



UNIVERSITAS INDONESIA

**THE COMPARATIVE STUDY OF BLBI CASE DURING THE
NEW ORDER ERA AND CENTURY BANK CASE DURING
THE REFORM ERA (FROM SOCIETAL REACTION
AND LEGAL PROCESSING PERSPECTIVE)**

UNDERGRADUATE THESIS

**Submitted in partial fulfillment of the requirements for achieving
Bachelor's Degree in Social Science**

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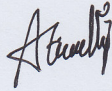
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PREFACE

As the freedom of expression prevails in the society, it is common to voice their mind about what the government should have done or simply do, to administer the law impartially. The scandals of Century Bank and BLBI are the highlight of how the law prevails in Indonesia. It is logic to question whether all the people of Indonesia are equal under the law or it has exception on people with power and money.

This research is the attempt to criticize the relationship between government and non-governmental actors in banking issue from perspective of societal reaction and legal process. The government has been chosen by the society to maintain justice and to achieve welfare for all citizens. The policy made should consider the public interest, not group interest. The chosen cases in this writing will indicate that public interest somehow is not always the cornerstone to decide public policy. Consequently, the government and non-governmental actors conduct such conspiracy known as corruption.

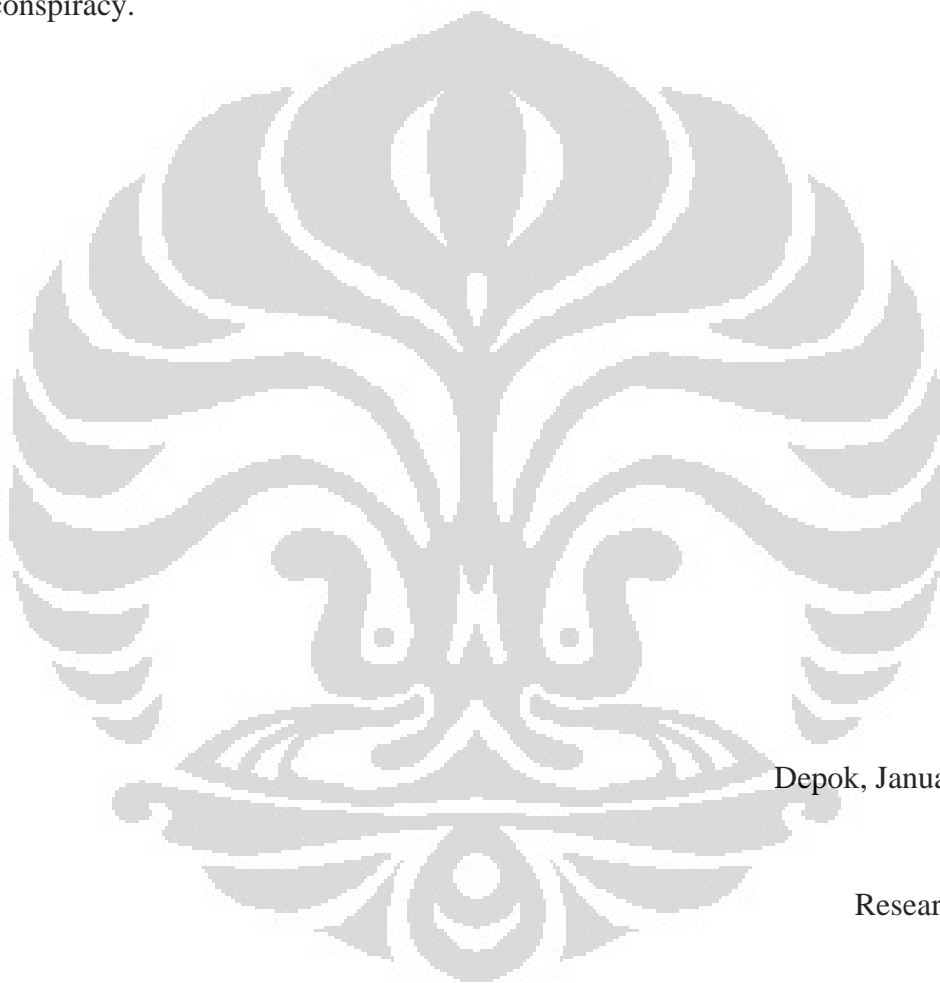
The societal reaction and legal process dimension toward corruptions occurred in the different regimes is the main theme of this research. Nevertheless, flaw and mistake are inevitable throughout the process. Hopefully, this research can serve insight and positive influence for those who need.

Depok, January 6 2012

Researcher

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The process of this research has involved many entities that form precise time in a certain place to eventually support and help me throughout the research. It is impossible to cite all the names and the contributions. To avoid such discourtesy, I would like to thank to The Creator, the creatures, and the creations for the conspiracy.



