Indonesian Corruption Eradication Commission



Gap Analysis of UNCAC

INDONESIA'S EXPERIENCE

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Indonesia Highlights



Some features:

- Total Population ± 240 Million
- 17,508 islands, 6000 inhabited
- More 300 ethnics & 724 local languages
- Per Capita GDP:US$ 2,246 (‘09)
- 1,919,440 km2 (16th)
- 33 provinces, 500 districts (Executive & Legislative Direct Ellection)
- CPI : 2.8 ('09); 2.6 ('08); 2.3 ('07)



Indonesia

Institutional reform 1998 after economic & political crisis :

- Implement direct and clean elections for the president, for provincial and local officials, and for national and local parliaments;
- strengthening the role of these parliaments;
- removal of the military from government;
- decentralisation of power from Jakarta to local governments; and
- setting up new institutions aimed at reducing corruption : *Anti-Corruption Commission, Anti-Corruption Court; INTRAC as FIU, an Ombudsman's Office* and revitalize function of *Supreme Audit Agency*
- Law number 28 of 1999 concerning *the Government Executives who are Clean and Free from Corruption, Collusion and Nepotism* , Law number 15 0f 2002 concerning *the Crime of Money Laundering* (amended 2003)
- *New Law on Corruption Eradication (1999)*

Corruption in Suharto's era

Economic Crisis 1997

Political Turbulance

an integrated concept of an ideal system of governance

democratization

Revision of Constitution & Legislation

Revitalization Parliament Role

Empowering Judicative

Implementation Good Governance Principles

Public Participation

Ombudsman

Special Court for Corruption

Justice Watch Commission

Commission of Human Rights

New Anti Corruption Law

Anti-Corruption Commission

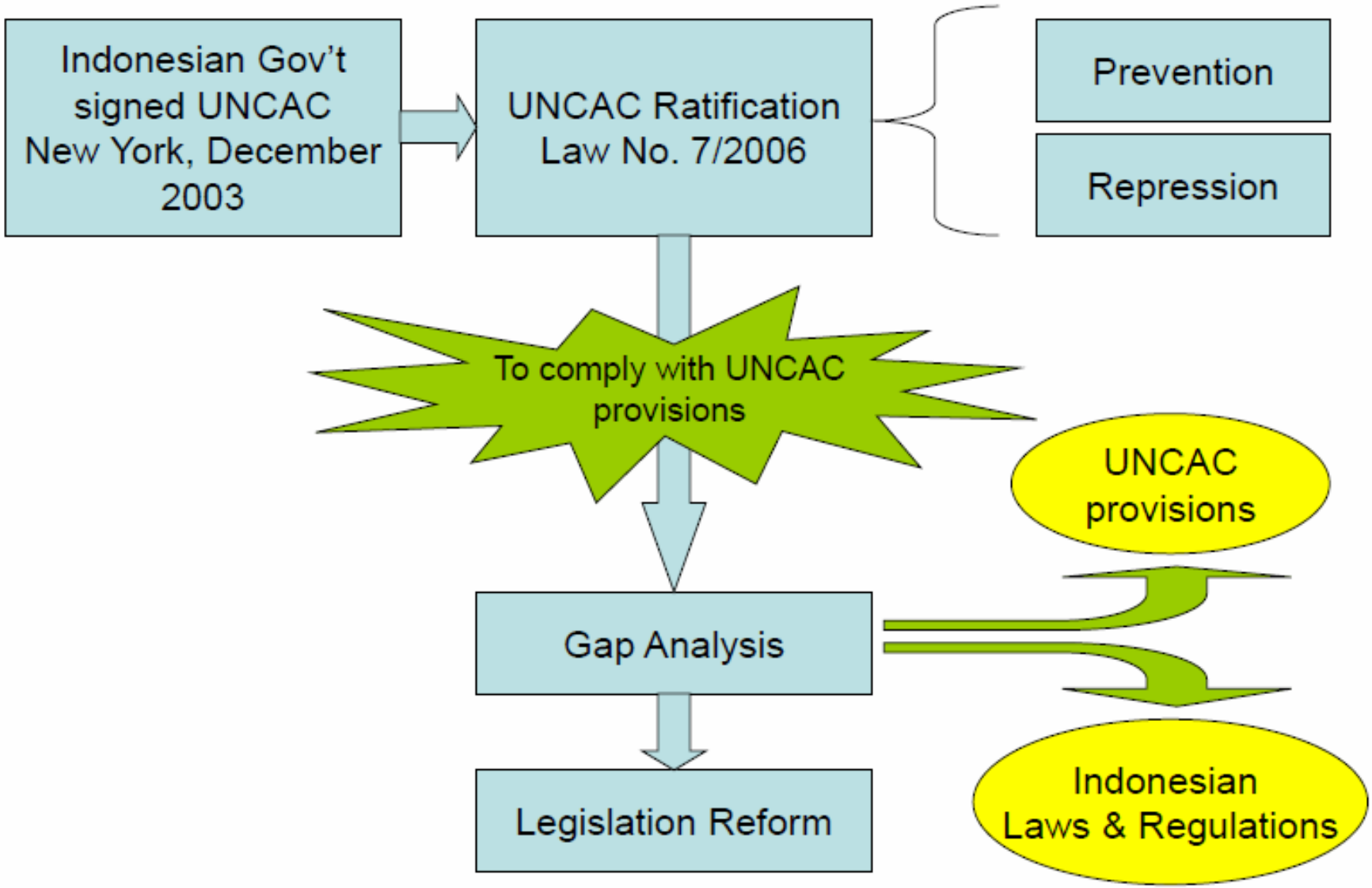
Anti-Monopoly Commission

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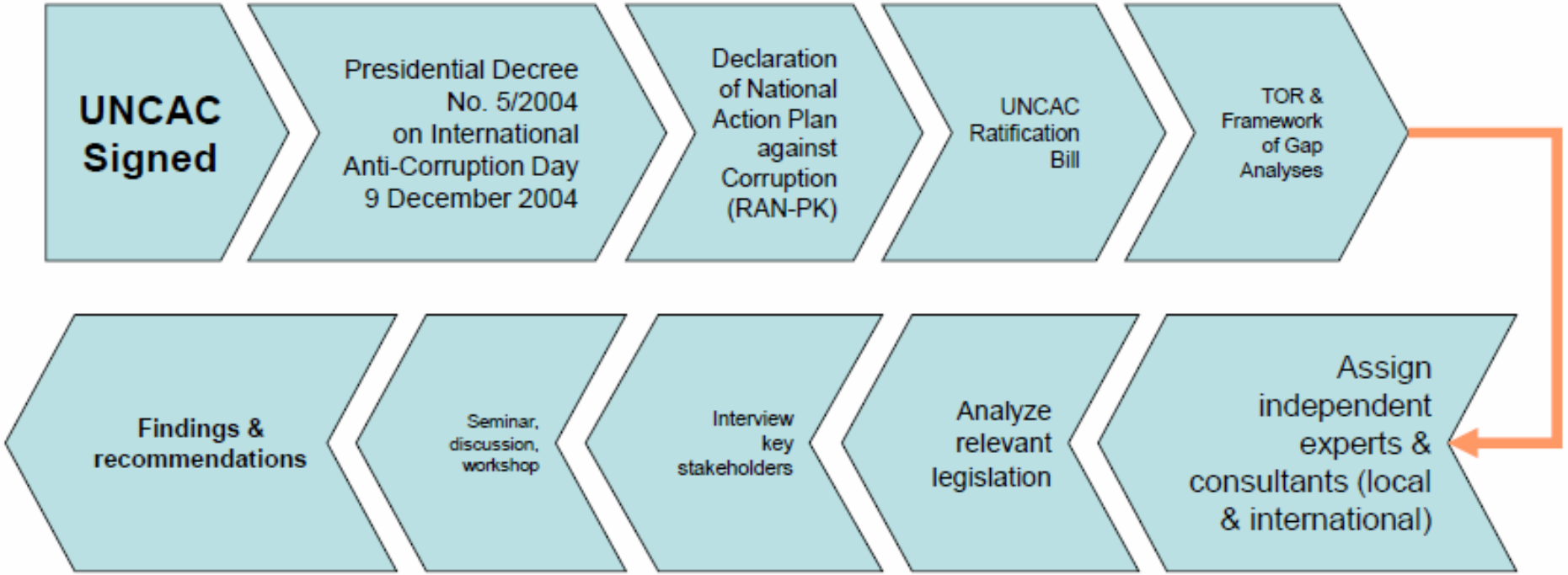


