

Buying justice

Few people would feel surprised by last week's arrest of a lawyer and a Supreme Court staff member for alleged bribery as the Corruption Eradication Commission (KPK) had sent shockwaves in its attempts to unveil corruption within the judiciary.

The KPK caught an advocate from Hotma Sitompul's legal practice, Mario C. Bernardo, who was reportedly about to hand over a Rp 80 million (US\$8,000) bribe to Supreme Court staff member Djodi Supratman on Thursday. The next day KPK investigators searched the law office in Menteng Central Jakarta for more evidence that would help the anti-graft body build a strong case.

The latest arrest only confirmed public suspicion that justice can be bought and the judiciary is just as corrupt as the other two branches of power, the executive and legislative. At least the repeated phenomena of light sentences, or perhaps acquittals, handed down to certain suspects have triggered speculation about the role of money in our justice system.

Congress of Indonesian Advocates (KAI) deputy chairman Tommy Sihotang, who is also representing Mario, does not deny that lawyers often resort to bribery to win cases because the system forces them to do so. Lawyers, he says, are dealing with a corrupt judicial system.

Public perception about the country's judicial power indeed remains negative, despite internal reforms — including salary increases — which involved foreign donors. In its study conducted recently, the Indonesian Legal Roundtable (ILR) found that 60 percent of a total of 1,200 respondents nationwide believed judges were susceptible to bribery, with 23 percent believing otherwise.

Another study by the Indonesia Corruption Watch (ICW) in 2012 showed that at least 10 judges had allegedly received bribes from graft defendants.

Those studies may not represent the general state of the 9,000-strong judiciary corps of the country, but even so this nation cannot let a few corrupt judges spoil the public trust in the judicial system. A number of judges, including corruption court judges, had been brought to justice, convicted of graft and dishonorably dismissed, but the latest KPK move indicates that judicial corruption has not been adequately addressed.

One of the reasons behind the failure to discourage corruption involving judges is perhaps the spirit of the corps among the judges, as evident in their reluctance to hand down maximum punishments for their convicted colleagues. As the last bastion of integrity for justice, judges cannot be compromised. In the absence of deterrence, temptation for judges to sell justice in exchange for money will go unbridled.

Internal supervision is another sticking point, due to the weakened powers of the Judicial Commission as the only outside institution allowed to monitor judges, but unfortunately excluding Supreme Court justices.

The KPK believes that Mario and Djodi are just middlemen who may lead investigators to higher officials, including Supreme Court justices. Therefore the public can expect surprises this time around.

More than a World Cup

Amid worrying statistical reports that millions of Catholics worldwide are abandoning their church and embarrassing reports on corruption and sex crimes by priests and church leaders, Pope Francis recently strongly criticized such church leaders while at the same time encouraging young worshippers to stick to their faith.

In his sermon before nearly 3 million people during World Youth Day celebrations at Copacabana Beach in Rio de Janeiro on Sunday the pope said, "At times we lose people because they don't understand what we are saying, because we have forgotten the language of simplicity and import an intellectualism which is foreign to our people." His warning was heard by Catholics across the globe, where their leaders often prefer to serve the rich and the elites and neglect the poor and the needy. The church in Indonesia is no exception.

As reported by the Associated Press, the pope told young soccer-crazy Brazilians, whose country will host the 2014 World Cup, and youths from across the globe that Jesus Christ offers them "something more than the World Cup". "The church needs you, your enthusiasm, your creativity and the joy that is so characteristic of you," said the Argentinean pope.

In the last few years, international media organizations have routinely reported a high number of sex crimes committed by priests against altar boys or faithful churchgoers in many countries, especially in the United States and Europe. The victims or their families eventually went public and sued the church, which tried to hide the evil acts for decades. The Catholic church is often criticized for its reluctance to punish sex offenders and trying to cover up such brutal acts.

Corruption scandals have also marred the church from time to time, even at the level of the Vatican as recently reported.

In Brazil, millions of Catholics have abandoned their religion and joined the evangelical Protestants and Pentecostals. For them, the two churches are much more attractive compared to dull rituals of their first church. The same phenomenon is also happening in many parts of the world, including Indonesia.

Since officially replacing Benedict XVI in March, Pope Francis has impressed church followers with his modesty. He exemplifies how the church and other religious institutions will remain relevant only if their leaders practice what they preach and when they are able to continuously adapt to the needs of their followers.

Hopefully, the pope's message, particularly to church leaders, did not land on deaf ears.

Mass Organization Law and the FPI conundrum

Tobias Basuki
JAKARTA

The most recent atrocities committed by members of the firebrand Islam Defenders Front (FPI) brought to the surface the complex and thorny issue in fine tuning dynamics between religion and state in Indonesia. It also brought up anew the debate about the controversial Mass Organization (Ormas) Law within civil society.