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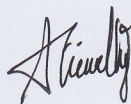
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ABSTRACT

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articles, 83 appendix)*

This study analyzes two banking scandals from different regimes. They are the case of BLBI during the New Order Era and Century Bank during the Reform Era under SBY regime, viewed from societal reaction and legal process perspective by Clinard and Quinney. Both cases are known as huge corruption cases in Indonesia, only occurred in the different government. This research does not explain the causes nor offering a solution for the scandals. The perspective will be used to see in what extent both cases conform with the preposition. By using documents study, the research indicates that somehow political background has influence on the differences of societal reaction and legal process toward both cases.

Key words : societal reaction, BLBI, Century Bank, The New Order, The Reform Era, legal process.

ABSTRAK

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(Depok, 2011, x + 66 halaman; 4 halaman Daftar Pustaka : 30 buku, 10 jurnal, 13 artikel, 83 lampiran)

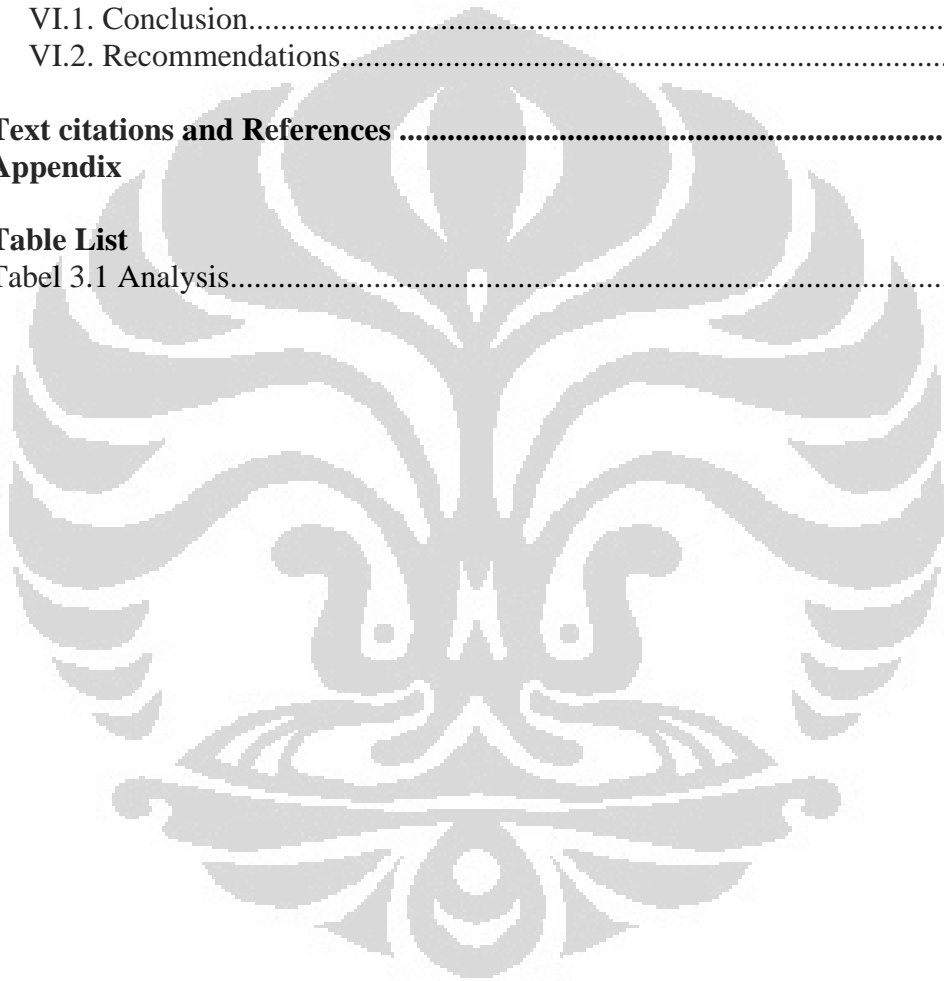
Studi ini menganalisis dua kasus perbankan dari masa pemerintahan yang berbeda, yaitu kasus BLBI di era Orde Baru dan Bank Century di era Reformasi dibawah pemerintahan SBY, dilihat dari perspektif reaksi sosial dan proses hukum oleh Clinard dan Quinney. Kedua kasus ini terkenal sebagai kasus korupsi besar, namun terjadi di rezim yang berbeda. Penelitian ini tidak menjelaskan tentang penyebab atau menawarkan solusi terhadap keduanya. Dimensi oleh Clinard dan Quinney akan digunakan untuk melihat sejauh mana kedua kasus sesuai dengan preposisi tersebut. Dengan menggunakan studi dokumen, penelitian ini menunjukkan bahwa latar belakang politik mempengaruhi perbedaan reaksi sosial dan proses hukum terhadap kedua kasus diatas.

Kata kunci: reaksi sosial, BLBI, Century Bank, Orde Baru, Era Reformasi, proses hukum.

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CHAPTER I

INTRODUCTION

I.1 Background

There have been two phenomenal governmental regimes in the political history of Indonesia which related to the phenomenon of corruption, collusion, and nepotism. They are New Order regime of Suharto and the regime of SBY (Susilo Bambang Yudhoyono) in the Reform Era. The two presidents governed for more than one period and both promised to build anti-corruption nation.

