

Overall Score:

81 - Strong

Legal Framework Score:

95 - Very Strong

Actual Implementation Score:

69 - Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁸³Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

According to Article 28E.3 of the Indonesian Constitution: "Every person shall have the right and freedom to associate, to assemble and to express opinions."

Also, Article 1.1, Law No. 16, on Foundation, states that "a foundation is a legal entity that does not have any member and the assets of which are separated and allocated to achieve certain purposes in social, religious and humanity fields."

References:

Article 28E.3, Indonesian Constitution, 1945, Fourth Amendment in 2002.

Article 1.1, Law No. 16, 2001, on Foundation.

Article 16 and 24, Law No. 39, 1999, on Human Rights.

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

References:

Articles 26.2, 52.2 and 72.1 of Law No. 28, 2004, which is an Amendment of Law No. 16, 2001, on Foundation.

Article 41 of Government Regulation No. 63, 2008, on the Implementation of the Law on Foundation.

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

References:

Articles 52.1, 52.2, and 52.3 of Law No. 28, 2004, on Amendment Law No. 16, 2001, on Foundation.

Article 37.4(f) of Government Regulation No. 63, 2008, on the Implementation of the Law on Foundation.

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

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

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

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

References:

Critic and self reflection of NGOs, the section of “Akuntabilitas dan Transparansi LSM: Perspektif Pemerintah Daerah” (NGOs’ Accountability and Transparency: Perspective of Local Government), Kamalia Purbani, PIRAC, 2004.

Yakob Ishadamy, Senior Adviser to the Governor of Aceh, interviewed on August 10, 2011, in Banda Aceh.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

The space for engagement between NGOs/CSOs and government at all levels and in all public sectors is largely open; however, the capacity of most NGOs/CSOs to engage with the government and other stakeholders in Indonesia is limited. Many anti-corruption NGOs/CSOs would rather conduct confrontational engagement rather than work with other stakeholders behind the scenes for better public transparency of the government or private sector. There is still a strong belief that “either you are with us or against us” among the NGOs/CSOs in Indonesia, and some of NGOs/CSOs who are engaging other stakeholders often are seen as “being in bed with the enemy.”

References:

“Corruption and Civil Society Organizations in Indonesia,” Richard Holloway, 2001.

“The Strategic Plan of Indonesia’s Corruption Eradication Committee 2008 – 2011,” http://www.kpk.go.id/modules/edito/doc/Strategic_plan_2008_to_2011_id.pdf

Ir Masnun, Senior Officer of Food Security Agency of Aceh Province, interviewed on August 7, 2011, in Banda Aceh.

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

References:

"World Report 2011: Indonesia," Human Rights Watch (HRW), January 2011, http://www.hrw.org/sites/default/files/related_material/indonesia_5.pdf

"AS Puji Peran Media & LSM Indonesia dalam Berantas Korupsi," Detik News, August 3, 2010, <http://www.detiknews.com/read/2010/08/03/012057/1412191/10/as-puji-peran-media-lsm-indonesia-dalam-berantas-korupsi>

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

67

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

No anti-corruption activist was imprisoned during the study period, including in Papua and West Papua.

References:

"Aktifis Anti Korupsi Rawan Kriminalisasi," KIC News, April 8, 2011, <http://www.koruptorindonesia.com/2011/04/aktifis-anti-korupsi-rawan-kriminalisasi/>

"AS Puji Peran Media & LSM Indonesia dalam Berantas Korupsi," Detik News, August 3, 2010.

[<http://www.detiknews.com/read/2010/08/03/012057/1412191/10/as-puji-peran-media-lsm-indonesia-dalam-berantas-korupsi>]

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes

No

Comments:

An Indonesian Corruption Watch (ICW) activist, Tama Satrya Langkun, was ambushed, beaten, tortured and stabbed in July 2010. This incident is believed to be related to his publication of rampant police corruption. He discovered a total of IDR 95 billion (more than \$11 million) in several high-ranking police officers' bank accounts that had been obtained through bribery, fraud and corruption.

References:

"The Rights Groups Push on Human Rights Defenders Protection Law", Indonesian Corruption Watch, Press Release, April 2011, <http://www.antikorupsi.org/antikorupsi/?q=content/19504/aktivis-desak-pembahasan-ruu-perlindungan-pembela-ham>

Indonesian Human Rights Working Group Urgent Appeal, July 8, 2010, <http://www.hrwg.org/in/berita/hrwg-dalam-berita/177-urgent-appeal-condemned-the-violence-against-activists->

"2010 Human Rights Monitor Report: Indonesia," U.S. government, April 2011.

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

"2010 Human Rights Monitor Report: Indonesia," U.S. government, April 2011.

"World Report 2011: Indonesia," Human Rights Watch (HRW), January 2011, http://www.hrw.org/sites/default/files/related_material/indonesia_5.pdf

Yes: A YES score is earned if there were no documented cases of NGO 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

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

According to the Indonesian Constitution: "The freedom to associate and to assemble, to express written and oral opinions shall be regulated by law."

"Every laborer/worker has rights to form and to become a member of a trade union," and "Trade unions can be formed by at least 10 workers/laborers."

References:

Article 28 of Indonesian Constitution (UUD), 1945.

Article 16 and 25, Law No. 39, on Human Rights, 1999.

Article 5.1 and 5.2 of Law No. 21 on Trade Unions, 2000.

Various Ministry of Man Power Acts related to the implementation of Law No.21/2000 at practical level.

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

"In 2010, one among many legal aid organizations in Indonesia, LBH Jakarta received 1,687 complaints from trade unions related to the violation of labor rights."

"From January to March 2011, 52 cases were reported to LBH Jakarta relating to the violation of freedom to associate and to assemble experienced by laborers in Jakarta."

"On December 23, 2010, Indonesian Prosperous Labour Union (KSBSI) Chairman Rekson Silaban said outsourcing and the contract system had sharply reduced the number of permanent workers in the country from 67 percent of the total formal labor workforce in 2005 to only 35 percent in 2010."

References:

Annual Report of Jakarta Legal Aid Institute 2010 (Laporan Akhir Tahun LBH Jakarta), 2010.

"May Day 2011 Notes from LBH Jakarta", LBH Jakarta, May 1, 2011.

Annual Survey on Violations of Trade Union Rights in Indonesia, ITUC CSI IGB, 2011, <http://survey.ituc-csi.org/Indonesia.html?lang=en#tabs-4>

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

Comments:

“Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.”

“Press freedom is an element of people’s sovereignty and dignity based on the principle of democracy, justice and law supremacy.”

“Press freedom is guaranteed as a right of citizens; the national press will not be censored, banned or denied from being broadcast or circulated; to guarantee press freedom, the national press has the right to search, to obtain, and to circulate ideas and information.”

References:

Article 28 F of Indonesian Constitution, 1945.

Articles 2 and 4 of Law No. 40 on Press (1999).

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.

05b. In law, freedom of speech is guaranteed.

Yes

No

Comments:

“Every person shall have the right to the freedom to associate, to assemble and to express opinions.”

References:

Article 28E.3 of the Indonesian Constitution, 1945.

Article 25, Law No. 39 on Human Rights, 1999.

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?

100

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

According to data on the media in Aceh in 2010, "In Aceh province, there were only two printed media outlets (one daily and one weekly) in 2002. In 2010, there were 10 printed media outlets based in Aceh."

References:

"Managing Press Freedom," Indonesian Press Council, Dewan Pers, June 2008.

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

References:

Article 7 of Law No. 37 on Ombudsman of the Republic of Indonesia, 2008.

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The Regulation of Ministry of Information and Communication of Indonesia No. 28/P/M/KOMINFO/09/2008, On Procedures and Mechanism of Broadcasting Licenses.

The Regulation of Ministry of Information and Communication of Indonesia No. 132/SK/MENPEN/1998 and The Regulation of the Ministry of Information and Communication of Indonesia RI No. 1/PER/MENPEN/1998 On Press/Media Licensing Procedures.

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

"The Standard of Press Company," Press Council Decision, December 6, 2007.

Government Regulation No. 7 on Non-Tax State Revenue Within Department of Information and Telecommunication, 2009.

Andi, Independent journalist in Aceh, interviewed August 21, 2011.

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?

94

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

"Pornography is a picture, sketch, illustration, photos, writing, audio, noises, cartoon, conversation, body movement, or other messages that are circulated via communication media and/or public display that might contain sensuality which is in compliance to the norms within the community."

Pornography services are all types of pornographic showing provided by individual or corporate via live show, cable TV, terrestrial TV, radio, telephone, Internet, and other electronic communication also via newspaper, magazine and other printed media.

Articles 1.1 and 1.2 of Law No. 44 on Pornography (2008) banned any broadcasting of media programs that have any connection to pornography.

The definition of pornography and pornography service/operator is too broad.

Law No. 32 on Broadcasting (2002) established the Broadcasting Committee which has power to design the guidelines and standards of broadcasting operations, which creates some barriers.

References:

The Regulation of Indonesian Broadcasting Committee No. 2/P/KPI/12/2009 on Guidelines on Broadcasting Attitude.

The Regulation of Indonesian Broadcasting Committee No. 3 on the Standards of Broadcasting Programmes, 2007.

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.

07b. 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:

Article 7 of Law No. 37/2008 on Ombudsman of the Republic of Indonesia.

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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The Regulation of Ministry of Information and Communication of Indonesia No.28/P/M/KOMINFO/09/2008 On Procedures and Mechanism of Broadcasting Licenses.

Andi, independent journalist in Aceh, interviewed August 21, 2011.

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Government Regulation No. 7/2009 on Non-Tax State Revenue Within Department of Information and Telecommunication.

Andi, independent journalist in Aceh, interviewed August 21, 2011.

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

Internet and Freedom in Indonesia, a statement made at The Human Voice of Freedom: The Internet and Human Rights, United Nation Human Rights Council, Geneva, <http://andreasharsono.blogspot.com/2011/06/between-freedom-and-hate-speech-in.html>, June 9, 2011.

Rizal Wahyudi, manager of www.aceh-eye.org, interviewed August 16, 2011

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.

08b. In practice, the government does not censor citizens creating content on-line.

Comments:

According to Article 28 of Law No. 11/2008 on Information and Electronic Transactions, “Everyone is prohibited from spreading – deliberately or unintentionally – a story which is untrue and which may cause disadvantage to the consumer of an electronic transaction,” and “Everyone is prohibited from spreading – deliberately or unintentionally – information that aims to spread hatred against another individual or race.”

And according to Article 27.3 of Law No. 11/2008 on Information and Electronic Transactions: “Everyone is prohibited from distributing – deliberately or unintentionally – any electronic information or document that could cause contempt for and/or defamation of others.”

References:

Kompas, <http://umum.kompasiana.com/2009/06/03/kronologi-kasus-prita-mulyasari/>, June 3, 2009.

Rizal Wahyudi, manager of www.aceh-eye.org, interviewed August 16, 2011.

Andi, independent journalist in Aceh, interviewed August 21, 2011.

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?

92

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

According to Article 5.1 of Law No. 40/1999 on Press: National media are obligated to report stories and publish articles, with a sense of respect for religious norms and public decency and with a presumption of innocence.

References:

Article 5.1 of Law No. 40/1999 on Press.

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 27.3 of Law No.11/2008 on Information and Electronic Transactions: “Everyone is prohibited – deliberately or inadvertently – from distributing any electronic information or document that could cause contempt for and/or defamation of others.

In June 2010, Indonesian Tempo magazine released a story on “fat bank accounts” belonging to several police generals involved in corruption and bribery. In response, the Indonesian Police filed a criminal case against Tempo.

References:

Article 27.3 of Law No. 11/2008 on Information and Electronic Transactions.

Tribun News, <http://www.tribunnews.com/2010/06/30/polri-resmi-pidanakan-tempo>, June 30, 2010.

Freedom House Country Report 2010, Indonesia, published on <http://freedomhouse.org/template.cfm?page=22&country=8056&year=2011>

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

References:

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed September 7, 2011.

Imran, Tempo Correspondent, interviewed August 19, 2011.

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?

75

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

Yes | No

References:

Article 5.3, Law No. 40/2007 on Limited Companies (Perseroan Terbatas).

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:

Article 5.3, Law No. 40/2007 on Limited Companies (Perseroan Terbatas).

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

Comments:

Out of 900 media in Indonesia, only 10 percent are healthy, 20 percent are good, 30 percent are adequate and 30 percent are very bad, said Margiono, chairman of the Indonesian Journalists Association (PWI), on February 9, 2011.

Eighty percent of journalists in Indonesia are not yet professional, said Margiono, Chairman of the Indonesian Journalists Association (PWI), on April 24, 2011.

References:

Margiono, chairman of the Indonesian Journalists Association (PWI), statement, February 9, 2011.

"Kebebasan Pers di Indonesia masih Terbelenggu" Cornelius Eko Susanto, Media Indonesia, <http://www.mediaindonesia.com/read/2011/05/05/223632/293/14/Kebebasan-Pers-di-Indonesia-masih-Terbelenggu>, May 5, 2011.

Margiono, Chairman of the Indonesian Journalists Association (PWI), statement during National Press Day and 65th Birthday of PWI, <http://www.republika.co.id/berita/nasional/umum/11/04/25/lk7ne6-waduh-80-persen-wartawan-indonesia-belum-profesional>, April 24, 2011.

Margiono, Chairman of Indonesian Journalist Association (PWI), 9 February 2011, <http://www.presidentri.go.id/index.php/fokus/2011/02/09/6455.html>.

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

Comments:

In the 1999 election, commercial media focused as much as 73.9 percent of their election broadcasting or election reporting on five major political parties, while 43 smaller political parties only received 26.1 percent of commercial-media coverage. Similarly, in the 2004 general election, state-owned media focused their reporting as much as 45.1 percent, while another 19 political parties only received 54.9 percent.

In the 1999 election, state-owned media focused as much as 69.1 percent of their election broadcasting or election reporting on five major political parties, while 43 smaller political parties only received 30.9 percent. Similarly, in the 2004 general election, state-owned media focused their reporting as much as 45.6 percent, while another 19 political parties only received 54.4 percent.

In 2009, some Indonesian media tycoons were central political figures. Bakrie, who was chairman of one of major political parties in Indonesia, controlled several broadcasting and online media such as Tvone, ANTV, and Vivanews. These media broadcast more political activities of the Golkar party. During the 2009 election, the owner of Media Indonesia Group also backed the Golkar party. Since then, he has stepped down and started his own political party.

References:

Harry Tanoe is teaming up with the Nasdem party; PPP worries that media will be used as a political-party campaign tool, Tempo Interaktif, <http://www.tempo.co/read/news/2011/10/13/090361281/Hary-Tanoe-Ogah-Jelaskan-Alasannya-ke-Nasdem>, October 13, 2011.

The Challenges for Independent Media, Investor Daily, http://www.investor.co.id/suratpembaca/ancaman-bagi-netralitas-media/24845#Scene_1, November 23, 2011.

Media and Local Politics: Media professionalism on election reporting, Indonesia Press Council, Page 5, December 2010.

Media, Election and Politic: The Media during 2009 election, ISAI, March 2010, <http://kanalinformasi.com/buku-isai/media/2011/02/14/media-pemilu-dan-politik>

"The Independency of media during 2009 election" M. Ajie Najmuddin, 23 February 2009, <http://el-karanjiy.blogspot.com/2009/02/independensi-media-dalam-pemilu-2009.html>

ToR from the seminar: "The Media Independency on Reporting Presidential Election" in Meridien Hotel, Jakarta, organized by AJI Indonesia on 5 December 2009, http://www.ajiindonesia.org/index.php?option=com_content&view=article&id=173%3Aindependensi-media-dalam-pemberitaan-pilpres&catid=31&Itemid=172&showall=1

Imran, TEMPO Correspondent, interviewed 19 August 2011.

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

Comments:

In the 1999 election, state-owned media focused as much as 69.1 percent of their election broadcasting or election reporting on five major political parties, while 43 smaller political parties only received 30.9 percent of their coverage. Similarly, in the 2004 general election, state-owned media focused their reporting as much as 45.6 percent, while another 19 political parties only received 54.4 percent.

In the 1999 election, commercial media focused as much as 73.9 percent of their election broadcasting or election reporting on five major political parties, while 43 smaller political parties only received 26.1 percent of their coverage. Similarly, in the 2004 general election, state-owned media focused their reporting as much as 45.1 percent, while 19 other political parties only received 54.9 percent.

References:

TVRI to resume its government extension?, Tempo Interaktif, <http://www.tempo.co/read/kolom/2010/10/29/271/TVRI-Kembali-Jadi-Corong-Pemerintah>, October 29, 2010.

Minutes of the meeting between Commission I of National Parliament and LPP TVRI, November 12, 2009.

Media and Local Politics: Media professionalism on election reporting, Indonesia Press Council, December 2010.

"The Independency of media during 2009 election," M. Ajie Najmuddin, 23 February 2009, <http://el-karanjijy.blogspot.com/2009/02/independensi-media-dalam-pemilu-2009.html>

ToR from the seminar: "The Media Independency on Reporting Presidential Election" in Meridien Hotel, Jakarta, organised by AJI Indonesia on 5 December 2009. [http://www.ajiindonesia.org/index.php?option=com_content&view=article&id=173%3Aindependensi-media-dalam-pemberitaan-pilpres&catid=31&Itemid=172&showall=1]

Media, Election and Politic: The Media during 2009 election, ISAI, March 2010. [<http://kanalinformasi.com/buku-isai/media/2011/02/14/media-pemilu-dan-politik>]

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?

