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“Who Let the Watchdogs Out? The Proliferation of National Watchdog Agencies in Indonesia’s Post-*Reformasi* Era”

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Abstract: *Indonesia’s post-reformasi era has seen a proliferation of judicial watchdog agencies established to reform legal infrastructure at the national level that includes, but is not limited to, a human rights watch, an anti-corruption commission, and an ombudsman institution. This study proposes an analysis of the proliferation from 1999 to the present by emphasizing two factors that have contributed to the inception of this type of watchdog agencies, namely, pressing socioeconomic issues and change agents. Through this analytical framework, this study extends the discussion of national judicial watchdog agencies’ effectiveness in two ways: (1) inducing state actors to conform to the rule of law and (2) inducing ordinary citizens to exercise their political rights other than voting.*

Keywords: *watchdog agency, accountability, rule of law, representation, democratization*

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Who Let the Watchdogs Out? The Proliferation of National Watchdog

Agencies in Indonesia's Post-Reformasi Era¹

Abstract

Indonesia's post-reformasi era has seen a proliferation of judicial watchdog agencies established to reform legal infrastructure at the national level that includes, but is not limited to, a human rights watch, an anti-corruption commission, and an ombudsman institution. This study proposes an analysis of the proliferation from 1999 to the present, by emphasizing two factors that have contributed to the inception of this type of watchdog agencies, namely, pressing socioeconomic issues and change agents. Through this analytical framework, this study extends the discussion of national judicial watchdog agencies' effectiveness in two ways: (1) inducing state actors to conform to the rule of law and (2) inducing ordinary citizens to exercise their political rights other than voting.

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“Where no counsel is, the people fall, but in the multitude of counselors there is safety.”

(Proverbs XI:14)

1. The Empirical Puzzle

Indonesia has succeeded fairly well in implementing the basic procedures of running a democracy, namely, holding free and fair elections including delivering peaceful power successions. Moreover, constitutional reforms that ensure the protection of individual rights including freedom of the press have been made. Nonetheless, evidence shows that the governability of Indonesia's post-authoritarian regimes still enables old practices from Suharto's authoritarian regime such as corruption and maladministration to remain rampant in the post-

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reformasiera. Based on Transparency International's 2014 Corruption Perception Index,² Indonesia still ranks close to the bottom of the 180 countries surveyed, performing more poorly than its neighboring states such as Malaysia, the Philippines, and Thailand.

The Indonesian experience suggests that once a new democracy has fulfilled the minimum definition of democracy, the subsequent and most difficult challenge it faces is sustaining stability or domestic order during the period between elections vis-à-vis developing itself into a substantive democracy. This study focuses on one of the strategies that Indonesia's post-*reformasi* presidents seem to apply in maintaining their democratic regime between elections. That is, post-*reformasi* regimes tend to establish a network of multiple judicial watchdog agencies at the national level, although the benefit of creating this form of accountability institution has yet to be sufficiently proven. Hence, this study questions why Indonesia has seen a proliferation of these national watchdog agencies.

To approach the question, this study proposes a framework that analyzes the proliferation of national watchdog agencies by emphasizing two factors that contribute to the openings for a regime to establish a new judicial watchdog agency at the national level. These factors are *pressing socioeconomic issues* and *change agents*. This study posits that the establishment of a national watchdog agency is merely a form of the regime leader's response for mitigating the existing socioeconomic problems without a clear long-term strategy for institutional empowerment or enforcement. Furthermore, it is an outcome of the regime leader's inclusion of non-state actors into major decision-making processes during a perceived crisis and pressure for major reforms. Given these factors, this study also queries the extent to which these judicial watchdog agencies can be effective at inducing state actors to conform to the rule of

² Data retrieved from http://www.transparency.org/cpi2014/in_detail (accessed on March 19, 2015).

law.³ Furthermore, to what extent do such agencies facilitate citizens' participation in imposing sanctions on the state?⁴ How aware are citizens across urban and rural communities about these alternative channels for justice and state accountability?

2. The Theoretical Puzzle

Democratization

Major scholars on democratization have viewed democracy with either of two theories. The elite-based theory presents democratization simply as a means for the elite to gain or increase their power for leadership in a competitive state (Schumpeter 1943) and suggests that a "high rule of law is required to constrain the behavior of society's most powerful actors" (Winters 2011). On the other hand, the pluralist theory views democratization as a process of building and maintaining a state that encourages public contestation and inclusive participation (Dahl 1971). One proponent of this latter school of thought stipulates the rule of law that entails mechanisms of accountability as a necessary condition to advance democratization (O'Donnell 2005).⁵

Winters' approach separates democracy and the rule of law as different in character and as different types of struggle, such that we see "democracy with low rule of law" in Indonesia and "high rule of law without democracy" in Singapore. This study views democratization as the course of "institutionalizing elite competition and inclusive mass participation"⁶ by the rule of law that involves mechanisms of accountability. The broader goal of this study therefore is to

³ See Maravall and Przeworski (2010).

⁴ Maravall and Przeworski (2010)

⁵ The term "institution" here refers to the formal set of procedures set in the organizational form of a state's administration (Hall and Taylor 1996, 938).

⁶ See also Andrain and Smith (2006) on how state institutions affect the public's trust and reliance on democratic institutions.

explain that when all the basic procedures for transitioning to a democracy are already established (and freedom is ensured by peaceful elections and successions of power), legal reform and advancement of the rule of law area consolidating democracy's subsequent struggle to sustain the state's domestic order, and simultaneously, to improve the quality of democracy.

This study addresses the question of under what conditions can institutions of accountability such as national judicial watchdog agencies constrain the behavior of state actors or ruling elites with predatory interests and minimize the threats such elites can pose to a state's order and quality of democracy (Mainwaring 2003; Hadiz 2010). Moreno, Crisp, and Shugart (2003) use the concept of "fire-alarm" function in describing these institutions of horizontal accountability, wherein "spillover of disagreements arising out of horizontal exchange" can "provide information for voters to use in assessing the performance of their agents, and voters can use this information in subsequent elections." Additionally, this fire-alarm function can also alert the incumbent president about the political misconduct of the agents of his or her regime that may threaten his or her regime survivability.

The Rule of Law

Przeworski (2003) presents a stimulating question: why can political actors obey electoral results but not the law? Post-*reformasi* Indonesia shows a similar phenomenon. While Indonesia has succeeded in holding four consecutive fair elections and peaceful transitions of power, cases of state actors' abusing the power of their office still occur, and powerful people in general are able to distort and deflect legal processes in their own favor. Certain individuals remain more powerful than societal and governmental institutions, even if they are willing to rotate in and out of office via legitimate democratic procedures. One example is the case of Yudhoyono who

vigorously campaigned for corruption eradication, won the presidency twice in highly competitive elections, and further strengthened Indonesian democracy as the first president to face term limits and leaving office without resistance or incident. However, during his second term, the “Hambalang” case revealed major corruption committed by a number of key officials from his party, Democratic Party (*Demokrat*). These party officials, including then-President Yudhoyono’s own son, embezzled funds for the building of a sports complex that was set to open for the 2018 Asian Games. Neither Yudhoyono nor his son was charged.

