

The Ascendancy of Governance in Thailand and Indonesia

*A Comparative Study of Governance Reform Driven by
Neo-Liberalism Mainstream Post Constitutional Amendment¹*

*By. R. Herlambang Perdana Wiratraman**

I. Introduction

Studies of governance in developing countries have been extremely arising in proposing certain requirements which was influenced by international financial institutions, especially the World Bank and International Monetary Fund (IMF). For instance, governance model has been injected by the World Bank through package of democratization and rule of law projects, included legal reform. Assumption behind these injections were the Bank evaluating that poor governance in the developing countries have caused large number of corruption, inefficiency, many failures for fulfilling growth economy rate and contrary with market liberalization.

Learning from Sub-Saharan Africa, such as Ghana, Kenya, and Zambia, it was early 1980s when the World Bank started to introduce prescriptive model of governance and democratization, to encounter poor governance which was considered as serious factor to obstruct economy liberalization. "Good

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Governance” was one of the most important projects, and there has been no critical objection to respond the idea of governance. In this context, new model of governance was expected to reduce or minimize corruption problem and other inefficiency. In fact, this program was so easy to be accepted as mainstream of governance, but it was too difficult to be implemented because of character of governance itself which was not fighting corruption culture and its roots of problems. Anti-corruption program and movement was designed to save and maintain only for ensuring debt repayment, in order to support the market liberalization scenarios in general. After years running, those countries receiving debt for good governance projects have still remained large number of corruption and fallen into more serious problem of governance (Abrahamsen, 2000; Wiratraman 2006a).

The emergence of prescriptive governance model seemed clearly in same language between proponents and opponents of liberalism. Uniquely, they have been considering and strongly falsifying the same actors who should be accounted for causing economy crisis and poor governance, particularly the authoritarian regime in the past. Although the idea of neo-liberalism has been challenged by anti-globalization groups around the world, but in the other side, governments and its proponents of neo-liberal policy have been continuously enlarging their power through designing systemic ways, influencing structural matters, and exporting ideology of free market. Here, it can be seen that debates on governance concept still remain vague and blurred position, but on the other hand, civil society and non-governmental organization, including academics, have been involving to convince and use this concept as necessary to reform governance system.

The aim of this paper is not elaborating the anti-globalization movement in criticizing governance, but it is to outline the influences and forces of neo-

liberalism that have been shaping governance reform in Asia post constitutional reform, especially Thailand and Indonesia. Two questions are raising in this context, first, how was neo-liberalism mainstream on governance model accepted through enacting several legal reforms and establishing new legal and political institutions; and secondly, what serious impact have been affecting to the political system, especially by comparing Thailand and Indonesian experiences.

It describes into three sections, first, Asian crises in mid 1990s and the emergence of concept of governance; second, neo-liberalism mainstream on governance reform; and third, neo-liberalism impact on governance reform. This study focuses during and after constitutional amendment, especially in Thailand (1997) and in Indonesia (1999-2002). And it only focuses on analyzing the 'good governance' concept based on legal-political reform which is being continuously influenced by multifactor, especially in criticizing concept 'legal framework for development'.

II. Asian Crises in Mid 1990s and The Emergence of Concept of Good Governance

Concern with proper governance is not new, and as old as civilization itself. But, it was World Bank which introducing at first time concept of 'governance' in the early 1980s, by implementing 'public sector management programmes'. The *World Development Report* reported that management in development in dealing with importance of reducing the role of state (World Bank 1993: 46). After admitting that structural adjustment program had failed, in World Bank 1989 report on Africa, the report author identified the economic crisis as a 'crisis of governance'. Here, governance is mentioned as 'the manner in which power is

exercised in the management of a country's economic and social resources for development' (World Bank 1989: 60). Asian crisis has been identified by World Bank in designing 'new governance' concept to support better administration and market efficiency. The World Bank discourse on deepening governance has been influencing for more than two decades, and it became the locus for policy among the Organization of Economic Cooperation and Development (OECD) donor community and the major organizations of the inter-state system.

Governance is defined as a set of ideas about how direction is provided to human activity, functioning institution or social system. It has system as a framework, included formal elements such as constitutions, laws, policies, and conventions, and also informal traditions, such as accepted practices, unwritten codes of conduct that people follow it in shaping how governance works. In World Bank (1992) terminology has defined 'governance' as the exercise of political power to manage a nation's affair. This management - also called public sector management - has three components: (i) legal framework for development; (ii) accountability; (iii) transparency and information.

In other approach, *Quadir et al* (2001: 4) argue that present conjuncture 'governance' involves continuous patterns of relations, decisions and policies among the heterogeneous trio of state, market, and civil society actors over a diverse range of issues and levels. Their conceptualization is rather different from the conventional state centric view. It acknowledges that governance also involves systems of ruler and patterns of behavior which are based upon norms and traditions outside formally sanctioned laws and statutes.

But as mentioned above, this paper will specifically look at legal-political reform or 'legal framework for development' as conditionalities of governance reform, or under "good governance" projects.

First of all, it has unique characteristic when we look at the emergence of some concept on governance reform following economic crises in mid 1990s in Asia. Interestingly, those concepts are orchestrated by numerous international financial institutions and state donor agencies, and also injected to South countries with imposing certain liberal conditions. This concept has been known as 'good governance'.