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

Yes | **No**

Comments:

In October 2010, Erwin Arnada, editor-in-chief of of Playboy Indonesia, was sentenced to two years imprisonment. He was charged after the Indonesian Islamist militant group FPI (Islamic Defense Front) filed a morality complaint against him even though the Indonesian Press Council had classified Playboy as a journalistic product. Arnada was freed after the Indonesian Supreme Court reviewed the case in June 2011 and found no basis for the conviction.

References:

"Erwin Arnada to be freed today,"

KOMPAS, <http://megapolitan.kompas.com/read/2011/06/24/17015782/Erwin.Arnada.Bebas.Hari.Ini>, June 24, 2011.

Press Freedom Barometer 2011, Journalists Without Borders.

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:

A journalist from Harian Aceh reported that a district military officer in Simeuleu island, Aceh Province, was involved in illegal logging. The journalist was summoned to Simeuleu military headquarters by First Lieutenant Faisal Amin in May, 2010. There, the journalist was beaten, he and his family were threatened, and his reporting equipment damaged. In January 2011, Banda Aceh military court sentenced First Lieutenant Faisal Amin to 10 months in prison for the incident.

A reporter from SCTV was beaten by court security in South East Moluccas district, in May 2010. The reporter had asked why journalists were not being allowed to report on a corruption case against the former district chief deputy, when the proceedings had been announced as being public.

References:

Kompas, <http://regional.kompas.com/read/2010/05/07/15425480/Liput.Sidang.Korupsi..Wartawan.Dipukuli-5>, May 7, 2010.

Imran, Tempo correspondent, interviewed August 19, 2011.

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:

At least four journalists were killed in Indonesia from June 2010 to June 2011. Alfrets Mirulewan, editor-in-chief of Pelangi weekly, was found dead December 17, 2010; he is believed to have been killed because of his reporting on illegal gasoline trading in Maluku islands. A leading Indonesian environmental journalist, Kompas' Borneo bureau chief, Muhammad Syaifullah, was found dead in July 2010; he is believed to have been killed because of his investigation of illegal logging and reporting on coal mining in Kalimantan. Others were killed accidentally and by criminals.

References:

"In two months, five journalists found dead," Viva News, <http://nasional.vivanews.com/news/read/178127-dua-bulan-empat-wartawan-tewas>, September 18, 2010.

"Journalist who covered environmental issues found dead," Journalists Without Borders, <http://en.rsf.org/indonesia-journalist-who-covered-26-07-2010,38029.html>, July 26, 2010.

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.

78

1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

References:

Law No.14, 2008, Free Information Act, articles 2(3), 3(a), and 4.

Article 14.2 of Law No. 39/1999 on Human Rights.

Government Regulation No. 61/2010 on Implementation of Free Information Act.

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

References:

Government Regulation No. 61, 2010, on Implementing Mechanism of Free Information Acts. (The establishment of Commission on Information)

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:

The citizen can request the information from a designated public officer in certain government departments or agencies through all means of direct communication, and the public officer is then obligated to provide information (except for certain criteria of information categorized as "exception"). If the information is not given, the citizen can complain to the Public Information Commission. The Public Information Commission then will try to mediate between the information seeker and government agency to make necessary arrangements. If the information seeker is not satisfied with the decision of the Public Information Commission, it can be resolved through the judiciary mechanism under criminal proceedings.

References:

Government Regulation No. 61, 2010, on Implementing Mechanism of Free Information Acts. (The establishment of Commission on Information)

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 to information requests effective?

79

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

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

Comments:

Do citizens receive responses to information requests within a reasonable time period?

Despite the Law No. 14 of 2008, the Free Information Act, which took effect a year later, since April 2010, more than 30 agencies from the central and local governments have not installed a designated officer to manage the information and documentation so that the public can directly and easily access information. This has become one of the biggest obstacles for the public to receive information within a reasonable time period.

Marzuki: "For more sensitive information, it depends on the connection of information requester and the officer within the department."

References:

68H Radio News Agency, August 2, 2011, <http://www.kbr68h.com/berita/nasional/10072-pelaksanaan-uu-keterbukaan-informasi-publik-tidak-serius>

Marzuki, Eye on Aceh, interviewed on August 19, 2011.

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is free to utilize the information request mechanism, based on existing freedom information acts; however, because this regulation is new, the infrastructure and resources available to implement this regulation effectively are not yet in place, such as in all provinces in Indonesia where the branches of Commission on Information are established.

References:

Toward Democratization through Free Public Information Acts, discussion between KBR68H and Ministry of Information and Telecommunication, KBR68H, August 1, 2011, <http://www.kbr68h.com/berita/olahraga/10034-mewujudkan-demokrasi-lewat-uu-keterbukaan-informasi-publik>

“Guideline on Public Information Service Standard at Secretary General of National Food Security Council,” April 2011.

Marzuki, Eye on Aceh, interviewed on August 19, 2011.

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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

Comments:

The law and its implementing regulation set the standard of information to be released to the public. However, some seekers receive better information, depending on his or her connection within the government agency.

References:

Managing Free Public Information: Principle and Implementation Guideline of Law No. 14, 2008, The Information Committee of State Civil Servants Agency, 2010.

Zulkifli, Secretary General of ASIA (Fishery sector entrepreneur association in Aceh), August 12, 2011.

Marzuki, Eye on Aceh, interviewed on August 19, 2011.

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 information requests within a reasonable time period.

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

Comments:

From July 2010 to March 2011, the Commission on Information received 224 information disputes between information requestor (public) and government agency; of those, 22 appeals were resolved through mediation facilitated by the Commission on Information, and seven went through an adjudication process.

References:

Kompas, April 30, 2011, <http://nasional.kompas.com/read/2011/04/30/02422281/KIP.Terima.224.Sengketa.Informasi>

Data on appeals (the number of adjudication and mediations by the Commission on Information) from 2010 to 2011, facilitated by the Commission of Information, between the information requestors and the government agencies who hold the information, <http://www.komisiinformasi.go.id/index.php/subMenu/408>

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

References:

“Guideline on Public Information Service Standard at Secretary General of National Food Security Council,” April 2011.

Danang Widoyoko, Coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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

References:

Data on the resume of appeals (the number of adjudications and mediations) from 2010 to 2011, facilitated by the Commission of Information, between the information requestors and the government agencies who hold the information, <http://www.komisiinformasi.go.id/index.php/subMenu/408>

The Decision Information Commission No. 1, 2010, on Public Information Service Standard.

Yakob Ishadamy, Head of Aceh Green Secretariat, the Government of Aceh, August 14, 2011.

Ir. Masnun Adami, officer, Food Security Agency of Aceh Province, interviewed on August 19, 2011.

Marzuki, Eye on Aceh, interviewed on August 19, 2011.

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.

2.1. Voting and Party Formation

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

References:

Articles 1.22 and 19 of Law No. 10, 2008, concerning General Election for Members of the People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

Articles 1.19, 1.20, and 1.21 of Law No. 42, 2008, on Presidential and Vice Presidential Election.

Government Regulation No. 17, 2005, on the Election, Legalization, and Suspension of Head of Regional Government (Governor and Mayor/District Chief).

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

References:

Article 22E.1 of Indonesian Constitution, 1945.

Article 4.1 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

Articles 32 to 49 of Law No. 10, 2008, Concerning General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

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?

100

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

100 | 75 | 50 | 25 | 0

References:

Final Report of the Carter Center Limited Observation Mission to the April 2009 Legislative Election in Indonesia, Carter Center, August 2009.

"Indonesia Presidential Elections 2009: A short observation report on the conduct of 2009 presidential election," Asian Network For Free Elections (ANFREL), 2009, http://anfrel.org/country/Indonesia/Mission_Reports/2009/Indonesia_Report_d6-final.pdf

"A Decade of Democracy in Indonesia: the 2009 Legislative Election," the Report of International Observer Mission, Asian Network For Free Elections (ANFREL), 2009, http://anfrel.org/country/Indonesia/Mission_Reports/2009/Indonesia_Legislative_Election_2009.pdf

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

References:

“Indonesia Presidential Elections 2009: A short observation report on the conduct of 2009 presidential election,” Asian Network For Free Elections (ANFREL), 2009, http://anfrel.org/country/Indonesia/Mission_Reports/2009/Indonesia_Report_d6-final.pdf

“A Decade of Democracy in Indonesia: the 2009 Legislative Election,” The Report of International Observer Mission, Asian Network For Free Elections (ANFREL), 2009, http://anfrel.org/country/Indonesia/Mission_Reports/2009/Indonesia_Legislative_Election_2009.pdf

Final Report of the Carter Center Limited Observation Mission to the April 2009 Legislative Election in Indonesia, August 2009.

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:

Sejarah – Pemilu Indonesia: <http://www.pemiluindonesia.com/category/sejarah>

“Elections in Indonesia,” Commission of Election Committee, 2010, http://kpu.go.id/dmdocuments/modul_1c.pdf

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?

100

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

Yes | No

References:

Article 2 (1) Law No. 2, 2011, on Political Parties (amended from previous Political Parties' Law No. 2, 2008).

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:

Law No. 32, 2004, on Regional Government also guarantees the participation of independent candidates to contest during local elections, such as the election of the head of a province or district.

References:

Article 2 (1) of Law No. 2, 2011, on Political Parties (amended from previous Political Parties' Law No. 2, 2008).

Law No. 32, 2004, on Regional Government.

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

References:

"Syarat Pendirian Parpol Konstitusional," Kompas Media, August 4, 2011, <http://nasional.kompas.com/read/2011/08/04/15443588/Syarat.Pendirian.Parpol.Konstitusional>

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:

There is no evidence to the contrary that there are formal barriers for citizens to run for political office in the study period. In the contest for local elections to elect the governor, district chief or mayor, independent candidates are accommodated; the candidates for senator or Regional Representative Council is based on personal or independent candidacy. The candidate for president and vice President is proposed by the winning political parties or by a coalition of several parties that have seats in the house of parliament. The contests for national, provincial and district members of parliaments are contested through the political party system.

References:

"Public Support on Independent Candidates: the finding from national survey," Lembaga Survey Indonesia (LSI), July 2007.

The decision of the Constitutional Court of Indonesia No. 5/PUU-V/2007 on Annuling Articles 56, 59, and 60 of Law No. 32, 2004, on Regional Government, which is to accommodate independent candidates to contest in local elections.

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:

Indonesia's 560-seat National Parliament is made up of nine major political parties from a total of 39 political parties that fielded candidates in the April 2009 general election. The majority Democrat Party occupies 21 percent of the seats.

References:

"List of Parliamentarian Members 2009 – 2014," Data DPR-RI, <http://www.dpr.go.id/id/anggota/per-fraksi>

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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.

2.2. Election Integrity

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

100

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

Yes | No

References:

Article 6.2 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

Law No. 22, 2007, on Elections Organizer – including the establishment of elections’ monitoring body, which is Bawaslu (the Election Supervisory Agency).

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.

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 of Law No. 22, 2007, about the Elections’ Organizer.

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

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References:

Brief profile of Bawaslu, <http://www.bawaslu.go.id/profile/2/>

Strategic Planning of Bawaslu, <http://www.bawaslu.go.id/profile/3/>

“Commission II DPR-RI Robs the Independency of Elections’ Organiser,” Joint Press Release by CETRO, KRHN, IPC, SPD, JPPR, SSS, Puledem, Puskappol UI, KIPP, Sigma Indonesia, November 10, 2010.

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:

Strategic Planning of Bawaslu, <http://www.bawaslu.go.id/profile/3/>

Statement by Wayan Sudirta, Chairman of the Bill Drafting Committee of Regional Representative Council (DPD), June 14, 2011.

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

Comments:

On April 9, 2009, one day after the general election, the Bawaslu already reported its ongoing findings relating to 150 violations and weakness of the implementation of general elections. These included some logistical issues and illegal voters (one person who did multiple voting). This report was made on various broadcasting media and printed media, such as Metro TV.

References:

"Bawaslu studied all reports," press release from Bawaslu, June 30,

2011, <http://www.bawaslu.go.id/berita/39/tahun/2011/bulan/06/tanggal/30/id/2538/>

"Handling of local election violations 2010," Local Election Supervisory Report from Bawaslu, December 22, 2010, <http://www.bawaslu.go.id/informasi/23/tahun/2010/bulan/12/tanggal/22/id/2009/>

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:

Indonesia's Elections Supervisory Board does not have an executorial mandate.

References:

"Bawaslu is insufficient," Republika, August 7, 2009, http://republika.co.id:8080/koran/45/67678/Kinerja_Bawaslu_Dinilai_tidak_Efektif

"Indonesia's Elections Supervisory Board does not have executorial mandate," Bawaslu, April 6, 2010, <http://www.bawaslu.go.id/berita/37/tahun/2010/bulan/04/tanggal/06/id/789/>

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:

In the 2009 general election, in many provinces in Indonesia, the election organizing agencies used an outdated list of eligible voters. Some listed voters who had moved away or died several years ago.

References:

"Ministry of Home Affairs: the weakness of permanent voters' list must be anticipated," Antara News, April 17, 2009.

"Chaotic DPT (permanent voters list) shadows local election 2010," Information from Commission II of National Parliament, February 17, 2010, <http://www.dpr.go.id/id/berita/komisi2/2010/feb/17/1339/kisruh-dpt-bayangi-pilkada-2010>

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:

Article 10.1 of Law No. 24, 2003, on 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:

Based on a summary of cases from the General Election 2009 and Local Election from 2008-2011 in the Constitutional Court: "From the 2009 legislative and presidential election, the Constitutional Court received 657 appeals from various political parties who contested the election across the country. Of those, 70 appeals were accepted, including eight appeals when recounting votes and ballots cast were processed. Similarly, from 2008 – 2011, the court also registered 363 appeals from various local elections (the election of governor and district chief/mayor), and of those, 37 appeals were accepted."

References:

"The Role, Function, and Authority of the Constitutional Court within Indonesian Governing Structure," presented paper, Janedjri M.Gaffar, Secretary General of Indonesia' Constitutional Court, October 17, 2009.

"Data Court Case and its Result within Constitution Court," Constitutional Court, 2011.

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:

There was no general election (legislative and presidential election) during the study period. The latest election was in 2009.

References:

"President Reminds Military and Police to be Neutral During Election," Sinar Harapan, January 29, 2009, www.sinarharapan.co.id/berita/0901/29/sh06.html

"Pocket Guideline on the Neutrality of TNI," Indonesian Military, 2008.

Indonesian Military in Chief Order No. STR/546/1006, August 22, 2006.

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 of Law No.10, 2008, on the General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

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

References:

"Indonesia Presidential Elections 2009: A short observation report on the conduct of 2009 presidential election," Asian Network For Free Elections (ANFREL), 2009, http://anfrel.org/country/Indonesia/Mission_Reports/2009/Indonesia_Report_d6-final.pdf

"A Decade of Democracy in Indonesia: the 2009 Legislative Election," the Report of International Observer Mission, Asian Network For Free Elections (ANFREL), 2009, http://anfrel.org/country/Indonesia/Mission_Reports/2009/Indonesia_Legislative_Election_2009.pdf

Final Report of the Carter Center Limited Observation Mission to the April 2009 Legislative Election in Indonesia, August 2009.

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.

92
2.3. Political Financing Transparency

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

83

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

Yes

No

Comments:

The maximum individual donation for a political party is 1 billion rupiah.

The non-member maximum individual donation for a political party is 1 billion rupiah per year.

References:

Articles 131.1 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

Article 35.1 (b) of Law No. 2, 2011, on Political Parties (amended from previous Political Parties' Law No. 2, 2008).

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:

The maximum corporate donation for a political party is 7.5 billion rupiah per year.

References:

Articles 131.2 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

Article 35.1 (c) of Law No. 2, 2011, on Political Parties (amended from previous Political Parties' Law No. 2, 2008).

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

Comments:

Currently, there is ongoing debate on this matter, and it could potentially lead to something positive.

There is no law to regulate this matter.

References:

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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

References:

Articles 131.3 and 133.3 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional

Representatives Council, and Regional People's Representative Council.

Article 39 of Law No. 2, 2011, on Political Parties (amended from previous Political Parties' Law No. 2, 2008).

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

References:

Article 39 of Law No. 2, 2011, on Political Parties (amended from previous Political Parties' Law No. 2, 2008).

Articles 131.3 and 133.3 of Law No.10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

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

Comments:

The Audit Board of the Republic of Indonesia (BPK) is mandated only to audit the expenditure of political parties that specifically come from the assistance of the national and/or regional government budget, and which the political parties can use only for the political education of their members and the operational costs of political party secretariats. However, other sources of income and expenditures are audited by a public accountant designated by the General Election Committee.

References:

Article 34A of Law No. 2, 2011, on Political Parties (amended from previous Political Parties' Law No. 2, 2008).

Articles 134.1 and 135.1 of Law No. 10, 2008, on on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

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 non-governmental 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

Comments:

The maximum individual donation for individual candidates of Regional Representative Council members is 250 million rupiah.

References:

Articles 133.1 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

Law No. 10, 2008, only regulates the individual donation to the candidates of a regional representative council. However, Law No. 32, 2004, on Regional Government, which is the legal basis for regional elections, does not regulate individual donations to the candidate of governor and the deputy and district chief/mayor and deputy.

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

Comments:

The maximum corporate donation for individual candidates of the Regional Representative Council is 500 million rupiah.

