

The Indonesian Update

Monthly Review on Economic, Legal, Security, Political, and Social Affairs



Main Report : Bureaucratic Reform The Economics

The Economics

- Land Disputes ■
- Electricity Basic Tariffs ■

Law & Politics

- A Variety of Case-Brokering Modes ■
- Congress of the Democratic Party ■

Social Issues

- Criticizing of the Public Order Police ■
- The Revocation of the Law on the Educational Law Entity ■

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Contributors :

Anies Baswedan (**Executive & Research Director**), Endang Srihadi (**Coordinator**),
Aly Yusuf, Antonius Wiwan Koban, Hanta Yuda AR, Nawa Thalo.

Editor : Awan Wibowo Laksono Poesoro

FOREWORD

In the context of implementing bureaucratic reform, there are several barriers that need to be dealt with. *First*, there are no legal tools to regulate public service standards that must be met by the government. *Second*, all levels of bureaucracy tend to be involved in corrupt activities. *Third*, the culture and ethics of human resources are still conventional and traditional. *Fourth*, the inability to involve stakeholders to participate in the monitoring of policies.

The most phenomenal examples of these barriers are the tax evasion cases and the legal case-brokering cases involving one of government institutions. The cases have revealed that many parties were involved. The cases reconfirm that bureaucratic reform is not guaranteed, even though it is supported by power, system, and funds. Bureaucratic reform faces difficulties in changing the culture and ethics of the corrupt bureaucrats.

This edition of the Indonesian Update raises a main theme on bureaucratic reform. The Indonesian Update also talks about some important topics from several fields. On the economy and finance, it discusses land disputes and electricity tariffs. On the legal affairs, it talks about the case brokers. On politics, it talks about the Democratic Party's national congress and challenges it faces. On social affairs, it discusses the public order police and the revocation of the Law on the Education Legal Entity.

The regular publication of the Indonesian Update with its actual themes is expected to help policy makers in the government and the business sector, academicians, and international think tanks get actual information and contextual analyses on economic, political, social, and cultural developments in Indonesia.

Happy reading!

Bureaucratic Reform

Good governance cannot be separated from the role of bureaucracy as the main energy supporting government activities. In addition to delivering government services, bureaucracy is also tasked with translating various political decisions into public policy programs.

Bureaucracy also has a function to practically govern various policy implementations through programs and events in accordance with the government's abilities and public's needs.

So, bureaucracy is considered as a crucial factor for the success of the government's agendas, including achieving good and clean governance in order to support public welfare.

In reality, bureaucracy, in technical terms, is not always able to perform its duties and functions. It is also sometimes independence and does not have the ability create a sound working system. These problems have their roots in corruption, collusion, and nepotism.

The important factors that relate to the success of bureaucracy are commitment, competency, and consistency of all sides that are involved in the implementation of government programs. They are all should be committed to achieving clean and good governance by acting in accordance with good moral values of our constitution. They should put forward national interests above all else.

In the context of implementing bureaucratic reform, there are several barriers that need to be dealt with. *First*, there are no legal tools to regulate public service standards that must be met by the government. *Second*, all levels of bureaucracy tend to be involved in corrupt activities.

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The cases reconfirm that bureaucratic reform is not guaranteed, even though it is supported by power, system, and funds. Bureaucratic reform faces difficulties in changing the culture and ethics of the corrupt bureaucrats.

Furthermore, the failure of bureaucratic reform has been caused by weak funding executions to support the bureaucratic reform programs. Financial Minister Sri Mulyani Indrawati has conveyed that 12 departments and institutions (K/L) were not one hundred percent ready to run bureaucratic reform.

As a result, bureaucratic and legal reforms' funds in the amount of Rp 18.07 trillion (which consist of Rp 774 million for bureaucratic reform and Rp 216.3 million for legal reform; Rp 223.6 million for democratic consolidation programs; and Rp 16.858 million for national security in the APBN 2010) could not be paid. Also, Sri Mulyani has said that 11 and 12 K/L were only 30 percent ready to run bureaucratic reforms.

There are many things that have been implemented by the government in supporting bureaucratic reform programs. Beside of its funding, the government has also given a legal guarantee through Minister of the Empowerment of Government Officials Decree No. 15/2008 on General Arrangements of Bureaucratic Reform. The minister was Taufiq Effendi at the time. The Ministerial Decree could be used as a reference by a government institution in conducting bureaucratic reform.

The policy has been followed up by the formation of the Monitoring Team for Bureaucratic Reform, which is headed by government officials, including the Finance Minister, the Cabinet Secretary, and the Vice Chair of the KPK.

This arrangement is reinforced by the creation of the Independent Team of Bureaucratic Reform that will support the Monitoring Team in order to assure transparency and the objectives of bureaucratic reform. This has proven the government's will to amend public services through bureaucratic reform.

According to the government's plan to conduct bureaucratic reforms in all central government institutions that must be finished at the end of 2011, some various stages have been passed, including organizational reform, business certainty, and human resources quality. The bureaucratic reforms need to be held immediately and simultaneously.

The complex problem has its roots in Indonesia's big, complicated, and overlapping processes of government functions. The efforts would require a great amount of funds.

