

## IN BRIEF: POLITICAL

decided to keep an appropriate distance to avoid any speculation that could connect Indonesia to the problems that Timor Leste is dealing with now,” the president told reporters on June 5.

One foreign correspondent who covered the recent fallout in Dili extensively told the *Report* that he did not uncover any evidence connecting Indonesia to East Timor’s internal woes. He did add, however, that rumours abound in Dili that Alkatiri’s family has allegedly enriched itself through his political position by landing lucrative road contracts and arms procurement contracts for the army and the police. Those rumours have seemingly led to increased animosity toward him among the population and underpinned calls for him to step down.

Alkatiri should be doing all he can to engage Jakarta and any actions to the contrary should be viewed as a political misstep. As a country with roughly 1 million inhabitants tucked between Australia and Indonesia, it should be focusing less on Lisbon and more on Jakarta and Canberra. In the end, President Yudhoyono’s decision to stay largely out of the affair seems to have been the right move given Alkatiri’s erratic behaviour.

### The trying case of Soeharto

With the refusal by the Attorney General’s Office to pursue the corruption case against former President Soeharto’s due to his health, the *Report* considers another possible legal avenue that could be exploited: an investigation by the Corruption Eradication Commission (KPK).

KPK Head Taufiequrrahmah Ruki told the *Report* on May 30 that it was not possible to investigate Soeharto, or indeed the US\$70 billion BLBI scandal, because the KPK does not have retroactive powers. The law that established the KPK, Article 68 of Law No.20/2002, however, stipulates that it had the authority to take over all unsettled corruption cases at the time the commission began.

The KPK’s retroactive powers were tested in February 2005 through a motion submitted to the Constitutional Court by a defendant in the trial of former Aceh Governor Abdullah Puteh for a corruption charge from 2001. The defendant’s lawyers claimed that Article 68 of the KPK law conflicts with Article 28 of the constitution that denies the principle of retroactivity in law.

In a judgment which did little to clarify the matter, the Constitutional Court ruled that the KPK could continue with the trial of Puteh and his co-defendants, who were later successfully prosecuted and sentenced by the Corruption Court. But as well as allowing the Puteh case to continue, the Constitutional Court also delivered some conflicting legal considerations on the issue that suggested the KPK did not have retroactive powers. At the time, a KPK commissioner, Tumpak H. Panggabean, announced that the KPK would continue to investigate corruption cases that had occurred before the KPK was established. “As long as we have evidence, we will continue our investigations,” he told reporters in February 2005.

Thus, while the legal principle of KPK’s retroactive powers remains ambiguous,

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the precedent of Puteh's case is clear. That has led many to wonder why the KPK is unwilling to pursue the Soeharto and Bank Indonesia Liquidity Support (BLBI) cases. If by pursuing these two cases, the courts are forced into looking at the 2005 judgment again, it could only benefit the KPK and the fight against corruption more generally by clarifying the issue further.

The principle that law cannot be applied retroactively is internationally accepted. In the vast majority of cases it would be clearly unfair to later prosecute someone for an act that was not a crime when it took place. Moreover, if a new anti-corruption agency expends too much effort looking into past corruption it may become so overwhelmed by outstanding investigations that it is unable to focus on the present.

Legal principles do allow for exceptions. The KPK, for example, is currently lobbying the government to provide an exception to the principle of presumption of innocence by asking that a reverse burden of proof be applied to the wealth reports of state officials. Widely regarded as a benchmark of best practice for anti-corruption agencies worldwide, Hong Kong's ICAC upheld the principle of non-retroactivity, but provided for a few exceptions. Other anti-corruption agencies and legal instruments around the world have also stated exceptions to the principle of non-retroactivity in the fight against corruption.

Given one criteria of the KPK's mission is to investigate and prosecute corruption cases that "have generated significant public concern," there is a strong case for advocating that the Soeharto and BLBI cases be treated as exceptions. This is especially true in view of a recent LSI survey which found that over 65 percent of Jakartans forgive Soeharto, but want the legal process against him continued. Indeed, any new anti-corruption agency can only succeed if supported by the public, which in turn needs a certain degree of trust and confidence in its activities.

Clearly, the KPK cannot handle all cases of past or even present corruption. But it was conceived and fought for by NGOs and some enlightened members of the government as a truly independent institution that could act as a powerful symbol that grand corruption would no longer be accepted in Indonesia, no matter who the perpetrators were.

Since it is generally accepted that the highly damaging corruption that still occurs in Indonesia is largely a Soeharto period legacy, a serious KPK investigation into the former president and his cronies would undoubtedly send a potent and much needed message that Indonesia has finally broken with the past and will no longer tolerate such behaviour.

### Avian Flu update

The Avian Flu situation is likely to continue in Indonesia with small sporadic outbreaks occurring, as the virus is now endemic in almost all the country's provinces, according to health officials in Jakarta. But there still remains no evidence that the virus has evolved into a more deadly strain in Indonesia.

The number of fatalities sits at 38 out of 51 confirmed cases, which gives