While Law No. 10, 2008, regulates corporate donation to the candidates of regional representative council, Law No. 32, 2004, on Regional Government, which is the legal bases for regional election, does not regulate corporate donation to the candidates of governor and the deputy and district chief/mayor and deputy.

References:

Articles 133.2 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional

Representatives Council, and Regional People's Representative Council.

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

Comments:

Law No.10, 2008, only requires public disclosure related to corporate and individual contributions to the candidates of regional representative council. However, Law No. 32, 2004, on Regional Government, which is the legal basis for regional elections, does not regulate public disclosure related to corporate and individual donations to the candidate of governor and the deputy and district chief/mayor and deputy.

References:

Article 133.3 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Yes

No

Comments:

The law states that campaign funds of Regional Representatives Council candidates, including revenues and expenditures, must be reported to the public accounting firm appointed by the commission by 15 days after the date of voting.

References:

Article 135.2 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

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

Comments:

Article 134.2 of Law No. 10, 2008: "The candidates of Regional Representative Council are required to preliminary report on campaign funds and its specific campaign bank account to General Election Committee at least 7 days before the official campaign schedule."

Article 135.2 of Law No. 10, 2008: "Campaign income and expenditure report of the candidate of People's Representative Council must be submitted to public accountant designated by General Election Committee 15 days after the election day — at the latest."

References:

Article 134.2 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

Article 135.2 of Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

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 non-governmental organizations.

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

50

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:

There are many loopholes in existing regulations that set the limits of individual donations to a political party. One person can channel a donation through various ways and names, and this violation has been unstoppable, especially since there is no law that makes arrangement to audit the individual donator's spending amount. Some of the major political parties in Indonesian have been reluctant to be open to the public about their campaign fund, which has increased public speculation on political parties' wrongdoing regarding campaign financial expenditures.

References:

“Nazaruddin Reveals Comprehensive Flow of Funds from Ministry of Youth and Sport,” Detik News, July 3, 2011, <http://www.detiknews.com/read/2011/07/03/182504/1673469/10/nazaruddin-kisahkan-lengkap-aliran-dana-kemempora>

“Transparency and Accountability of Campaign Funds during the 2009 Elections,” Wawan Ichwanuddin, Center for Political Studies of Indonesian Institute of Science (LIPI), March 27, 2009, <http://www.politik.lipi.go.id/index.php/in/kolom/politik-nasional/37-wawan-ichwanuddin>

“Evaluation of Campaign Funds relating to the 2009 Legislative and Presidential Elections,” Indonesia Corruption Watch, October 2009.

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:

There are many loopholes in existing regulations that set the limits of individual donations to a political party. One person can channel a donation through various ways and names, and this violation has been unstoppable, especially since there is no law that makes arrangement to audit the individual donor's spending amount. Some of the major political parties in Indonesian have been reluctant to be open to the public about their campaign fund, which has increased public speculation on political parties' wrongdoing regarding campaign financial expenditures.

References:

“Nazaruddin Reveals Comprehensive Flow of Funds from Ministry of Youth and Sport,” Detik News, July 3, 2011, <http://www.detiknews.com/read/2011/07/03/182504/1673469/10/nazaruddin-kisahkan-lengkap-aliran-dana-kemempora>

“Bawaslu investigates foreign funding to SBY campaign team,” Surya Online, July 30, 2009, <http://www.surya.co.id/2009/07/30/bawaslu-usut-dana-asing-ke-tim-sby.html>

“Transparency and Accountability of Campaign Funds during the 2009 Elections,” Wawan Ichwanuddin, Center for Political Studies of Indonesian Institute of Science (LIPI), March 27, 2009, <http://www.politik.lipi.go.id/index.php/in/kolom/politik-nasional/37-wawan-ichwanuddin>

“Evaluation of Campaign Funds on 2009 Legislative and Presidential Elections,” Indonesia Corruption Watch, October 2009.

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:

Both existing laws on general elections and political parties do not regulate the maximum limits of expenditures of a political party: These are Law No. 10, 2008, on General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council; and Law No. 2, 2011, on Political Parties. Political party campaign expenditures during the 2009 election varied. Expenditures by smaller parties, such as Partai Buruh (Labor Party), were only IDR 1.7 billion, while some of the bigger party's expenditures were more than IDR 1 trillion.

References:

"Evaluation of Campaign Funds on 2009 Legislative and Presidential Elections," Indonesia Corruption Watch, October 2009.

"Transparency and Accountability of Campaign Funds during 2009 Elections," Wawan Ichwanuddin, Center for Political Studies of Indonesian Institute of Science (LIPI), March 27, 2009, <http://www.politik.lipi.go.id/index.php/in/kolom/politik-nasional/37-wawan-ichwanuddin>

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:

"Bawaslu investigates foreign funding to SBY campaign team" Surya Online, July 30, 2009, <http://www.surya.co.id/2009/07/30/bawaslu-usut-dana-asing-ke-tim-sby.html>

"Election Supervisory Board (Bawaslu) will be given power as KPU (General Election Committee)," Antara News Agency, June 14, 2011, <http://www.antaraneews.com/berita/262950/bawaslu-akan-diberikan-kewenangan-seperti-kpu>

"Evaluation of Campaign Funds on 2009 Legislative and Presidential Elections," Indonesia Corruption Watch, October 2009.

Mustawalad, candidate of the People Representative Council during the 2009 general election, interviewed on August 26, 2011.

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, though 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

Comments:

Despite the fact that some political parties received some individual or corporate donations above the set limit during the election in 2009, there was not a single penalty given. The mandate of the monitoring agency is insufficient.

References:

"Election Supervisory Board [Bawaslu] will be given power as KPU (General Election Committee)," Antara News Agency, June 14, 2011, <http://www.antaraneews.com/berita/262950/bawaslu-akan-diberikan-kewenangan-seperti-kpu>

"Bawaslu investigates foreign funding to SBY campaign team," Surya Online, July 30, 2009, <http://www.surya.co.id/2009/07/30/bawaslu-usut-dana-asing-ke-tim-sby.html>

"Evaluation of Campaign Funds on 2009 Legislative and Presidential Elections," Indonesia Corruption Watch, October 2009.

"Transparency and Accountability of Campaign Funds during 2009 Elections," Wawan Ichwanuddin, Center for Political Studies of Indonesian Institute of Science (LIPI), March 27, 2009, <http://www.politik.lipi.go.id/index.php/in/kolom/politik-nasional/37-wawan-ichwanuddin>

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.

100 | 75 | 50 | 25 | 0

Comments:

The designated auditors experienced difficulties in executing a comprehensive audit on the campaign funds of political parties for various reasons, such as a lack of supporting documents. This can be seen in the audit reports from 40 general election contestants that were released by the General Elections Committee in June 2009.

References:

Detail of audit reports on 40 contestants political parties during the 2009 legislative elections, http://www.kpu.go.id/index.php?option=com_content&task=view&id=6205&Itemid=76

List of income of campaign funds for each candidates of presidential election 2009, Data KPU, September 15, 2009, http://mediacenter.kpu.go.id/images/mediacenter/berita/JULI/Penerimaan_Dana_Kampanye_Pilpres0001.pdf

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?

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.

100 | 75 | 50 | 25 | 0

Comments:

Despite the fact that laws set a limit on individual donations, there are many loopholes in which one donor can channel several donations by proxy, normally by using a friend or relative. The agency often does not direct the candidate campaign funds directly to the candidates.

References:

Mustawalad, candidate of the People Representative Council during the 2009 general election, interviewed on August 26, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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

Comments:

Despite the fact that laws set a limit on individual donations, there are many loopholes in which one donor can channel several donations by proxy, normally by using a friend or relative. The agency often does not direct the candidate campaign funds directly to the candidates.

References:

Mustawalad, candidate of the People Representative Council during the 2009 general election, interviewed on August 26, 2011.

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

Comments:

In conducting investigations on possible violations of campaign funds, the agencies seem to favor certain candidates, and in many cases there is an indication of corruption/bribery between the election organizing body and some candidates; "some candidates became an ATM machine for the election officers."

References:

"Presidential Election 2009: the investigation on violation of campaign fund is suspended," Kompas, October 14, 2009, <http://cetak.kompas.com/read/2009/10/14/03540233/penyidikan.pelanggaran.dana.kampanye.dihentikan>

Mustawalad, former candidate of the People Representative Council during the 2009 general election, interviewed on August 26, 2011.

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:

In conducting investigations on possible violations of campaign funds, the agencies seem to favor certain candidates, and in many cases there is an indication of corruption/bribery between the election organizing body and some candidates; "some candidates became an ATM machine for the election officers."

There was no public recorded case in which offenders were penalized.

References:

"Presidential Election 2009: the investigation on violation of campaign fund is suspended," Kompas, October 14, 2009, <http://cetak.kompas.com/read/2009/10/14/03540233/penyidikan.pelanggaran.dana.kampanye.dihentikan>

Mustawalad, former candidate of the People Representative Council during the 2009 general election, interviewed on August 26, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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

Comments:

"Normally, before the official campaign dates are started, the candidate only submitted the availability of campaign funds they have and the source of the fund to the election supervisory and election organizer agency. Nevertheless, the candidates were not clarified or given feedback."

References:

Mustawalad, former candidate of the People Representative Council during the 2009 general election, interviewed on August 26,

2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

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

Comments:

A political party is only required by existing regulations to disclose its financial income and expenditure following the election (which is a five-year event); nevertheless, the accuracy of financial information (especially among major political parties) is in doubt, and the political party only sees this exercise as an administrative requirement.

References:

"Indonesia Corruption Watch: 9 political parties are not transparent on the sources of funds," Detik News, August 7, 2011, <http://www.detiknews.com/read/2011/08/07/075342/1698216/10/icw-9-parpol-tidak-transparan-soal-sumber-dana>

"Asking for financial report: Indonesian Corruption Watch visited Democrat Party headquarters," Okezone, July 28, 2011, <http://news.okezone.com/read/2011/07/28/339/485281/tagih-laporan-keuangan-icw-datangi-kantor-demokrat>

Danang Widoyoko, Coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

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

References:

"Indonesia Corruption Watch: 9 political parties are not transparent on the sources of funds," Detik News, August 7, 2011, <http://www.detiknews.com/read/2011/08/07/075342/1698216/10/icw-9-parpol-tidak-transparan-soal-sumber-dana>

"Asking for financial report: Indonesian Corruption Watch visited Democrat Party headquarters," Okezone, July 28, 2011, <http://news.okezone.com/read/2011/07/28/339/485281/tagih-laporan-keuangan-icw-datangi-kantor-demokrat>

Danang Widoyoko, Coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

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.

100 | 75 | 50 | 25 | 0

References:

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

Mustawalad, former candidate of the People Representative Council during the 2009 general election, interviewed on August 26, 2011.

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

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 NGOs. 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 NGOs trying to access this information.

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

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

Comments:

General Election Commission released the financial information on the 2009 election contested party, but the quality of information among major political parties was poor and the accuracy was questionable. The details can be found at http://www.kpu.go.id/index.php?option=com_content&task=view&id=6205&Itemid=68

References:

Danang Widoyoko, Coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

Marzuki, Eye on Aceh researcher, interviewed on August 19, 2011.

Firman, freelance journalist in Aceh, August 20, 2011.

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?

44

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

100 | 75 | 50 | 25 | 0

References:

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

Danang Widoyoko, Coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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

References:

Mustawalad, former candidate of the People Representative Council during the 2009 general election, interviewed on August 26, 2011.

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

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:

In the case of the National Representative Council, during the campaign process and before the day of casting ballot paper, there is very little effort by the election committee or election implementation body to insist that individual candidates submit their detail list of income and expenditure. However, once a certain candidate wins the majority and before he/she is officially declared a 'senator', this elected senator has to submit his/her list of income and expenditure to the election implementation body. Once this budget is submitted, they are audited and that information is normally available upon request from the general public. This information is free of charge. Citizens may have to pay for photo copies if there are no multiple copies available, and in some cases, the citizen must travel to the office to get information in case they are not available online.

References:

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

Mustawalad, former candidate of the People Representative Council during the 2009 general election, interviewed on August 26, 2011.

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

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 NGOs. 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 NGOs 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

Comments:

During the presidential election in 2009, there was a big gap of differences between the amount of financial records that was officially released and the data that was released by an Indonesian leading anti-corruption NGO, ICW. See the evaluation paper, "The Issue of Campaign Expenditure of General Election and Presidential Election 2009," ICW, October 2009.

References:

Danang Widoyoko, Coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

Marzuki, Eye on Aceh researcher, interviewed on August 19, 2011.

Firman, freelance journalist in Aceh, August 20, 2011.

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 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁷⁴Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

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

Yes

No

References:

Article 17 of Law No. 39, 1999, on Human Rights.

Article 63.1 of Law No. 30, 2002, on Corruption Eradication Committee.

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.

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

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

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

Comments:

Normally, the government gives no detailed information on the basis of new policy being made to the public; however, many popular policy decisions made in Indonesia are based on public pressure, macro and micro economic/development context, as well as global economic context, such as the recent Policy on Government Subsidies Import Tax in 2010, in response to a global economic slowdown and to minimize the impact on Indonesia. To implement this policy, the government allocated IDR 2 trillion.

References:

"Six policies' package from Ministry of Finance," Tempo Interactive, February 28, 2011, http://www.tempo.co/hg/perbankan_keuangan/2011/02/28/brk.20110228-316635.id.html

"An Analysis of the implementation of Government Subsidies Import Tax in 2010," Agunan Samosir, the researcher of the Fiscal Policy Unit of Ministry of Finance, August 22, 2011.

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 11a of Law No. 30, 2002, on Corruption Eradication Committee.

Article 10 of Law No. 24, 2003, on Constitutional Court.

Article 10 of Law No. 8, 2011, on the Amendment of Law No. 24, 2003, on 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 court is the body that makes the final decision within the judiciary system in Indonesia. It is the final step of the judiciary chain, after investigations by the police, the attorney, or other bodies that have legal proceeding mandates. There is no mechanism in Indonesia that allows the judiciary to review the action of the executive, unless as part of legal/court proceeding related to a criminal case, commercial and industrial related case, or other court cases.

References:

"Constitutional Reform: Perspective of Judicial Power," Reformasi Konstitusi: Perspektif Kekuasaan Peradilan; Dr Bambang Widjojanto, September 2, 2010, <http://www.djpp.depkumham.go.id/htn-dan-puu/742-reformasi-konstitusi-perspektif-kekuasaan-kehakiman.html>

Dr. Hasballah M.Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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:

At the beginning of every year, the national, provincial, and district parliaments adopt a list of prioritized laws, or local regulation (at the provincial and district levels) to be debated, discussed, and legally codified within one year. Based on these laws, the president, the governor or district chief/mayor makes the necessary executive orders. Under normal circumstances, there is a direct correlation between laws and executive order, unless there is an exceptional circumstance, such as national disasters,

internal social conflicts/uprisings.
— Hukum Online (2011) and Hasballah Saad (2011)

References:

"Hierarchy of Regulation in Indonesia," Hukum Online, March 23, 2011, <http://hukumonline.com/klinik/detail/cl4012>

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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 of Indonesian Constitution, 1945.

Article 11a of Law No. 30, 2002, on Corruption Eradication Committee.

Article 10 of Law No. 8, 2011, on the Amendment of Law No. 24, 2003, on Constitutional Court.

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:

Articles 7A and 7B of Indonesian Constitution, 1945.

Article 11a of Law No. 30, 2002, on Corruption Eradication Committee.

Article 10 of Law No. 8, 2011, on the Amendment of Law No. 24, 2003, on Constitutional Court.

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:

Article 5.3 of Law No. 28, 1999, on State Administration Free from Corruption, Collusion, and Nepotism.

Article 13a of Law No. 30, 2002, on Corruption Eradication Committee.

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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:

Article 5.3 of Law No. 28, 1999, on State Administration Free from Corruption, Collusion, and Nepotism.

Article 13a of Law No. 30, 2002, on Corruption Eradication Committee.

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 of Law No. 20, 2001, on Corruption Eradication.

Articles 16, 17 and 18 of Law No. 30, 2002, on Corruption Eradication Committee.

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

References:

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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 law on this matter.

References:

Dr. Hasballah M.Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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:

Lieutenant General (Ret) Prabowo Subianto, former Commander in Chief of the Army's Strategic Reserve Command (Kostrad) in 1998, currently is involved in and owns 17 private companies with assets of more than \$1 billion throughout Indonesia, in plantation, forestry, mining, fishery and other sectors. Many of these businesses were established during his service as a military general.

A former minister of agriculture who served from 2004-2009, Anton Apriyantono, has been a board commissioner member of PT Bakrie Sumatra Plantation since June 2010. This company is owned by Abu Rizal Bakrie, former coordinating minister of Social Welfare from 2004 to 2009, and currently head of a major political party in Indonesia, GOLKAR. Besides being part of the PT Bakrie Sumatra Plantation, Anton Apriyantono (who is also a politician at another major Islamic-based political party in Indonesia (PKS)), in 2010 was also appointed as adviser of PT Asia Natural Resources Tbk, governing board member of PT TUV International Indonesia Certification Body, and consultant at PT Tiga Pilar Sejahtera since 2011.

References:

"If Prabowo Becomes President (Jika Prabowo Menjadi Presiden)," A. Pambudi, Narasi Publisher, ISBN 9791681392, 2009.