Suharto ruled the New Order regime for approximately 32 years, with the support of Golongan Karya as the dominant political party that won every period of presidential election, before the fall of his regime in 1998. Suharto once promised the public, as he ruled the country, to eradicate the corruption. One of his popular political statements is “Not only a good government, but also a clean government”. The reality showed the opposite fettle. He abdicated his 32 years reign leaving the nation with rampant corruption, collusion and nepotism (*KKN*). The Cendana family (popular family name referring to Suharto and his family) often associated with the phenomena of corruption, collusion, and nepotism (Robertson-Snape, 1999).

Corruption Perception Index 1998 by Transparency International showed that Indonesia ranked 80 out of 85 other countries. This concluded that based on the survey, Indonesia was perceived as the most corrupt country. One of the surveys used by Transparency International was *Hong Kong-based Political and Economic Risk Consultancy* in 1997. This survey found out that Indonesia was the most corrupt country in Asia. The conclusion of the survey that involved 280 foreigners was, a country assumed as a corrupt country if it is necessary for a company to offer bribery and other inducements to bureaucrats, politicians, or government officials to achieve official approval to a specific goal. Further evidence is the survey conducted in February 1998 by the Centre for the Study of Development and Democracy in Jakarta which involved 1000 respondents. From the total number, 78% Indonesians polled that bribery was a necessity in dealing

with government offices; for example to get birth certificate, driving license, or citizen identity card (Robertson-Snape, 1999).

The corruption committed in the New Order regime was classified as petty corruption that went through from the smallest towns to the highest echelons of the criminal justice system. Ironically, although the standard of living for Indonesian bureaucrats has been improved under this regime, the incidence of this sort of widespread petty corruption was still generally explained by the low wage rates of Indonesia's civil servants. In the year of 1990, Hal Hill asserted that civil service wages could only cover one third of an official's household needs. This triggered them to do corruption due to the low wages (Robertson-Snape, 1999).

The government under President SBY in the Reform Era that has been ruling for almost two political periods (2004-2009 and 2009-2014), the corruption cases are popular spreading through media and becoming the public attention. SBY as the President of Indonesia overcame the issue by prevailing anti-corruption laws, UU RI No. 20 Tahun 2001 as the amendment of UU RI No. 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi (KPK, 2011) and UU No. 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi as the basic law for anti-corruption commission, *Komisi Pemberantasan Korupsi* (KPK, 2011). Beside the laws regarding the corruption problem, he also supported a special court for corruption cases, Corruption High Court (*Pengadilan Tindak Pidana Korupsi*). This special court is in charge of investigating and deciding corruption deeds that are accused by KPK based on Article 53 UU No. 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi. Based on the anti-corruption laws, there are many big chances to punish the corruptor with enough severe punishments, but the reality is, the verdict is made light or even the charges are dropped (Yanto, 2010)

Indonesia rated 2.8 in Corruption Perception Index 2010. It shows that the rate was the same with the previous year, number five in Asia and number 110 out of 178 of the assumed most corrupt countries in the world (Lubis, 2010). This indicated that social perception about corruption rate in Indonesia was not better. However, the effort of the government of SBY is in need of judgment and

reconsideration, considering that the anti-corruption movement was stated clearly as his political plan.

The concept of legal process and societal reaction, which are going to be explained further in the next chapter, can be seen in the both regimes through the bailout scandals of Century Bank and BLBI. The Bank of Indonesia gained a lot of public attention due to financial support to the already bankrupt private banks to keep their liquidity ratio on balance. This liquidity support was conducted due to the economic crisis in Indonesia and Asia regionally and also based on IMF's policy (Saleh, 2008). This BLBI case in the New Order era is the evidence that many entrepreneurs in Indonesia ran unhealthy business and the impact is totally devastating until now for the state's financial condition. In 1997, bank interest reached 300%. This situation resulted many banks were running out of fresh money. This economic instability triggered many people withdrawing their money (rush). The impact was, those banks asked the Bank of Indonesia for bailout. It is not the end of the economic disaster. In 1999, based on BPK report, it was revealing that there were such banking offenses regarding credit lending that went over the maximum limit and other collateral offenses. The worse fact is, the credit was misused; for example, to fund another business, instead of to maintain the collapse bank. Because of the misusing of BI dispensation in auditing the banks incorrectly, there were some banks which could not pay back the credit. Those findings also caused BPKP (*Badan Pemeriksa Keuangan Perbankan*) conducted auditing in the year of 2000. The data found that there were indeed offenses in distributing BLBI by BI and the misuse of BLBI by the private banks (Yuntho & Rahayu, 2006). It is surprising why the offenses were found and responded both by mass media and law enforcement 2 years after the event and after the fall of the New Order regime. It has been a pains-taking ongoing process for BI officials, the Minister of Finance, and other related suspects. Syahril Sabirin, the governor of Bank Indonesia has been convicted by the court (vivanews.com, 2009). This economic tragedy is indeed the blatant indication of abuse of power.