In regard to the Ormas law, civil society organizations and radical Islamist groups became unusual bedfellows in their opposition to the passing of the law by the House of Representatives, albeit for different reasons.

Civil society groups feared a return to an authoritarian rule akin to the New Order's tight control over mass organizations.

Radical Islamist groups, on the other hand, would love to have absolute control over society, as long as they are the ones controlling it. Their opposition to the law in this case is merely due to the fear that it may impact them directly, potentially getting them into trouble.

That debate almost immediately got a case study, debating FPI's existence after its umpteenth violent act, in which its members were involved in running over and killing a pregnant woman with their car in a conflict with residents in Kendal, Central Java.

Civil society is split in their views on how to deal with the FPI. Intellectuals, moderating the outrage against the FPI, have been countering public cries to disband it. Civil society groups' main argument against calls to disband the FPI is their attempt to remain consistent in upholding the right to freedom of association and expression, even if it means defending the rights of radical groups.

This tenuous balance between upholding rights to association and expression versus dealing with perpetual violent acts by radical groups such as the FPI is dilemmatic.

It is a conundrum democratic proponents must face. Although the Mass Organization Law is problematic in many ways (for example, its definition of mass organization and other technical details), allowing the government to disband organizations through the court may not necessarily violate democratic principles as feared by civil society groups.

Larry Diamond, in his seminal work *Developing Democracy: Toward Consolidation* made a very clear distinction in defining civil society, a definition that would be very useful in giving a clear definition of mass organizations, which our law fails to address.

Diamond defines civil society as "an intermediary phenomenon standing between the private sphere and the state. Thus it excludes parochial society: inward looking groups ...," and it is "distinct from political society ... whose primary goal is to win control of the state or at least some position in it".

Thus, religious groups and organizations essentially are not necessarily part of civil society and therefore not categorized as mass organizations. Religious organizations and institutions (mosques, churches) primarily looking inwardly in managing affairs of the organization and members should have free reign within their organizations without interference from the state.

However, the catch will be when a religious groups' activity moves beyond its "private" function and enters the public sphere. In what Diamond called "performing mediating functions" acting as a "bridge" between the private interests of its group to the public sphere, they

have become part of civil society and thus subject to laws concerning their activity.

A key principle Diamond underlined is the principle of pluralism and diversity to which mass organizations within civil society must adhere. Thus, any extremist group such as the FPI that "seeks to monopolize a function or political space in society, crowding out all competitors while claiming that it represents the only legitimate path", has violated important democratic principles. Thus banning them with due process of the law would not be a violation of democracy.

One may ask how it is different from the Ku Klux Klan, or the Westborough Baptist church in the United States. Both are extremely repulsive, bigoted groups allowed to exist in the US on the premise of freedom of speech.

One crucial difference is that groups do not, and cannot dominate the public sphere and crowd out competing voices in US civil society. They are fringe groups not attached to any wider movements that threaten democracy in the US. The Westborough group is the most hated group in the US, a laughing stock to any US citizen outside of its own members.

The FPI is different. Although its members are often dismissed as mere thugs, they represent a wider network of narrow-minded ideas that threaten Indonesia's budding democracy. They have become effective extensions and "smashing tools" of proponents of these ideologies to root out conflicting ideas.

There are numerous poignant examples.

The group we often dismiss as "simple thugs" recently won a judicial review at the Supreme Court to abolish a national regulation on alcohol control, to basically allow regional administrations with "fun-

damentalist" tendencies to make their entire district or province "dry". Have we not learned from the US prohibition era, and its epic failure?

The FPI has perpetrated countless acts of violence with near impunity. It attacked the police headquarters a few weeks ago. It even had the audacity to violently confront a peaceful movement of the Alliance for Religious Freedom at the National Monument in 2008. The FPI with other groups managed to outshout attempts to abolish the highly problematic Blasphemy Law, which is valid today.

The FPI has not only attacked revered figures such as Abdurrahman "Gus Dur" Wahid, but verbally threatened to overthrow the government in 2011. This alone should be enough cause to see the organization as fundamentally rotten in structure as it is not isolated actions of individual members.

Disbanding such a problematic organization does not contradict democracy. On the other hand, it would send a clear message that no group, for whatever "divine" reason, can repeat acts that threaten and bleed our democracy without repercussions.

Allowing the government to disband organizations through the court may not necessarily violate democratic principles.

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Deregulating finance? Why China must be very cautious

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THE GLOBALIST/WASHINGTON D.C.

Rumor has it that China is set to accelerate the deregulation of its financial system.

For years, China has restricted the ability of its residents and foreign investors to pull and push their money in and out of the country.

While that may be illiberal, there was a sound reason for this restriction: Every emerging market that has scrapped these regulations has had a major financial crisis and subsequent trouble with growth.

The world can't afford for that to happen in China. China is too big to fail.