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:

There are two examples:

On August 25, 2011, the Corruption Eradication Committee caught two bureaucrats from the Department of Manpower and Transmigration (secretary of Directorate General of Transmigration Settlement Development, and the head of the Planning and Evaluation Section) who had with them IDR 1.5 billion in cash, which they had accepted from a contractor.

On April 21, 2011, the Secretary of the Department of Youth and Sport was arrested with envelopes containing various currencies (IDR 73,171,000, US\$128,148, AUD 13,070 and 1,955 euros). These envelopes were handed over by the contractor who won the tender for construction of facilities for the 26th Southeast Asian Games, which were held in November 2011 in Indonesia.

References:

68H News Radio, April 25, 2011, <http://www.kbr68h.com/berita/nasional/5477-kpk-temukan-uang-saat-tangkap-tersangka-kasus-korupsi-sea-games>

Public Relation of Corruption Eradication Committee, August 26, 2011, <http://www.kpk.go.id/modules/news/article.php?storyid=2220>

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:

Members of the executive branch, such as minister or above, are categorized as public officials, similar to minister, head of government, judge, prosecutor and others. Therefore, they have to comply with existing regulations related to annual reporting of public wealth. Nevertheless, it is not clear whether the public wealth report is audited sufficiently. In 2010, 82 percent of the total public officials in Indonesia (which is 118,000) submitted their annual wealth report. Ninety-eight percent from the total of 16,000 legislative members (national, provincial and districts) submitted their annual public wealth report. However, the quality of this wealth report is poor, and “just simply to comply” with administrative procedure, without prior independent auditing.

References:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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?

75

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

Yes | No

References:

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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:

Citizens can only access a summary report from the Corruption Eradication Committee Public Official's Wealth Report, while the full dossier of public official wealth is categorized as an "exception not to be released to public," according to Law No. 14, 2008, on Free Information Acts.

A citizen can request the information from designated public officers in certain government departments or agencies through all means of direct communication, and the public officer is obligated to provide information (except for certain criteria of information categorized as "exception"). If the information is not given, the citizen can make a complaint to the Public Information Commission. The Public Information Commission then will try to mediate between the information seeker and government agency to make the necessary arrangements. If the information seeker is not satisfied with the decision of the Public Information Commission, it can be resolved through a judiciary mechanism under criminal proceedings.

References:

Cahyana Hardiyanto Harefa, commissioner of Corruption Eradication Committee, September 2, 2010, <http://hukumonline.com/berita/baca/lt4c7f5502a96ac/berkas-pemeriksaan-lhkpn-tidak-bisa-diakses-publik>

"This is the wealth of President SBY," Kompas, March 5, 2010, <http://nasional.kompas.com/read/2010/03/05/20102614/Inilah.Harta.Kekayaan.Presiden.SBY>

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

Comments:

The Corruption Eradication Committee makes information available to the public in accordance with existing regulations, which can be printed, through the broadcasting media or on notice boards in relevant agencies, and these are free of charge.

References:

"This is the wealth of President SBY," Kompas, March 5, 2010, <http://nasional.kompas.com/read/2010/03/05/20102614/Inilah.Harta.Kekayaan.Presiden.SBY>

Dr. Hasballah M.Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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 NGOs. 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 NGOs 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

Comments:

Citizens can only access a summary report from Corruption Eradication Committee Public Official's Wealth Report, while the full dossier of public official wealth is categorized as an "exception not to be released to public," according to Law No. 14, 2008, on Free Information Acts.

The publicly available financial records of the head of state only indicate the total (released annually). It does not give the details for where the public can add up the figure.

References:

Law No. 14, 2008 on Free Information Acts.

"This is the wealth of President SBY," Kompas, March 5, 2010, <http://nasional.kompas.com/read/2010/03/05/20102614/Inilah.Harta.Kekayaan.Presiden.SBY>

Cahyana Hardiyanto Harefa, commissioner of Corruption Eradication Committee, September 2, 2010, <http://hukumonline.com/berita/baca/lt4c7f5502a96ac/berkas-pemeriksaan-lhkpn-tidak-bisa-diakses-publik>

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.

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

0

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

100 | 75 | 50 | 25 | 0

Comments:

Twenty-one of 34 Indonesian Cabinet ministers 2009 – 2014 are in active positions within several political parties, such as heads of political parties, treasuries, and senior officials.

Travels for work to various parts of the country by the ministers is mostly combined with political party activity. For example, on May 29, 2011, the coordinating minister of Social Welfare, Agung Laksono (who is also a Golkar politician), went to Pidie to symbolically deliver direct assistance for the poor. However, most of his day was occupied with the inauguration of a new structure of the district branch of Golkar for Pidie and Pidie Jaya.

References:

Nusantaraku: <http://nusantaraneews.wordpress.com/2009/10/21/inilah-menteri-kabinet-indonesia-bersatu-ii-catatannya/>

Serambi Indonesia, May 30, 2011, <http://serambinews.net/news/view/31741/ribuan-kader-hadiri-pelantikan-pengurus-golkar-pidie-dan-pijay>.

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances:
Legislative Branch

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

83

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

Yes

No

References:

Article 10.1a of Law No. 24, 2003, on Constitutional Court, and its amendment, Law No. 8, 2011, on the Amendment of Law No. 24, 2003, on Constitutional Court.

Article 24C of Indonesian Constitution, 1945. Fourth Amendment in 2002.

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:

According to Articles 29 and 30 of Law No. 24, 2003, on Constitutional Court, and its amendment, Law No. 8, 2011, the Constitutional Court is a pure constitutional, judicial body, and will only act to review the law passed by legislature based on appeals or complaints filled by citizen, either directly or represented by a lawyer.

References:

"Constitutional Court has no mandate to trial ultra petita," Constitutional Court, September 20, 2011, <http://www.mahkamahkonstitusi.go.id/eng/index.php?page=website.Berita.Berita&id=5872>

Dr. Hasballah M.Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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

Comments:

All laws are applied to all citizens, including those who are heads of government and members of the national legislature. Indonesian criminal codes and other laws where citizens or member of national legislature involve on criminal activities.

References:

Article 10.3 of Law No. 24, 2003, on Constitutional Court, and its amendment, Law No. 8, 2011.

Article 11 of Law No. 30, 2002, on Corruption Eradication Committee.

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?

50

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

Yes

No

References:

Article 5.3 of Law No. 28, 1999, on State Governance that is Clean and Free from Corruption, Collusion, and Nepotism.

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 that prohibits members of the national legislator from entering the private sector after leaving the government.

References:

There is no regulation that prohibits members of the national legislator from entering the private sector after leaving the government.

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

References:

Articles 12B and 12C of Law No. 20, 2001, on Corruption Eradication.

Articles 16, 17 and 18 of Law No. 30, 2002, on Corruption Eradication Committee.

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:

Article 5.3 of Law No. 28, 1999, on State Administration Free from Corruption, Collusion, and Nepotism.

Article 13a of Law No. 30, 2002, on Corruption Eradication Committee.

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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:

Even many active members of the national legislature are also doing dual jobs in the private sector. Many members of the national legislature were businessmen before they became legislators.

References:

"Abdul Hadi Jamal: Bribery on port construction project from financial stimulus package," Corruption Eradication Committee Clearing House, <http://acch.kpk.go.id/web/guest/abdul-hadi-jamal>

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

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:

The survey that was conducted by various non-government agencies, including the latest by Kemitraan in April 2011, listed the national legislature as the most corrupt institution in Indonesia, and the judicial body as the second-most corrupt. The pattern of corruption involved bribery and unreported gifts and hospitality, and the national budget-funded project's commission.

For example, in 2010, Mirwan Amir, a national legislative member and a member of the budgetary committee, received gifts of as much as IDR 9 billion from PT Anak Negeri (the company that won the government construction contract for accommodations for the Southeast Asian Games). Similarly, recent corruption investigation cases revealed that 10 legislative members received travel checks as gifts at around IDR 500 million each for voting for a certain candidate as the Bank of Indonesia's deputy.

References:

"Survey by Kemitraan: Legislature is the most corrupt institution," Media Indonesia, April 21, 2011, <http://www.mediaindonesia.com/read/2011/04/21/219717/284/1/-Hasil-Survei-Kemitraan-Sebutkan-DPR-Lembaga-Terkorup>

Imran, TEMPO Correspondent, interviewed on August 19, 2011.

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

Comments:

Members of the legislature are also public officials like ministers, the head of government, judges, prosecutors, and others. Therefore, they have to comply with existing regulations related to annual reporting of their assets. Nevertheless, it is not clear whether the public wealth report is audited sufficiently. In 2010, 82 percent of the total public officials in Indonesia (118,000) submitted their annual wealth report; 98 percent from the total of 16,000 legislative members (national, provincial and districts) submitted their annual public wealth report. However, the quality of this wealth report is poor – the reports simply comply with administrative procedure but have not been independently audited prior to submission.

– Metro TV News, Annual Report of Corruption Eradication Committee, Danang Widoyoko (ICW)

References:

Metro TV news, March 15, 2010, <http://metrotvnews.com/index.php/metromain/news/2010/03/15/12837/Anggota-DPD-RI-Laporkan-Kekayaan-ke-KPK>

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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?

88

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

Yes | No

References:

Article 5.3 of the Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guidelines on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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, non-governmental 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

Comments:

For annual public officials wealth report 2010, by March 2011, the Corruption Eradication Committee had received 99 percent of public officials' wealth reports for 2010 from the total of member of legislative members who are obliged to file the report. Also, by March 2011, the committee had already examined almost all of the reports.

References:

Tempo Interaktif, May 23, 2011, <http://www.tempo.co/hg/hukum/2011/05/23/brk.20110523-336234.id.html>

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 Corruption Eradication Committee made information available to the public in accordance with existing regulations, which is printed and broadcast in media and put on notice boards in relevant agencies, and these are free of charge.

References:

Tempo Interaktif, May 23, 2011, <http://www.tempo.co/hg/hukum/2011/05/23/brk.20110523-336234.id.html>

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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 NGOs. 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 NGOs 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

Comments:

Citizens are only able to see an increasing or decreasing total amount of wealth of members of the legislature as compared to the previous year. Nevertheless, the figures do not detail transactions/expenditures of wealth.

References:

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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?

100

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

Yes

No

Comments:

The information that can be accessed by the public is only that which is categorized as unexceptional information, in accordance with Article 17 of Law No. 14.

References:

Article 17 of Law No. 14, 2008, on Free Information Act.

Articles 11g and 18b of Law No. 14, 2008, on 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.

Comments:

The standard for the records to become accessible to the public, according to Law No. 14, 2008, is up to two weeks; this does not include information categorized as an exception to be available to the public. The official websites of national as well as provincial parliaments often provide information on drafts of new regulations, and sometimes also include the minutes of the meetings on debating the drafts.

References:

List of new draft regulations, <http://www.dpr.go.id/id/uu-dan-ruu/ruu-sedang-dibahas>

List of newly passed regulations, <http://www.dpr.go.id/id/uu-dan-ruu/ruu-sudah-disetujui>

List of minutes of meetings of legislative process and documents in 2010-2011, <http://www.dpr.go.id/id/arsip/risalah>

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.

Comments:

The records are free of charge, as they can be accessed online, For records that are not available online, the information seeker only needs to photocopy the records.

References:

List of new draft regulations, <http://www.dpr.go.id/id/uu-dan-ruu/ruu-sedang-dibahas>

List of newly passed regulations, <http://www.dpr.go.id/id/uu-dan-ruu/ruu-sudah-disetujui>

List of minutes of meetings of legislative process and documents in 2010-2011, <http://www.dpr.go.id/id/arsip/risalah>

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 NGOs. 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 NGOs trying to access this information.

80
3.3. Conflicts of Interest Safeguards & Checks and Balances:
Judicial Branch

36. Are judges appointed fairly?

100

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

Yes

No

Comments:

Article 24A.3 of Indonesian Constitution, 1945: "The candidates for judges for the Supreme Court of Justice are proposed by the Judicial Commission to the House of National Parliament for approval, and then officially installed by the president."

Article 18.1 of Law No. 24, 2003, on Constitutional Court and as Amended by Law No. 8, 2011: "The candidates for judges for the Constitutional Court — three candidates are proposed by the Supreme Court of Justice, three candidates are proposed by House of Parliament, and three candidates are proposed by president; all nine judges of the Constitutional Court are legally appointed by presidential decree."

References:

Article 24A.3 of Indonesian Constitution, 1945.

Article 18.1 of Law No. 24, 2003, on Constitutional Court and as amended by Law No. 8, 2011.

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

Comments:

Harifin A. Tumpa is the current chief of the Supreme Court of Justice. His educational background ranges from a first degree to doctoral degree, all related to laws, judges, and public attorney – both in Indonesia and in Leiden University of Netherlands. His formal judiciary career began in 1969 as a judge in the district court in Sulawesi; he then progressed to chief judge at district and provincial courts in several provinces in Indonesia. More than 30 years later he was appointed as head of the Indonesian Supreme Court of Justice in September 2004.

Professor Mahfud, M.D, is the current chief of the Constitutional Court; he was just appointed to a second term in August 2011. His education and academic careers relate to Indonesian law and politics – he has a first to doctoral degree, and has been teaching law and politics in more than 10 prestigious universities in Indonesia to post-graduate and doctoral programs. In addition, he became the rector of Islamic University of Kediri (2003 – 2006). From 2000 to 2001, he served as minister of defense and then minister of justice and human rights, and then served as a member of the National Parliament from 2004 to 2008.

References:

Detik News, January 15, 2009, <http://www.detiknews.com/read/2009/01/15/105426/1068770/10/profil-harifin-a-tumpa-ketua-ma-baru>

Personal website of Mahfud, M.D, chief of Constitutional Court of the Republic of Indonesia, <http://www.mahfudmd.com/index.php?page=web.Profile&PHPSESSID=6upkb28ccd4e2gb7uer736q4v6>

Dr. Hasballah M.Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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

Comments:

Article 24A.3 of Indonesian Constitution, 1945: “The candidates for judges for the Supreme Court of Justice are proposed by Judicial Commission to the House of National Parliament for approval, and then officially installed by the president.”

And according to Article 18.1 of Law No. 24, 2003, on Constitutional Court (and as amended by Law No. 8, 2011), covering the candidates for judges for the the Constitutional Court: “Three candidates are proposed by Supreme Court of Justice, three candidates are proposed by House of Parliament, and three candidates are proposed by the president; all nine judges for the Constitutional Court are legally appointed with a presidential decree.”

References:

Article 24A.3 of Indonesian Constitution, 1945.

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?

83

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

Yes

No

References:

Article 197 of Law No. 8, 1981, on the Law of Criminal Code.

Articles 45.1, 56 and 57 of Law No. 24, 2003, on Constitutional Court and as amended by Law No. 8, 2011.

Article 109 of Law No. 5, 1986, on State Administrative Court, and as amended by Law No. 9, 2004.

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:

Sample of Supreme Court of Justice Decision No. 76/K/MIL, 2011, on April 5, 2011, <http://putusan.mahkamahagung.go.id/putusan/fcaab3bfe6d593a5c4eb73e608e7d4a8>

Sample of Constitutional Court decision No. 35/PUU-VII, 2010, on enabling independent candidates to contest the local election for governor, district chief, and mayor and revoking Article 256 of Law No.11, 2006, on Governing of Aceh, on December 30, 2010, <http://www.mahkamahkonstitusi.go.id/index.php?page=website.Download.PutusanDownload&id=711>

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

References:

Articles 32A and 32B of Law No. 3, 2009, on Supreme Court of Justice, Second Amendment from Law No. 14, 1985, on Supreme Court of Justice. Both are specific about the internal and external monitoring and supervision of the Supreme Court of Justice.

Articles 13b and 22.1 of Law No. 22, 2002, on Judicial Commission, related to the external monitoring and supervision of the Supreme Court of Justice.

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

References:

Article 2 of Law No. 22, 2002, on Judicial Commission.

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

Comments:

As an agency whose tasks is to select the judges for the Supreme Court of Justice, the Judicial Commission is mandated to conduct an investigation of each candidate, as well as to announce the wealth assets of the candidates for judges. In making sure the citizens received a fair trial decision, in 2011 the Judicial Commission conducted investigations on several trial decisions made by the district court and high court, such as the investigation of the trial decision in the cases of Cekeusik religious violence in July 2011.

References:

Suparman Marzuki, 68 News, August 1, 2011, <http://www.kbr68h.com/berita/wawancara/10032-komisi-yudisial-usut-vonis-kasus-cikeusik>

“There is a candidates for judge for the Supreme Court of Justice who has a fantastic amounts of wealth and bad behavior” Detik News, Asep Rahmad Fajar, Judicial Commission, June 21, 2011, <http://www.detiknews.com/read/2011/06/21/151805/1665194/10/ada-calon-hakim-agung-punya-harta-fantastis-tabiaburuk>

“Judicial Commission Questioned Ballistic Expert on Antasari Case,” Judicial Commission website, May 19, 2011.

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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:

As an external monitoring and supervisory body within the Indonesian judiciary system, the Judicial Commission has no mandate to impose sanctions or penalties — it only gathers the information, conducts investigations, and provides recommendations to the Supreme Court of Justice to review certain criminal-related cases or take action against the misbehavior of judges. For election-specific cases, the Judicial Commission provides a recommendation to the Constitutional Court.

References:

“Affectivity of Judicial Commission in Supervision on the Behavior of Judges,” Ariyeni Fitri, Law Faculty of Andalas University of West Sumatra, 2010.

Dr. Hasballah M.Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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?

50

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes

No

References:

Article 5.3 of Law No. 28, 1999, on State Governance that's Clean and Free from Corruption, Collusion, and Nepotism.