In the case of Southeast Asia, particularly Indonesia and Thailand, the emergence of good governance was inseparable with crises in 1997-1998. Southeast Asia economic crisis began in early 1997, and it was also happened in some parts of East Asia. Here, the Asian 'tiger' economy was shifting and falling, from what World Bank sounded as Asian 'miracle' (World Bank, 1993) to Asian 'debacle'. The region descended suddenly and rapidly into economic chaos, out of which it has yet to emerge. In 1998, as a result of the crisis, the GNP of Malaysian had fallen by more than 8 percent, that of Thailand by nearly 8 percent, and that of Indonesia by as much as 20 percent. About 20 million were added to the 30 million already bellow the poverty line in the affected countries. Eighteen million more people became openly unemployment in Indonesia, Thailand and Korea. Real wages fell by 10 percent in Thailand and by 40 to 60 percent in Indonesia (World Bank, 1998).

There was no consensus in defining type of crisis. In neo-liberal perspective, crisis is seen as financial problems which caused by inefficiency in liberalizing economy and investment, institutional weaknesses and lack of accountability, such as leadership of *Soeharto* and his cronies. In other quite similar language, the problem of political instability, indecisiveness, and mismanagement at the political and administrative level have been also seen as major situation which contributing to cause financial crisis. *George Soros*, an international financier

argued that the unregulated expansion of capitalism, especially finance capital, threatens to undermine its own future, capitalism has to be saved from itself (in Jomo KS, 1998: 9). The Asian economic crisis is not just crisis dealing with financial sector, but also livelihood crisis for vulnerable sectors of society. The World Bank has acknowledged that 'this is a financial crisis and human crisis, and both dimensions need to be addressed' (Sandström 1998).

On the other side, according to anti-globalization perspective, liberalism has failed. It was marked and evidenced by Asian economic crisis. Liberalization, involves deregulation, free trade, export orientation, and privatization. Anti-globalization asserts that rapid and unfettered liberalization causes great damages to weak economies. The perceived failures of the IMF interventions in the initial stages of the Asian crisis suggested to anti-globalist that countries should develop their own policies and ignore the orthodox advice of IMF and the World Bank (Hewison 2001: 5). *Bello* argued that there was an intersection of crises: multilateralism, the neo-liberal vision and order, the corporation, the system of military hegemony, liberal democracy and the global production system (Bello 2002: 2-16).

Contesting debate between proponents and opponents of liberalism has been arising during and after crises, and it has been seriously influenced by economic and political mainstream which would lead countries for leaving the crises. The emergence of governance reform could not be separated from various debates within these spectrums. Under neo-liberalism projects, which it would like to recover crises by designing prescribed reforms on economic and political dimensions, also introducing governance and legal reform thereof. In responding to economic crises, World Bank and other financial institutions acknowledged that their program had failed. Their evaluation to criticize the economic crises was the failure of governance system in loan recipient's countries to maintain

government and economic growth programs, therefore phenomena of corruption, collusion, and nepotism have been prevailing as usual in those countries. Poor or bad governance in leading bureaucracy system has been clearly constituted as major problem which contravene law and other regulations, especially it has exacerbated market liberalization. Uniquely, in picturing this situation, there has been concluding that poor or bad governance as single of the major causing the crises, and the problem was defined as 'domestic and institutional policies.' Hence, there has been no formidable debate, or rarely, to conclude that the crisis was also caused by the failure of structural adjustment program and neo-liberal economy in the past.

Thereby, the idea of governance reform has been mainstreaming to correct past bureaucracy government, by designing certain conditions which should be applied as a proper administration, more known as 'good governance'. Post crises, international financial institutions have been easily justifying the logic of necessity of governance reform, and it was unsurprisingly also accepted by larger society and democracy movement in the South. It is frequently seen in many documents of financial institution, government planning, and civil society projects. Especially in programming 'good governance', it was a common program - or 'sexy' projects - for getting financial resources from various donors during transition period from authoritarian to new more democratic system, not only accessed by government bodies, but also by numerous non-governmental organizations and democracy or governance center at universities.

Hence, the principle of 'good governance' has been pretty well known in almost social, economic and political dimensions, especially the principle of transparency, anti-corruption, participation, and rule of law. Those principles met with the interest of most people, especially reformation group who wanted changing situation. Interestingly, the idea of governance reform has been making

fusion among neo and anti liberalism, government, non-government groups, religious community, academics, reformist group, and even crony-capitalism bureaucracy from previous regime. The extremity gap ideas during transition period among them have been uniquely fusing and decreasing nexus of interest. This phenomenon is easily found in South East Asia, especially in Indonesia, Thailand and Philippines.

The 1997 crises in Thailand and Indonesia prominently and directly brought discourse on deepening governance at domestic level. In donor institutions mind, bad governance practices, such as corruption, manipulation of decision, and collusion, were simpler legitimized as source of economic collapse. Importantly, the idea of governance reform has been massively injected by World Bank and other financial institutions through continuing their debt projects and designing prescribed governance reform. In simpler language, the emergence of governance reform ideas in the South has been easily exported by the North because 'right track' justification to develop economic growth. 'Right track' should be followed in order to getting loan from them. Debt policy here is also contributing to design and impose model of governance.

III. Neo-Liberalism Mainstream on Governance Reform: "Good Governance Free Market Assistance"

Why the North has easily exported the idea of governance reform to the South? What interest behind exporting ideas? And how the governance reform became neo-liberalism mainstream? Liberals have been interested in democracy for long time ago, participation and representative at the level nation state. It seems logical and reasonable for liberals to expect and promote these characteristic at the global level, particularly in international institution. International financial

institutions like World Bank, International Monetary Fund (IMF), and Asian Development Bank (ADB), and also some donor countries, such as United States, Japan, and European Union, have strong and common interest to establish more efficient economy market by improving bureaucracy or better administration in the South. Without 'good governance', according to them, would be affecting inefficiency in liberating market economy. Especially for debt repayment scheme, it would be important for obeying 'political or democracy adjustments', included strengthening rule of law as basis of fairly competitiveness.

