

**Lead Paper**  
**by the Director General for Law and International Treaties**  
**of the Indonesian Ministry of Foreign Affairs**  
**at the Talk Series: Indonesia's Fight Against Corruption"**  
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**Distinguished Participants,**

**Ladies and Gentlemen,**

The C word has been a subject of discussion and debate in many venues, be it in schools, universities, media, formal bilateral meetings, regional gatherings, or multilateral settings, and it is also the subject of talks of many people from all walks of life of all layers of society. The C word is also a subject of the work of many institutions, be it governments, non-governments or even GONGOS (government-sponsored NGOs). The C word is so important that it is debated so pervasively, endlessly. Here in Indonesia, the C word is a subject of endless talks, debate, strategizing or policy-making. In the environment of freedom of press where all is broadcasted and reported, it is simply impossible not to find a single piece of news or article of C word in any given media in Indonesia. And it appears in numerous demonstration jamming the streets of Jakarta or in any given part of this vast archipelago.

It is without a doubt that corruption is a salient issue in developing countries, as well as in developed countries. The root causes, nomenclature or standard of burden of proof of corruption may differ from one country to another, but the underlying intention is the same: the want to steal from other people's money, as simple as that. To best illustrate this is the fact that in many developing countries, including Indonesia, there are many corruptors who stole huge sum of public money, but by any measures their stolen asset are dwarfed compared to the amount of money stolen by a man in a developed world, a man named Bernard Lawrence Madoff, Bernie Madoff, who according to prosecutors stole 65 billion US Dollars or about 600 trillion Rupiah. This is more than Indonesian foreign exchange reserves in 2009 which stood at 51 billion US Dollars. What kind of man who stole 65 billion US Dollars? Don't tell me it is not a corruption because it does not involve state fund: just ask his thousands of former clients.

Although corruption is a commonplace problem in all corners of the world regardless of ideology, legal-political system or economic development, there remains barrier in international cooperation to fight corruption; barriers in law, in political-will, in economic convenience and also in perception.

A case in point is the famous corruption ranking that is being issued annually with such rigors and which received so many attentions from high-ranking officials. I consider this

annual ritual of naming and shaming is a barrier to the real fight against corruption that is being fought for by no less than the United Nations Convention Against Corruption, the truly global benchmark in bringing to justice all kind of corrupt practices.

The Transparency International (TI) and the Political and Economic Risk Consultancy (PERC) recently revealed the latest country's ranking and score which indicates the perceived level of public corruption in a country based on its annual surveys and studies.

The work of PERC is only focused on 16 (sixteen) countries in the Asia Pacific using 0-10 (zero-to-ten) scale based on survey conducted among 2,174 respondents ranging from middle to senior business executives in Asia, Australia, and United States of America. The zero-scale indicates a very clean country, whereas the ten-scale indicates the most corrupt country. Indonesia scores 9.27 which means that it falls under the category of the most corrupt country with score 9.27, respectively followed by Cambodia, Vietnam, the Philippines, Thailand, India, China, Malaysia, Taiwan, South Korea, Macau, Japan, United States of America, Hong Kong, Australia, and Singapore being the cleanest of all.

TI draws its ranking and score index from polls and surveys from 13 (thirteen) independent institutions, including PERC. Indonesia falls in number 111 and scoring 2.8, along with countries like Algeria, Djibouti, Egypt, Kiribati, Mali, Sao Tome and Principe, Solomon Islands, and Togo.

### **Distinguished Participants,**

We have no privy to understand the detail of the working methods of such rankings. We do not know what kind of questions being posed to those business executives in Asia, Australia and United States of America. We do not know whether the business executives who filled up the questionnaire are men and women of honor and ethics. We do not know whether those business executives were involved in money laundering. We do not know whether actually Bernie Madoff had once filled such questionnaire. But if he did or a man or woman having similar traits actually did reply to such questionnaire, the results of such ranking are simply a tainted product.

The kind of questions being asked to those business executives are indeed critical to guarantee the comprehensiveness of the final analysis on how corrupt, more corrupt or less corrupt a particular country is. Subjective questions like "Do you trust the government?" or "Is corruption a big problem in your country?" are questions that lead to no where in terms of understanding the real situation of corruption in a country. The list of questions that should be asked should reflect the global benchmark of anti corruption fight, UNCAC. Such questions as (1) Is the spouse of your president or prime minister leads or owns major national companies and do you consider that as a nepotism that leads to corruption or do you consider that as good business model? (2) Do you agree that stolen assets from developing

countries should be returned? (3) Do you question your clients where the money they invested really come from? (4) Do you consider managing corruptly obtained asset in foreign jurisdiction is as corrupt as the act of corruption itself or do you think is a good business model? (5) Are you willing to report to relevant authorities, foreign or domestic, that the money that you are handling are actually from corruptly acquired money? (5) Will you fight request to freeze your accounts by foreign governments because you launder dirty-corruptly-obtained assets (6) Do you want to be extradited if you are found guilty of laundering corruptly acquired assets? (7) Do you support governments who reject extradition requests and unhelpful to MLA requests?