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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 of Law No. 20, 2001, on Corruption Eradication.

Articles 16, 17 and 18 of Law No. 30, 2002, on Corruption Eradication Committee.

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

References:

Article 13 of Law No. 30, 2002, on Corruption Eradication Committee.

Article 16.2 of Law No. 22, 2002, on Judicial Commission.

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:

No regulation exists on this particular matter.

References:

No regulation exists on this particular matter.

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:

Fewer retired judges, especially career judges, are taking private sector jobs. It is more often the case that ad hoc judges are taking private sector jobs.

On the aspect of commercial- and industrial-related tribunals, the appointment of ad hoc judges is proposed by unions and business institutions.

References:

“An Analysis of Adhoc Judges in Commercial Tribunals/Kajian Hakim Adhoc dalam Pengadilan Tata Niaga,” the Legal Commission of Indonesia, January 20, 2005.

“The debate on the draft law on corruption tribunal: most political parties propose more ad hoc judges,” Hukum Online, June 30, 2009, <http://www.hukumonline.com/berita/baca/hol22453/mayoritas-fraksi-usul-jumlah-hakim-adhoc-lebih-banyak>

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:

On June 1, 2011, Syarifuddin, head judge in South Jakarta Court, was caught by the Corruption Eradication Committee together with a curator of the court receiving a “gift” (gratification) from PT Sky Camping Indonesia. The “gift” was IDR 250 million, paid as compensation for changing the status of assets of the bankruptcy of PT Sky Camping Indonesia. Following further investigation, the Corruption Eradication Committee also confiscated IDR 390 million, more than US\$116,000 and S\$245, from his house.

On March 2008, the Corruption Eradication Committee arrested a senior Supreme State Prosecutor, Tri Urip Darmawan, who was in charge as head of the criminal corruption investigation of Bank Indonesia’s IDR 28 trillion Liquidity Assistance Fund and involving a businessman, Sjamsul Nursalim. Tri Urip Darmawan suspended the case against Sjamsul Nursalim after receiving a bribe of US\$660,000.

References:

Detik News, March 3, 2008, <http://www.detiknews.com/index.php/detik.read/tahun/2008/bulan/03/tgl/03/time/074624/idnews/902725/idkanal/10>

Public Relation of Corruption Eradication Committee, August 24, 2011, <http://www.kpk.go.id/modules/news/article.php?storyid=2214>

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:

The judges are also public officials like ministers, the head of government, and others. Therefore, they have to comply with existing regulations related to the annual reporting of their assets. However, the quality of this report is poor, and they are produced without having been independently audited before submission. – Annual Report of Corruption Eradication Committee and Danang Widoyoko (ICW)

References:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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?

88

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

References:

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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

Comments:

By March 2011, the Corruption Eradication Committee had received 91 percent of the 2010 personal wealth reports from members of the legislative branch. The Corruption Eradication Committee already had examined almost all the reports and made public announcements in the media, designated websites, and designated notice boards.

References:

Tempo Interaktif, May 23, 2011, <http://www.tempo.co/hg/hukum/2011/05/23/brk,20110523-336234.id.html>

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 Corruption Eradication Committee made information available to the public in accordance with existing regulations, which is printed and broadcast in media and put on notice board in relevant agencies; these are free of charge.

References:

Tempo Interaktif, May 23, 2011, <http://www.tempo.co/hg/hukum/2011/05/23/brk,20110523-336234.id.html>

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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 NGOs. 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 NGOs 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

Comments:

Citizens are only able to see an increasing or decreasing total amount of wealth of members of the legislature compared with the previous year. The figures do not show detailed transactions/expenditures of wealth.

References:

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

Yes | No

References:

Article 15 of Law No.17, 2003, on 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

References:

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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:

Most members of parliament have no background on budget monitoring, but they do have staff members and a team of experts who have the capacity.

References:

"Former Indonesian VP Criticized Parliament Members/JK Kritik Anggota Dewan," Harian Jogja, April 4, 2010, <http://www.harianjogja.com/beritas/detailberita/Luar/22750>

"Improving the Performance of Parliament Members," speech by Marzuki Alie, head of National Parliament, during a work meeting of the Democrat Party on November 26, 2010, in Jakarta.

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

References:

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

Rizky Armaga, Center Study for Laws and Policy (PSHK), interviewed on September 8, 2011.

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

Comments:

The budget hearing is a parliamentary closed-door meeting.

References:

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

Rizky Armaga, Center Study for Laws and Policy (PSHK), interviewed on September 8, 2011.

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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

Comments:

Citizens can only access information on approved budget allocations, and only upon approval.

References:

Rizky Armaga, Center Study for Laws and Policy (PSHK), interviewed on September 8, 2011.

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

References:

Article 81 of Law No. 27, 2009, on People's Consultative Council, People's Representative Council, Regional Representatives Council, and Regional People's Representative Council.

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The department (executive) submits the reports regularly to parliament at the end of the financial year, and there is an internal mechanism in parliament for this report to be delivered to the committee.

References:

Rizky Armaga, Center Study for Laws and Policy (PSHK), interviewed on September 8, 2011.

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

Comments:

It is widely known that the committee does not act in a nonpartisan manner.

References:

"ICW: Ideally, Budget Committee Meeting is Open/ICW: Rapat Banggar Seharusnya Terbuka," Kompas, June 19, 2011, <http://nasional.kompas.com/read/2011/06/19/21494851/ICW.Rapat.Banggar.Seharusnya.Terbuka>

"Establish a Special Committee on Budget Mafia/Bentuk Panja Mafia Anggaran," Kompas, July 26, 2011, <http://nasional.kompas.com/read/2011/07/26/02443527/Bentuk.Panja.Mafia.Anggaran>

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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

Comments:

For the past several years, there have been many special committees established within the parliament to investigate financial irregularity. But these investigations have been known to be filled with conflicts of interest between several political parties, as the committee members are constituted by parliament members, not independent investigators.

— Sunny Tanuwidjaja (CSIS) and G.A. Adan

References:

"The Political Parties' Dynamics within Century Case Special Committee/Dinamika Partai Dalam Pansus Century," Sunny Tanuwidjaja, Center for Strategic and International Studies (CSIS), February 27, 2010.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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.

4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

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:

Article 3 of Law No. 43, 1999, on the Principle of Civil Servants, amended from Law No. 8, 1974, on the Principle of Civil Servants.

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

References:

Article 3 of Government Regulation No.11, 2002, on Recruitment of Civil Servants, amended from previous Government Regulation No. 98, 2000, on Recruitment of Civil Servants.

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:

Article 35 of Law No. 43, 1999, on the Principle of Civil Servants, amended from Law No. 8, 1974, on the Principle of Civil Servants.

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:

Article 6 of Government Regulation No. 11, 2002, on Recruitment of Civil Servants, amended from previous Government Regulation No. 98, 2000, on Recruitment of Civil Servants.

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?

53

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

"Governor: Investigate the involvement of civil servants on local election in Tuban," Antara News Agency, February 21, 2011, <http://www.antarajatim.com/lihat/berita/55984/gubernur-usut-keterlibatan-pns-dalam-pilkada-tuban>

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

Comments:

In many cases, the appointments and evaluations of civil servants are based on professional criteria, but there many cases of them also being based on nepotism, family connections, friendships and patronage.

References:

A.S. (initials only – the source prefers anonymity), former member of the Regional Representative Council (2004-2009), interviewed on August 12, 2011.

T.L. (initials – the source prefers for anonymity), senior conservation officer at the Nature Conservation Agency of Department of Forestry in North Sumatra Province, interviewed on August 21, 2011.

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:

In many cases, the civil service management actions are based on professional criteria, but there many cases of them also being based on nepotism, family connections, friendships and patronage. Nevertheless, the management cannot dismiss civil servants, but can only remove them from certain positions to become non-job civil servants.

References:

A.S. (initials only – the source prefers anonymity), former member of the Regional Representative Council (2004-2009), interviewed on August 12, 2011.

T.L. (initials – the source prefers for anonymity), senior conservation officer at the Nature Conservation Agency of Department of Forestry in North Sumatra Province, interviewed on August 21, 2011.

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:

Most civil servants do have clear job descriptions for their daily routines, but there are also many whose job descriptions are extremely flexible. The biggest issue keeping civil servants from working efficiently is the inability of management to utilize resources effectively. Also, there often are more civil servants than needed.

References:

"57 Percent of Regional Annual Budget in Depok only to Pay the Civil Servants," Oke Zone, July 4, 2011, <http://economy.okezone.com/read/2011/07/04/20/475445/57-persen-apbd-depok-habis-untuk-gaji-pegawai>

Ir Masnun, senior officer of Food Security Agency of Aceh Province, interviewed on August 7, 2011, in Banda Aceh.

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:

In fact, for ordinary civil servants the bonuses and additional pay (such as allowances for food, position, inflation, kids, health and more) is much more than the basic salary. For civil servants at the management level, the additional pay is much higher than for a lower level civil servant.

References:

"There are 10 Extravagant Causes of Bureaucracy Fees/Inilah 10 Penyebab Borosnya Ongkos Birokrasi," Oke Zone, July 26, 2011, <http://news.okezone.com/read/2011/07/26/337/484569/inilah-10-penyebab-borosnya-ongkos-birokrasi>

"Salary and Allowances of Civil Servants," Daly Erni and Wukil Ragil, September 24, 2007.

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

Comments:

Normally, the provincial government releases recruitment advertisements in public media annually, identifying the list of civil servants required in the province or to be located per district. Similarly, the central governments (different department) also advertise their new civil servant recruitment programs to the public via media and relevant websites.

References:

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

Yakob Ishadamy, senior adviser to the governor of Aceh, interviewed on August 10, 2011, in Banda Aceh.

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:

Due to the time-consuming and rather complicated process, a larger percentage of the applicants or existing civil servants do not use an existing redress mechanism, such as the state administration court and Ombudsmen of the Republic of Indonesia, to address the management action or to appeal the selection process of civil servant recruitment.

References:

Minutes of the meeting between Commission II of National Parliament of Indonesia (DPR-RI) and Several Civil Society Groups (MP3, YLBHI, YLKI), January 12, 2011, in Commission II DPR-RI meeting room.

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

References:

The Decree of Ministry of Home Affairs No. 23, 2007, on Monitoring Guideline on Local Governance.

"Government Prepares New Designed Salary Payment System for Civil Servants," Janry Haposan, National Civil Servant Agency, January 17, 2011.

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

References:

"Road project corruption, former Head of Local Public Infrastructure Department of South Sumatra province is Sentenced," Hukum Online, April 25, 2011, <http://hukumonline.com/berita/baca/t4db555d8f1c4b/korupsi-jalan-mantan-kepala-dinas-dihukum>

Suheri, Yayasan Ekosistem Lestari, interviewed on September 7, 2010.

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?

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

References:

Article 5.3 of Law No. 28, 1999, on State Governance that's Clean and Free from Corruption, Collusion, and Nepotism.

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

Commission of Corruption Eradication, Simple Guideline of Wealth Report for Public Officer, http://www.kpk.go.id/modules/edito/content_lhkpn.php?id=32

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

References:

No regulation/law exists 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

Comments:

This is based on various interviews and desk research. In fact, it is very common for civil servants to enter the private sector after

they leave a government job. For example, one former Department of Mining and Energy worker in one province immediately became a senior manager with a mining company (that he helped during his term) as soon as he retired from government.

References:

No regulation/law exists 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 of Law No. 20,2001, on Corruption Eradication.

Articles 16, 17 and 18 of Law No. 30, 2002, on Corruption Eradication Committee.

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

References:

Article 5.3 of Law No. 28, 1999, on State Administration Free from Corruption, Collusion, and Nepotism.

Article 13a of Law No. 30, 2002, on Corruption Eradication Committee.

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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

Comments:

A former head of the Department of Mining and Energy of Aceh province is currently working as a senior manager in an iron-ore mining company. During his term as the head of the mining authority prior to 2008, he assisted the licensing process of this company.

References:

"Bank Bukopin Manado provides business loans for former civil servant," Tribun News, Manado, May 18, 2011, <http://manado.tribunnews.com/2011/05/18/bukopin-manado-beri-kesempatan-pensiunan-pns-miliki-usaha>

Senior staff member at the Department of Mining and Energy of Aceh province, interviewed on August 18, 2011. Anonymity requested.

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

Comments:

On August 25, 2011, the Corruption Eradication Committee caught two bureaucrats from the Department of Manpower and Transmigration (secretary of Directorate General of Transmigration Settlement Development, and head of Planning and Evaluation Section) together with IDR 1.5 billion in cash, which they had accepted from one contractor.

References:

"Accepting gratification, four civil servants are suspended," Antara News, September 5, 2010, <http://www.antaranews.com/berita/1283627521/menerima-gratifikasi-empat-pns-diberhentikan>

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

Comments:

On 12 September 2011, the brother of the South Sulawesi governor was given two strategically important positions within the provincial government: He became head of the Investment Coordinating Board of South Sulawesi Province, and the head of Trade and Industrial Department of South Sulawesi.

— Tribun Timur (September 12) and Journal Nasional (July 29)

References:

Tribun Timur, September 12, 2011, <http://makassar.tribunnews.com/2011/09/12/adik-kandung-gubernur-sulsel-rangkap-jabatan>

“Chief Administrative Secretariat of Special Capital Region of Jakarta: No problem civil servant with multi duties,” Journal Nasional, July 29, 2011, <http://www.jurnas.com/news/35808>

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.

References:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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?

75

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

References:

The Decision of the Commission of Corruption Eradication No. KEP.07/KPK/02, 2005, on Guideline on Registration, Public Notification and Audit on Public Officials' Wealth Report.

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

References:

Tempo Interaktif, May 23, 2011, <http://www.tempo.co/hg/hukum/2011/05/23/brk.20110523-336234.id.html>

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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

Comments:

The Corruption Eradication Committee made information available to the public in accordance with existing regulations, which is printed and broadcast in media and put on notice boards in relevant agencies; these are free of charge.

References:

Tempo Interaktif, May 23, 2011, <http://www.tempo.co/hg/hukum/2011/05/23/brk.20110523-336234.id.html>

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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 NGOs. 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 NGOs 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

Comments:

Citizens are only able to see an increasing or decreasing total amount of wealth of senior civil servants compared with the previous year. The figures do not show detailed transactions/expenditures of wealth.

References:

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

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.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

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:

Law No. 13, 2006, on the Protection of Victims and Witnesses, is a protection mechanism for witnesses and victims of criminal acts in Indonesia. This protection is given to all citizens, including civil servants, businessmen, ordinary citizens, politicians and state officials.

References:

Law No. 13, 2006, on the Protection of Victims and Witnesses.

Articles 1 and 5 of Law No. 13, 2006, on the Protection of Victims and Witnesses.

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:

Although corruption cases commonly occur, they are sometimes the most difficult thing to prove. Normally, when a lower ranking civil servant is found guilty of corruption, he then reveals that a higher chain of command also was involved. However, the higher chain of command is normally not prosecuted, while lower ranking civil servants are imprisoned. Often, the lower-ranking civil servants also are sued for defamation.

References:

"Reporting bribery on civil servant recruitment, a civil servant is sentenced among others," Harian Sumut Pos, August 17, 2011, <http://www.hariansumutpos.com/2011/08/13059/pelapor-penipuan-cpns-rp600-m-ikut-ditahan.htm>

"The fate of whistle-blower," Viva News, July 7, 2011, <http://nasional.vivanews.com/news/read/231504-nasib-whistle-blower>

"Twist and turn of those who leak the scam of their institution," Detik News, August 7, 2011, <http://www.detiknews.com/read/2011/07/08/225542/1677701/10/lika-liku-mereka-yang-membongkar-aib-instansi>

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:

Law No. 13, 2006, on the Protection of Victims and Witnesses, is a protection mechanism for witnesses and victims of criminal acts in Indonesia. This protection is given to all citizens, including civil servants, businessmen, ordinary citizens, politicians and state officials.

References:

Articles 1 and 5 of Law No. 13, 2006, on the Protection of Victims and Witnesses.

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

Comments:

Despite these corruption cases commonly occurring, they are difficult to prove. Often, when an employee reports the corruption or manipulation of management or bosses, he is sued for defamation or his employment contract is not extended and is terminated for some other “made-up reason.”

References:

“Tax manipulation, Argis Electronic company is reported,” Tempo Interaktif, April 27, 2010, http://www.tempointeraktif.com/hg/nusa_lainnya/2010/04/27/brk_20100427-243648.id.html

“Yulianis’ information starts to panic Democrat Party,” Tempo Interaktif, September 14, 2011, http://www.tempointeraktif.com/hg/politik/2011/09/14/brk_20110914-356118.id.html

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.

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

49a. 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:

Article 11 of Law No. 30, 2002, on Corruption Eradication Committee.

Online internal reporting mechanism for whistle-blowing activities, <http://kws.kpk.go.id/?lang=en>

Other reporting mechanisms: Jl.HR. Rasuna Said Kav. C-1. Jakarta Selatan 12920. P.O. Box: 575 Jakarta 10120; Telephone (021)2557 8389; Fax: (021) 5289 2454 and SMS: 0855 9 575 575, 0811 959 575

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

100

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100

75

50

25

0

Comments:

The internal reporting mechanism is handled by professional staff at the Corruption Eradication Committee under the unit of Internal Control and Public Complaints/Reports.