In order to maintain the above mentioned government plan, the Minister of the Empowerment of Government Officials and Bureaucratic Reform, EE Mangindaan, has finished the main design of bureaucratic reform in April 2010. The next step would be the Minister forming a Committee on Bureaucratic Reform that will be headed by the Vice President and supported by three Coordinating Ministers.

Furthermore, the implementation of programs will be executed by the Minister of Government Officials and supported by the Minister of Finance, the Minister of Home Affairs, the Head of *Bappenas*, and the Head of the Presidential Unit for Development Supervision and Controlling (UKP4) in order to improve the quality of national bureaucracy as soon as possible.

One of main duties of the Bureaucratic Reform Committee is to examine the bureaucratic system, which is deemed overlapping at the local and national levels.

Therefore, it is important to design the government's role at both center and local levels in order to be able to run the government effectively, efficiently, and transparently. Accordingly, bureaucratic reform should lie on three aspects: to reform the organizational aspect, to implement the business aspect, and to improve the quality of the government's human resources.

As a first step, bureaucratic reform should be focused on four technical manners: to enhance the quality of public service, to develop the system of working system and official welfare, to set the organization, and to enforce the local governments' capacity.

There is some expectation that the output of reform is to get professionals and experts of the government's official resources have the ability to set such strategies to strictly develop its potency, to create working system examination, to develop recruitment system, to create educational and practice system, to enforce rotation and carrier system, and to increase official database system.

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— **Aly Yusuf** —

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Land Disputes

Land disputes are a perennial issue in this country. Troubled, chaotic seizure of land is often led to bloodshed. The recent Tanjung Priok tragedy is an actual example.

Land acquisition in this country tends to increase. This trend is in line with population growth. The increasing number of people clearly has an impact on people housing needs. On the other hand, land acquisition is not easy. These factors have caused a discrepancy between the supply and demand for housing.

The number of population is also closely correlated with economic activities. Furthermore, increased economic activities will lead to the increased mobility of society. This means that the needs for infrastructure development such as roads -both public roads and highways- will continue to rise.

On the one hand, road extension will make the economy more efficient. On the other hand, road constructions clearly require massive land acquisition, making them very difficult to implement.

We are fully aware that the Government has a very limited budget to build economic infrastructure. For that reason, the government has tried to invite foreign investors through public-private partnership schemes.

However, investors are reluctant to invest their money as land acquisition is always convoluted. The difficulties in land acquisition occur even in the capital city, Jakarta.

Here are some land acquisition projects that are obstructed in Jakarta.

Projects/Locations	Area (hectares)	Executors
Tanjung Priok- Rorotan Toll Road	20,00	PT Jakarta Propertindo
Banjir Kanal Timur in Jakut & Jaktim	408,98	Land Acquisition Committee
BMW	26,50	Land Acquisition Committee Jakut
JORR W2	42,00	Land Acquisition Committee Jaksel
Bantar Gebang Garbage Pool	108,00	PT Godang Tua Djaya
Around Mbah Priuk's Grave	4,50	PT Pelindo II

Source: Bisnis Indonesia

This obviously makes foreign investors reluctant to take part in the construction of highways. Uncertainty surrounding land acquisition could lead to a very large cost. As a result, a profitable investment could turn into an unprofitable one.

Various causes

Many people probably think that land acquisition process is always resolved by a price deal between land owners and organizers of the project. It is apparently not the case.

Mbah Priuk case –and some other cases such as indigenous lands – imply that the religious, social and cultural factors should be taken into consideration. It is a fact that each case has a different story.

The most common story behind land clearing is the involvement of land speculators and mafia. When knowing that a piece of land is about to be cleared, they directly control the land, trying to seek profits. The indigenous communities finally have always been the loss party.

For that reason, a legal draft on Land Acquisition must be immediately prepared and transformed into law. Unfortunately, the draft has not been a priority for the House of Representatives.

— **Nawa Thalo** —

The most common story behind land clearing is the rampant involvement of land speculators and mafia.

Electricity Basic Tariffs

Government proposals to raise the electricity basic tariffs (TDL) in July 2010 at an average rate of 10 percent eventually approved by the House of Representatives (DPR). In addition to the tariff increase, the DPR also approved additional subsidies amounting to between Rp 2, 4 trillion and Rp 56, 15 trillion. The increase tariff policy is a response to reducing fiscal risks due to the increase in subsidies.

Should they be raised?

“No electricity is more expensive than expensive electricity” is a popular joke among businesses. It is indeed very reasonable. As a result, businesses agreed to PLN’s policy to increase the tariffs for electricity, instead of having cheap electricity but often experiencing power outage.

The uncertainty of power supply in this country is one of the main factors inhibiting the growth of investment. Frequent power outage will inhibit production processes and damage business relationships. It will also make the economic lives of production machineries become much shorter due to damages. Such things are certainly a disincentive for investment climate.