Such cases of corruption show the weaknesses of elections. First, elections are a simple mechanism that is employed only once every five years. Second, elections do not provide ordinary citizens with complete information about the credibility of the candidates’ future adherence to the rule of law. There is a major accountability gap that periodic elections are unable to fill. This is especially true in a country like Indonesia where civil society is relatively weak and political parties are top-down instruments rather than bottom-up channels for popular aspirations and controls.

Accountability institutions are therefore one of the many instruments that the state can exploit to realize a high rule of law (Maravall and Przeworski 2003).⁷ These institutions comprise mechanisms of both vertical accountability and horizontal accountability. Vertical accountability refers to the exchange of information, justification, and sanction between the ordinary citizens and the political elite or state actors (Schedler 2005); elections are a form of vertical accountability. Because institutions with the mechanisms of vertical accountability seem to be insufficient for states with low rule of law to fight against unlawful actions, states may

⁷In structuring a general notion of the rule of law, Maravall and Przeworski (2003) propose that a researcher should begin with analyzing the goals, organization, and conflicts of all political forces because these forces may use economic, military, or ideological institutions as instruments that they can mobilize to realize their goals.

additionally need institutions of horizontal accountability to detect state actors' unlawful actions and process them without any power consideration.

O'Donnell (2005) proposes that to advance the rule of law based on democratic ideals, a state needs not only to enforce judicial independence of the courts but also to guarantee "citizens' political rights" and establish "networks of responsibility and accountability which entail that all public and private agents, including the highest state officials, are subject to appropriate, legally established controls on the lawfulness of their acts." This statement implies the necessity of such networks to ensure that no state actor or ordinary citizen will be excluded from each other's supervision and control despite living under the umbrella of democracy that upholds the principals of freedom and equality. Although democracy may realize an equality of citizenship (such as one person one vote), it does not automatically ensure an equality of power in front of a police investigator, prosecutor, or judge.⁸

Based on this normative statement, this study will examine the interaction between networks of accountability and the rule of law through an empirical analysis of four of the tenagencies that this study identifies as Indonesia's national judicial watchdog agencies. These watchdog agencies are post-*reformasi* regimes' instruments for highlighting the gap between low and high rule of law. Furthermore, they serve as citizens' channels for pressuring the state to close the gap and treat every citizen equally before the law.

Previous works suggest that members of the elite who exploit illicit channels are those who are also well protected by law (Holmes 2003). This study therefore seeks to analyze how these watchdog agencies are operationalized to constrain the behavior of this group of elites and to curb the number of the illicit channels. Given the gap between low and high rule of law, this

⁸This study refers to Gibson (2012)'s definition of a democratic regime as a regime that shows the effective exercise of ordinary citizens' political rights.

study addresses the effectiveness of national watchdog agencies in closing the gap and extending the rule of law to both the weak and the powerful. Also, it is important to note that these watchdog agencies can do something ordinary citizens are unable to do, that is they are enabled by law to fight a battle to constrain the elites at the elite level itself. Thus, this study views the rule of law as a condition wherein the state and its network of accountability institutions are capable of facilitating citizens' legal and political rights and of exercising state institutional mandates decisively in redressing unlawful misconduct, regardless of the allegedly unlawful actor's political status.

Horizontal Accountability

The accountability institutions discussed in this study refer exclusively to those designed to perform mechanisms of horizontal accountability. This study's concept of horizontal accountability is based on O'Donnell's (1999a) definition:

The existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful.

In short, horizontal accountability is shown in the “monitoring, investigating, and enforcement activities of a number of independent state agencies” (Diamond and Morlino 2005). Therefore, these institutions of horizontal accountability play a vital role in maintaining a democracy primarily because these non-electoral institutions may not only constrain the behavior of state actors as the political elite, but also induce state actors' responsiveness between elections—a period that is actually longer and more substantive than the electoral period. Furthermore, these institutions serve an alternative channel for citizens to have access to justice and to participate in the regime's democratization. One key characteristic of this study's national

watchdog agencies that shows how they can be such alternative channels is their complaint-handling mechanism; in this study, this mechanism is also the key indicator of these agencies' performance or effectiveness.

3. National Watchdog Agencies

A host of national watchdog agencies with similar functions in the judicial or legal sector (see Table 1) includes the National Commission for Women Rights, Anti-Monopoly Commission, National Commission for Human Rights, National Law Commission, Ombudsman of the Republic of Indonesia, Corruption Eradication Commission, Judicial Commission, Attorney General's Office Commission, Public Information Commission, and Presidential Working Unit for the Supervision and Management of Development (UKP4). These national watchdog agencies within their legal framework are considered to serve as "state auxiliary institutions" that perform checks and balances on the regime's accountability and its compliance with the law. Furthermore, although the degree of their legal empowerment varies from one agency to another (see *Legal Basis* column in Table 1), these agencies are prescribed to induce the reciprocal relationship between citizens' advancing the rule of law and state actors' responding to the agencies' sanctions through ordinary citizens' demands.

Nine of the national watchdog agencies included in this study belong to the Indonesian government's so-called *non-structural institutions* (*Lembaga Non Struktural* or LNS). According to the Indonesian Bureaucratic Reform Ministry, Indonesia has a total of 88 non-structural institutions at the national level. The term refers to their authority's being autonomous from the state. In other words, these institutions operate independently from the executive, judicial, and legislative branches of government. Although the state allocates a budget for their operation, the

non-structural institutions, including the national watchdog agencies discussed in this study, are authorized to seek further funding independently. An exception is the Judicial Commission that does not belong to the category of non-structural institutions. Its inclusion in this study however is justified because, like the non-structural institutions, it is subject to the mechanisms of horizontal accountability (see *Duty, Function, and Jurisdiction* column in Table 1).

Since the beginning of the *reformasiera*, the establishment of non-structural institutions, according to Indonesian Constitutional Court Judge Zoelva (2012), has been part of the Indonesian government's efforts to decentralize the national government's power in favor of more civilian control. Therefore, the distinct feature of this type of institution is that non-state bureaucrats—ordinary citizens who are professionals in the relevant fields—are appointed by the executive regime and the national legislature to hold office as commissioners of these institutions.

According to the literature on democracy and democratic institutions, national watchdog agencies are vital instruments for civilian control that are rarely considered to exist by authoritarian leaders such as Suharto. A few authoritarian rulers, such as in China, however, may themselves establish national watchdog agencies—but only as symbolic institutions to demonstrate a commitment to power sharing with their political allies, rather than as genuine initiatives for political liberalization (Svolik 2012).