References:

Online internal reporting mechanism for whistle-blowing activities, <http://kws.kpk.go.id/?lang=en>

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:

In 2010, the Corruption Eradication Committee was allocated more than IDR 431 billion by the annual state budget, and in 2011, the allocation was IDR 575.7 billion.

References:

Indonesian Budget Statistic 2006 – 2012, Ministry of Finance Republic Indonesia, August 22, 2011.

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Summary of Meeting of Commission III of National Parliament, September 1, 2010.

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:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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

References:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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.

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

80

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

References:

Article 6e of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services.

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:

Article 125 of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services.

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.

References:

"PT Kereta Api denied tender conspiracy," *Bisnis Indonesia*, March 14, 2011, printed edition.

"Corruption Eradication Committee (CEC) discovered the misuse of IDR 2.2 trillion from the special allocation fund in education sector," M. Jasin, CEC Public Relations, January 18, 2010, <http://www.kpk.go.id/modules/news/article.php?storyid=1154>

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 monitoring section of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services does not specify details of this particular issue.

The previous regulation on government procurement of goods and services (Presidential Regulation No. 80, 2003) does not specify the spending habits of procurement officials.

References:

There is no specific regulation for such matters.

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:

Article 35.2 of Presidential Regulation No. 54, 2010, on Government's Procurement Good and Services.

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

References:

Articles 37, 38, and 39 of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services.

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:

Article 60 of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services.

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:

Article 94 of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services.

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:

Article 118 of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services.

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 company is usually prohibited from participating for a certain period, but it is relatively easy in Indonesia to establish a registered company, so the management or the owner of the company often changes the name of a prohibited (or blacklisted) company to establish the new company.

References:

Ir Masnun, senior officer of Food Security Agency of Aceh Province, interviewed on August 7, 2011, in Banda Aceh.

Imran, Tempo correspondent, interviewed on August 19, 2011.

Muchsin, director of CV Vonna Teknologi, interviewed on August 27, 2011.

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?

100

52a. In law, citizens can access public procurement regulations.

Yes

No

References:

Article 5 of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services.

Article 14m of Law No. 14, 2008, on Free Public Information Acts.

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:

Article 8 of Presidential Regulation No. 54, 2010, on Government's Procurement Goods and Services.

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

Comments:

Most procurement regulations are announced in the media as well as on certain designated websites, where there are lists of procurements or projects to be offered. Once there is a public announcement, the bidders go to certain designated offices to collect procurement documents.

References:

Ir Masnun, senior officer of Food Security Agency of Aceh Province, interviewed on August 7, 2011, in Banda Aceh.

T. Iskandar, Indonesian Trade and Commerce of Aceh Province, interviewed on August 19, 2011.

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

Comments:

Public procurement documents can be obtained for free at certain government agencies. These documents can also be downloaded from <http://www.inaproc.lkpp.go.id/inaproc/lpse>.

References:

Ir Masnun, senior officer of Food Security Agency of Aceh Province, interviewed on August 7, 2011, in Banda Aceh.

T. Iskandar, Indonesian Trade and Commerce of Aceh Province, interviewed on August 19, 2011.

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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Public procurement documents can be obtained for free at certain government agencies. These documents can also be downloaded from <http://www.inaproc.lkpp.go.id/inaproc/lpse>.

References:

The Assignment Letter of Government Goods and Services Procurement Policy Agency (LKPP) No. 071/SPPBJ/PPK.I/06/2010 on Assigning Koran TEMPO as Official Advertisement Channel for Government Goods and Services Procurement, from July 10, 2010, to July 9, 2011.

Ir Masnun, senior officer of Food Security Agency of Aceh Province, interviewed on August 7, 2011, in Banda Aceh.

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

Comments:

Public procurement bidding results can be obtained on the notice board of designated government departments/agencies. The results can also be accessed online via <http://lpse.lkpp.go.id/eproc/app?service=page/PemenangCari>.

References:

Ir Masnun, senior officer of Food Security Agency of Aceh Province, interviewed on August 7, 2011, in Banda Aceh.

Imran, Tempo Correspondent, interviewed on August 19, 2011.

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

References:

Articles 3 and 5 of Government Regulation No. 33, 2005, on Procedures for Privatization of State Limited-Liability Companies (Persero).

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:

There is no particular restriction keeping government officials involved in privatization from buying privatized state assets.

For example, during the initial public offering (IPO) of Krakatau Steel (a state-owned company) in 2010, the minister of the state-owned enterprise agency urged his deputies not to buy shares because it would be a conflict of interest. However, he gave the green light for other officers from the agency to participate in the IPO. In contrast, Government Regulation No. 33, 2005, restricts the staff or officials of privatized state-owned companies and financial advisers or brokers from buying shares during public offerings.

(Article 3 of Government Regulation No. 33, 2005, has nothing to do with conflict of interest. It does not say the officers of state-owned enterprises cannot buy shares of a privatized state-owned company.)

References:

There is no particular restriction keeping government officials involved in privatization from buying privatized state assets.

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:

"Avoiding conflict of interest, Minister of State Owned Enterprise Agency restricts his staff from participating in the IPO of Krakatau Steel," Detik Finance, November 4, 2010, <http://finance.detik.com/read/2010/11/04/173013/1486166/6/hindari-konflik-kepentingan-staf-ipo-bumn-dilarang-beli-saham-ks>

Air Langga Hartarto, chief of Commission VI of National Parliament, December 2, 2010.

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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?

100

54a. In law, citizens can access privatization regulations.

Yes

No

References:

Articles 3 and 5 of Government Regulation No. 33, 2005, on Procedures for Privatization of State Limited-Liability Companies (Persero).

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

Comments:

Privatized state-owned companies are obligated to advertise their public offerings to citizens and market via media and through the Indonesian Stock Exchange website and also release to the public all financial, management and other documents. Information on state privatized companies, such as PT Krakatau Steel (KRAS), PT Kimia Farma, PT Aneka Tambang, and others, can be found at <http://www.idx.co.id/Home/ListedCompanies/CompanyProfile/tabid/89/language/id-ID/Default.aspx>

References:

"Advertise of PT Krakatau Steel on IPO," *Bisnis Indonesia*, May 5, 2011.

"Advertise of First Semester 2011 Financial Report of PT Krakatau Steel," *Bisnis Indonesia*, July 26-27, 2011.

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:

The Decree of Stock Exchange and Financial Institutions Supervisory Board of Ministry of Finance No. KEP-413/BL, 2009, on Transaction and Changes of Major Commercial Activities.

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

Comments:

Privatized state-owned companies are obligated to advertise their public offerings to citizens and market via media and through the Indonesian Stock Exchange website and also release to the public all financial, management and other documents. Information on state privatized companies, such as PT Krakatau Steel (KRAS), PT Kimia Farma, PT Aneka Tambang, and others, can be found at <http://www.idx.co.id/Home/ListedCompanies/CompanyProfile/tabid/89/language/id-ID/Default.aspx>

References:

"Advertise of PT Krakatau Steel on IPO," *Bisnis Indonesia*, May 5, 2011.

"Advertise of First Semester 2011 Financial Report of PT Krakatau Steel," *Bisnis Indonesia*, July 26-27, 2011.

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

Comments:

Privatized state-owned companies are obligated to advertise their public offerings to citizens and market via media and through the Indonesian Stock Exchange website and also release to the public all financial, management and other documents. Information on state privatized companies, such as PT Krakatau Steel (KRAS), PT Kimia Farma, PT Aneka Tambang, and others, can be found at <http://www.idx.co.id/Home/ListedCompanies/CompanyProfile/tabid/89/language/id-ID/Default.aspx>

References:

"Advertise of PT Krakatau Steel on IPO," *Bisnis Indonesia*, May 5, 2011.

"Advertise of First Semester 2011 Financial Report of PT Krakatau Steel," *Bisnis Indonesia*, July 26-27, 2011.

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁸⁹National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

References:

Law No. 37, 2008, on Ombudsman of the Republic of Indonesia.

Law No. 25, 2009, on Public Services.

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.

56. Is the national ombudsman effective?

84

56a. In law, the ombudsman is protected from political interference.

Yes | No

References:

Articles 2, 19, and 20 of Law No. 37, 2008, on Ombudsmen of the Republic of Indonesia.

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

References:

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

Danang Widoyoko, Coordinator of Indonesia Corruption Watch (ICW), interviewed on 7 September 2011.

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

Comments:

According to Article 10 of Law No. 37, 2008, the head of the office of the ombudsman and members of the office are given immunity status in conducting their work, so that they cannot be arrested, interrogated, detained, or sued.

References:

Article 10 of Law No. 37, 2008.

Hakristuti Hakrisnowo, Select Committee of Ombudsman Candidates Members, Tempo Interaktif, July 5, 2010, <http://www.tempointeraktif.com/hg/politik/2010/07/05/brk,20100705-261099,id.html>

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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

References:

Annual Report of the Ombudsman of Republic of Indonesia 2009, October 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

Annual Report of the Ombudsman of Republic of Indonesia 2008, January 10, 2009, http://www.ombudsman.go.id/file-uploads/2009///laporantahunan2008_20101028082053_403_0.pdf

The Structure and Members of the Ombudsman of Republic of Indonesia, <http://www.ombudsman.go.id/Website/detailArchieve/303/id>

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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:

Annual Report of the Ombudsman of Republic of Indonesia 2009, June 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

"The Notes from the end of the Year 2010 of the Ombudsman of Republic of Indonesia," Antonius Sujata, then-chairman of the Ombudsman of Republic of Indonesia, December 27, 2010.

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

References:

"Indonesian Budget Statistic 2006 – 2012," Ministry of Finance Republic Indonesia, August 22, 2011.

Annual Report of the Ombudsman of Republic of Indonesia 2009, June 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

Summary of a meeting between Commission II of National Parliament and the Ombudsman of Republic of Indonesia, DPR-RI, September 22, 2010.

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

References:

Annual Report of the Ombudsman of Republic of Indonesia 2009, June 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

"The Notes from the end of the Year 2010 of the Ombudsman of Republic of Indonesia," Antonius Sujata, then-chairman of the Ombudsman of Republic of Indonesia, December 27, 2010.

Annual Report of the Ombudsman of Republic of Indonesia 2008, January 10, 2009, http://www.ombudsman.go.id/file-uploads/2009///laporantahunan2008_20101028082053_403_0.pdf

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:

In 2010, there were 4,888 complaints from citizens, which were requests for assistance from the national ombudsman to mediate the communication with relevant agencies, and all were resolved. The national ombudsman also received 1,154 complains, which were categorized as major cases. Of those, 97 percent proceeded to the relevant agencies. Of those, 77 percent were responded to by relevant agencies, in the form of clarification, and provided a solution.

References:

"The Notes from end of the Year 2010 of the Ombudsman of Republic of Indonesia," Antonius Sujata, then-chairman of the Ombudsman of Republic of Indonesia, December 27, 2010.

Annual Report of the Ombudsman of Republic of Indonesia 2009, June 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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:

The ombudsman has no mandate to impose penalties, but only acts to investigate based on reports from public. He then plays a mediation role between the citizen and the relevant agency that is the subject of the citizen's complaint.

References:

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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:

In 2010, there were 4,888 complaints from citizens, which were requests for assistance from the national ombudsman to mediate the communication with relevant agencies, and all were resolved. The national ombudsman also received 1,154 complains, which were categorized as major cases. Of those, 97 percent proceeded to the relevant agencies. Of those, 77 percent were responded to by relevant agencies, in the form of clarification, and provided a solution.

References:

"The Notes from end of the Year 2010 of the Ombudsman of Republic of Indonesia," Antonius Sujata, then-chairman of the Ombudsman of Republic of Indonesia, December 27, 2010.

Annual Report of the Ombudsman of Republic of Indonesia 2009, June 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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:

In 2010, there were 4,888 complaints from citizens, which were requests for assistance from the national ombudsman to mediate the communication with relevant agencies, and all were resolved. The national ombudsman also received 1,154 complains, which were categorized as major cases. Of those, 97 percent proceeded to the relevant agencies. Of those, 77 percent were responded to by relevant agencies, in the form of clarification, and provided a solution.

References:

"The Notes from end of the Year 2010 of the Ombudsman of Republic of Indonesia," Antonius Sujata, then-chairman of the Ombudsman of Republic of Indonesia, December 27, 2010.

Annual Report of the Ombudsman of Republic of Indonesia 2009, June 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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

References:

Article 7 of Law No. 37, 2008, on Ombudsmen of the Republic of Indonesia.

Article 23.5 of Law No. 25, 2009, on Public Services.

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:

The timing of and accessibility by the public of the report are in compliance with the existing of Law No.37/2008 on Ombudsmen of the Republic of Indonesia and Law No.25/2009 on Public Services.

References:

"The Notes from end of the Year 2010 of the Ombudsman of Republic of Indonesia," Antonius Sujata, then-chairman of the Ombudsman of Republic of Indonesia, December 27, 2010.

Annual Report of the Ombudsman of Republic of Indonesia 2009, June 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

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

Comments:

The reports of the ombudsmen (annual reports, year-end notes, and quarterly reports) are available at the national ombudsman website, free of charge.

References:

Annual Report of the Ombudsman of Republic of Indonesia 2009, June 2010, http://www.ombudsman.go.id/file-uploads/2010/10/28/laporantahunan2009_20101028081629_402_0.pdf

"The Notes from end of the Year 2010 of the Ombudsman of Republic of Indonesia," Antonius Sujata, then-chairman of the Ombudsman of Republic of Indonesia, December 27, 2010.

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

References:

Chapter VIII A, Articles 23E, 23F, and 23G of Indonesian Constitution, 1945.

Law No. 15, 2006, on the Audit Board of the Republic of Indonesia.

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.

59. Is the supreme audit institution effective?

91

59a. In law, the supreme audit institution is protected from political interference.

Yes

No

References:

Article 2 of Law No. 15, 2006, on the Audit Board of the Republic of Indonesia.

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:

According to Law No. 15, 2006, the chief and members of the Audit Board of the Republic of Indonesia are given immunity status in conducting their work, which is to prevent any potential criminalization. The removal of the chief of the Audit Board of the Republic of Indonesia is done only upon serious criminal offenses.

References:

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

Fakri, senior officer of Directorate Assets Management, Department of Financial Planning of Reconstruction and Rehabilitation Agency, Aceh – Nias, interviewed on August 18, 2011.

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:

Dr. Hasballah M. Saad, former minister of Human Rights and Justice of Indonesia, interviewed on August 3, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed on August 15, 2011.

Fakri, senior officer of Directorate Assets Management, Department of Financial Planning of Reconstruction and Rehabilitation Agency, Aceh – Nias, interviewed on August 18, 2011.

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:

“The selection of the Audit Board of the Republic of Indonesia’s members for the period of 2009-2014 is suspected to have conflict of interest,” Viva News, October 14, 2009, http://nasional.vivanews.com/news/read/97132-seleksi_anggota_bpk_dinilai_sarat_kepentingan

Fakri, senior officer of Directorate Assets Management, Department of Financial Planning of Reconstruction and Rehabilitation Agency, Aceh – Nias, interviewed on August 18, 2011.

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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:

Indonesian Budget Statistic 2006 – 2012, Ministry of Finance Republic Indonesia, August 22, 2011.

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

Comments:

The Audit Board of the Republic of Indonesia issues semester audit reports on the utilization of national and regional government budgets.

References:

Semester Audit Report, Semester II – 2010, the Audit Board of the Republic of Indonesia, March 2011, http://www.bpk.go.id/web/?page_id=8104

Semester Audit Report, Semester I – 2010, the Audit Board of the Republic of Indonesia, September 2010, http://www.bpk.go.id/web/?page_id=6970

Semester Audit Report, Semester II – 2009, the Audit Board of the Republic of Indonesia, March 2010, http://www.bpk.go.id/web/?page_id=5856

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

Comments:

The Audit Board of the Republic of Indonesia has the power to report findings to the attorney general for the purpose of criminal or court processing. The findings can also be legally used by the Criminal Investigation Unit for further follow-up, and normally the government acts on the findings and fixes the problem, especially on findings of a major problem.

References:

Fakri, senior officer of Directorate Assets Management, Department of Financial Planning of Reconstruction and Rehabilitation Agency, Aceh – Nias, interviewed on August 18, 2011.

G.A. Adan, former member of the House of National Parliament 1992 – 1999 and Regional Representative Council (formerly known as F-UD) 1999 – 2004, interviewed, August 15, 2011.

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:

Strategic Planning of the Audit Board of the Republic of Indonesia 2011 – 2015, http://www.bpk.go.id/web/?page_id=8

“The Result of Peer Review of the Audit Board of the Republic of Indonesia, The Netherlands Court of Audit, July 2009.

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?

100

60a. In law, citizens can access reports of the audit agency.

Yes

No

Comments:

Citizens can legally access the report after the audit board submits it to parliament.

References:

Article 7 of Law No. 15, 2006, on the Audit Board of the Republic of Indonesia.

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

Comments:

The citizen can expect general audit reports twice each year: September for the first semester and March of the following year for the second semester.

References:

Semester Audit Report, Semester II – 2010, the Audit Board of the Republic of Indonesia, March 2011, http://www.bpk.go.id/web/?page_id=8104

Semester Audit Report, Semester I – 2010, the Audit Board of the Republic of Indonesia, September 2010, http://www.bpk.go.id/web/?page_id=6970

Semester Audit Report, Semester II – 2009, the Audit Board of the Republic of Indonesia. March 2010, http://www.bpk.go.id/web/?page_id=5856

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.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can expect general audit reports twice each year: September for the first semester and March the following year for the second semester. These reports can be downloaded free of charge, together with more detailed reports.