Another bailout scandal later occurred also in the Reform Era, under SBY regime. The notorious case was called as the Century Bank scandal. The case is about suspicious bailout by the Bank of Indonesia for Century Bank (Now,

Mutiara Bank). It was started from the inability of Century Bank to withdraw Rp 2 trillion of Budi Sampoerna's money. On November 20th 2008, the Bank of Indonesia delivered a mail to the Minister of Finance related the establishment of failed bank status on Century Bank and stated that the bank was in need of further action. As the Head of *Komite Stabilitas Sektor Keuangan*, Sri Mulyani held a meeting to discuss this case. In July 2009, KPK started to ask permission to audit the bank. During the process of the case, Century Bank kept receiving the bailout, until on August 27th 2009, legislative called in the current Minister of Finance, Sri Mulyani, the Bank of Indonesia official and the insurance institution to explain the increased bailout for the Century Bank approximately Rp 6,7 trillion (TAUFIK, 2009). In the following year, legislative legitimized *Panitia Khusus Century* or Special Committee of Century to encounter and to get the explanation of the tangled case (Noorastuti & Kusumadewi, 2009). A year after, the special committee came up with C option, chosen by 325 parliamentary members, from total 537 present members, that cited the process of giving the bailout for Century Bank is questionable (ANTARAnews, 2010).

The Century Bank and the BLBI case are similar. Both never seem finished until now and still on the process. There are several indications of white-collar crimes from both cases. Nevertheless, both cases are the implementations of public policy in dealing with bailout issue. The difference is, BLBI case occurred when regionally there was an economic crisis and many banks got the same liquidity problem, while Century Bank scandal occurred by internal management problem.

The indications of white-collar crimes in the two regimes from both cases can be compared from the perspective of legal process and societal reaction. Based on what Clinard and Quinney stated as theoretical dimensions for a typology of criminal behaviour, types of crimes are constructed as systems of behaviour. One of the five dimensions is societal reaction and legal processing, when behaviours are defined by vary in the kind and amount of public reaction and from society in general. Societal reactions range from the degree of approval or disapproval to the official sanctioning procedures. Each type of criminal behaviour is responded by different policies of punishment and treatment. These

societal reactions are affected by the visibility of the offense and the degree to which the criminal behaviour corresponds to the interests of the power structure of society. Furthermore, types of criminal behaviour vary in the ways that they are processed through the legal system. Patterns of detection, arrest, prosecution, conviction, sentencing, and punishment exist for each type of criminal behaviour (Clinard & Quinney, 1972). This constructed definition also postulated by Richard Jenkins that culture signifies a repertoire of meaningful behaviour (Jenkins, 1998).

To explain the problems with legal process and societal reaction perspective, first thing to determine is the offenses. From BLBI case, the offenses regarding the misuse of the bailout by the receiving banks and reckless distributing the bailout by the Bank of Indonesia occurred tacitly. The media did not react until the audit report by BPK in 1999, so did the law enforcement and the legal process. The spreading news about BLBI scandal and other reactions eventually happened after the fall of the New Order regime. The different reaction occurred in the SBY regime, the spreading news regarding the Century Bank scandal by the media was started because some Century Bank's customers complained about withdrawing problem that led to the bigger picture as explained before, internal management issue and the unexplainable increased total bailout by the Bank of Indonesia. Later, the law enforcement reacted to process the case legally and legislative were proactive to establish special committee as their political reaction.

As a white-collar crime issue, the offenses from both cases were committed by two actors, the private actors and the government itself. This type of crime is more harmful than conventional crimes. The victims are unnecessarily aware of the victimization. If people do not know, they will not make problem of it. For example, corruption does not harm the people directly, but it is more harmful for financial condition of the state which will indirectly have an impact for the public. The legal system cannot control the corruption because the criminal justice system in general has been polluted by corrupt governments. The legal process of corruption, collusion, and nepotism encounters the obstacle from the corrupt law enforcement (Mustofa, 2010).

Since the related crimes were conducted by organization, it is perceivable to correlate with the concept of organizational crime. According to Weber (1978), actions by organization consists of two forms, (1) as an action of the staff that's legitimized by the executive to achieve organizational order; (2) an action of the members directed by the staff. An organization has hierarchy, social roles, and division of labor to achieve a certain goal that's included in such norms or laws. Corporation is one of organization which the main activity is business to achieve financial profit. State is also an organization consists of legislative, judicative, and executive institution. The government as the executive can also be called as beaurocracy (Mustofa, 2010). Slapper and Tombs (1999) categorized crimes conducted by corporation in four types : (1) financial crimes; (2) crimes against consumers; (3) crimes against the workers; (4) environmental crimes. Sutherland noted that crimes by corporation committed in organized way formally or informally (Mustofa, 2010). Referring to the cases, it is perceptible that the crimes committed by the banks are considered as corporate crime, because those banks misappropriated the consumer's money and harmed the financial condition of the state.