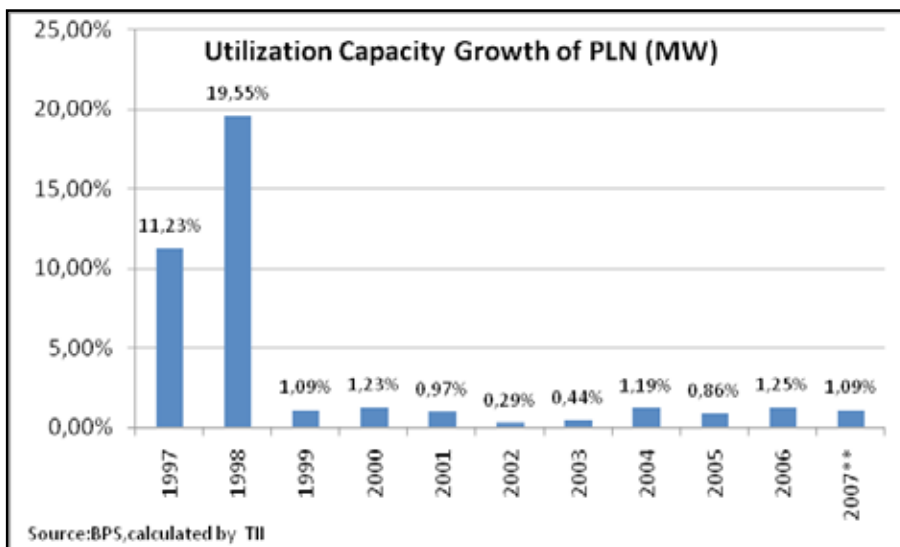
A dilemma is faced by PLN and the Government as its owner, as the rate of increase will receive resistance from the community, even though the people’s purchasing power has been restored. However, PLN, as the appropriate provider of energy, certainly requires a huge capital expenditure. With that capital spending, the company will be able to increase its production capacity while improving efficiency.

As can be seen in the graph, after the 1997-1998 financial crises, the growth in PLN's installed capacity is very low compared to the previous period. Since 1999, the capacity growth is never more than two percent. This shows PLN's minimal ability to invest and a number of other factors. The increase in world oil prices is one of them.

To increase its capital spending, PLN is forced to raise electricity rates. But of course this is not an easy matter. All this time, people have always been complaining about the performance of PLN services. They frequently suffer from power blackouts. A tariff hike then is not worthy.

The same thing happens with other services, such as toll roads. How come that the providers raised tariffs while they could not deliver good services? On the other hand, the company would see from the opposite perspectives. Services cannot be good without the tariff adjustments. In other words, tariff adjustments are absolutely necessary to reduce the frequency of power outage.

The uncertainty of power supply in this country is one of the main factors inhibiting the growth of investment.



— Nawa Thalo —

A Variety of Case-Brokering Modes

A case broker, which is widely known by the abbreviation *Markus*, has become a household phrase in this country. Through the reporting of the mass media, the people are aware that the number of various legal cases involving *Markus* is increasing.

This all started with the statement of the former Head of the Indonesian National Police (INP) Criminal Investigation Department (CID), Susno Duadji that many case brokers operating in many government agencies, including the INP.

The statement from Susno Duadji that could be categorized as a whistle blower's statement has triggered the unveiling of many cases involving case brokers in various government institutions.

One example is the case that happened in the Directorate General of Taxation that involved Gayus Tambunan, a junior public servant in the Directorate that was acquitted in a tax fraud case involving Rp 25 billion.

Based on investigation that was carried out by police, of the total funds of Rp 25 billion in Gayus account, only Rp 395 million that could be regarded as illicit money. The rest of the money, which had been originally frozen by the police, was then released.

According to Susno, the funds had been channeled to the pockets of several high-ranking police officers and investigators. According to the Susno statement, two senior officers, Police Brig Gen Edmon Ilyas, the then Lampung Police Chief, and Brig Gen Raja Erizman, the CID's Director II for Economic Crimes had enjoyed the money.

As a result of this case, 10 Gayus superiors in the Directorate General Pajak had been dismissed from their positions. Moreover, two public prosecutors who handled the Gayus case, Cirus Sinaga

and Poltak Manullang, had also been dismissed from their positions. In the meantime, Brig Gen Edmon Ilyas, had also been sacked from his position as the Lampung Regional Police Chief.

A Variety of Modes

According to a research that was carried out by the Indonesian Corruption Watch (ICW) that can be found in *Kompas.com*, at least there are six modes that are used by *Markus* to obtain profits as much as possible from various sides are involved in law enforcement, such as the police, the attorney general's office, and the courts.

Obscuring legal cases

This mode is carried out by *Markus* through the obscuring of criminal elements in the legal case, so that the courts could acquit the suspects. In the end, the courts will stop the court proceedings for not being able to get sufficient evidence. As a result, the Prosecutor's Office will issue an order letter to stop the investigation (SP3).

Negotiating Cases

In this mode, the investigators usually try to find some mistakes that can make the charges heavier. Later on the legal process, the investigators will the door for negotiations. As a result, bribery will occur.

Offering to Use Certain Lawyers

According to the ICW research, this mode shows the existence of mutual relations between the law enforcement officials handling the case and the lawyers defending the suspects.

In this mode, the ICW believes that there is collusion the law enforcement officials and the lawyers to blackmail the suspects. The lawyers have special relations with the law enforcement officials.