References:

Semester Audit Report, Semester II – 2010, the Audit Board of the Republic of Indonesia, March 2011, http://www.bpk.go.id/web/?page_id=8104

Semester Audit Report, Semester I – 2010, the Audit Board of the Republic of Indonesia, September 2010, http://www.bpk.go.id/web/?page_id=6970

Semester Audit Report, Semester II – 2009, the Audit Board of the Republic of Indonesia, March 2010, http://www.bpk.go.id/web/?page_id=5856

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 NGOs. 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 NGOs trying to access this information.

97
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes

No

Comments:

Indonesian tax issues are handled by the Directorate General of Taxes, under the Ministry of Finance.

References:

Law No. 28, 2007, on General Principles and Tax Guideline (third amendment from Law No. 6, 1983, on General Principles and Tax Guideline).

The Decree of Ministry of Finance No. 132/PMK.01, 2006, on the Organizational Chain and Vertical Structure of Directorate General of Taxes.

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.

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:

The Decree of Ministry of Finance No. 132/PMK.01, 2006, on the Organizational Chain and Vertical Structure of Directorate General of Taxes.

Press Release of Ministry of Finance No. 12/HMS, 2011, on Ministry of Finance Inaugurates the Officials of Echelon I and II within the Ministry of Finance, dated January 12, 2011.

Fuad Rahmadi, Directorate General of Taxes, interviewed on August 15, 2011.

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

Comments:

The funding for the tax agency is integrated in the regular funding for the Ministry of Finance, because the tax agency a directorate under the Ministry of Finance.

References:

Indonesian Budget Statistic 2006 – 2012, Ministry of Finance Republic of Indonesia, August 22, 2011.

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

Comments:

In 2010, only 4.6 percent, or 460,000, of the total of 12.9 million actively registered business and non-business institutions that have to comply with annual tax payments actually paid and submitted their annual tax obligations. Similarly, from a total of 110 million working Indonesians, only 55 million have tax filing numbers. Of those, only 25 million actually paid their monthly taxes, and of the 25 million, only 8.5 million actually submitted their annual tax form. Some companies that have connections with high-profile politicians, such as the current chairman of the Golkar Political Party, have also been known to be involved in tax payment fraud, which siphoned off more than 2.1 trillion rupiah from their actual tax payment obligations in 2009.

References:

"The discrimination in resolving tax violation cases would affect the investment climate," Antara News, February 4, 2008, <http://www.antaranews.com/print/1202117434>

"Tax Directorate General Investigates Unpaid Tax of Bakrie's Companies," Kompas, December 16, 2009, <http://bisniskeuangan.kompas.com/read/2009/12/16/13062669/Ditjen.Pajak.Selidiki.Tunggakan.Pajak.Bakrie>

Fuad Rahmadi, Directorate General of Taxes, interviewed on August 15, 2011.

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

64a. In law, is there a national customs and excise agency?

Yes

No

References:

Law No. 17, 2006, on Excise (amended from Law No. 10, 1995, on Excise).

Law No. 39, 2007, on Custom (amended from Law No. 11, 1995, on Custom).

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.

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:

The Decree of Ministry of Finance No. 74/PMK.01, 2009, on Organization and Vertical Structure of Directorate General of Custom and Excise.

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

Comments:

The funding for the Custom and Excise Agency is integrated within regular funding for the Ministry of Finance, because the tax agency is a directorate under the Ministry of Finance.

References:

Indonesian Budget Statistic 2006 – 2012, Ministry of Finance Republic of Indonesia, August 22, 2011.

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

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

References:

"Custom and Excise: Blackberry import tax needs to be reviewed," Viva News, September 12, 2011, <http://teknologi.vivanews.com/news/read/246475-bea-cukai-pajak-blackberry-perlu-dikaji-lagi>

"Discrimination on export tax," Portal Nasional, June 6, 2011, <http://portal-nasional.com/?p=2984>

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

References:

Law No. 19, 2003, on State Owned Enterprises (SOEs).

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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

90

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

References:

Article 6 of Law No. 19, 2003, on State Owned Enterprises (SOEs).

Articles 4.4 and 30.1 of Ministry of State Owned Enterprises Decree No. PER-08/MBU, 2010, on Criteria and Guideline of Assignment and Suspension of Board of Directors of State Owned Enterprises.

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:

Presidential Decree No.127/M, 2010, related to termination of the services and assignment of the official within the Ministry of State Owned Enterprises, dated September 16, 2010.

Organization and Human Resources of the Ministry of State Owned Enterprises, <http://www.bumn.go.id/tentang-kami-kementerian-bumn/organisasi-dan-sdm/>

The organization structure and officials within the Ministry of State Owned Enterprises, <http://www.bumn.go.id/tentang-kami-kementerian-bumn/struktur-organisasi-dan-pejabat/?lang=en>

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

References:

Indonesian Budget Statistic 2006 – 2012, Ministry of Finance Republic Indonesia, August 22, 2011.

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.

Comments:

In some cases, external pressure forced the Ministry of State Owned Enterprises to conduct an investigation. In August 2009, the agency investigated PT Pindad (Indonesian weaponry and ammunition production company) after the export consignments were held by excise and custom of Philippines due to incomplete export documents. Similarly, in August 2011, the Ministry of SOEs and Financial and Development Supervisory Agency conducted an investigation of the insurance company PT Askrindo over the issue of corruption involving board members. For SOEs subsidized by government funding, the Audit Board of Republic of Indonesia conducts annual audits.

References:

"BUMN investigates PT PINDAD," Warta Kota, August 31, 2009, <http://www.wartakota.co.id/read/news/11055>

"BKPP will audit and investigate PT ASKRINDO," Kontan Online, August 10, 2011, <http://keuangan.kontan.co.id/v2/read/1312983183/75122/BKPP-akan-audit-investigasi-untuk-Askrindo>

"BUMN: Investigate Chaotic Garuda Flight Schedule!" Viva News, November 24, 2010, <http://nasional.vivanews.com/news/read/190410-garuda-diminta-lapor-menteri-bumn-jumat>

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.

References:

"The Ministry of SOEs will swiftly prosecute company commissioners involved in political parties," Detik Finance, July 22, 2011, <http://finance.detik.com/read/2011/07/22/144047/1687074/6/pemerintah-akan-tindak-tegas-bumn-berkongsi-dengan-parpol>

"Two board of directors of PT Askrindo are implicated in corruption case," Seputar Indonesia, Saturday, August 20, 2011, <http://infokorupsi.com/id/korupsi.php?ac=9458&l=dua-pejabat-pt-askrindo-jadi-tersangka-korupsi>

"117 SOEs will be merged," Rakyat Merdeka, February 23, 2011, <http://www.rakyatmerdekaonline.com/news.php?id=19050>

Audit Report of Government Venture, Cost and Investment on PT KKA, Financial Year 2006 – 2007, the Audit Board of Republic Indonesia, August 18, 2009.

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 14 of Law No. 14, 2008, on Free Information Acts.

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

Comments:

Currently, there are 142 state owned enterprises in various sectors, and 19 of those have already “gone public” and registered on the Indonesian Stock Exchange. The financial records of these 19 companies are publicly accessible and present high standard quality data. While other SOEs’ financial records are also accessible through the Ministry of SOEs website, the quality of the data is not as good as that on the Indonesia Stock Exchange website.

References:

“SOEs dominated stock capitalization of Indonesia Stock Exchange in 2010,” Oke Zone, December 31,

2010, <http://economy.okezone.com/read/2010/12/31/278/409186/bumn-kuasai-26-kapitalisasi-saham-bei-sepanjang-2010>

Outlook BUMN (SOEs) 2011, the Ministry of State Owned Enterprises, January 2011.

List of SOEs, Ministry of SOEs, <http://www.bumn.go.id/daftar-bumn/>

Listed Companies on Indonesian Stock Exchange, Indonesian Stock Exchange, <http://www.idx.co.id/Home/ListedCompanies/CompanyProfile/tabid/89/language/en-US/Default.aspx>
List of SOEs, Ministry of SOEs, <http://www.bumn.go.id/daftar-bumn/>

Listed Companies in Indonesian Stock Exchange, Indonesian Stock Exchange, <http://www.idx.co.id/Home/ListedCompanies/CompanyProfile/tabid/89/language/en-US/Default.aspx>

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:

Currently, there are 142 state owned enterprises in various sectors, and 19 of those have already “gone public” and registered on the Indonesian Stock Exchange. The financial records of these 19 companies are publicly accessible and present high standard quality data. While other SOEs’ financial records are also accessible through the Ministry of SOEs website, the quality of the data is not as good as that on the Indonesia Stock Exchange website.

References:

“SOEs dominated stock capitalization of Indonesia Stock Exchange in 2010,” Oke Zone, December 31, 2010, <http://economy.okezone.com/read/2010/12/31/278/409186/bumn-kuasai-26-kapitalisasi-saham-bei-sepanjang-2010>

Outlook BUMN (SOEs) 2011, the Ministry of State Owned Enterprises, January 2011.

List of SOEs, Ministry of SOEs, <http://www.bumn.go.id/daftar-bumn/>

Listed Companies on Indonesian Stock Exchange, Indonesian Stock Exchange, <http://www.idx.co.id/Home/ListedCompanies/CompanyProfile/tabid/89/language/en-US/Default.aspx>

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

Comments:

Currently, there are 142 SOEs in various sectors, and 19 of those have already “gone public” and registered on the Indonesian Stock Exchange. The financial records of these 19 companies are publicly accessible and present high standard quality data. While other SOEs’ financial records are also accessible through the Ministry of SOEs website, the quality of the data is not as good as that on the Indonesia Stock Exchange website for free.

References:

“SOEs dominated stock capitalization of Indonesia Stock Exchange in 2010,” Oke Zone, December 31, 2010, <http://economy.okezone.com/read/2010/12/31/278/409186/bumn-kuasai-26-kapitalisasi-saham-bei-sepanjang-2010>

Outlook BUMN (SOEs) 2011, the Ministry of State Owned Enterprises, January 2011.

List of SOEs, Ministry of SOEs, <http://www.bumn.go.id/daftar-bumn/>

Listed Companies on Indonesian Stock Exchange, Indonesian Stock Exchange, <http://www.idx.co.id/Home/ListedCompanies/CompanyProfile/tabid/89/language/en-US/Default.aspx>

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:

Currently, there are 142 SOEs in various sectors, and 19 of those have already “gone public” and registered on the Indonesian Stock Exchange. The financial records of these 19 companies are publicly accessible and present high standard quality data. While other SOEs’ financial records are also accessible through the Ministry of SOEs website, the quality of the data is not as good as that on the Indonesia Stock Exchange website for free.

Based on Free Information Acts, citizens can access the information for free. If not available online, there might be photocopying costs.

References:

"SOEs dominated stock capitalization of Indonesia Stock Exchange in 2010," Oke Zone, December 31, 2010, <http://economy.okezone.com/read/2010/12/31/278/409186/bumn-kuasai-26-kapitalisasi-saham-bei-sepanjang-2010>

Outlook BUMN (SOEs) 2011, the Ministry of State Owned Enterprises, January 2011.

List of SOEs, Ministry of SOEs, <http://www.bumn.go.id/daftar-bumn/>

Listed Companies on Indonesian Stock Exchange, Indonesian Stock Exchange, <http://www.idx.co.id/Home/ListedCompanies/CompanyProfile/tabid/89/language/en-US/Default.aspx>

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 NGOs. 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 NGOs trying to access this information.

90

5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

94

70a. In law, anyone may apply for a business license.

Yes

No

References:

Article 7 of Law No. 40, 2007, on Limited-Liability Company (Perseroan Terbatas).

Articles 2 and 3 of Ministry of Home Affairs Decree No. 24, 2006, on Operational Guideline of One Stop License Services.

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:

Article 18 of Ministry of Home Affairs Decree No. 24, 2006, on Operational Guideline of One Stop License Services.

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

Comments:

Although licensing guidelines identify a timeline of a certain number of days for certain types of licenses, license applications typically experience delays. This is due to clarifications and recommendations made by various departments before the application is signed by the regional chief.

References:

Doing Business in Indonesia, International Financial Cooperation, June 2010, <http://www.doingbusiness.org/data/exploreeconomies/indonesia/starting-a-business>

Zulkifli, senior officer of One Stop License Service of Aceh Province, interviewed on June 10, 2011.

Kaival, Senior officer of One Stop License Service of Aceh Province, interviewed on 10 June 2011.

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:

Doing Business in Indonesia, International Financial Cooperation, June 2010, <http://www.doingbusiness.org/data/exploreeconomies/indonesia/starting-a-business>

Zulkifli, senior officer of One Stop Lincense Service of Aceh Province, interviewed on June 10, 2011.

Kaival, Senior officer of One Stop Lincense Service of Aceh Province, interviewed on 10 June 2011.

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:

Law No. 28, 2002, on Buildings and Construction.

Law No. 1, 1970, on Work Safety.

Law No. 13, 2003, on Manpower.

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:

Law No. 32, 2009, on Environmental Management and Protection.

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. 28, 2002, on Buildings and Construction.

Law No. 1, 1970, on Work Safety.

Law No. 13, 2003, on Manpower.

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?

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

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

References:

"The Minister of Manpower and Transmigration Inspects the Implementation of Health and Public Safety Standards in PT Bogasari," Wisatapesisir.com (journalistic database on tourist resorts in North Jakarta), March 10, 2011 (<http://id.wisatapesisir.com/berita/1044-menteri-nakertrans-ri-pantau-pelaksanaan-k3-di-pt-bogasari>).

"The challenges of implementing health and public safety standards in the construction sector in Indonesia," lecture by Reini D.Wirahadikusuma, Civil and Environment Engineering of Bandung Technology Institute, May 2007.

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:

"AMDAL and Law without Implementation," Eonike Friska Simatupang, Public Health Faculty of North Sumatra University, March 10, 2011, http://www.medanbisnisdaily.com/news/read/2011/03/10/23095/amdal_dan_uu_tanpa_implementasi/

"AMDAL has not yet been used as effective instrument," Pontianak Post, October 27, 2010, http://www.pontianakpost.com/index.php?mib=berita_detail&id=41756

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

Comments:

Although there is a law on this matter, the implementation of the law is weak.

References:

"The Minister of Manpower and Transmigration Inspects the Implementation of Health and Public Safety Standards in PT Bogasari," *Wisatapesisir.com* (journalistic database on tourist resorts in North Jakarta), March 10, 2011 (<http://id.wisatapesisir.com/berita/1044-menteri-nakertrans-ri-pantau-pelaksanaan-k3-di-pt-bogasari>).

"The challenges of implementing health and public safety standards in the construction sector in Indonesia", lecture by Reini D.Wirahadikusuma, Civil and Environment Engineering of Bandung Technology Institute, May 2007.

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.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁷⁵Anti-Corruption Law

73. Is there legislation criminalizing corruption?

78

73a. In law, attempted corruption is illegal.

Yes | No

References:

Articles 5, 6, 7, 8, 9, 10, 11, and 12 of Law No. 20, 2001, on Corruption Eradication (amended from previous Law No. 31, 1999).

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 of Law No. 20, 2001, on Corruption Eradication (amended from previous Law No. 31, 1999).

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

References:

Article 5 of Law No. 20, 2001, on Corruption Eradication (amended from previous Law No. 31, 1999).

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

References:

Article 5 of Law No. 20, 2001, on Corruption Eradication (amended from previous Law No. 31, 1999).

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:

Article 16 of Law No. 7, 2006, on the Ratification and Legalization of United Nations Conventions Against Corruption 2003.

Articles 5, 6, 7, 8, 9, 10, 11, and 12 of Law No. 20, 2001, on Corruption Eradication (amended from previous Law No. 31, 1999).

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:

Although the law does not regulate this matter, there is strong public scrutiny on using public resources for private gain. However, despite being publicly scrutinized, public resources are commonly used for private events by public officers. We sometimes see an ambulance used for a family weekend, and red plates (public assets vehicles) are commonly used outside office hours or during holiday for private purposes.

References:

Existing regulations related to anti-corruption and state assets management do not specifically regulate the mechanism for or illegality of using public resources for private gain.

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

References:

Article 51 of Law No. 14, 2008, on Free Public Information Acts.

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:

Article 3 of Law No. 25, 2003, on Money Laundering (amended from previous Law No. 15, 2002, on 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. 8, 1981, on Criminal Code (also known as Indonesian Penal Code (KUHP) or Indonesian Criminal Code).

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

References:

Law No. 30, 2002, on Corruption Eradication Commission.

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.

75. Is the anti-corruption agency effective?

89

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

References:

Article 3 of Law No. 30, 2002, on Corruption Eradication Commission.

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:

In the past several years, the Corruption Eradication Committee (CEC) has been a subject of political intimidation from national parliament members and other law enforcement agencies such as the police. The most recent example, in September and October 2011, came from various national parliament members who are attempting to reduce the power of the CEC and who also are calling for the suspension of the CEC. A member of the national parliament from the Golkar political party is calling for the suspension of the corruption investigation mandate of CEC, while a member of the national parliament from PKS is calling for the demolition of the CEC.