The issue of white-collar crimes above can also be related to the concept of occupational crime. The difference from the earlier concept, occupational crimes consist of offenses committed by individuals for themselves in the course of their occupations and the offenses of employees against their employers (Clinard & Quinney, 1972). What government and the corporate did in the both cases is perceived as occupational crime based on the concept.

The societal reaction from public and the legal process toward occupational crimes differ from other crimes not only in their unique forms of activity but also in the toleration and support they receive from the public. This toleration from the public of occupational crimes caused by the fact that occupational crimes are usually more complex and often diffused over a longer period of time than the case of ordinary crimes. The other reason is about the different type of publicity about occupational crimes and ordinary crimes. Also in the criminal justice system, the laws directed at the offenders of occupational

crimes are more lenient due to the high social status of them (Clinard & Quinney, 1972).

I.2 Problem Statement

As what has been explained in the background, there are some indications of white-collar crime that occurred in the different regimes regarding the bailout scandal of BLBI on the New Order regime and the Century Bank case on the Reform era under the SBY regime. The same scandals in the different regime may cause the differences in societal reaction and legal process due to the different characteristic of the running government. The BLBI case under the New Order era was firstly brought before the court after the downfall of the regime. It is something that can be questioned, whether the similar legal process would probably occur in the Century Bank scandal on the SBY regime or otherwise.

The New Order regime under President Suharto who held power for 32 years had particular political policies that can be compared with political policies of the SBY regime in the Reform Era who ruled for almost two periods. This comparison will later give tentative explanation about the societal reaction and legal process of the bailout scandals. Both bailout scandals are the example of public policies that have been misappropriated by the government officials and the private actors in Indonesia.

I.3 Research Question

To what extent do the societal reaction and legal process toward the Century Bank case under the SBY regime conformed with the preposition of Clinard and Quinney compared with the BLBI case during the New Order regime?

I.4 Purpose of Study

This comparative case study is aimed to give tentative explanation about societal reaction and legal process toward the similar bailout scandals in the different regimes in Indonesia. To compare the both aspects, the BLBI case from

the New Order regime and the Century Bank case are chosen as they have similarity in particular theme.

I.5 Significances of Research

In this research, there are two significances intended in academic and also in practical scope.

a. Academic

This research can contribute findings and considerations to develop criminology study about public policy, corruption, and study about sociology of law related to white-collar crime.

b. Practical

- This research will be able to be considered as the effort in the anti-corruption movement
- This research can be used as the supporting opinion in the various discussion related to white-collar crime.

CHAPTER II

REVIEW OF THE LITERATURES AND THEORETICAL FRAMEWORK

II.1 White-Collar Crime

The term of white-collar crime was introduced by Edwin Sutherland. In his time, he was questioning the studies of crime and justice. He thought those studies were invalid conceptually and too focused on traditional crimes. The current theories in explaining how the laws created, why the laws disobeyed, how and by whom the laws prevailed, did not consistently match with criminal behaviour because of the biased sample about the crimes. In that time, crimes were assumed as the result of poverty, but wealthy people did crimes also (Simpson & Weisburd, 2009). This matter encouraged Sutherland in 1939 to bring the issue to American Sociological Association and defining white-collar crime as the crime committed by respectable people and with high social status in their occupations. Nevertheless, this definition is not clear enough to limit how 'high social status' or 'respectability' are to be defined. The study about white-collar crime then became more developing and although this type of crime is often associated with the crimes by senior management and executives, the term is also used to describe all non-manual workers, and any specific form of crimes related to occupations is likely to contain offenders from a wide spectrum of employment levels (Croall, 2001). In 1970s there came the definition of white-collar criminal which is not limited to people with high social status, but this crime is also committed by people with different background in their occupation scope.

Another literature stated that there were many ways in defining this white-collar crime. If Sutherland defined it through offender perspective, in another definitions focused more in the crime per se rather than the criminal. Wheeler et al. (1982:642) defined white-collar crime as the economic offenses committed by using the combination of fraud, deception, or collusion (see also Shapiro 1990; Weisburd and Waring 2001). The offenses including antitrust offenses, securities fraud, mail and wire fraud, false claim and statement, credit and lending

institution fraud, bank embezzlement, income tax fraud, and bribery (Agnew, Piquero, & Cullen, 2009).

There are criminologists who distinguish individual crime with organizational crime. Organizational crime considered as white-collar crime and differed by the fact that the crime committed in achieving the organizational goal and happens in the organizational context. Clinard and Quinney (1973:189) defined corporate crime as the crime committed by the employer for the corporation and the crimes of the corporation itself. The examples are price fixing, financial fraud, unsafe work site, environmental pollution, and selling dangerous products. Some criminologists focus on the broad array of organization, including the government agencies, nonprofit agencies, and private business (e.g., Holtfreter 2005), but most limit focused on the corporations. Between those criminologists, there are some who limit the focus to violation of the criminal law, when others argue that violations of the civil and administrative should be also considered (Agnew, Piquero, & Cullen, 2009).