By imposing scheme of debt repayment for supporting market, capital investment and privatization, it has been clearly showing the idea of neo-liberal on governance. The idea of neo-liberal here is defined as the ordering principle of international relations, which has major factor of economic globalization. This factor or characteristic of economic globalization, according to *Amorre et al* (1997: 181), has been transforming social relations and political institutionalization. It includes, (i) an expansion of the process of capitalist accumulation; (ii) the tendency 'toward the homogenization of state policies', (iii) 'the addition and expansion of a layer of transnational institutional authority above the states' and (iv) 'the exclusion of dissident forces from the arena of state policy making'. As a consequence of neo-liberalism scheme within economic globalization, the role of state primarily would be away from the domestic constituency in favor of transnational capital. This phenomenon called as 'internationalization of state structure', or the 'globalized state' has become, first and foremost, a facilitator of transnational market interest.

Neo-liberalism in context of political bureaucracy has strong discourse which has brought a discursive power into political projects. Because the typical of neo-liberal which predominantly strives to create an enabling environment for markets to flourish, they believe that governance reform is possible only through

a retreating state, in context that the state must make space for the market. By reducing state roles, it can ensure efficient management of resources. State roles in this context are very important as an indicator to see whether or not government still concern to respect, protect and fulfill human rights. Neo-liberalism mainstream on governance reform is seen in this context, by approaching a “legal framework for development” that World Bank has constituted. The World Bank believes that without rule of law and legal reform as part of legal framework for development, a country could not sustain economic growth. So that is why the World Bank design a “legal framework for development”, particularly development of a strong economic legal infrastructure and effective enforcement of the law which is central to market agenda. By sponsoring legal reform and legal technical assistance, the World Bank can evaluate the progress of governance if a country fulfills “ordered legal reform”.²

The Bank’s ‘good governance’ project has clearly occupied the South countries, in Africa and Asia. Good governance has been described as denoting ‘predictable, enlightened and open policy processes bureaucracy with a professional ethos, a government accountable for its actions, a strong civil society participating actively in public affairs, and all under the rule of law’ (World Bank 1994). This description was embedded in a neo-liberal ideology by supporting and promoting liberal democracy, human rights and strong civil societies as essential preconditions for sustainable growth and social development. Constitutional amendment was the first object which should be considered as

² For instance, A Country Director of World Bank, Mark Baird, has noted a lot of progress has been made in legal reform when a new bankruptcy law has been enacted, a new commercial court established – with its first order of business being application of the bankruptcy law, a pro-competition law has been passed and an institutional framework for administrating the law is being assembled a new banking law has been issued and the central bank has been made legally independent of the government, and a secured transactions law is being prepared and the company law is being formally reviewed (Baird 2000).

main part of neo-liberalism machine. In Indonesia, debate between socialism and neo-liberalism during constitutional amendment process 1999-2002 has been happening, especially concerning on article 33.³ It was finally won by Indonesian socialism at last draft submitted to *Majelis Permusyawaratan Rakyat* (People Representative Assembly, the highest parliament in Indonesia) (Susanti 2002). Although Indonesian socialism has won in contesting ideas, but 'paper' victory could not enough guarantee to fight neo-liberalism project which hijacked institution, structure and policy at domestic level. It can be referred from several regulation based on market principles and imposed by financial institutions and corporations, such as Act Number 7/2004 on Water Resources, Act Number 20/2002 on Electricity, and Act Number 13/2003 on Manpower.⁴

In Thailand, constitutional amendment process during 1996-1997 has been influenced by middle class reformers, because they have strong position historically at political chess (Maisrikrod 1997). Although democracy has been developing steadily since 1978, the new constitution represents a step level shift in the movement toward full democracy. Not only does the new constitution radically revise the systems of electoral democracy, it also creates new institutions for democratic governance that parallel elections as major instrument

³ Neo-liberalist pushed to revise 3 sub-articles under Article 33, but Indonesian socialism could stronger draft and convince MPR (People Representative Assembly) for keeping the original provision. The final draft submitted by Economic Team Expert, it was added 2 sub-articles under Chapter XIV (The National Economy and Social Welfare), and completely Article 33 constitute: "(1) The economy shall be organized as a common endeavor based upon the principles of the family system; (2) Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State; (3) The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people; (4) The organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy; (5) Further provisions relating to the implementation of this article shall be regulated by law."

⁴ Water commercialization and privatization are enacted under Act Number 7/2004, and the principles of labor market flexibility, outsourcing, contractual based worker, are also market principles enacted under Act Number 13/2003. These provisions are examples of legal reform designed as market friendly strategy.

of democratic authority (Albritton and Burekul 2001). But, new electoral systems and neo-institutionalism approach in procedural democracy in Thailand were also expected by neo-liberals reformers, included during constitution amendment process. *Robinson et. al.* in their observation stated that,

“The crises strengthened the political leverage available to neo-liberal reformers in Thailand. The proposed neo-liberal reforms were not simply clearing space for the efficient operation of the market. Such reforms demanded fundamental transformation in the operation of government and in the ways of the business was organized and conducted. Neo-liberal reforms such as privatization and deregulation aimed to neuter the state’s ability for economic intervention, while political reform were meant to establish ‘good governance’ and to insulate officials and technocrats from particularistic influences and cronyism. As noted elsewhere, this process might have been political, but ‘the ultimate aim was to empty the state of politic and to replace it with a notion of governance conceived as a technically rational and abstracted process” (Robinson, Rodan and Hewison 2002: 2).