This mode is the one that was revealed by Susno in the Gayus Tambunan case, where the actors who were involved were the same as the actors in a case of *arwana* breeding that involved Rp 500 billion. Those who were named by Susno were Mr. X (SJ), Andi Kosasih (the owner of money in the scenario of the Gayus case), and Haposan Hutagalung (the lawyer of Gayus).

Lobbying the Courts

This mode is used when the case has already entered the court stage. Usually, there are some offers from the parties inside and outside the courts to carry out negotiations to finally issue SP3.

Selecting Favoring Judges

Based on the research that was carried out by ICW, there are practices of selecting judges who will handle the case by contacting the management of the courts. The judges that are picked to be included on the panel of judges for the case will make sure that the court proceedings will favor the suspect.

Extortion and Bribery

Another mode that is mentioned in the ICW research is a judge will contact the lawyers or the suspects via a broker. This broker will inform the suspects that a decision has been prepared, but there is still a weakness on the evidence. Afterwards, they will offer to help to reinforce the evidence.

Various modes that are mentioned above show the reality that case brokers operate in various law enforcement agencies in Indonesia. They are well organized and have wide networks. Susno Duadji's role as a whistle blower must be given appreciation as a brave side who has the guts to expose the existence of case brokers that are damaging the law enforcement in this country.

Susno's statement is like a wild ball that has triggered a conflict within the INP. This matter could be used as the entrance to expose various corrupt practices in in the INP as well as other Indonesian law enforcement agencies.

Markus have operated in Indonesia for a long time. They are well organized and have wide networks. Therefore, the momentum that was created by Susno Duadji that had exposed Markus operations in the Indonesian National Police and the Directorate General of Taxation must be used by the government to form a special team that is assigned to waging war on the existence of Markus.

— **Benni Inayatullah** —

The Momentum of Congress and the Challenges Faced by the Democratic Party

The political dynamics within the Democratic Party's upcoming congress in Bandung has been increasing. Three candidates - Andi Alfian Mallarangeng, Anas Urbaningrum, and Marzuki Ali - are almost certain to participate in the 2010 race to become the party's chair. The congress of the Democratic Party has an important impact on the future of the political party system in Indonesia. The reason is that this party has become a winner in the previous elections, controlling more than a quarter of the seats in the parliament.

The strength of the Democratic Party can be seen from the sharp increase in votes in the 2009 Elections. In the 2004 Elections - the first time of direct elections - the Democratic Party succeeded in garnering around eight million voters (7.8 percent of the vote), or 10.2 percent of the strength in the House of Representatives (56 seats). The political support enjoyed by the party increased very dramatically - three times - in the 2009 Elections to 21.7 million voters (20.8 percent), or 26.4 percent of the strength in the parliament (148 seats).

The phenomenon of gigantism

It is hard not to say that the main factor in the Democratic Party's victory in the 2009 Elections was the strong magnetism of the personality of Susilo Bambang Yudhoyono (SBY), rather than saying that it was the performance factor of the networks of the party's political machinery. Although the age of this party that was founded by is not yet eight years old, its electoral achievement is so glorious, winning the 2009 Legislative Elections and the Presidential Elections in one round.

The spectacular victory in the elections could be considered as good news or bad news for the Democratic Party, because it could be considered as a “threat” to the future of the party. The reason is that the very flat posture of the electoral politics has caused the Democratic Party to suffer from “the politics of gigantism”, a condition in which the posture of the party grows very large in a quick time, but there is less healthy condition in its the organization. That is because the weight of electoral politics grows in a relatively short lifespan, while the posture of the organization - infrastructure, networks, and resources - cannot keep up. Like people who suffer from gigantism - a condition that brings excess body - , the Democratic Party is facing a high risk of suffering from various diseases. Political gigantism – which has something to do with the big name of SBY - experienced by the Democratic Party will certainly bring some risks of political complications as well.

The internal problem

At least institutionally, the Democratic Party could suffer from a few complications in its organization such as the problem of leadership and the mechanism of decision-making of party under the superiority of SBY, the threat of factionalism that could result in internal conflicts, the impact of the dependency on the figure of SBY, the real political support from the grassroots level, as it has only been supported by the floating mass (the swing voters), and the problem of identity of the party due to the strong figure of SBY.

The problems of leadership and the decision-making within the party have emerged since the party’s formation due to the big name of SBY. This is indeed a “political blessing” as well as a “political disaster” for the Democratic Party. It is a blessing, because the popularity and appeal SBY contribute to a giant electoral weight of the Democratic Party - to be the winner of the election. It is a disaster, because institutionally the Democratic Party has become dependent of SBY. If viewed from the perspectives of the institutionalization, the party is clearly not healthy. The leadership and decision-making patterns of the party will depend heavily on the “wants” of SBY as the owner of “the veto” in the party. This problem will be the biggest obstacle for the Democratic Party to transform itself into a modern and democratic party, where the leadership and decision-making mechanism is collective-collegial.