Strains related to white-collar crime are economic strain and status-related strain, including occupational strain, because generally white-collar crime associated with occupation. The general strain theory predicts individuals or corporations tend to commit white-collar crime when they find problem in achieving their economic goals legally. Some studies found that the motives of committing white-collar crime, and some white-collar criminals stated that they were motivated by their desire to gain financial profit, although they often confessed that the deed was motivated by the desire to prevent financial loss and suffer it might bring (Agnew, Piquero, & Cullen, 2009). This means, corruption, embezzlement, bribery, fraud, and another related crimes are influenced by the urge to enrich the offenders financially that the result affects their self-acceptance by the society. The impediment of the economic goal achieving can explain why individuals from high social status commit white-collar crime. Although they have high economic status, they also want to achieve economic goal beyond their limit. (Agnew, Piquero, & Cullen, 2009). They want to achieve what they have not had yet. This can explain also that corruption or abuse of authority is not because they want to cover their basic needs, but the urge to achieve a goal that is

irrelevant with the ability. As some researchers explained, some corporations or corporate employees tend to set their unrealistic economic goal (greed) (Clinard 1983; Clinard and Yeager 1980; Coleman 1987; Shover and Wright 2001:255–256; Simpson and Koper 1997; Vaughn 1982). A corporation can also be impeded in achieving economic goal in legal way and because of that committing such crime. The impediments are economic recession, business competition, the lack of capital or resources, technological change, laws change, and other related problems related to internal corporation (Baucus and Near 1991; Croall 1989; Probst 2005; Simpson 1986; Simpson and Koper 1997; Simpson et al. 1998; Vaughan 1982) (Agnew, Piquero, & Cullen, 2009).

II.2 Corruption as The Political White-Collar Crime

In the book *State Crime: Governments, Violence, and Corruption* by Penny Green dan Tony Ward, citing Passas (1990) in developing anomie theory by Merton that criminal behaviour in organizational level results from a coincidence of pressure for goal attainment, availability and perceived attractiveness of illegitimate means, and an absence or weakness of social control mechanisms (Green & Ward, 2004). The opportunity in doing white-collar crime is caused by the absence of control system as the pressure to do responsibility and transparency in a corporation or occupation in the corporation enables the abuse of authority.

Political and administrative corruption is the form of political white-collar crime committed by individuals against the state. The widely used definition to describe corruption is the abuse of public office to achieve vested interest. That definition is correct in defining such individual deviance. Other corrupt deeds are either committed in pursuit of the organizational goals of state agencies, or are tolerated for organizational reasons. Such crimes are classified as state crime. (Green & Ward, 2004). For example, a public policy made actually based on the interest of some groups, not the public, as the target.

What distinguishes corruption from other form of official deviance is that it involves clandestine exchange such as bribery of an exchange of ‘favors’ between state and non-state actors, including embezzlement as the informal

incentive of an official position (Green & Ward, 2004). In organizational context, corporation or the state, corruption can be assumed as organizational deviance where the corruption committed as the mean to pursuit organizational goal, as the condonation of corruption serves organizational goal, and the third, the pursuit of profit through corruption itself becomes an organizational goal (Green & Ward, 2004). When the crime committed by government officials in public office scope it is called as corruption, but when it is done in private sector the crime perceived as occupational crime. As Clinnard and Quinney defined, occupational crime is the offense committed by individuals for themselves in the course of their occupations and the offenses of employees against their employers (Clinnard & Quinney, 1972).

Regarding the crimes committed by high social status individuals, how they overcome their conventional honor is something interesting. Benson (1985) as cited in *Criminological Theory* stated with his statement that those individuals deny their guilt. He also added that they learnt “rationalization” or the process to justify their crimes in a certain situation. For them, robbing someone in the street is a crime and morally unacceptable, but robbing consumer by fixing the price is only business everyone does in industry. This view can be applied in the political sphere, where the corruptors find any justification to condone the corrupt deed. In the same literature, Donald Cressey (1950,1953) used the view of Sutherland on “rationalization” or definitions of situation favorable to crime in his classic study in bank embezzlement. Based on interviews with incarcerated embezzlers, Cressey argued that three factors intersected to enable respectable individuals to take other people’s money or known as the fraud triangle (Jonson & Geis, 2010, p. 225). He developed integrated theory that counts motivation, opportunity, and decision making (Lilly, Cullen, & Ball, 2011). The fraud triangle can also explain the corruptions occur in a country. Motivation might be based on political interest, for example, to win an election or to get a certain position in the governmental office. It needs more than just a motivation, but also opportunity to get pursuit the goal. The opportunity is somehow provided by the governmental officer itself. As explained in the previous lines that corruption involves clandestine exchange. For this case, the bribery could occur. Beside motivation and opportunity, to complete

the fraud triangle it needs the decision making. The process of making a decision is related with the term of discretion. It is not only found in political sphere, but also in the criminal justice system. As in written on the book *Controlling Corruption* by Klitgaard that corruption occurs when monopoly plus discretion and an absence of accountability (Klitgaard, 1991).