This study argues that because the institutional mandates of national watchdog agencies contain the procedural dimensions of democracy (Diamond and Morlino 2005), the establishment of national watchdog agencies is the equivalent of standard operating procedures or a blueprint for democratic reforms: promoting a higher rule of law, government accountability,

and state actors' responsiveness. The results of this study's empirical analysis may show that these national watchdog agencies that are potentially useful instruments for

Table 1. National Judicial Watchdog Agencies

Regime	Watchdog Agency <i>Legal Basis</i>	Duty, Function, and Jurisdiction				
Habibie	National Commission on Violence Against Women <i>Presidential Decree No. 181 of 1998 and Presidential Reg. No. 65 of 2005</i>	(1) Spread knowledge on all forms of violence against Indonesian women and the efforts to prevent, control and eliminate all forms of violence against women.	(2) Assess and research the prevailing laws, regulations, and international instruments related to the protection of women rights.	(3) Monitor, conduct fact finding and documents filing on all forms of violence against women and to publish the monitoring result to the public	(4) Advise the government, parliament, and the judiciary to encourage the ratification of legal framework and legal policies that support the efforts to prevent and eliminate all form of violence against women	(5) Develop regional and international cooperation to enhance the prevention and elimination efforts on all forms of violence against Indonesian women
Habibie	Anti-Monopoly Commission <i>Law No. 5 of 1999 and Presidential Decree No. 75 of 1999</i>	(1) Monitor all business activities related to monopolistic practices, unfair business competition and abuse of dominant position	(2) Conduct pre-investigations and examinations on anti-monopoly cases	(3) As a quasi-judicial institution, conduct hearings on anti-monopoly cases	(4) Provide advice on government policies relating to monopolistic practices and/or unfair business competition	(5) Provide regular working reports of the commission to the President and parliament
Habibie	National Commission for Human Rights (Komnas HAM) <i>Law No. 39 of 1999</i>	Assess, research, advise, monitor, and mediate on human rights issues. (Although the Komnas HAM has already been established by Suharto since 1993, Habibie revitalized the effectiveness of this human rights watch commission and gave greater legal empowerment through the upgrading of its legal basis from a decree to a law)				
Wahid	National Law Commission <i>Presidential Decree No. 15 of 2000</i>	(1) At the request of the President, give advice on government legal policies and legal issues related to public or national interest	(2) Assist the President in the design of national legal reform to improve public trust in the law and law enforcement			
Wahid	National Ombudsman Commission (ORI) <i>Presidential Decree No. 44 of 2000 and Law No. 37 of 2008</i>	(1) Receive complaints on alleged maladministration in public service and examine the substance of the complaints	(2) Follow up complaints within the jurisdiction of the Ombudsman	(3) Conduct investigations on own initiative	(3) Coordinate and cooperate with other state agencies, community organizations, and individuals	(4) Build networks and take preemptive measures to prevent maladministration in the provision of public service
Megawati	Corruption Eradication Commission (KPK) <i>Law No. 30 of 2002</i>	(1) Conduct pre-investigations, investigations and prosecution of corruption cases	(2) Corruption cases that involve law enforcement officers, state officials, or the private sector	(3) Corruption cases are high-profile cases	(4) Corruption cases involve state loss in excess of one billion Rupiah	

(Continued from Table 1. National Judicial Watchdog Agencies)

Regime	Watchdog Agency <i>Legal Basis</i>	Duty, Function, and Jurisdiction			
Megawati	Judicial Commission <i>Law No. 22 of 2004</i>	(1) Pre-select candidates for appointment to the Supreme Court	(2) Receive public complaints about judicial conduct	(3) Investigate alleged violations of judicial conduct	(3) Submit recommendations for follow-up action to the Supreme Court with copies to the President and parliament
Megawati	Attorney General's Office Commission <i>Law No. 16 of 2004 and Presidential Reg. No. 18 of 2005</i>	(1) Supervise, monitor, and evaluate the performance of prosecutors and prosecutorial staff	(2) Report to the Attorney General on the results of the supervision, monitoring, and evaluation		
Yudhoyono	Central Information Commission (KIP) <i>Law No. 14 of 2008</i>	(1) Mediate conflicts on issues related to the dissemination of public information	(2) Request public agencies to provide any materials needed for the adjudication of the case	(3) Call for public officer or any party deemed as witness to a dispute	(4) Perform witnesses' oath-taking procedure in non-litigated adjudication of disputes (5) Create the code of ethics for public information
Yudhoyono	Presidential Working Unit for the Supervision and Management of Development (UKP4) <i>Presidential Reg. No. 54 of 2009</i>	(1) Monitor the consistency and synchronization of the National Priority programs by collaborating with the Ministry of National Development Planning and its subordinate agency (BAPPENAS) as well as the Ministry of Home Affairs	(2) Analyze, coordinate, and facilitate problems of project implementation	(3) Conduct quick research on issues deemed strategic and potentially inhibiting or expediting public administrative processes and provide the President and Vice President with recommendations to resolve these issues	(4) Operate the President's situation room to assist the President in times for strategic decision-making (5) Complete special tasks from the President and Vice President to finalize or provide advice on urgent matters

Sources: Aziz and Ramadhani (2010); *<http://www.komisiinformasi.go.id/category/profil/tugas-dan-fungsi>; **<http://www.ukp.go.id/profil/sekilas-ukp-ppp>

maintaining domestic order, without state actors' adequate attention, actual political support, and legal empowerment, become mere symbols of democracy. Nonetheless, these agencies' trajectory of effectiveness displays the struggles for a democratic order and stronger civil society.

4. Hypotheses

This study proposes a set of hypotheses for tracing the process of the proliferation of national watchdog agencies in Indonesia.⁹ *Pressing socioeconomic issues* and *change agents* of the ruling regime seem to be the two major factors that provide openings for the incumbent President to establish a new watchdog agency. Pressing socioeconomic issues straightforwardly refer to the ongoing problems at high risk, for example, days of violent mass demonstrations, hyperinflation, etc. Change agents are actors who “work to foster specific kinds of incremental change” (Mahoney and Thelen 2010). These two factors can be useful to understand how certain incentives and initiatives to implement reformist measures affect the effectiveness of these agencies in sanctioning administrative and legal misconduct in the government.

4. 1. Pressing Socioeconomic Issues

This study views each established watchdog agency as a byproduct of the acting regime's response to the ongoing crises of its period.¹⁰ A crisis is perceived by the ruling regime to be “threatening the established order” and “implies the need for a response” (Robinson 1972; Brecher 1978; Billings 1980; Brass 1986). Whenever there is a serious crisis, the executive regime creates an agency to solve it.

⁹ This study's approach is inspired by the analytical framework which Yang (2005) offers in *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in China*.

¹⁰ This study agrees with Crouch's (2010) view that Habibie's reforms “were largely crisis-ridden.”