Clearer provisions under new Constitution of The Kingdom of Thailand amended in 1997 were included several provisions in line with neo-liberalism economic agenda. It can be seen from Chapter V concerning on ‘Directive Principles of Fundamental State Policies’ which clearly states privatization and encourages a free economic system.⁵ In written paper context, if it is compared to

⁵ Provision supporting the neo-liberal economy agenda can be referred from Section 87, “The State shall encourage a free economic system through market force, ensure and supervise fair competition, protect consumers, and prevent direct and indirect monopolies, repeal and refrain from enacting laws and regulations controlling businesses which do not correspond with the economic necessity, and shall not engage in an enterprise in competition with the private sector

Indonesian Constitution, the Thai Constitution explicitly has stronger and clearer provision in facilitating neo-liberal economy agenda. Even though Indonesian socialism successfully resisted the neo-liberal agenda through drafting and amending new constitution, but at this point, it still remains question if neo-liberal agenda could be resisted or rejected in the policy level. Resistances to neo-liberalism are very being depended to legal and structural implementation, especially at Constitutional Court, government policies, and other administrative aspects. And also the role of middle class in Thailand which have influenced in every political reform (Wiratraman 2006b).

In this context, the idea of constitutionalism is very important to be able to be seen as whether neo-liberalism mainstream could be resisted not only in legal terms, but also economically and politically in particular policy. In political dimension, neo-liberal concept on good governance has posed in shaping democratization model.

As noted in legal framework for development under new constitution dealt with electoral democracy, Thailand and Indonesian have had experience for the first democratic general election after constitution amendment. It was quite successfully in terms of liberal democracy and enlarging civil society participation in election. Liberal democracy, of course, was costly in practical. And it has been involving many donor institutions and states from the North to fund general election. In the sense of liberating politic through electoral democracy, unsurprisingly and easily seen that neo-liberalist has been quite influencing to develop ability Indonesian and Thailand government, as well as civil society, by giving or lending money to democratize better and fair elections. The problem is, even though it can be believed to chose political representative

unless it is necessary for the purpose of maintaining the security of the State, preserving the common interest, or providing public utilities.”

democratically, it will possibly also be hijacked by elected leadership in both countries, both at national level or local level. Common phenomenon of this type of governance can be found in both countries, Indonesia and Thailand.

For neo-liberalist, as *Unger* said, 'the form of politics preferred by neo-liberalism is relative democracy, democracy but not too much' (Unger 1999: 68). Democracy is needed, but it should be restricted and delegative at best. This model is actually facilitating competitive capitalism in accordance to defend free market policy, and it would be necessary based on capitalist democracy against all totalitarianism or undemocratic governance in the past. Its logical can be understood as World Bank which has identified crises by putting all blame for the problems and the responsibility for reform on 'domestic institutions and policies' (Islam and Morrison 1996: 5-7; Quadir et al. 2001: 12-14). Liberal democracy and civic participation in election that have been practiced in Thailand and Indonesia was one pillar of 'good governance' which should be extolled by government representatives.

Mainstreaming 'good governance' can also be seen mostly in anti corruption projects. In the name of 'transparency' in policy making, the government should ensure no corruption in implementing program or projects, especially projects which are dealt with World Bank, ADB, IMF and other projects under loan scheme. And also principle of 'participatory' sounded by neo-liberal rhetoric, which it should be implemented and attached to all of decision making process, actually aimed to involve people in order to more active in controlling projects only. The idea of participation actually should be tied with the promotion of "citizenship" (Hickey & Mohan 2005). "Citizenship" in this context constitutes not only a set of legal obligation and entitlements, but also the practices through which individuals and groups formulate and claim new rights or struggle to expand and maintain existing rights (Isin and Wood 1999: 4).

In policy level, these principles covered by constitution or specific bills. In Thailand, under Constitution Section 297-302, it establishes a new institution in order to against corruption, National Counter Corruption Commission. This body has constitutional authority to inquire and decide whether a State official has committed an offence of corruption. Not far different, in Indonesia, even though it does not cover anti corruption under new constitution, but the government passed new legislation concerning on Combating Corruption Crime (*Undang-Undang Nomer 39 Tahun 1999*). This new legislation mandated by People Representative Assembly Decree Number IX/MPR/1998 concerning on Clean Governance and Free from Corruption, Collusion, and Nepotism. And, the government also establishes KPK, or *Komisi Pemberantasan Korupsi* (Commission for Combating Corruption). These facts are usual happening in Southeast Asia post crises, and it has been done in order to recover new or better image to show at international level how country policy has been changing.