From the explanation above, there one thing to be made clear that corruption can be perceived as occupational crime, because corruption requires an office or an occupation under the laws. The occupation contains power and authority which enable individuals to commit such crime. Dominantly, this occupational factor causes the offenders are hard to track by laws compared to other crimes offenders, because those individuals hold position that allow them to make discretion. With that position, the corruption can be covered by the policy to make it appeared legal, so the laws perceive the action as the function of the legal position (Nitibaskara, 2006).

The same view was argued by James C. Scott (1969) in explaining the relationship between political machine and corruption as the crucial component. The machine is not what one might think about an ideological values held by the members, or the superhuman qualities of the leaders, but rather like a nonideological organization interested more in securing and holding office and power for its leaders and distributing income to those who run and work for it. This is like a business, where the members are the stakeholders and dividends are paid based on the contribution of the capital. The corruption which is part of the machine does not work like a random greedy sucker, but a finely organized and articulated one to maximize its electoral support (Scott, 2007). This influences how public evaluate the government performance, and how the government is trusted by society. As postulated by Christopher J. Anderson and Yuliya V. Tverdova (2003), political trust or system support is an important indicator of a healthy civic and democratic political society. The research shows that corruption phenomena in a country has effect on the attitude of people toward the government. Citizens in countries with higher levels of corruption express more negative evaluations of the performance of the political system and exhibit lower levels of trust in civil servant (Anderson & Tverdova, 2003). It is logic to consider

that corruption committed in public offices leads to greater inequality, and it affects the level of trust from society to the government. The notion is supported by Bo Rothstein and Eric M. Uslaner (2005) in *World Politics* journal, that corruption exacerbates inequality and mistrust and lead to social conflicts that thwart against universalistic social welfare policies (Rothstein & Uslaner, 2005).

II.3 Societal Reaction and Legal Process against Corruption

In order to savvy the whole picture of crime, the crime as a social problem, and the impact to society, there is an importance to consider 'square of crime', in which the victim, the criminal, the reaction of the formal agencies, and the public reaction interacted each other to produce crime as a social problem (Walklate, 2005). This concept can help to understand why crimes occurs, defined, and reacted differently.

Ezzat E Fattah (1997), as cited in *Tegakkan Hukum Gunakan Hukum* by Tb Ronny R Nitibaskara, called those individuals as powerful criminals and criminals in power. There are two categories of them, the untouchable, the people who are above the laws like Hitler or Idi Amin, and the second one is unreachable, those who have enough high power formally or informally which make them hard to be reached by the laws, except with great difficulty and in exceptional circumstances. Those are what WJ Chambliss (1968) named as state-organized crime, acts defined by law as and committed by state officials in the pursuit of their jobs as representative of the state. In this term, he did not include the crimes committed for vested interest, or small group with only materialistic orientation. To be included as state-organized crime, such corruption is based on the aim to achieve broaden goal, for example political winning. Tb Ronny R Nitibaskara (2006) has his own term called super white-collar crime (Nitibaskara, 2006).

Muladi (1992) proposed seven characteristics of those respectable individuals (Nitibaskara, 2006),

- 1) Low visibility
- 2) Complexity
- 3) Diffusion of responsibility

- 4) Diffusion of victimization
- 5) Hindrance in prevailing the laws
- 6) Ambiguous laws; and
- 7) The vague of the criminal status.

Those characteristic are used to determine super white-collar crime.

The book *Kleptokrasi*, Muhammad Mustofa (2010) used the term beaurocratic occupational crime to describe such crime committed by government officials who have formal function to serve the society. The crime is popular known as corruption. There is abuse of authority in corrupt activities associated with the position of public office committed by beaurocrates to achieve personal economic gain (Mustofa, 2010).

The theoretical framework used in this research is the explanation about societal reaction and legal process by Clinard and Quinney. Corruption as occupational crime is not only responded by formal reaction or legal process, but also by the society in general. Politicians and government employees commit various occupational of offenses, including direct misappropriation of public funds or the illegal acquisition of these funds through padded payrolls, or monetary payments from appointees. Their illegal activities are more subtle and influence the visibility of the crimes. Those individuals may gain financially by furnishing favors to business firms, such illegal commissions on public contract issuance of fraudulent licenses or certificate, and tax exemption or lower tax evaluations. However, Clinard and Quinney stated in occupational crimes, societal reaction toward the offender has been traditionally mild. Official penalties have been lenient and often restricted to the sanctions given by the professional associations. Public reaction is becoming less tolerant (Clinard & Quinney, 1972). These prepositions are later proved whether they prevail in the chosen cases or not by analyzing the data.