Moreover, the evidence suggests that these watchdog agencies are alternative channels of dispute resolution for citizens because the reliability and accessibility of the courts are still a work in progress. Pressing socioeconomic issues however need to be managed; otherwise, domestic order is highly compromised. Pompe (2005) theorizes that the less efficient courts become, the more prone society is to violence. In the same vein, the less certain a state's legal infrastructure, the less confident foreign investors are to invest. Hence, as violence increases and economic confidence decreases, regime survival is compromised. For example, the aftermath of the May 1998 riot was a series of serious socioeconomic and political crises. Cases that needed to be put to justice varied from mass rape and corruption to the state apparatus' shooting student demonstrators and the disappearance of human rights activists. This chain of events led to the creation of at least two judicial watchdog agencies and to the legal empowerment of the National Commission for Human Rights.

4. 2. ChangeAgents

Change agents matter primarily because they “become the intervening step through which the character of institutional rules and political context do their causal work. (Mahoney and Thelen 2010).” Many scholars suggest that Indonesia's *reformasi* era has been a “society-led transition” (Sulistyo 2002; Pompe 2005; Aspinall 2010; Hadiz 2010). After the outbreak of the 1997 Asian financial crisis and the fall of Suharto's authoritarian regime in 1998, the succeeding post-authoritarian regime led by Habibie included *non-state actors* in deliberations for immediate strategies to stabilize the state's socioeconomic and political conditions. Legal reform was the remedy that these non-state actors proposed (Pompe 2005).

The non-state actor change agents frequently mentioned in scholarly work as the leading proponents of major legal reforms since the end of Suharto's regime in May 1998—and a few even before Suharto's resignation—include coalitions of domestic Non-Government Organizations (NGOs). Throughout Suharto's regime, these coalitions of NGOs had been dealing with repression from the state. In contrast, Habibie included them in many of the state's subsequent decision-making processes for policies aimed at major political and legal reform. The main agenda at that moment was to restore the Indonesian courts' judicial independence in order to attract foreign investors (Pompe 2005) and to enable more freedom for citizens to exercise their civil and political rights (Aspinall 2005). In meeting this agenda, NGO activists offered legal reform packages that included the establishment of national watchdog agencies as a network of institutions to serve at least three functions. These functions are (1) checking on the government's accountability; (2) lessening military control and strengthens its civilian counterpart; and (3) enforcing the rule of law with autonomous authority from the state.

Other change agents that matter are *elite groups* and *international organizations*. The two groups of elites identified in this paper are from the legal sector and the national legislature. The legal sector elites developed the legal infrastructure of each agency, whereas the legislative elites' political support affects the type of legal basis under which a watchdog agency is established and its effectiveness afterwards. International organizations (IO) in some cases provide the funding and technical assistance to government officials conducting survey studies for the drafting of new laws and reforms. Hence, a model of each agency's degree of effectiveness based on the change agents and legal basis of its establishment can be generated from this set of hypotheses.

Change Agents	Legal Basis of National Watchdog Agency's Establishment	
	<i>Decree</i>	<i>Law</i>
<i>Non-State Actors</i>	Lowest	High
<i>Elites and IOs</i>	Low	Highest

Table 2. National Watchdog Agencies' Degree of Effectiveness

4. 3. Structural Changes

An alternative hypothesis that this study also considers is that structural changes within Indonesia's electoral system and constitution may provide the opportunities and incentives for these change agents to establish a new national judicial watchdog agency. These changes matter because they generate the key factor that distinguishes Indonesia's post-*reformasiera* from its earlier era: less concentration of executive power (Butt and Lindsey 2012; Horowitz 2013). In other words, post-*reformasiregimes* are less centralized.

a. Electoral System

The tradeoff between having multimember district or single-member district legislative representatives is to provide voters with either fair representation of all groups in the society or more responsive and accountable representation (Alais and Massicotte 2002). Indonesia's proportional representation system generates multimember district representatives. Because of this electoral system, Indonesian district representatives must oversee issues within a large area but citizens are less likely to develop a close relationship with them. This condition may be a justification for the state to establish multiple institutions of accountability as alternative channels for state representation. Watchdog agencies can therefore be an advantage for both the state and citizens. For the state, watchdog agencies can assist in overseeing problematic issues in

the administration and society as well as increasing citizens' confidence in the state. For citizens, watchdog agencies can assist in monitoring the behavior of the state actors for whom they have voted and in exercising their other political rights in addition to voting.

b. Constitutional Amendment

Since the 1998 *Reformas* movement, amendments to the Indonesian constitution have stressed recognition and protection of individual rights (King 2003). These amendments have provided incentives for the incumbent President to establish new institutions in compliance with the amended constitution. Furthermore, the insertion of clauses on human rights into the constitution has changed the dynamics of the decision-making process between state and non-state actors (Sulistyo, 2002).

5. Empirical Analysis

This study comprises two main inquiries. The first queries the causal mechanisms of the proliferation of national judicial watchdog agencies; and the second queries the effectiveness of these national watchdog agencies in advancing the rule of law in the society and the mechanisms of horizontal accountability within each regime's administration. Analysis is conducted in chronological order, based on the date of establishment as seen in each agency's legal basis. An agency's legal basis may initially be a presidential decree and subsequently be upgraded to a law (equivalent to a bill or an act). Alternatively, an agency's legal basis may be in the form of a law; such a basis suggests that the agency's existence is more empowered or politically backed than that of agencies with legal bases at a lower degree of power than a law.

In addition, agencies are grouped according to the regime that established them. The socioeconomic situation of each regime is learned from time-relevant major news articles, the preamble section of each agency's legal basis, and related publications of each agency's institution profile. Such mechanisms potentially capture the change agents and incentives for lawmakers and the ruling president to create a new agency.

Finally, a focus on one major agency in each regime is provided to address the effectiveness of each type of watchdog agency, from its establishment to the present. While complete measurement of all ten agencies' effectiveness would further strengthen the arguments of this study, the purpose of focusing on only a few and specific cases is to highlight the extreme variation across agencies over time and different regimes. Furthermore, another purpose is to show the conditions that enable certain agencies to be relatively successful and show positive incremental change. One quantitative method of measuring the effectiveness of an agency is analyzing the number of complaints or cases recorded in its annual accountability reports. The minimal conclusion that can be drawn from the pattern of complaints concerns the popularity and accessibility of the agency to citizens.

5. 1. The National Commission on Violence Against Women

Pressing Socioeconomic Issues

The National Commission on Violence Against Women is a newly established agency under the regime of Suharto's successor, Habibie. During the time of Habibie's succession to the Indonesian presidency, the pressing issues that he had to manage following the May 1998 riot included cases of rape and kidnapping of human rights activists. Habibie was confronted with the

urgency not only to stabilize the economy and political order but also to regain the public confidence in his commitment to delivering a responsive administration.