Gap Analysis between UNCAC and Indonesian Laws & Regulation

The Gap Analysis Process



The Gap Analysis Process



General Provisions
(Chapter I, Articles 1-4 UNCAC)

- whether to reorganize and concentrate the dispersed anti-corruption rules in a single law.
- Indonesia anti-corruption laws, regulations and institutions have been created as sequence of historically grown layers

Prevention
(Chapter II, Articles 5-14 UNCAC)

- Priority is given to four issues identified as being of particular concern to Indonesia :
  - defining the responsibilities for prevention
  - civil service reform, with particular focus on measures in law enforcement agencies and the judiciary
  - public procurement reform
  - preventive anti-money laundering provisions
- The public administration in Indonesia is perceived to be thoroughly corrupt → particular emphasis is put on civil service reform in overall framework of the country's corruption prevention strategy
- Essential precondition for transparent and fair selection and promoting procedures.

Prevention (Cont'd)

- The judiciary and law enforcement agencies in Indonesia have the doubtful reputation of high corruption → Continuous and rather promising efforts are underway to build capacity within the Attorney's General office and the Indonesian National Police .
- Measures taken by GOI with a view to enhancing transparency and preventing corruption in public procurement include the introduction of a national procurement office.
- Indonesian FIU (PPATK) is focal point tasked with coordinating prevention and eradication of money laundering in Indonesia.

Criminalization and Law Enforcement (Chapter III, Articles 15-42 UNCAC)

- Indonesia's provisions on domestic corruption overall meet the requirements of Article 15 UNCAC
- Article 16 UNCAC criminalizing foreign bribery, i.e. the active bribing of a foreign public official or an official of an international organization, is yet to be translated into domestic law in Indonesia
- Indonesia should consider whether reversing the burden of proof in case of unexplained substantial wealth is compliant with the basic legal principles of the Indonesian system.

Criminalization and Law Enforcement (Cont'd)

- Despite its non-mandatory nature, it is strongly recommended to translate the UNCAC provision on private-to-private corruption into domestic Indonesian law.
- The Law No. 13/2006 on Witness and Victim protection has been enacted by Parliament on 18 July 2006.

International Cooperation (Chapter IV, Articles 43-50 UNCAC)

- It is recommended that Indonesia adopts a generous approach to granting international cooperation in general and in relation to extradition in particular.
- Indonesia has signed the ASEAN 2004 MLA Treaty and has entered into bilateral extradition treaties with all countries ASEAN, except with Singapore, and with Australia, PR China and Korea.
- It is recommended to review the law on mutual legal assistance in order to grant the fullest extent of mutual legal assistance.

Asset Recovery
(Chapter V, Articles 51-59)

- The provision of chapter V of the UNCAC focuses principally on measures to be taken by requested states rather than the requesting side.
- In the course of seeking to return asset stolen Indonesia likely to have revert to international judicial assistance and in the long run to engaged in procedures to request the return of these stolen funds from the jurisdictions where they are hidden. In this case Indonesia will be of the requesting state.
- During 2008-2009, Indonesia was starting to act on the requested side by assisting some countries like Singapore, Thailand, Brunei Darussalam, US, SAR Hong Kong, in joint investigation to find a fugitive or person in Indonesia who committed crime in their home country.

Pilot Review Program for the Implementation of UNCAC

Article 5	Indonesia has adopted the measures required in accordance with UNCAC Article 5
Article 15	Indonesia has adopted most of the measures required in accordance with UNCAC Article 15
Article 16	Indonesia has not yet adopted the measures required in accordance with UNCAC Article 16
Article 17	Indonesia has adopted some of the measures required in accordance with UNCAC Article 17
Article 25	Indonesia has adopted some of the measures required in accordance with UNCAC Article 25
Article 46 (9)	Indonesia has adopted the measures required in accordance with UNCAC Article 46(9)
Article 46 (13)	Indonesia has not yet adopted the measures required in accordance with UNCAC Article 46(13)
Article 52	Indonesia has adopted the measures required in accordance with UNCAC Article 52
Article 53	Indonesia has adopted most of the measures required in accordance with UNCAC Article 53