References:

"M. Jasin (Deputy of Corruption Eradication Committee – CEC): Parliament often interfered with the corruption case in CEC," Viva News, August 19, 2011, <http://nasional.vivanews.com/news/read/241883-m-jasin-dpr-sering-intervensi-kasus-di-kpk>

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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

References:

“Ari Muladi reveals the criminalization strategy toward the leaders of Corruption Eradication Committee,” Tempo Interaktif, January 25, 2010, <http://www.tempo.co/hg/hukum/2010/01/25/brk,20100125-221220.id.html>

State Address of the President of the Republic of Indonesia on the Occasion of the 66th Anniversary of the Proclamation of Indonesia, August 16, 2011, <http://www.presidenri.go.id/index.php/pidato/2011/08/16/1692.html>

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

References:

“8 candidates for CEC leaders are ready for fit and proper test by parliament,” Investor Daily, August 19, 2011, <http://www.kpk.go.id/modules/news/article.php?storyid=2204>

“Bambang Widjojanto is strongest candidate for CEC chief,” Waspada, August 23, 2011, http://www.waspada.co.id/index.php?option=com_content&view=article&id=212727:bambang-calon-kuat-kpk&catid=17:nasional&Itemid=30

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:

The staff of the KPK has sufficient capacity to carry out its mandate. We have to remember that any form of corruption is a criminal offense, and KPK is a leading agency on this matter; nevertheless, there is a police institution also mandated to deal with any form of criminal offense. Therefore, the KPK should improve its coordination and cooperation with the police institution to back up its corruption eradication tasks, rather than increasing number of staff, which will create a further burden on the state budget and could possibly make the rivalry between the KPK and police institution worse.

References:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Annual Report of Corruption Eradication Committee 2009, December 2009.

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

Comments:

In 2010, the Corruption Eradication Committee was allocated more than IDR 431 billion by the annual state budget, and in 2011, the allocation was IDR 575.7 billion.

References:

Indonesian Budget Statistic 2006 – 2012, Ministry of Finance of the Republic of Indonesia, August 22, 2011.

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Summary of Meeting of Commission III of National Parliament, September 1, 2010.

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

Comments:

The CEC makes annual reports and case-by-case reports, as well as regularly updating reports on its clearing house website, which is accessible to the public. Citizens can obtain these reports free of charge.

References:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Annual Report of Corruption Eradication Committee 2009, December 2009.

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 the past several years, the Corruption Eradication Committee (CEC) has been a subject of political intimidation from national parliament members and other law enforcement agencies such as the police. The most recent example, in September and October 2011, came from various national parliament members who are attempting to reduce the power of the CEC and who also are calling for the suspension of the CEC. A member of the national parliament from the Golkar political party is calling for the

suspension of the corruption investigation mandate of CEC, while a member of the national parliament from PKS is calling for the demolition of the CEC.

References:

"PPP (political party) accuses CEC of interfering with parliament," Detik News, August 22, 2011, <http://www.detiknews.com/read/2011/08/22/163509/1708602/10/ppp-anggap-pansel-kpk-campuri-wewenang-dpr>

"Parliament budget committee is told to stop being childish," Viva News, September 23, 2011, <http://politik.vivanews.com/news/read/249649-banggar-jangan-ngambek-seperti-anak-kecil->

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Annual Report of Corruption Eradication Committee 2009, December 2009.

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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

Comments:

On February 2011, Dr. R. Wendelyna Simarmata, the "whistle-blower," received an award from the Jakarta Regional Police. In 2008, he reported corruption within the Department of Home Affairs to the police, which resulted in two senior officers within the department receiving sentences of one year each on March 27, 2011. While the case was processed, he was subjected to discrimination within the department, being transferred to other smaller offices several times, including to the office at the sub-district level.

References:

"Reporting bribery on civil servant recruitment, a civil servant is sentenced among others," Harian Sumut Pos, August 17, 2011, <http://www.hariansumutpos.com/2011/08/13059/pelapor-penipuan-cpns-rp600-m-ikut-ditahan.htm>

"The fate of whistle blower," Viva News, July 7, 2011, <http://nasional.vivanews.com/news/read/231504-nasib-whistle-blower>

"Twist and turn of those who leak the scam of their institution," Detik News, August 7, 2011, <http://www.detiknews.com/read/2011/07/08/225542/1677701/10/lika-liku-mereka-yang-membongkar-aib-instansi>

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.

88

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

58

77a. In law, there is a general right of appeal.

Yes

No

References:

Article 196.3 of Law No. 8, 1981, on Criminal Code.

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.

Comments:

In general, there is a lack trust among general public about judicial fairness in Indonesia, especially among disadvantaged citizen. Although the law states that all citizen have equal rights in judicial fairness, law enforcement officials (in this case, the court) often prioritize those who have power and money in the appeals process. It is often the case that appeals made by those citizens with power and money are processed quicker than the appeals made by those who are disadvantaged. The appeals made by disadvantaged citizens often take a long time, usually around one year to get the decision.

References:

Judiciary Administration in Indonesia, The National Commission of Law of Republic Indonesia, December 15, 2008.

Final Periodical Report of Judicial Commission of Republic Indonesia 2005 – 2010, Judicial Commission of the Republic of Indonesia, December 2010.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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.

Comments:

Technically, anyone can afford the official cost of the appeal mechanism, but there are extraneous or informal expenses that discourage people from using the appeals mechanism. First scenario: The actual fees for a lawsuit are small, but the police, attorney and even judges often ask for money (in large amounts) so that the small retail business can win the case. Second scenario: The lawsuit from a small retail business can be easily defeated or dismissed because the officers in the judiciary process accept payment from those the lawsuit is against.

References:

"The Court Fees are High, Debt Collectors are Preferred," Hukum Online, April 28, 2011, <http://hukumonline.com/berita/baca/lt4db9410d05be3/biaya-pengadilan-tinggi-debt-collector-laku>

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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?

50

78a. In practice, do judgments in the criminal system follow written law?

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

Comments:

Despite the written law giving the standard or parameters of sentences, the “small people or disadvantaged citizens” often receive the maximum sentence, while “big people or people with money and power” receive the minimal sentence, and sometimes their charges are downgraded. For example, on October 19, 2011, a judge in Bandar Lampung gave no prison sentence to the former deputy of district chief involved in a corruption case involving IDR 28 billion from a public fund. According to Law No. 31, 2003, those convicted of corruption involving public funds will be sentenced up to 12 years in prison and the minimal sentence is two years.

References:

“Judiciary Administration in Indonesia,” National Commission of Law of the Republic of Indonesia, December 15, 2008.

Final Periodical Report of the Judicial Commission of the Republic of Indonesia 2005 – 2010, Judicial Commission of the Republic of Indonesia, December 2010.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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?

50

79a. In practice, are judicial decisions enforced by the state?

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

Comments:

Despite the written law stating that prisoners must stay in jail unless there is an emergency, the “small people or disadvantaged citizens” go to jail immediately after they are convicted, while “big people or people with money and power” are often free to roam and stay at home or even to travel out of prison, both on holidays and overseas business trips. For example, on June 28, 2010, Samuel Matutina, the then-chief of district administration in Ende district, was sentenced to eight years following the corruption of IDR 3.5 billion of public funds; nevertheless, from September 15 to 24, 2010, he traveled overseas (Philippines) for a business trip.

References:

“Person convicted in corruption case in Ende district is free to make overseas trip,” Rakyat Merdeka Online, September 16, 2011, <http://www.rakyatmerdekaonline.com/news.php?id=39489>

“For 6 years, convicted district secretary has never stayed in prison,” Antara News, November 22, 2010, <http://bali.antaranews.com/berita/8426/6-tahun-sekkab-terpidana-bebas-berkeliaran>

“Indicted Gayus (tax officials involved in large-scale corruption) allowed to travel to holiday island and overseas by head of prison”, Metro TV News, September 20, 2011, <http://www.metrotvnews.com/read/newsvideo/2011/09/20/136321/Gayus-Keluar-Negeri-Atas-Izin-Kepala-Rutan>

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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:

Article 24 of Indonesian Constitution, 1945.

Article 4 of Law No. 4, 2004, on the Judicial Power.

Law No.5, 2004, on Supreme Court of Justice.

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:

"Head of Supreme Court admits judges in Indonesia are not yet free from interference," Detik News, February 16, 2010, <http://www.detiknews.com/read/2009/02/16/171831/1085702/10/ketua-ma-akui-hakim-indonesia-belum-bebas-intervensi>

"Fika Fawzia, Judicial Corruption in Indonesia: Authoritarianism & the Weakening of the Judiciary," The Jakarta Post, February 9, 2011.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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, on Criminal Code.

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 of Law No. 5, 2004, on Supreme Court of Justice.

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?

50

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

According to reports, one of the judges in Manado court was hurt by criminal defendants as soon as they were sentenced. He was also beaten in March 2011 by the defendant after he handed out a prison sentence in a murder case.

References:

“After reading the conviction, a judge was beaten in the courtroom,” Kompas, March 10, 2011, <http://regional.kompas.com/read/2011/03/10/19182813/Ups.Selesai.Vonis.Hakim.Aris.Dipukul>.

“A judge in Ende district was beaten by trial visitor,” Kupang Post, October 30, 2010, <http://dion-bata.blogspot.com/2009/10/hakim-pn-ende-dipukul-pengunjung-sidang.html>

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

Comments:

There were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

References:

Based on desk research.

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?

54

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Judiciary Administration in Indonesia, National Commission of Law of the Republic of Indonesia, December 15, 2008.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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:

Judiciary Administration in Indonesia, National Commission of Law of the Republic of Indonesia, December 15, 2008.

Final Periodical Report of the Judicial Commission of the Republic of Indonesia 2005 – 2010, Judicial Commission of the Republic of Indonesia, December 2010.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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

Comments:

There is currently a draft law related to providing legal counsel or legal aid for disadvantaged criminal perpetrators. Despite this draft being with the national parliament for the last several years, the law has not been passed.

References:

Based on desk research.

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:

There is no state legal assistance for disadvantaged criminal defendants, and there is no law in Indonesia obligating the state to provide a lawyer for a criminal defendant.

References:

Judiciary Administration in Indonesia, National Commission of Law of the Republic of Indonesia, December 15, 2008.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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

Comments:

Those with a median yearly income in Indonesia are mostly unable to afford to bring a legal case to court, and this is not related to the official legal lawsuit fees and transportation costs of going back and forth to the police, prosecutor, or court. Illegal fees are involved in the whole process, including extortion and an unwritten obligation to give "gifts" to the police, prosecutors and sometimes the judges.

References:

Judiciary Administration in Indonesia, National Commission of Law of the Republic of Indonesia, December 15,2008.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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

Comments:

First scenario: The actual fees for the lawsuit are small, but the police, attorney and even judges often ask for money (in large amounts) so that the small retail business can win the case. Second scenario: The lawsuit from a small retail business can be easily defeated or dismissed because the officers in the judiciary process accept payment from those the lawsuits are targeting.

References:

Judiciary Administration in Indonesia, National Commission of Law of the Republic of Indonesia, December 15, 2008.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

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

Comments:

Almost all districts or regions in Indonesia have court. There are a total of 33 provinces, 375 districts, 90 municipals, 5 administrative municipals, and 1 district municipalities. The number of courts are as follow: 347 state courts (at district level), 30 high courts (at provincial level), 33 industrial courts (related industrial relation or the court that deal with the issue of labor/trade union and employers), 4 human rights courts, 5 commercial courts, and 5 marine and fishery courts (dealing with the issue of illegal fishing). There are also district or state courts that are in the processes of being established following the recent creation of new regions in Indonesia (Data Indonesian Supreme Court of Justice, 2010).

References:

Judiciary Administration in Indonesia, National Commission of Law of the Republic of Indonesia, December 15, 2008.

Final Periodical Report of Judicial Commission of the Republic of Indonesia 2005 – 2010, Judicial Commission of the Republic of Indonesia, December 2010.

Mufti Makaarim, former head of the Federation of KONTRAS (the Commission for Disappearances and Victims of Violence) and current director of the Institute for Defense, Security and Peace Studies, interviewed on September 26, 2011.

Data Indonesian Supreme Court of Justice, 2010

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

It is common in Indonesia for the family members and relatives of a public officer (such as head of a department or lower rank) to easily get recruited to become civil servants in his/her department. For example, Andi Basrul, former head of the Nature Conservation Agency (BKSDA) in one of provinces in Indonesia recruited more than 10 of his relatives and family members during his term. It also is common for civil servant recruitment officers to accept bribery (in many cases they asked for money in order for certain candidates of civil servants to get jobs).

References:

"Stop corruption, collusions, and nepotism during police recruitment," Waspada, May 30, 2011, http://waspada.co.id/index.php?option=com_content&view=article&id=196700:stop-kkn-penerimaan-anggota-polri&catid=14:medan&Itemid=27

"The recruitment mechanism for state attorney must be improved," Fajar Online, July 23, 2011, <http://www.fajar.co.id/read-20110722190101-perbaiki-mekanisme-rekrutmen-jaksa>

"Position Paper: the Indonesian Police Reform toward Democratic Policing," Indonesian NGO Coalition on Police Reform (ICJR, ICW, IDSPS, Imparsial, INFID, KontraS, LBH Jakarta, Praxis, ProPatria, P2D), June 2010, <http://kontras.org/data/Kertas%20Posisi%20Reformasi%20Polisi%20menuju%20Kepolisian%20yang%20Demokratis.pdf>

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

Comments:

The Indonesian Police and the Department of Defense are among 10 biggest national budget allocation recipients within 82 government departments and agencies in Indonesia. In 2006, the police received IDR 16.5 trillion of the national budget allocation; in 2011 it received double, at IDR 31.3 trillion. In 2012, police will be allocated IDR 34.4 trillion. The Defense Department also received IDR 24 trillion in 2006 and has received more than double in 2011, at IDR 50 trillion. The allocation for 2012 will be IDR 64.5 trillion. The state attorney also follows the same trend of budget increases: IDR 1.4 trillion in 2006, IDR 2.8 trillion in 2011 and almost IDR 3 trillion in 2012.

References:

Indonesian Budget Statistic 2006 – 2012, Ministry of Finance of the Republic of Indonesia, August 22, 2011.

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:

A politically elite figure in Indonesia is often a dominant economic player. For example, on August 1, 2011, Gayus Tambunan (a tax officer) was sentenced to 10 years for assisting the tax avoidance of PT Surya Alam Tunggal. However, at the same time he also assisted the tax avoidance of several companies belonging to Abu Rizal Bakrie (former Indonesian cabinet minister and current leader of a major political party in Indonesia). Nevertheless, in the latter cases, there has not been any investigation or court proceedings, which means Abu Rizal Bakrie is safe, and Abu Rizal Bakrie has been heavily backed by parliament members from his party.

References:

"Conflict of interest within law enforcement in Indonesia," Gema Nurani (the campaign tabloid of one of the major political parties in Indonesia, HANURA), September 10, 2011, <http://www.gema-nurani.com/2011/09/conflict-of-interest-penegakan-hukum-di-indonesia/>

"Law enforcement hit by the intervention of political power," Scherazade Mulia Saraswati, Media Indonesia, January 20, 2011, <http://www.mediaindonesia.com/read/2011/01/01/197293/16/1/Penegakan-Hukum-Terbentur-Intervensi-Kekuatan-Politik>

Sofyan Wanandi, head of Indonesian Entrepreneur Association, January 31, 2011, <http://www.suarapembaruan.com/ekonomidanbisnis/pemerintah-diminta-jangan-intervensi-hukum/3221>

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.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes

No

References:

Article 7 of Presidential Regulation No. 7, 2011, on National Police Commission (replacing previous Law No. 17, 2005, on National Police Commission).

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:

From January to September 2010, the National Police Commission received 928 complaints about police performance from citizens, and only 465 were resolved, which is around 50 percent.

— National Police Commission, <http://www.kompolnas.go.id/?q=pengaduan>

References:

National Police Commission: <http://www.kompolnas.go.id/?q=pengaduan>

"Recapitulation of Citizens Complaints January – September 2010," Data National Police Commission, September 2010.

"Recapitulation of Citizens Complaints January – August 2010," Data National Police Commission, August 2010.

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, on Corruption Eradication Commission.

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:

Annual Report of Corruption Eradication Committee 2010, December 2010, http://www.kpk.go.id/uploads/PDdownloads/kpk_laptah_2010.pdf

Annual Report of Corruption Eradication Committee 2009, December 2009.

Danang Widoyoko, coordinator of Indonesia Corruption Watch (ICW), interviewed on September 7, 2011.

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:

Articles 29 and 30 of Law No. 2, 2002, on Indonesian National Police.

Article 9 of Presidential Regulation No. 7, 2011, on National Police Commission (replacing previous Law No. 17, 2005, on National Police Commission).

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

Comments:

In 2009, 429 police personnel were fired (including from mid-rank police) due to their involvement in criminal activities, indiscipline, and violation of the police code; in 2010, 272 police were fired, while from January to July 2011, there were 88 police fired for similar reasons.

References:

"Using drugs and involved in extortion, 32 state attorney officers are fired," Oke Zone, March 9, 2011, <http://news.okezone.com/read/2011/03/09/339/432992/gunakan-narkoba-dan-memeras-32-jaksa-dipecat>

"For corruption and selling criminal evidences, four state attorney officers are fired," Pos Kota News, October 21, 2010, <http://www.poskota.co.id/kriminal/2010/10/21/korupsi-dan-jual-barang-bukti-empat-jaksa-dipecat>

"From January – July 2011: 88 police have been fired," Republika, August 15, 2011, <http://www.republika.co.id/berita/nasional/umum/11/08/15/lpylql-2011-belum-habis-sudah-88-polisi-dipecat>

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.