ChangeAgents

Non-State Actors: Human Rights Activists

The most active and influential group of human rights activists that succeeded in meeting with Habibie to demand the state's responsibility in solving cases of mass rape and human rights violation was the Voluntary Team for Humanity, with its subdivision Team for Anti-Violence Against Women (Hoon 2011). On July 15, 1998, after 2.5 hours of deliberation with Habibie, this NGO succeeded in prompting an official statement from Habibie condemning the violent actions of the May riot, specifically against women; this statement was issued more than two months after the riot. Habibie also announced his commitment to delivering a "proactive" approach in protecting the society from such violence's ever happening again (SiaR, July 17, 1998).¹¹ Habibie's response to the allegations made by the Voluntary Team for Humanity that state actors and particularly the armed forces were involved in the mass rape of ethnic Chinese women and burning of Chinese businesses was threefold. First, Habibie created a Joint Fact-Finding Team to investigate the riot as well as the need for a state agency to oversee issues related to human rights or women-specific violence. Second, he followed the recommendations of his Joint Fact-Finding Team and established the National Commission on Violence Against Women through a presidential decree. Finally, his regime produced a major bill on human rights which legally empowered the work of the National Commission for Human Rights that had been a mere formality during Suharto's authoritarian regime.

¹¹The National Committee on Violence Against Women's Official Accountability Report for 1998-2001

Case Study: The Struggle for Women's Rights in Weak Rule of Law Society

The effectiveness of the National Commission on Violence Against Women (hereafter referred to as Women Commission) in mitigating the number of abuses to women and in fostering gender equality in Indonesian law and bureaucracy can be interpreted as both good and bad news. Based on the Women Commission's annual reports, cases related to violence against women increased tremendously from 3,168 cases in its first three years of operation (1998-2001), to a total of 216,156 cases in 2012. Thus, the good news is that the Women Commission's existence has addressed a serious problem of discrimination against women victims of abuse before the law to both state actors and citizens. Furthermore, the increasing number of complaints possibly suggests that the agency has made substantive efforts in expanding its network with various local NGOs, hospitals, police, and courts for transparency and systematic data collection; and also in raising women's awareness of its existence as an alternative channel for access to the judiciary. The bad news, however, is that the Women's Commission has yet to show its ability to curb the amount of abuse to women and to increase the number of cases brought to trial.

5. 2. The Ombudsman

Pressing Socioeconomic Issues

The National Ombudsman Commission, the present Ombudsman of the Republic of Indonesia (ORI), was established under the Wahid regime, Habibie's successor. Indonesia's economy during Wahid's regime did not fully recover from the 1997 Asian financial crisis. Domestic and international economists and intellectuals expressed mounting concerns about the poor legal infrastructure in Indonesia that hindered foreign investors and, consequently,

Indonesia's economic growth. The lack of judicial independence and law enforcement in Indonesia's legal institutions was due to Suharto's decades of personalistic authoritarian rule. Hence, the Wahid regime's main agenda was to improve public administration and the legal infrastructure in order for Indonesia to become more competitive in the global market and a more conducive environment for foreign investors.

Change agents

a. International Organizations

Daniel S. Lev's (2005) report to the International Monetary Fund (IMF)/Netherlands Program, evaluating Indonesia's judicial reform program from 2000 to 2004, presents a vast array of international organizations involved in the program. To name a few, those international organizations were the United Nations Development Program (UNDP), USAID, AUSAID, The World Bank, and the IMF. Lev classifies this group as "outsiders," and domestic state actors as "insiders." The emergence of so many outsiders and insiders, according to Lev, does not affect the contingency of a "gradual and uncertain" reform process. Programs initiated by the two groups largely lacked a "determined coordination among them" and "clear strategy." Another factor that Lev identifies as rather hindering the success of the legal reform programs was the regime's leadership. His report notes how the leadership's every interest is to procrastinate effective political and legal reforms that are potentially seen as serious threats to its power.

b. Legal Sector Elites

The strongest advocate for Indonesia's consolidating democracy and for the establishment of an ombudsman institution is Antonius Sujata, former prosecutor of the Supreme

Court. In many accounts, Sujata frequently mentions the struggle to obtain a more solid legal basis for Indonesia's ombudsman institution than a presidential decree, reflecting his and President Wahid's desires. His apprehension about the ombudsman's effectiveness is valid, as it took almost eight years after the agency's establishment in 2000 to finally succeed in lobbying the legislative elite to pass the Law on the Ombudsman of the Republic of Indonesia (ORI) in 2008. The law seems to have affected the ORI's effectiveness incrementally, as the number of complaints it has received since 2008 shows a different pattern from the period prior to the effect of the law.

Case Study: The Ombudsman's Role in Inducing State Agencies' Responsiveness to Citizens

Considering Indonesia's population and size of administration, the level of complaints that the ORI has received is relatively low. Its smaller, neighboring country, the Philippines, received a total of 11,366 complaints in 2013, on average 947 complaints per month.¹² The ORI received only 5,173 complaints in 2013, with an average of 431 complaints per month. There are, however, trends that show initial enthusiasm in the availability of an ombudsman institution in its first year and then, in the following year, a substantial drop in the number of complaints. The number remained low until 2003. Later, a steady increase of complaints was seen from 2004 to 2010. Finally, the number of complaints doubled in 2011 and again in 2013. One important event to note in 2011 that may possibly be a key factor in the growing number of complaints is the change of regime leadership in January 2011 (see Figure 1).

¹² Philippine Office of the Ombudsman Complaints for Calendar Year 2013 at http://www.ombudsman.gov.ph/docs/statistics/references/complaints_2013.pdf (accessed Dec 9, 2014).

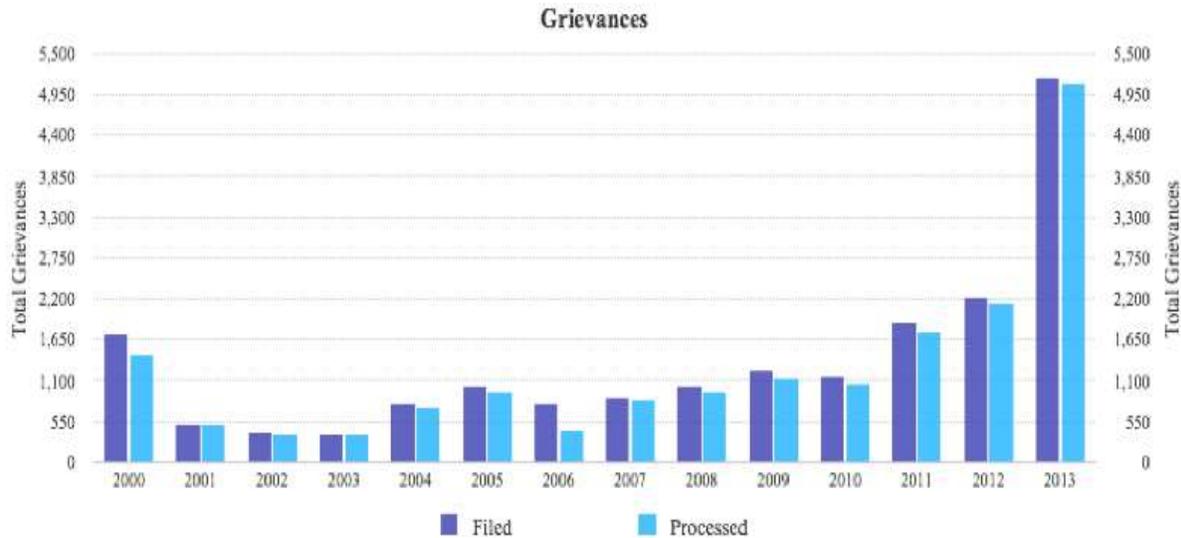


Figure 1. Number of complaints based on annual reports of the ORI

The ORI’s annual reports on the Classification of Reported Institutions display a rather comprehensive evaluation of its mechanism of horizontal accountability. The data presented enable readers to examine the responsiveness of state agencies to citizens’ complaints and the ORI’s recommendation letters. A few interesting patterns can be observed (see Figure 2):