The potential internal conflicts and internal factionalism also depart from the reliance of the Democratic Party on the figure of and the political charisma of SBY. SBY’s position as the “Father” of all “the powers of interests” and political factions in the party

has caused the party elites not to be accustomed to solving internal problems independently. The leaders of the party are untrained to build institutionalized political consensus. The weakness of finding resolutions to internal conflicts by party members has led to the use of the political power of patron, which in turn leading to a compromise mechanism that is never institutionalized. As a result, the conflicts are never complete. Conditions like this would be a latent threat for the Democratic Party if SBY no longer has the charismatic power or the position like now. The problems have its roots in the strong popularity and electability of SBY, rather than in the achievement of the party's organizational structure and networking. This shows that the Democratic Party is actually supported only by the floating mass. At this point, the constituency basis of the Democratic Party is in fact very liquid, and party's roots in society are very fragile. The party is like a floating political party.

The problem of the identity of the party has been suffered by the Democratic Party since its birth in 2001. Since its foundation, the party is more synonymous with SBY's name, rather than an ideological identity, orientation programs, and the party's position. Religious-Nationalism and the "party center" that have been proclaimed as the the ideological and political position of party have been undermined by the perception that the Democratic Party is the party of SBY. Again, in the short term, such a perception is indeed profitable, but in the future, this could pose a threat to the party. In a situation that the popularity of SBY is decreasing, especially in this last period of his presidency, the party will go through an identity crisis.

The fourth is the internal problem that has caused the Democratic Party not to develop into a strong and modern party. At this point, the party congress is supposed to be a momentum for institutionalizing, strengthening, and modernizing the internal party system. In addition, the party's chair and the new board have two important tasks: to keep the coalition of the SBY-Boediono administration solid and to win the 2014 elections. Therefore, the future of this party needs a leader who has skills to manage the organization, as well as to conduct excellent political communication and lobbying. Will the congress be a momentum to really strengthen the party, or will it be just another management succession event? Congratulations to the congress.

— **Hanta Yuda AR** —

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Criticizing of the Public Order Police

The portrait of violence shown by the Public Order Police (*Satpol PP*) has once again attracted public attention. This started with clashes on Tuesday, April 13, 2010, between *Satpol PP* and Chinese Indonesians who inhabited the banks of the River Cisadane, Tangerang, Banten Province. The clashes were triggered by the rejection of citizens to the eviction order that was being enforced by *Satpol PP* members.

The next day, 14 April 2010, a larger conflict happened in Koja, North Jakarta, where clashes between *Satpol PP* and the people from the communities living around the tomb of Habib Hasan bin Muhammad al-Haddad, or Mbah Priok. That day, *Satpol PP* was trying to close unlicensed buildings in the area surrounding the tomb. The clashes left three *Satpol PP* members killed and a total of 130 people injured.

Clashes in the Chinese settlement and Koja became the climax of a series of violent acts that had often been committed by agents of *Satpol PP* when enforcing local government policies. The pattern of violence looks as if the civil service apparatus confirms that violence has become an integral part of how the government operates in the area.

The Source Violence

The Article 4 of the Government Regulation No. 6/2010 on *Satpol PP* states that the *Satpol PP*'s main task is to maintain public order and public safety and to provide the society. The main tasks are placed in the earliest chapters. However, as witnessed by the public today, *Satpol PP* seems have a better understanding of the articles that give them a license to act decisively. This decisive action in practice can be translated into the use of some form of force, intimidation, and acts of violence.

It is very seldom that we hear the news that *Satpol* PP's launches stern actions against those who have disturbed the public. As a result, there are many unlicensed drivers, gambling groups, and thugs roaming the streets of our towns and cities. In contrast the residents who desire to live quiet and peaceful lives are often harassed by *Satpol* PP.

In PP No. 6/2010 on *Satpol* PP, we do not find a conflict management mechanism that can encourage a process of solving problems peacefully. These regulations clarify only the *Satpol* PP's duty to protect and implement local government policies. The problem arises when the local policy is a form of structural violence.

Structural violence always encourages policy makers to use its apparatus to impose the policy. The local government of DKI Jakarta also used *Satpol* PP to maintain public order in the settlements around the cemetery in Tanjung Priok. In this context, *Satpol* PP's violence is a mere instrument for local governments. It shows that in fact *Satpol* PP has no concept of peace and conflict management mechanism in PP No. 6/2010.

The absence of a peaceful conflict management framework in PP No. 6/2010 is at the core of the problem. Therefore, this entity has no knowledge base and legal mechanisms to create a peaceful conflict management process. Peaceful conflict management, such as fair negotiation mechanism in dealing with various cases of conflict of interests should be included in the PP No. 6/ 2010.

If it cannot be included in the PP, the district chiefs' task is to build a conflict management system that reduces the level of violence, both the institutional violence and the violent reactions from residents who feel that the economic interests of society, identity, and other interests are threatened by a local government policy.

Reforming *Satpol* PP

Reforms must be initiated by the central government to revise the Government Regulation No. 6/2010. Although it has recently been published on January 6, 2010, this rule has a fundamental weakness because the assignment of *Satpol* PP is not restricted.

In the regulations mentioned, the main task of *Satpol* PP is to uphold local regulations and maintain public order. But it is also stated that the *Satpol* PP can perform "other duties" as instructed by the head

of the region. This is what makes the *Satpol PP* authority seems to have no limits, and it can perform whatever duties as requested by the regional head.