I do not know whether these type of questions are listed or even considered at all. But I have a hunch that these are not the questions being asked to those business executives. The evidence that those questions are not being asked is overwhelming. The results of those ranking never demonstrate that a jurisdiction where corruptly obtained asset is being invested and enjoyed endlessly is a corrupt jurisdiction. The ranking results never tell us that managing corruptly obtained asset is as corrupt as the act of corruption itself.

As a matter of fact those rankings name and shame the source of corruption but says nothing about the management of corruptly obtained assets in foreign jurisdiction. This has been the pattern of the rankings of corruption in the world. Asset flights, asset tracing, management of dirty corrupt money are shunned and not addressed at all. These rankings in a way serves as a safe heaven for corruptors who managed to flee the country to a nice and secure place to launder their loots freely. If British Prime Minister Benjamin Disraeli once said that “there are three kind of lies: lies, damned lies and statistics”, we may consider adding rankings in such a list.

### **Distinguished Participants,**

We cannot clap with one hand. We need two to tango. We need to address corruption in two fronts, domestic and foreign. The work of all member of international community needs to cover both fronts. We cannot cherry pick which front to expose and which front to hide. We will do disservice to the noble fight against corruption.

The Stolen Asset Recovery (StAR) Initiative, run under the auspices of the World Bank and United Nations Office on Drugs and Crime, has conducted a study on the cost of various health programs in Africa Region to give perspective of the significant use of the ill-gotten assets which are fled off and stashed in foreign jurisdiction. The study shows that every \$100 million restituted to a developing country could fund various projects, such as first line treatment of HIV/AIDS for one year for over 600,000 people, full immunization for 4 million children, around 250,000 water connections for households, or 240 kilometers of two-lane paved road.

The so-called clean jurisdictions providing safe heaven for such huge amount of stolen assets should also bear moral and legal responsibilities. They should start working to really clean themselves as world center financial service provider free from perpetrators of corruption or other organized crime groups concealing their ill-gotten assets and provide a safe haven. Instead of recognizing their moral and legal responsibilities, some of them have placed a protective financial policy and regulations when it comes to providing judicial assistances for countries aiming to trace and recover the looted assets stashed within their jurisdictions.

Learning from the asset recovery cases in foreign jurisdictions, Indonesia finds that foreign jurisdictions have not shown a completely outward looking approach, instead, they have imposed strict and rigid policy with regard to regimes in support of international cooperation in freezing, confiscation and disclosure regimes.

UNCAC sanctioned that asset recovery as its fundamental principle and incorporates it under the Chapter V, dedicated solely to asset recovery. Furthermore, the Convention advises the development of strong international cooperation among State Parties, especially in terms of request for legal assistances, as provided through mutual legal assistance in criminal matters and extradition.

To recover assets, the requesting country can request a country where the assets are located for tracing, freezing/restraining, confiscation, as well as to request for disclosure. Disclosure of information is an important element to help the requesting country in building a case and establish a link between the alleged offences/ offences and the said assets. The difficulties faced by Indonesia are related to the rigid and inward looking policy imposed by some foreign jurisdictions. As experienced in the Adrian Herling Woworuntu case, whereby the rigid domestic requirements has hurdled Indonesia's effort in obtaining and returning ill-gotten assets which are stashed in a foreign jurisdiction.

The same goes in the Guernsey case, whereby strict evidentiary test were applied. Indonesia had to produce evidence that the assets in Guernsey were derived from illegal business activities. As in the majority of money laundering cases establishing a link is almost impossible. Therefore disclosure on information regarding the origin of the fund is an essential factor. The court did grant Indonesia a freezing order falling short of a disclosure order. What Indonesia really needs is a disclosure order. A freezing order not coupled with a disclosure order is simply just prolonging the withholding of the assets, but eventually having to face the fact that the money would then be released due to the difficulty to establish the link to satisfy the execution of a request.

The rigid and inward looking policy imposed by some foreign jurisdictions where targeted assets are located has been a great challenge and sometimes even hampering Indonesia's effort in recovering corruptly obtained assets.

Distinguished Participants,

The C word does not only stand for “corruption”, it could stand for “comprehensiveness”. “C in C” or comprehensiveness in fighting corruption ought to be the language we need to promote. We should employ the global standard of anti corruption found in UNCAC as the basis to treat all matters equally. We should not cherry pick issues in the real fight against corruption. We should not provide safe heaven for corruptors in foreign jurisdictions. We should fight against this kind of impunity. We should stop giving credits to jurisdictions who are the centers of laundering of assets and start think and strategize globally on more effective asset recovery. It should not stop at mere talks and debates, it should move on real actions in all fronts.

I thank you.