In this context above, legal framework for development is simply interpreted by creating new legal products and institutional or reforming it. But in practical situation, especially at lower level, transparency and participation are often used only for fulfilling loan scheme, rather than for democratizing people participation. Term of 'used' here does not always relate to practice in real or substantial meaning. For instance in Indonesia, after passing new Water Resources Act which states water privatization, it is continued to WATSAL project of World Bank concerning on water technical support loan, PISP project of ADB concerning on irrigation supporting project, and also PRSP project of World Bank concerning on poverty reduction strategies. All of those projects have similarities in determining 'participation' as loan conditionalities. The government should prepare 'public' entities to justify projects for getting money (loan). In preparing 'public' entities is often found that the government

manipulates the role of public participation in real meaning, such as recognizing only Water User Association (WUA) as single organization for involving at decision making process. In fact, WUA does not represent majority of people, especially those are who accessing water as well, such as peasant or subsistent farmer, women at rural, indigenous community, and small industry at rural. Non governmental organizations have been involved also, but it was not as an equal partner. They were more involved as sub-contractor of loan projects, rather than contributing in decision making (Wiratraman 2004).

Same situations have been occurred in Thailand. Although ADB loan conditions and processes could be violating of the Thai Constitution, ADB nonetheless demands a fundamental reform of national policy on water resource through its Agricultural Sector Program Loan or ASPL. (Chantawong 2002: 1). Under the Development Policy Letter and Policy Matrix, ADB required Thai government to reform water management structures in the country as a condition for the loan. ADB also called for the drafting a National Water Resources Policy, enactment of a Water Law and an application of policy on cost recovery in irrigation, an increase in the National Water Resource Committee's authority in managing water resources nationwide, and an appointment of river basin organizations in three pilot river basins. It also required privatization of an irrigation system by having a private company take care of the irrigation operation system and having farmers in the irrigated share the cost occurring from water management (Chantawong 2002: 3-4). In drafting the policy, the National Water Resources Committee obtained technical assistance from consultants hired by the ADB and committee members who had close relationships with these ADB-hired consultants. Shortly, the direction of the National Policy on Water Resources in Thailand was determined by the ADB (Chantawong 2002: 3-4).

It can be concluded that legal framework for development that neo-liberal has argued, is more defending 'authoritarian in law' because it has no respect to legal pluralism over local community. Law was ordered and controlled by neo-liberal, and it should be implemented in accordance to neo-liberal favor. Transparency, participation, anti-corruption in principles of good governance has been driven to market assistance strategy. 'Rule of law' which is also part of governance reform, in reality it has been orchestrated systematically by using neo-institutionalist approach and proceduralism in the line of 'rule of neo-liberalism law'. Put simply, neo-liberalism mainstream on governance reform has clearly addressed just free market paradigm, and it is an idea of 'good governance free market assistance' exported by the North or neo-liberal proponents.

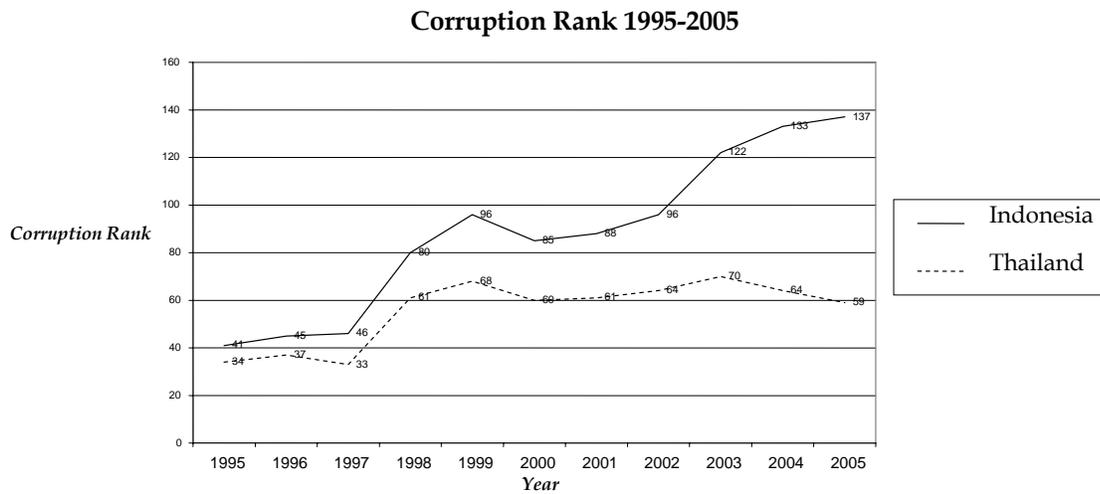
IV. Neo-liberalism Impact on Governance Reform:

A Reflection of Corruption and Its Rampant after Crisis

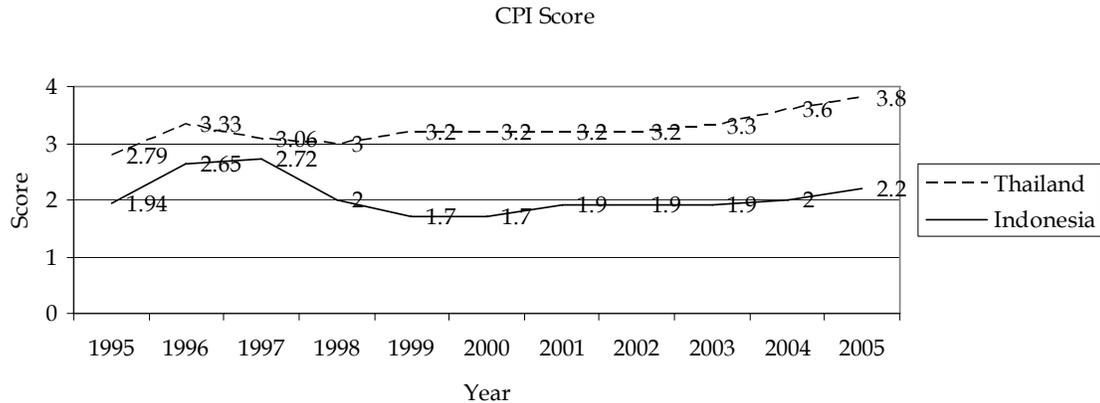
Does governance reform or good governance project reduce corruption? Or, whether good governance promotes, protects, and fulfills human rights? And what impact for Indonesian bureaucracy after implementing good governance?