This issue came to the fore last year when the People's Bank of China (PBOC) announced that it might "liberalize" its financial system in five-10 years.

This move stood in stark contrast to a Chinese National Development and Reform Commission (NDRC)-World Bank report that put such a plan much further into the future.

That study cited the overwhelming evidence that shows, first, that dismantling cross-border financial regulations is not associated with growth and, second, that it tends to cause banking crises in economies with fledgling financial systems.

But now, Guan Tao, a director-general in the State Administration of Foreign Exchange has announced that "capital account convertibility" — as wonks call financial globalization — should happen in just a few years' time.

Indeed, last week China already started raising the ceiling on the amount of foreign speculation in China.

One wonders: Why rush this issue? Guan Tao says this is about making the yuan, China's currency, a global currency.

No doubt, in the long run it sure would be good to have more than US dollar on offer in the world economy.

The US dollar is increasingly a risky bet. Moreover, trading in yuan would reduce exchange-rate risk for one of the world's largest trading nations (and all its trading partners). And it would also reduce global risk by alleviating the world's over-reliance on the US dollar.

That said, China should not put the cart before the horse. To get where it wants to be and deserves to be, China will need to carefully reform its interest rate, exchange rate and financial regulatory regimes first.

Managing these reforms successfully will be close to impossible to achieve with a deregulated capital account. Financial stability is essential for China in order to move on with necessary reforms and maintain growth — let alone to maintain political stability.

Interest rates in China have been kept low to provide cheaper loans for industry. This has been very beneficial, playing a key role in a Chinese industrial policy that spawned the world's manufacturing export powerhouse.

However, at this point China's investment rates are too high and China needs to consume more. Low rates moved households to over-invest in real estate, and have caused a real estate bubble in the country.

If China deregulated cross-border financial regulations before reforming its interest rate policy, there could be enormous capital flight out of China.

Low interest rates in China, juxtaposed with higher rates available abroad, would provide an attractive rate of return for many wealthy Chinese. While China has taken small steps in interest rate reform, it still has a long way to go.

Capital flight would also jeopardize China's exchange rate reform, which has made great strides over the past two years.

Exchange rate reform has made the yuan appreciate significantly, with estimates of yuan appreciation now at 35-50 percent.

Capital flight could cause a major

depreciation of the currency that could hurt consumers by further weakening their purchasing power, and stall reform.

China will also need to continue financial regulatory reform. China's big banks are still indirectly responsible for large amounts of non-performing loans and are increasingly intertwined with a shadow banking system that is not properly regulated.

These banks need serious reform — or they will not be able to compete with international financial firms upon liberalization.

The global record is clear: When Latin America prematurely opened its doors to foreign finance in the 1990s domestic banks got wiped out. Next, the new dominant players in the market — foreign banks — didn't lend to domestic firms with innovative new ideas.

That undermined growth and economic transformation. The result has been anemic investment rates, de-industrialization and very little inclusive growth.

The IMF's own (and other) research shows that capital flows are susceptible to massive surges and sudden stops. These trends have only intensified since the global financial crisis.

For a while, there was a surge in capital flows to emerging markets due to low interest rates in the industrialized world, which made things look good.

But now that the US Federal Reserve hinted its bond buying programs would slow, capital is fleeing from emerging market countries.

But even before that trend change occurred, things were more bubbly than rosy. During the 2009-2013 period, when capital flowed in, exchange rates appreciated. That hurt export prospects and caused asset bubbles.

Now that exchange rates are depreciating, all those loans from the credit bubble are more expensive because they are denominated in US dollars.

China's ambitions aside, the fundamental economic lesson is clear: Regulating capital flows is essential for the exchange rate to fluctuate relative to economic fundamentals — rather than the irrational whims of speculative finance.

Indeed, there is now a consensus among economists and international financial institutions that capital account liberalization is not associated with economic growth in emerging markets, and that it causes banking crises (especially in nations with fixed exchange rates).

Such evidence has even prompted the IMF — the very institution that once saw rapid capital account liberalization as a number one priority — to change its tune.

The IMF now officially recommends the cautious sequencing of capital account liberalization.

China should remember with pride that it was not as severely affected by the financial crises of the 1980s and 1990s in Latin America and East Asia. These were crises where capital account liberalization played a big role.

Large countries such as Indonesia were set back by as much as a decade. Why did China not experience the same disaster? Because it prudently regulated cross-border capital flows.

If China does not now proceed with great caution, few countries will weather a financial crisis when it hits China.

All around the globe, we are reliant on China for trade, investment and finance. Simply put, China is too big to fail.

Thus, it is in the interests of the United States and the rest of the world to urge China not to deregulate its financial system. But most of all, it's in China's very own interest.

The writer is a professor of international relations at Boston University and a regular contributor to The Globalist, where this article initially appeared.

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