The Jakarta Governor should not collect policing fees from PT Pelindo, the opponent of the heirs of Mbah Priok in the dispute over the area of the tomb. The Jakarta City Government argues that such a levy was justified by a governor's decree.

Nevertheless, the problem is that the government regulation clearly states that the operating costs of *Satpol PP* should be burdened to the regional budgets. It is very confusing if the authorities finance their operations by the parties.

Reforms must be initiated by the central government to revise the Government Regulation No. 6/2010. This rule has a fundamental weakness as the assignment of the Satpol PP is not restricted. The main task of the Satpol PP is to uphold local regulations and maintain public order. But it is also stated that the public order police can perform "other duties" as instructed by the head of the region. This makes the Satpol PP's authority seems to have no limits, and they can perform whatever duties requested by the regional head.

The *Satpol PP* reforms should also touch their approach in solving problems. So far, they have always emphasized on violence and ignored the persuasive approach. These emphases on violence actually have invoked hatred from the society, even triggering open conflicts.

Violence by *Satpol PP* can be eliminated if the government strictly limits the authority to control them all at once. Besides, the enforcement of local regulations must not be done with repressive measures. It should be done through fines or administrative sanctions.

Another reason for the dominance of violence by the *Satpol PP* is a paramilitary approach that is deliberately instilled in them. The use of military-style uniforms and equipment, as well as the use of other Mobile Brigade equipment are a clear trend of the emergence of aggressiveness.

The "paramilitary" look has also made the public have difficulties in seeing the difference with the real military. Indeed there is no rational argument for the *Satpol PP* members who are in charge of the securing assets and activities of local governments to using militaristic uniforms, equipment, and behavior.

Efforts should be made to minimize the arrogant and uncivilized behavior of the *Satpol PP* apparatus. This behaviour should be replaced by principles of good governance. This is the principle to make civilized public and state officials, regardless their ranks and functions.

— Endang Srihadi —

The Revocation of the Law on the Educational Law Entity

On March 31, 2010, the Constitutional Court issued a ruling to revoke Law No. 9/2009 on the Educational Legal Entity (BHP Law). This decision is a result of the judicial review on the BHP Law submitted by some components of the society. Many education observers welcome this Court decision, but higher education providers are not happy with it, especially those who have been implementing the legal entity status.

The BHP Law essentially regulates the governance of education by the relevant education providers. For example, it regulates that the governance of the educational institutions should be run in the form of a legal entity. Some public universities have adopted this Law by making their institutions as State Owned Legal Entities (BHMN). BHP Law also regulates that education providers can manage their funds independently to advance their educational units. The public's objection that had triggered the pressure for the cancellation of the BHP Law was the tendency of the implementation of BHP Law to make the educational institutions, especially universities, commercial.

It was complained that since the implementation of BHP Law, the costs of higher education in the state universities and colleges became even more expensive. It was also complained that there was discrimination that prospective students who were able to pay more could be accepted in colleges. One impact of the university status as a BHMN was that it could independently apply the breakthrough for fundraising to advance the educational units. For example, by offering the enrollment program that was named "independent enrollment", which gave the prospective students who could pay more to be enrolled in the universities.

On the other hand, the BHP Law actually created corridors for cross subsidies; that is, the BHP could give subsidies to good but less financially capable students, which made up at least 20 percent of the number of students accepted (Article 46 of Law No. BHP 9/2009).

But it was worried that this rule even gave way to discrimination. The five reasons that the Constitutional Court revoked the BHP Law can be seen in the Table I below.

Table 1. Five reasons that Constitutional Court revoked the BHP Law

No.	Consideration
1.	The BHP Law had many judicial weaknesses: clarity of purposes, and disharmony with other laws.
2.	The BHP Law is based on the assumption that education providers in Indonesia have the same capabilities, Padahal kesamaan perguruan tinggi negeri (PTN) tidak berarti bahwa semua PTN mempunyai kemampuan yang sama. Whereas in reality, public universities (PTN) do not share the same ability.
3.	Granting autonomy to the PTNs will bring a variety of consequences, as many PTNs are not able to collect funds due to the limited market in their areas of business. Ini akan menyebabkan terganggunya penyelenggaraan pendidikan. This will cause the disruption of education.
4.	The BHP Law does not guarantee the achievement of national education goals and does not guarantee legal certainty. UU BHP dinilai bertentangan dengan Pasal 28 D Ayat 1 dan Pasal 31 UUD 1945 BHP Law is considered contrary to Article 28 D Paragraph 1 and Article 31 of the 1945 Constitution
5.	Non-profit principle is not only applicable in the BHP, but also in other legal forms.

Article 28 D Paragraph 1 refers to “everyone is entitled to recognition, guarantee, protection and legal certainty of fair and equal treatment.” Meanwhile, Article 31 of the 1945 Constitution refers to “every citizen has the right to get education.”

Up to now, there have been seven State Universities (PTNs), which have been implementing the status of Higher Education State Owned Legal Entity (PT BHMN) throughout Indonesia. They are University of Indonesia (UI) in Depok, West Java; Gadjah Mada University (UGM) in Yogyakarta; Bandung Institute of Technology (ITB); Bogor Agricultural Institute (IPB); University of North Sumatra (USU); University of Indonesian Education (UPI) in Bandung, and the Airlangga University, Surabaya.