- i. The declining number of complaints received by the Judicial Courts seemingly indicates improving responsiveness. Conversely, the increasing number of complaints received by Regional Governments seems to indicate their declining responsiveness (see blue and yellow lines).
- ii. The Police experience contrasting trends of complaints between 2000-2006 and 2007-2014 (see green line). A defining causal mechanism of these phenomena is yet to be proven, however, two critical events concerning the police force in 2005 are worth mentioning. The first event is the establishment of the National Police Commission, a watchdog agency within the police bureau itself (perhaps equivalent to the police bureau’s own ombudsman office) in February, whereas the second event is the change of leadership from Chief Commander Dai Bachtiar to Chief Commander Sutanto in July.

- iii. Gradual increase of complaints against Regional Government (see yellow line) is apparent since 2001. The legislation of Law no. 22 of Year 1999 on Regional Autonomy may contribute to this change of pattern.

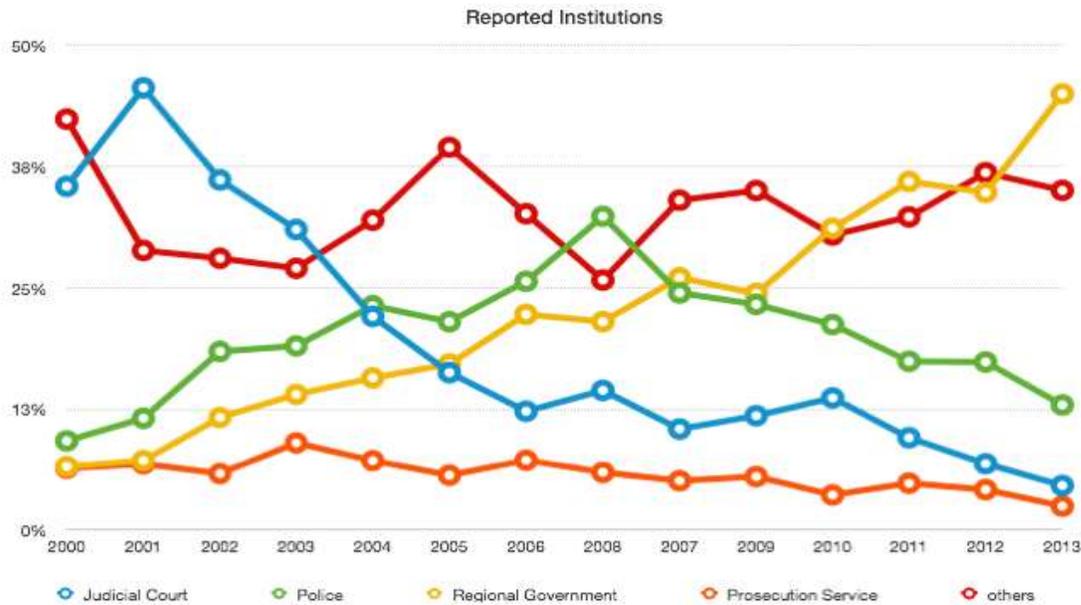


Figure 2. Classification of Reported Institutions retrieved from ORI’s Annual Reports

5. 3. The Corruption Eradication Commission (KPK)

Pressing Socioeconomic Issues

The national legislature overthrew Wahid before he finished his term as Indonesia’s President, accusing him of corruption. Megawati, who was Vice President, rose to power and continued Wahid’s term as President at a time when the Indonesian currency still had not recovered from the years of inflation following the 1997 Asian financial crisis. Furthermore, public confidence in Indonesia’s judicial institutions remained low. Besides continuing Wahid’s political agenda for major legal reforms to create laws that would enable a better investment climate, Megawati was faced with mounting demands from home and abroad to handle serious cases of corruption within the national government.

Change agents

a. Legislative Elites

The idea of establishing an independent agency for overseeing cases of major corruption was initiated by the United Development Party (PPP) faction.¹³ Legislator Muh. Zen Badjeber represented the PPP faction and suggested the idea in one of the parliamentary sessions discussing the drafting of the 1999 Law on Eradication of the Criminal Act of Corruption.¹⁴ Based on many accounts described by then-Director General of Law and Legislation of the Justice Ministry Romli Atmasasmita who were present in the deliberation, Badjeber recommended his faction's idea be incorporated in the law and implemented within one year from the law's legislation. Atmasasmita claims that he was suggested by the PPP faction to accept the idea as a compensation for the House's approving his ministry's request for a "burden of proof reversal" clause in the anticorruption law.

Atmasasmita was later appointed to head the team for drafting the Law on the Commission to Eradicate Criminal Acts of Corruption. The drafting of the law almost reached a deadlock as there had been a series of disagreement between Atmasasmita's team and legislators who were lobbied by the police and attorney general's office voicing strong concerns about the potential monopolistic nature of the commission if certain clauses were approved.¹⁵ After two regime successions from Habibie to Wahid and subsequently Wahid to Megawati, the House finally passed the Law on the Corruption Eradication Commission's (KPK) establishment during Megawati's regime in 2002.

b. International Organizations

¹³ See "Architect of the KPK's Establishment [*Arsitek Pembentukan KPK*] <http://www.tokohindonesia.com/biografi/article/285-ensiklopedi/4332-arsitek-pembentukan-kpk> (accessed on May 11, 2015) and "Understanding the Law on Corruption Eradication Commission [*Memahami UU Komisi Pemberantasan Korupsi*] <http://www.hukumonline.com/berita/baca/1t4b0a444f23252/UU%20KPK> (accessed on May 11, 2015); see also Simanullang (2014).

¹⁴ Law No. 31/1999

¹⁵ Atmasasmita admits that it was a dilemma to make compromises because evidence from his team's fieldwork suggests the public's major distrust in the police and judiciary.