Theoretically, governance reform which argued many strategies for developing better administration, proposed many ideal principles and defended legal guarantee, actually expected could reduce level of corruption and have more sensitive approach in responding human rights. But here, this section does not repeat discourse or theory on governance reform, but it exercises in more detail the impact of governance reform based on real situation, especially in criticizing implementation of 'good governance'.

The Berlin-based *Transparency International* since 1995 has been releasing international annual report on corruption. The first report on corruption perception index (CPI) reported that Indonesia ranks was the worst and Thailand was categorized the worst ten in the world most corrupt nations. And surprisingly, during and after economic crisis in mid's 1990s, the most corrupt position tends to be consistently worsening from year to year and time to time. It can be seen from CPI 1995-2005 made by Transparency International (2005) in table bellow.



CPI country rank's diagram shown above does not really measure real corruption, but it is a perception of it. But this diagram can be reflected to level of corruption in both countries, especially comparing with other countries in the world. This country rank is based on CPI Score surveyed by *Transparency International*, related to perceptions of the degree of corruption as seen by business people and country analysts and ranges between 10 (highly clean) and 0 (highly corrupt). In 2005, CPI for Thailand is 3.8, and Indonesia is 2.2, and both of them have been increasing 0.2 of previous year. But increasing rate for both are quite slow and low from year to year, especially there has been no significant number in increasing of CPI since economic crisis 1997 (see table below).



Importantly for assessing corruption data given by Transparency International above is by questioning why corruption ranks for Indonesia and Thailand are extremely worsening from year to year, especially after economic crises. And also, is there relationship between neo-liberalism mainstream and corruption in both countries.

Problems of corruption in Thailand and Indonesia have been around for a long time and its roots are deeply in culture and systematically in economic or politic.

In Thailand, after constitutional amendment 1997, there was bunch new mechanism in the fight corruption. The major improvements were establishment National Counter Corruption Commission and the Public Information Disclosure Act. Corruption analyst said that the major problem is the clash between Thai traditions and the new method in fighting corruption (Professor Chong, cited in Warsta 2004: 5, 13). In structural perspective, even since 1932, the year of democratic system has been laid down, all Thais have always depended on bureaucrats in every activities of their life. It is inevitable that corruption still

exists not only for small bribes by base echelon, but also gaining huge sum of money from abusing power in mega projects by politicians. Not far different with Indonesian experience, since authoritarian regime of *Soeharto* took in power in 1966-1967 and during his reign for 32 years, large corruptions have been spreading systematically in every sectors of government, judicial, political party and society. The corruption was also seen as major problem on economic collapse in 1997-1998, so then regime post *Soeharto* has put special program in the fight corruption. The difficulties to combat corruption in Indonesia are deepened by two things, first, resisting the corruptor oligarchy of status quo power in the past which is still influencing in the political position nowadays; and secondly, social system or culture of corruption which have been well accepted and practiced for long time in society.

A World Bank report stated that it has been approximately 20-30 % development loan stolen or shifted its allocation for paying informally or bribing to government official and politicians. They have shifted development loan for adding operational or compensation money (Schwartz 1999) It is also said by *Winters* in his testimony (2004). As mentioned before that economic crises was triggered by corruption problem in such countries, and in order to respond this crises, World Bank, ADB, IMF and other donor countries have been injecting 'good governance' to combat corruption.

In Asia, especially in Thailand and Indonesia post crises, pillars of 'good governance' to combat corruption have been introduced as an attached part of loan conditions. Its loan conditions can be easily found at its policy, report, and research documents (ADB 1999b; World Bank 1997; IMF 1997). They called it 'good governance through development assistance'. It means that governance reform should be applied in order to enhance economic management, institutional capacity, and effective environment for supporting liberal market

economy. In my words mentioned before in this paper is explaining similar thing, it is clearer defined as 'good governance free market assistance'. Shortly, it can be concluded in multilateral development banks perspectives that 'good governance' and free market should go hand in hand. *Kaufmann* said good governance was established in the frame of "market friendly strategy".⁶

When free market economy as ideological perspective in applying 'good governance', less corruption is expected to support market and greater investment. Beside that, 'good governance' in free market frame will tackle certain programs, mainly such as privatization state owned enterprises; legal and judicial reform in line with growth, deregulation, investment strategy, and poverty reduction.

Privatization state owned enterprises is major program done in promoting market based development. Here, the government should begin to address the requisites for reducing state intervention and promoting greater market competition. In this scheme, parliament should pass new legislation to develop better climate of investment. Unsurprisingly after it, under controlling financial institutions, Indonesian government has passed or revised Anti Monopoly Act, Consumer Protection Act, Anti-Corruption Act, Decentralization Act, etc. More detail at practical level, ADB has been giving loan scheme US\$ 1.5 billion for promoting better governance. Better governance mentioned by Bank in this context should be addressed to: (i) policy reforms that improved regulations of and corporate governance within the financial sector and support greater competition; (ii) a revision of anti-corruption law; (iii) institutional strengthening of the National Audit Agency; and (iv) research on public administration reform. Those projects, together with IMF and ADB, and several other donors, World

⁶ Daniel Kaufmann (World Bank Institute), statement on *Public Seminar Presentation at Partnership for Governance Reform*, Jakarta, on 8/5/2006.