However, the cancellation of BHP Law by the Constitutional Court as of March 31, 2010 does not have an immediate impact on the management of PTN and PT BHMN. This is because beside the BHP Law, there is still a Government Regulation (PP) that is also used as a reference for management. The PP is the State and Government Regulation No. 17/2010 on Management and Operations of Education. This Government Regulation refers to the Law No. 20/2003 on National Educational System.

Deep criticism on the BHP Law was reflected some crucial points such as the tendency of the legalization of government to let go the responsibility in the provision and financing of education. *First*, it is about funding. Article 21 Paragraph 2 of BHP Law stipulates that the Government and the Local Government can get educational resources such as funding, education, education staff, and facilities from the Board of Education Law. This sentence is interpreted as a softening of the Government's responsibility, meaning that there was a shift from obligation (as mandated by the constitution).

Second, it is related to educational human resources. According to the BHP Law, human resource management for the teachers and educational staff should be submitted to the labor market, including the recruitment, dismissal, and also the employee rights and obligations are stipulated in the working agreement. At this point, the BHP Law was criticized as an effort to liberalize the education sector. On the other hand, by providing the autonomy and freedom for the education institutions to do the fundraising, they will have opportunities to raise capital in order to improve the quality of education. However, another corridor that still should not be violated is that the provision of education is still limited as non-profit institutions.

Related to the cancellation of BHP Law, the proposed alternative is the Government could encourage the people who open businesses in the education sector to choose an existing legal entity that is suitable for their businesses. For example, the Foundation Law, Limited Enterprises Law, and Cooperative Law.

If the school is aimed at nonprofit and philanthropic activities —of which the costs are cheap, even free — the management can choose a legal entity of Foundation. When a school or educational institution is founded as an attempt to gain profit, the management can choose a legal entity of Limited Enterprises, with the consequences of adhering to the laws and Taxation Law. Thus, the legal entity is a choice with consequences, not uniformity.

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— **Antonius Wiwan Koban** —

 THE NDONESIAN INSTITUTE
CENTER FOR PUBLIC POLICY RESEARCH

The Indonesian Institute (TII) is a Center for Public Policy Research that was established on 21 October 2004 by a group of young, dynamic activists and intellectuals through the initiative of Jeffrie Geovanie. Its current Executive and Research Director is Anies Baswedan, and the Program Director is Adinda Tenriangke Muchtar.

TII is an independent, non-partisan, non-profit institution, whose main funding stems from grants and contributions from foundations, companies, and individuals.

TII has the aim of becoming a main research centre in Indonesia for public policy matters and has committed to giving contribution to the debates over public policies and to improving the quality of the planning and results of public policy in the new era of democracy in Indonesia.

TII's missions are to conduct reliable research that is independent and non-partisan and to channel the research to the policy-makers, the private sector, and academia in order to improve the quality of Indonesian policy-makers.

TII also assumes the role to disseminate ideas to the society so that they are well informed about the policies that will have a good impact on the people's lives. In other words, TII has a position to support the democratization process and the public policy reform, as it will be involved in the process.

The scope of the research and review on public policies undertaken by TII includes economic, social, and political factors. The main activities have been conducted in order to achieve vision and mission based on research, surveys, training, public discussions, policy brief, and weekly analysis.

Contact details:

Jl. K.H. Wahid Hasyim No. 194
Central Jakarta 10250 Indonesia
Phone. 021 390 5558 Fax. 021 3190 7814
www.theindonesianinstitute.com

Research on the Business and Economy

Business Analysis

The business sector needs a comprehensive analysis in order to minimize the potential risks, while at the same time increasing the value of its business. Business analysis is a solution in corporate strategic planning to make reliable decisions. The TII Business Policy Research Division is present to provide company leaders with practical recommendations on the decision-making process.

Research that TII offers are: **(1) Company Financial Analysis**, which encompasses financial analysis and financial risk analysis. **(2) Corporate Planning Consultancy**, which includes economic and industrial research, business valuation, and brand valuation. **(3) Strategic Marketing Analysis**, which encompasses strategic marketing and *Corporate Social Responsibility* (CSR) program design.

Research on the Economy

The economy tends to be used as an indicator of the success of the government as a policy-maker. Limited resources have often caused the government to face obstacles in implementing economic policies that will optimally benefit the people. The increase in the quality of the people's critical thinking has forced the government to conduct comprehensive studies in every decision-making process. In fact, the studies will not be stopped when the policy is already in place. Studies will be continued until the policy evaluation process.

The TII Economic Research Division is present for those who are interested in the conditions of the economy. The results of the research are intended to assist policy-makers, regulators, and donor agencies in making decisions. The research that TII offers: **(1) Economic Policy Analysis; (2) Regional and Sectoral Prospects; and (3) Program Evaluation.**

Research on the Social Affairs

Social Research

Social development needs policy foundations that come from independent and accurate research. Social analysis is a need for the government, the businesspeople, academia, professionals, NGOs, and civil society to improve social development. The Social Research Division is present to offer recommendations to produce efficient and effective policies, steps, and programs on education, health, population, environment, women and children.