Article 5	-National Strategy for Eradication of Corruption -National Action Plan for Eradication of Corruption
Article 15	-Criminalizes both Active & Passive Bribery -by Persons and or Corporation -in Territory and by Indonesian in abroad
Article 16	
Article 17	Criminalizes embezzlement, mispproriation or other diversion of property by public official
Article 25	Law on Protection of Witnesses and Victims
Article 46 (9)	-Law on Mutual Legal Assistance in Criminal Matters -Treaty with several country
Article 46 (13)	
Article 52	Law on Crime of Money Landering
Article 53	Article 18 : Additional penalty for state loss recovery



MONITORING AND INVESTIGATION OF POLITICALLY EXPOSED PERSONS (PEPs)

KPK'S EXPERIENCE

Government Executives (Law number 28 of 1999)

- Functionaries in the State Institutions
- Ministers;

3. Governors;
5. Judges,
6. Other State Functionaries under the Regulations and Legislation in force;

   Eg. *Ambassador, Vice-Governors, Regents or Mayors*
7. Other Functionaries having strategic functions in relation to the Organizing of the State under the Regulations and Legislation in force.

   Eg. *Members of Director-board / Supervisory-board of the State / Local-Owned Enterprises, the Central Bank, State-owned Universities, Echelon 1 of the Civil Service or equal in the Military or National Police, Prosecutors, Investigators, Assistants of Judges, Chief and treasury officers of National / Local Projects.*

'Public official' (*Law on Corruption Eradication 1999)* shall mean:

- any person who receive sallary or payment from state or regional budget ;
- any person who receive sallary or payment from corporations which receive grant or subsidy from state or regional budget ;
- any person who receive salary or payment from other corporations that use capital or facility from the state or public .

Asset Registries

Law number 28 of 1999 obliged Government Executives to:

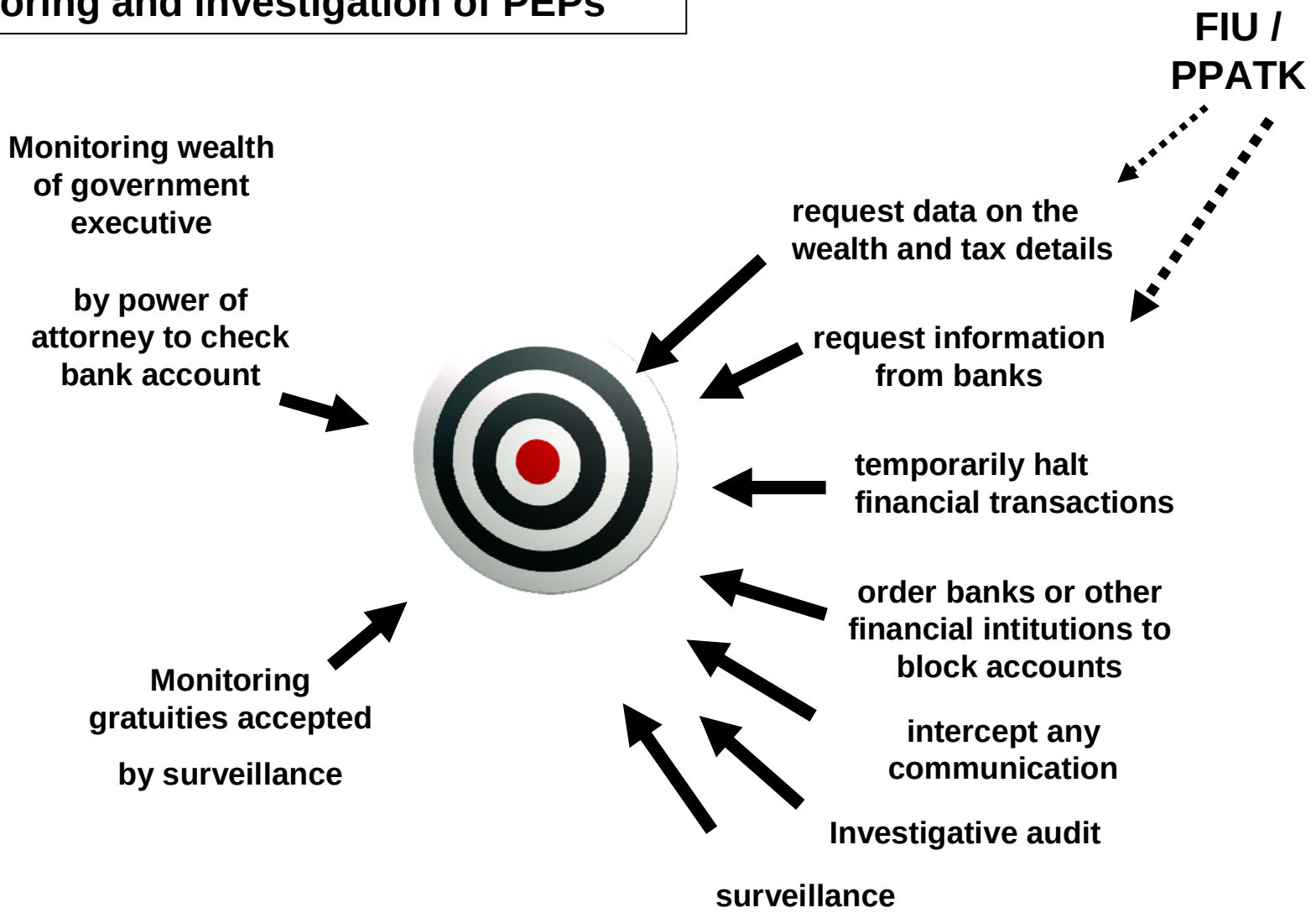
1. pronounce an oath or pledge according to his/her religion before being appointed his position;
2. be prepared for and accept any investigation of his/her assets before, during and after holding his/her position.
3. report and announce his/her assets before and afterserving in his/her position;