Bank has assisted government in addressing financial restructuring and corporate governance issues through its Policy Reform Support Loan (PRSL) operations.

In addition, the rule of law enforcement as also a pillar of good governance to fight against corruption can be seen in projecting legal and judicial reform funded by international financial institutions. The road map of legal framework in enforcing it is also driven to market based development. ADB paper (1999a: 5) explained,

“.....Without effective enforcement, good laws, whatever their nature and orientation, are of little consequence. Weak enforcement generally implies that judges can be bought and thus court decision can be unpredictable. This has negative implication for investment, growth and poverty reduction. The implication is that judicial reform is a necessary as prerequisite and of foremost importance for sustained economic development.”

According to these designs in applying good governance, anti-corruption program is clearly only developed in the sense of market based development. Governance reform in this context has not been really combating corruption by criticizing those projects (privatization, labor flexibility and other legal reform), and its roots at structural and cultural level. Anti-corruption scenario was only addressed to safe loan scheme and attack misuse of power in implementing donor's agendas.

Beside the corruption problems, both countries are still facing serious problems on poverty and human rights violations. In the case of Indonesia, after the fall of Soeharto in 1998, gross violation of human rights happened in East Timor (1999)

and Aceh⁷, ethnic conflict in Ambon, Mollucas, Poso, land and natural resources conflict, labor rights, and many other instances. According to KontraS staff, there has been no significant change in the sense of human rights, even though the government established new mechanism, such as Human Rights court and Truth and Reconciliation Commission, and enacted numerous new legislation concerning on human rights, but in practice there has been a gap between mechanisms and its implementation (Cohen 2003; Cumaraswamy 2003). The government does not yet respond progressively in the case of disappearance people, Tanjung Priok case, Trisakti case, and other gross violation of human rights. There has been no concrete implementation of international human rights instruments, even though Indonesia ratified it, such as cases of urban poor community. As Legal Aid Office has reported that there 14,949 of poor people lost their jobs and their homes in Jakarta during December 2004 - October 2005 (LBH Jakarta 2005: 1-3). Even though the Indonesian government at various levels often pronounce good governance in many occasions, but its implementation does not really respond to human rights.⁸

In the case of Thailand is pretty similar with Indonesia. Southern Thailand case which has caused thousands people killed after constitutional reform, included hundreds victim of tortured and disappearance peoples. Ironically, human rights violations have been tremendously happened during *Thaksin* regime, not only in the case of Southern Thailand, but also human rights cases on migrants, land disputes, big project development such as gas pipeline in Songkhla (Sano et al 2006). In the case of "the war on drugs", *Thaksin Sinawatra* issued Order 29/2546 concerning on drug suppression policy. During implementation of this policy, there have been 2,000 people died within three months, the number of people or drug traders were shot dead either in the form of extrajudicial killings by state

⁷ In the case of Aceh, the conflict has been deescalating especially after Tsunami in 2004.

⁸ Nining Nurhaya (KontraS), interview on 10/5/2006.

officials, or what state agencies described as “pre-emptive killing” among drug traders (Cosananund 2003: 59-84).

Based on these explanations above, it seemed that governance reform or good governance project could not really reduce corruption as well as promote, protect, and fulfill human rights. The most serious absence under concept and projects of good governance is human rights issue. Human right is not governance issue, or in the World Bank perception better governance is seen as important factor contributing to better development outcomes, and better governance in this context does not say much on rights of the people (Kaufmaan, Kraay, Lobaton 1999; Kaufmann 2006). The Bank’s or donor project on ‘good governance’ was biased toward the promotion of market economies rather than human security or rights. Human rights have not been regarded as part of the concept as such, but rather as an issue that arises in relation to World Bank (or other donor) activities. Only to some extent have human rights been considered relevant to the Bank’s mandate (Koch 2000: 84-85). Like democracy, human rights are perceived as “internal affairs” which cannot be tackled by the Bank’s in order to implement governance reform and good governance.⁹ Even though the World Bank views that human rights are important to increase the government performance, such as the importance of civil liberties (Isham, Kaufmann, Pritchett 1997).

Good governance which has been introduced to answer problem on economic crisis actually could not work properly, particularly in the sense of developing better and proper administration at bureaucracy system. Even though the idea of participation, transparency and accountability has been promoted, but technocraticism and proceduralism has framed model of liberal democracy,

⁹ Daniel Kaufmann (World Bank Institute), statement on *Public Seminar Presentation at Partnership for Governance Reform*, Jakarta, on 8/5/2006.

which has influenced to the hijacked democracy. Democracy can be driven by oligarchy-capitalism or elites because they can buy an electoral democracy in order to influence decision making process. Participation under good governance has no meaning when the people have no strong position in decision making process. Here, substantial democracy involving people in controlling government was not drawn clearly by donors in progressing level of participation.¹⁰ Unsurprisingly again, because tokenism of participation, that many local government, included member of parliament, were easily doing collective corruption, legalizing laws against people rights, misusing public budget for traveling abroad, shopping, facilitating themselves. Uniquely, the major problem dealt with corruption, such as misuse of power or undemocratic authority, deprivation of rights, is not touched or criticized much by the donors.