As head of the team for drafting the Bill on the Corruption Eradication Commission, Atmasasmita claims that his team received a US\$1 billion funding from the Asian Development Bank to conduct research and survey similar anticorruption commissions abroad. Throughout the research, Commissioner De Speville of Hong Kong's anticorruption agency supervised Atmasasmita's team.¹⁶ The Indonesian government also approached The IMF/Netherlands Program for Legal and Judicial Reform in Indonesia and The Asia Foundation to provide technical assistance for the development of the KPK and the preparation of an anticorruption court or *Tipikor* (Lev 2005).

Case Study: Citizens' Confidence in the KPK

The KPK is by far the most popular watchdog agency among citizens. Since its establishment to date, this legislator-initiated watchdog agency has succeeded in convicting 73 legislators, 11 ministers/ministerial level officials, 10 provincial governors, 35 mayors/regents, 1 central bank governor, and 7 commissioners from the General Election, Anti-Monopoly, and Judicial Commissions (Grossman 2014). The number of complaints that KPK received from citizens shows a relatively consistent rate throughout its ten years of operation (see Figure 3). However, the ratio between the number of complaints received and of those that positively indicate a criminal act of corruption is interesting and worth further studies. Two points can be inferred from this pattern. First, a huge discrepancy can be seen between citizens' perception of corruption and the KPK's credentials for corruption under its jurisdiction. If this is the case, citizens may still lack information about the KPK's duties and functions. Second, citizens remain

¹⁶ See "Architect of the KPK's Establishment [*Arsitek Pembentukan KPK*] <http://www.tokohindonesia.com/biografi/article/285-ensiklopedi/4332-arsitek-pembentukan-kpk> (accessed on May 11, 2015) and "Understanding the Law on Corruption Eradication Commission [*Memahami UU Komisi Pemberantasan Korupsi*] <http://www.hukumonline.com/berita/baca/1t4b0a444f23252/UU%20KPK> (accessed on May 11, 2015); see also Simanullang (2014).

optimistic and confident in the KPK’s capacity to sanction corrupt politicians and private sector despite KPK’s high threshold for actions deemed as criminal act of corruption and low case follow-up rate.

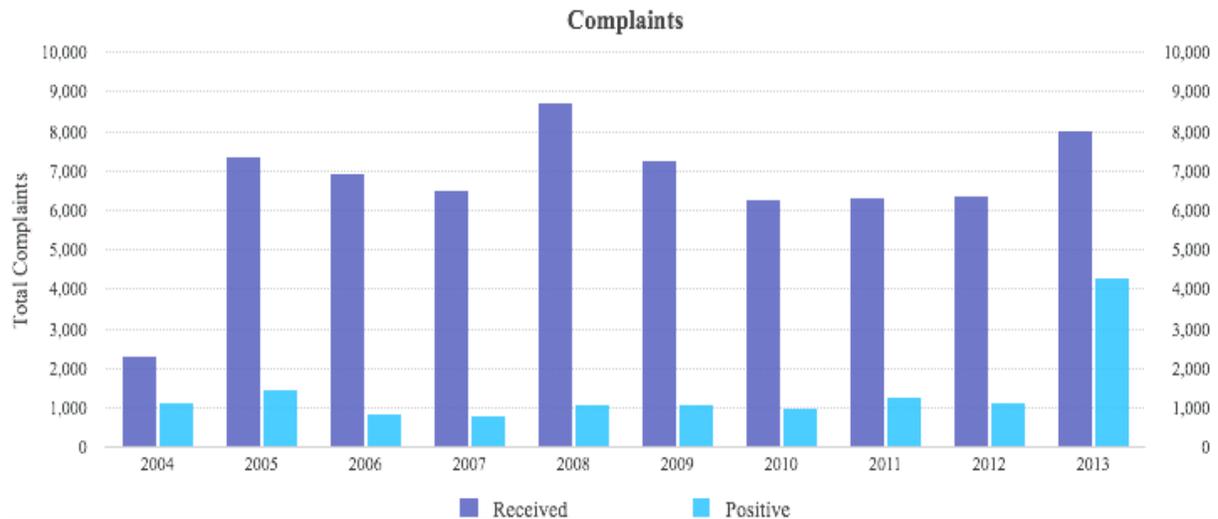


Figure 3. Number of complaints based on annual reports of the KPK

5. 4. The Central Commission for Information (KIP)

Pressing Socioeconomic Issues

Corruption remained the main problematic issue during the beginning of Yudhoyono’s first term. Yudhoyono’s primary agenda was to create a “zero corruption zone” throughout his administration. The slogan of his political agenda was “Consolidation, Conciliation, and Action (*Konsolidasi, Konsiliasi, dan Aksi* K2A). Further legal reform was intended for the consolidation of his governance, conciliation with his predecessor during the power transition, and concrete action to improve the state’s condition, primarily in the acceleration of Eastern Indonesia’s development and the alleviation of poverty. (Yusuf 2005).

The 2008 global financial crisis had a considerable impact on Indonesia’s economy. Yudhoyono, in his second term, was therefore committed to accelerating Indonesia’s national infrastructure and stimulating more growth. Confident of the improved legal infrastructure that

Indonesia had already developed, Yudhoyono's main priority was to strengthen Indonesia's economic robustness for the survival of his administration after the 2008 crisis.

Change agents

Non-State Actors: The Coalition for Freedom of Information

The KIP was established as a fulfillment of one of the clauses in the 2008 Law on Public Information Disclosure. The ratification of the Law on Public Information Disclosure itself was itself a story of struggle between a coalition of 42 domestic and international NGOs and the legislators (Widyaningsih 2013). The coalition of NGOs was united under the name "Freedom of Information" and had campaigned for the drafting of the law since early 2000 (Sudibyo 2008; Soebagjo 2014).¹⁷ The drafting had been incorporated formally into the legislators' agenda only in 2005. The coalition faced another struggle when the Defense Ministry proposed an agenda for the drafting of a law on state secrecy in 2006. The coalition's agenda then shifted into passing the law on public information disclosure before the law on state secrecy. The coalition's struggles were finally concluded when the Law on Public Information Disclosure was passed in April 2008 and the final drafting of the law on state secrecy postponed.¹⁸

Case Study: The Minimal Sanctioning Power of the KIP

¹⁷ See also Sofian Munawar Asgart's "Public Information Disclosure in the Perspective of Governability [*Keterbukaan Informasi Publik dalam Perspektif Governability*]" at https://www.academia.edu/4374231/Keterbukaan_Informasi_Publik_dalam_Perspektif_Governability. (accessed May 11, 2015).

¹⁸ See "Drafting of Law on State Secrecy Deemed Unnecessary [*RUU Rahasia Negara Dinilai Tidak Perlu Dilanjutkan*]" <http://nasional.kompas.com/read/2014/09/12/13483441/RUU.Rahasia.Negara.Dinilai.Tidak.Perlu.Dilanjutkan> (accessed May 11, 2015).

Records provided by the KIP show that the number of disputes related to the violation of citizens' rights for access to state agencies' information is relatively low. Since its inception from 2009 to 2010, the KIP had received a total of only 76 complaints. However, the agency's receiving 1,354 complaints in 2014 indicates citizens' increasing awareness of and confidence in its duties, functions, and jurisdictions.