Social research that TII offers: **(1) Social Policy Analysis; (2) Explorative Research; (3) Mapping & Positioning Research; (4) Need Assessment Research; (5) Program Evaluation Research; and (5) Indicator Survey.**

Political Survey and Training

Direct General Election Survey

One of the activities that TII offers is the pre-direct election surveys. There are sundry reasons why these surveys are important (1) Regional direct elections are democratic processes that can be measured, calculated, and predicted. (2) Surveys are used to measure, calculate, and predict the processes and results of elections and the chances of candidates. (3) It is time to win the elections using strategies based on empirical data.

As one of the important aspects in the strategies to win the elections, surveys can be used to prepare political mapping. Therefore, campaign teams need to conduct surveys: (1) to map the popularity of candidates in the society (2) to map the voters' demands (3) to determine the most effective political machinery that will act as a vote getter; and (4) to find out about the most effective media to do the campaign.

Local Council Training

The roles and functions of local councils in monitoring local governments are very important. They need to make sure that participative and democratic policies will be espoused. Members of provincial and regent local councils are required to have strong capacity to understand democratization matters, regional autonomy, legislative techniques, budgeting, local politics, and political marketing. Thus, it is important to empower members of local councils.

In order for local councils to be able to response every problem that will come out as a result of any policy implemented by the central government or local governments, the Indonesian Institute invites the leaderships and members of local councils to undergo training to improve their capacity.

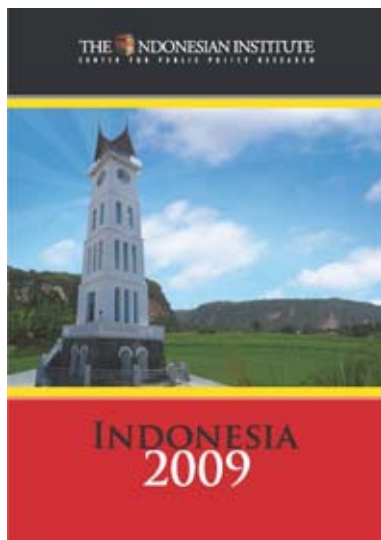
Available now!

The 2009 INDONESIA REPORT

The Indonesian Institute, Center for Public Policy Research (TII) has again published its annual publication, **Indonesia 2009**, after previously producing the report in the years 2005, 2006, 2007, and 2008.

The publication is aimed at presenting clear pictures of economic, legal, social, and political developments and of policies espoused by the Indonesian government. The 2009 Indonesia is published so as to give complete data on Indonesia in 2009. This annual publication is expected to become a basis for predicting Indonesia's short-term and long-term trends.

The publication of a report on Indonesia is also expected to assist policy-makers in the government, the private sector, academia, national and international think tanks in getting actual information and contextual analyses on economic, political, security, and social developments in Indonesia.



Topics that are raised in the 2009 Indonesia:

1. The Year of Economic Recovery
2. Progress of Infrastructure Development
3. Disputes of Three Law Enforcement Institutions
4. The Recycle of Regional Autonomy
5. Indonesian Politics 2009: Political Parties, Elections, Government Coalition and the Prospect of Democracy
6. Portrait and Representation Performance of the New Parliament (2009-2014)
7. Protection of Indonesian Migrant Workers Abroad
8. Gloomy Portrait of Child Protection

The Indonesian Institute Team:

Adinda Tenriangke Muchtar
 Aly Yusuf
 Antonius Wiwan Koban
 Benni Inayatullah
 Endang Srihadi
 Hanta Yuda AR
 Nawa Poerwana Thalo

Supervision: Anies Baswedan (Executive and Research Director)

For further information, please contact:

Mrs. Meilya Rahmi / Mr. Hadi Joko at 021 3905558
 or email to: contact@theindonesianinstitute.com
 or theindonesianinstitute@yahoo.com

Executive & Research Director

Anies Baswedan

Program Director

Adinda Tenriangke Muchtar

Board of Advisors

Rizal Sukma

Jeffrie Geovanie

Jaleswari Pramodawardhani

Hamid Basyaib

Ninasapti Triaswati

M. Ichsan Loulembah

Debra Yatim

Irman G. Lanti

Indra J. Piliang

Abd. Rohim Ghazali

Saiful Mujani

Jeannette Sudjunadi

Rizal Mallarangeng

Sugeng Suparwoto

Effendi Ghazali

Clara Joewono

Researchers of Economic Affairs

Awan Wibowo Laksono Poesoro,
Nawa Thalo.

Researchers of Political Affairs

Aly Yusuf, Benni Inayatullah,
Hanta Yuda AR.

Researchers of Social Affairs

Antonius Wiwan Koban,
Endang Srihadi.

Program and Supporting Staff

Edy Kuscahyanto, Hadi Joko S.,
Suci Mayang.

Administration Officers

Diana Paramita, Meilya Rahmi.

Secretary: Lily Fachry

Finance Officers: Rahmanita

IT Staff: Usman Effendy

Design and Layout

Harhar, Benang Komunikasi

Jl. Wahid Hasyim No. 194 Tanah Abang, Jakarta 10250

Phone (021) 390-5558 Facsimile (021) 3190-7814

www.theindonesianinstitute.com

e-mail: update@theindonesianinstitute.com