It is not a surprise because rampant corruption can be seen at every level. In the case of Indonesia, whether in bureaucracy, political or judicial system, corruption is the day-to-day means to make money. After Decentralization Act 1999 enacted by parliament in Indonesia, it was massive and systematic corruption occurred, not only happened at central government, but also corruption was widespread and wildly decentralized in most of regional government, district government up to the lowest level of government at villages. Participation in corruption has uniquely enlarged or increased, in loan based projects as well as in autonomous projects without loan. The widespread fears of democracy would lead back to an era of chaos and confusion were vindicated after the fall of *Soeharto* in 1998 as the

¹⁰ In practical situation, participation in 'good governance' involves public or people to access information, to discuss and insert ideas in formulating decision, to be partner in implementing programs. But adversely, many participations found that there were manipulated by government in determining who is individual or group who should be involved or invited. If there is critical member of people coming, quite often the government excludes him/her. Even through democratic process and involving multi-stakeholders, but if the process is addressing to market or state based law, quite often also the process of multi-stakeholders discussion would be deadlock. A study of effectiveness the multi-stakeholder as attached part of 'good governance' found that prescribed law in participation process is often unable to meet agreement because law as source of conflict should be respected or recognized by all parties (Fahmi and Zakaria 2004).

new democratic politician failed to shake themselves free of either the entrenched bureaucratic and military remnants of the *Soeharto* era or the floods of new political entrepreneurs and gangster that now jostled for power, influence and patronage in the arena of parties and elections (Robinson, 2000; Hadiz, 2003). In this picture has shown corruption at stake, legalized, and uncontrolled.

In Thailand, as *Benedict Anderson* observed, predatory business systems found the new system of parliaments and parties that evolved through 1980s and ideal framework that enabled them to avoid dealing with official and bureaucrats, extending their controls and influence over rents through financial control of elections, politician and parties (in Robinson, 2004). More recently, there was demonstrated how Prime Minister *Thaksin Sinawatra* established a new and more highly concentrated form of money politics in the post crisis democracy in Thailand (Hewison 2003; Phongpaichit & Baker 2004). Even the effect of foreign debt is not highly burdening Thai government, but neo-liberalism has been influencing into economic foreign policy and particularly on governance reform. Like other countries in Latin America, Thailand practice dual economic strategies that try to profit from globalization while simultaneously protecting internal interest. This has been labeled “neo-liberal populism” or “globalized populism” (Phongpaichit & Baker 2004).

In terms of corruption, these situations are relevant in explaining why the CPI Score after enacting new legislation in 1999 in Indonesia and Thailand was extremely below of CPI Score in the early economic crisis 1996/1997. Even it is uneasy to assume close relationship between neo-liberalism mainstream and deepening of corruption, but at least neo-liberalism projects and its own agenda for strengthening market based development in both countries has not touched and tackled roots of corruption, and its kind of governance has shaped and worsened corruption practices. And dangerously, good governance has never

criticized state power relation disciplined by the Bank's, and it has also impacted to human rights problems. In conclusion, governance reform could not systematically reduce corruption or protect human rights as long as its reforms are designed for only satisfying the process of market liberalization.

V. Conclusion

Neo-liberalism is the major situation in controlling almost all of dimensions around the world, politics, economics, laws, and social-culture. It has been systematically influencing and forcing states or countries to follow their games. Governance reform, as one of the issues addressed in the frame of neo-liberalism has contributed in shaping domestic and regional policies. It has brought several ideas as principles or pillars of governance reform, especially drawn prominently on 'good governance'.

'Good governance' has tackled at first in responding to crises in Africa in the early 1980's, then waving to Asian crises in mid 1990's, included Thailand and Indonesia which have been deteriorated by multidimensional crises. Poor or bad governance which has been practiced for long time by authoritarian regimes in the South economically and politically triggered the North and donor countries to export their ideas on governance reform. Its legitimacy was so offensive used by the World Bank and other financial institution, especially in forcing free market economy development. Through establishing neo-institutionalism approach under legal framework development and proposing legal reform (included constitutional reform), neo-liberalist has injected governance programs which should be adopted adjusted by collapsed countries. Here, neo-liberalist was having a momentum and legitimate to impose policies.

Governance reform was designed and formed in the line of neo-liberalism mainstream, and there was no significant program in responding to most people needs. Governance mentioned by banks and donors has created prescriptive characteristic of 'good governance free market assistance' in the name of development assistance. The Bank's have prioritized and dictated what the recipient's countries should be done rather than how to assist or facilitate the countries to plan their own strategy to recover its economy.

In evaluating model of "good governance free market assistance", it uses corruption as an example whether this scheme can work properly in the fight against corruption. There were found positive correlation between deepening corruption score as well as rank and "good governance free market assistance" in the sense of exterminating deep participation, substantial democracy, human rights and progressive legal reform. Rights of the people have been deteriorated by leviathan of bureaucracy, uncontrolled politician, and many other corruptors in every level. Thailand and Indonesia experiences after crises and constitutional amendment have pretty similar situation and clearly shown those tremendous worsening situation. Predatory business in politics or collective and legalized corruptions are unsurprisingly unfolded, and these are the neo-liberalism impact on governance reform. In conclusion, the model of governance reform which introducing 'good governance' could be any longer persisted as long as governance just driven to satisfy free market paradigm under neo-liberalism discourses. And lastly, reconstruction the juxtaposition of state, market and civil society in governance reform should be put democratically in context of human dignity and sounded progressively for social-economic rights protections.

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