With the legislation of the Law on Public Information Disclosure, citizens' rights in having access to any kind of information that concerns the public interest and in pressuring state agencies for transparency are empowered. The availability of the KIP is viewed as reinforcement to the Yudhoyono regime's struggle in fulfilling its "zero tolerance for corruption" policy.¹⁹ An exemplary case testing the KIP's authority in reducing corruption is the 2011 dispute between the domestic NGO Indonesian Corruption Watch (ICW) and the National Police.²⁰ When the National Police refused to disclose the identities of 17 police officers whose bank accounts are categorized as legitimate by the National Police Commission but deemed questionable by the ICW, the ICW filed a complaint to the KIP. The KIP, that has the legal authority to adjudicate cases of such disclosure of information, ruled that the National Police must provide the requested information to the ICW. This ruling created a backlash against the KIP, because the National

¹⁹Yudhoyono's 2004 Inaugural Speech at http://kepuustakaan-presiden.perpusnas.go.id/speech/?box=detail&id=62&from_box=list_245&hlm=1&search_tag=&search_keyword=&activation_status=&presiden_id=6&presiden=sby (accessed May 11, 2015); and 2009 Inaugural Speech at <http://sains.kompas.com/read/2009/10/20/1324076/pidato.lengkap.presiden.sby.20.oktober.2009> (accessed May 11, 2015).

²⁰ See "Case of Police Officers' Suspicious Bank Accounts Filed to Central Commission for Information [Kasus Rekening Polisi Mencurigakan Masuk Komisi Informasi]" <http://www.hukumonline.com/berita/baca/1t4cc14a7b26590/kasus-rekening-polri-mencurigakan-masuk-komisi-informasi> (last accessed May 11, 2015); "Disclose the 17 Legitimate Bloated Bank Accounts [Publikasikan 17 Rekening Gendut yang Wajar]" <http://nasional.kompas.com/read/2011/02/06/15061145/Publikasikan.17.Rekening.Gendut.yang.Wajar> (last accessed May 11, 2015); "Central Commission for Information Charged [Komisi Informasi Pusat Digugat]" <http://www.hukumonline.com/berita/baca/lt4db5493994c3e/komisi-informasi-pusat-digugat> (last accessed May 11, 2015); and "Indonesian Corruption Watch: Hope the Central Commission for Information Makes History [ICW: Semoga KIP Buat Sejarah]" <http://nasional.kompas.com/read/2011/02/06/19431090/ICW.Semoga.KIP.Buat.Sejarah> (last accessed May 11, 2015).

Police made an appeal to the state’s administrative court and filed a lawsuit against the KIP. It is not known whether the case between the KIP and the National Police has yet been resolved.

5. 5. Summary of Analysis

Therefore, from the case studies of four of the ten national watchdog agencies in this study, a pattern of how the composition of change agents and legal basis affect an agency’s degree of effectiveness can be drawn. The degree of power of the legal basis of each agency’s establishment can affect its leverage among other state agencies and within the society. Furthermore, although a regime leader may seem to accommodate non-state actors’ demands in the beginning, without continuous political support from the regime, the degree of effectiveness of agencies established due to pressure from this group of change agents tend to be lower than of those established by initiatives of the elites and international organizations.

Change Agents	Legal Basis of National Watchdog Agency’s Establishment	
	<i>Decree</i>	<i>Law</i>
<i>Non-State Actors</i>	National Commission on Violence Against Women (Lowest)	Central Commission for Information (Low)
<i>Elites and IOs</i>	Ombudsman of the Republic of Indonesia (High)	Corruption Eradication Commission (Highest)

Table 3. National Watchdog Agencies’ Degree of Effectiveness

6. Conclusion

Through the study of the proliferation of national judicial watchdog agencies, this study has shown how Indonesia's post-*reformasi* regimes have enabled non-state actors to participate in the decision-making process for major reforms and expansion of political rights to citizens. This phenomenon distinguishes the post-*reformasi* regimes from Suharto's authoritarian regime. In addition to pressure from ongoing socioeconomic conditions and NGOs, pressure from the politically empowered elite of the legal sector and the national legislature (as well as funding from international organizations) also provides incentive for the incumbent regime leader to establish additional, neutral agencies independent of the executive, legislative, and judicial branches. The incumbent regime leader's mitigating these kinds of pressure by incorporating all change agents' reform packages and providing the legal empowerment of agencies selectively has led to this proliferation of agencies with similar duties, functions, and jurisdictions.

Major literature on democratization has stressed stability in all aspects—political, social, and economic—as the main concern of every kind of regime to maintain legitimacy and order. Many scholars have also explained election and power succession as the necessary conditions for a regime's transition to democracy. However, this study shows that such conditions are insufficient to assure a democratic regime's stability. The period in between elections poses the greatest challenge because its duration is longer and therefore the regime's leaders and state actors make strategic decisions to maintain popular support. Establishing watchdog agencies may be one of the strategies to maintain popular support by expanding the effective awareness and exercise of political rights to ordinary citizens; but not necessarily an effective strategy to advance the rule of law or government accountability.

Despite each regime's sophisticated level of political engineering,²¹ these institutions of accountability in the form of watchdog agencies more often expands the bureaucracy than functions as ordinary citizens' channels to check on the government effectively. Meanwhile, rule of law continues to show a discrepancy between the treatment of the elites and that of ordinary citizens before the law.

The Implications of the Practice to the Present

Past regime's lack of clear long-term strategy for the maintenance or effectiveness of these national judicial watchdog agencies, as well as selective legal empowerment, present implications to the current regime. If regime leaders from 1999 to 2014 tend to establish at least one national judicial watchdog agency to consolidate their democratic regime and order, the current Jokowi regime tends to dismiss at least one.²² Among the ten agencies in this study, two agencies that are established by decrees and have not empowered by a law are dismissed as the current regime's agenda to cut state spending.

Research Agenda

Furthering our understanding of the structural conditions of accountability institutions is necessary because these institutions play a vital role in detecting transgressions exercised and condoned by governing elites. Hence, another objective of this study is to offer an analytical framework for future research that explores the proliferation of informal institutions in post-*Reformasi* Indonesia; and is part of a future larger project examining the interaction between

²¹Ziegenhein (2015).

²² See "President Jokowi Dismisses 10 Non-Structural Institutions [*Presiden Jokowi Bubarkan 10 Lembaga Non-Struktural*]<http://nasional.kompas.com/read/2014/12/12/15382641/Presiden.Joko.Widodo.Bubarkan.10.Lembaga.No-n-struktural>, accessed May 11, 2015.

these national judicial watchdog agencies and subversive informal institutions such as corruption and rent-seeking. Without denying the existence of informal institutions (i.e., rent-seeking, patronage, etc.) from colonial Indonesia to today, the question of how these accountability institutions can constrain the untamed operation of informal institutions is not addressed in this study.

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