Article 38B (*Law on Corruption Eradication)* that obligates a corrupter defendant to explain the sources of his/her assets that are not written in the indictment filed by the Public Prosecutor. If the defendant fails to show the lawful sources of these assets, the court should deem the assets as having come from corruption, so that the judge has every right to order the confiscation of the assets



As a part of corruption prevention, KPK has a duty to improve the accountability of public officials by requiring public officials to be transparent to the public in declaring their assets and by effective analysis of *Public Officials' Wealth Reports*. within this report public officials are also obliged to give power of attorney to KPK with the authority to open and check their bank accounts at any time.

Monitoring and investigation of PEPs



base on public information ⟷ **investigation** to **prosecution**

→ **Pre-investigation** (corruption case)

Corruption Cases involved High Ranking Officials handled by KPK (2004-2009)

- 17 Member of Parliaments
- 3 Ministers/Head of Ministerial Level
- 5 Province Governors;
- Governor of Central Bank & 4 Deputy Governor*
- 19 Mayors and Head of Regents/District
- 6 Commissioners of General Election; Judicial; Anti-Monopoly commissions
- 3 Ambassadors (incl. Chief National Police) and 4 General Counsels
- Senior Prosecutor and Lawyers, incl. KPK's investigator
- Many high ranking Gov Official echelon I & II (Director General, Secretary general, Deputy, Director, etc)
- High rank CEO of state owned companies and private sectors involved in public corruption

100% conviction rate

PEPs prosecuted by KPK (2007 to 2009)

1. ***Position abuses related to public procurement***

   -Governor of Riau and West Java Province,

   -Mayor of Medan and Makassar Municipality, Batam

   -the regional secretary of the Jambi Province

2. ***Public procurement by mark-up***

   -*General Secretary of the Ministry of Law and Human Rights*

   -Director General of the Ministry of Workforce and Transmigration

   -Ambassador in Singapore

3. ***Abuse of licensing processes in the forestry-sector***

   -Governor of East Kalimantan and

   -Regent of Pelalawan

4. ***Abuse of power/position as a member of parliament or government executive by taking a bribe***

   -13 members of parliament on 5 different cases.

   -The general manager in East Java of the State Gas Corporation

   -auditor of the State Audit Office on 2 different cases

5. ***Giving bribe to government executives or members of parliament***

   -5 businessman

6. ***Abuse of power/position as law enforcement officers by taking bribes***

   -member of the Judiciary Commission, investigator of AGO, member of the Business Competition Monitoring Commission, investigator of the Customs Dept., Judge of Administrative Court, Lawyer

7. ***Abuse of power/position regarding use of the state budget***

   -Governor of South Kalimantan Province,

   -governor and deputy governor of the Central Bank

   -regent of the Kendal, Kutai Kartanegara , Garut, Yapen Waropen, Boven Digul and Situbondo Regencies

8. ***Abuse of power/position regarding collection of state income***

   -*minister of maritime and fisheries*

   -3 ambassadors and 5 consul generals of Indonesia Embassy in Kuala Lumpur

   -director of finance of a state-owned company



Thank you !