The subtlety of the offenses affects on the visibility by the society. Since the nature of white-collar crime is the diffusion of victimization, it does not create resentment from society as other crimes do, such Bom Bali, riot in Sampit, or street crime like robbery. This also affects on the publicity of the crime. Societal reaction can be seen as mass media publication, opinions by experts,

demonstration, internal process of the occupational organization, or process by legislatives (Mustofa, 2010). These forms of societal reaction show the public concern. Clinard and Quinney stated that laws directed at those offenders are lenient because of the high social status of them. In the case of crime by government, the public reaction is not usually strong to begin with, because the public has been led to believe that whatever the government does is right and must by definition be legal. It is difficult for society to form intelligent opinion about governmental crime, moreover, it is more difficult to prove the crime. First, it is because the public gets the censored news or a particular conception of reality is presented by the mass media. Second, it is the way in which the government forces its consensus on the public. The rulers can create a certain conception of reality presented to the public. Those who rule also continue their policies even when public rises against them. Those authority actions influence the legal process. The charges are dropped; the defendants are cleared, or may be dismissed from his former responsibilities. Clinard and Quinney also noted that what government fails to regulate legally is sometimes people react by morally questioning the acts of the government. When the law ceases to be and by the people, and when it is a primary tool of a government beyond the people, the only resource opens to the public is morality (Clinard & Quinney, 1972). The difficulty in sentencing white-collar criminals by processing legally is also because the offenders do not present a physical threat to society although the economic crimes committed clearly injured individuals (Podgor, 2007). The visibility of the crime, therefore, generates public opinions and how the society reacts to the crime.

II.3.1 Social Reaction, Societal Reaction, and Media as Public

Control of Government

The reaction itself can be defined as an action conducted by individuals to respond or reciprocate an external provocation or stimulus. Social reactions are divided into three types, formal, informal, and non-formal social reaction (Mustofa, 2007).

1) Formal social reaction is any patterned behaviour of public institutions

established by the state formally to overcome crimes, such as institutions in the criminal justice system (police departments, law court, and prison).

2) Informal reaction is any behaviour of official institutions in the criminal justice system against the offenders, but does not necessarily refer to the prevail laws. The example of this type is discretion of a police officer to divert an underage drug user to the rehabilitation institution instead of the prison.

3) Non-formal reaction is any behaviour of society which is conducted directly against the offender or the crime itself without the involvement of criminal justice process.

Societal reaction by Clinard and Quinney (1972) can be interpreted as non-formal reaction in social reaction types explained by Muhammad Mustofa (2007). The argument for this is that Clinard and Quinney explained social reactions range from the degree of approval and disapproval to the official sanctioning procedures, which means that societal reaction per se is purely the behaviours of the society toward crimes and differed from formal reaction or legal processing.

Richard Quinney explained in the Social Reality of Crime, that responses to crime from the perspective of individual are influenced by knowledge about crime and also perceptions about the understanding of crime. Those responses are including all the reactions toward criminal behaviour, law enforcement, and everything related to the crime (Quinney, 1970). Therefore, it is important to know what matters affect the knowledge and perception of an individual about crime. This is explained in the following paragraphs.

Mass media publication is a blatant extraction of societal reaction. Therefore, the existence of information has influence on criminal activities, including corruption. As described in International journal, Corruption and the Role of Information, that if citizens acquire more access to the internet, they should be more aware about what both government and private business do. The increase of transparency should be expected to lower corruption levels, since it can discourage the corrupt activities. Therefore, it is perceivable that increased access to information results in fewer offense by government. Increased exposure to information emerges a more open and free society. The reseach has shown, that

condition decreases the level of corruption. Referring to Schroth and Sharma (2003), the journal argued that technology and legal means can be used to reduce corruption, for example the access to internet and mobile technology can be deployed to distribute the news concerning corrupt activities. Tanzi (1998), as cited in the journal, underlines the transparency of rules, process, and laws as the important weapons in anti-corruption movement (DiRienzo, Das, Cort, & Jr, 2007).

The influence of media accessibility as a public control of the government, especially on corrupt activities has been justified in the journal by Rajib N. Sanyal and Subarna K. Samanta (2002), stated that monitoring groups such as the Berlin-based Transparency International, through its annual rankings draw negative media attention to corrupt nations. When democratic practices have spread, there is a greater demand of transparency in the issuing contracts and the media have reported the transgressions of the public officials. The writing has also noted that overseas banks were forced to follow the laws when dealing with troublesome accounts – (Sanyal & Samanta, 2002). Media is a symbol of openness and transparency of a government. If media is controlled by official regulation by the state, the accountability of the running government is questionable. As quoted from The World Bank (1999) in Morris Szeftel's writing (2000), that 'internal checks and balances within government need to be stronger', and 'anti-corruption laws must be adequately enforced, the key "watchdog" institutions made strong and sufficiently funded, and corrupt practices visibly punished". Also, non-state institutions and organisations, such as an independent media, are encouraged and funded, because to achieve a civil society, people needs to be better organized and equipped to control government and create transparency and accountability (Szeftel, 2000).

Corruption in Indonesia has been somehow emerged by the inefficiency in implementing transparency and accountability for society. Jon S. T. Quah (1999) cited that the financial crises in Thailand, South Korea, Malaysia, and Indonesia in 1997 have underlined the problems of corruption, cronyism and nepotism, and there's the need for more accountability and transparency in government and banking operations in these countries (Quah, 1999).

Ironically, the presence of media as public control of government and also the symbol of transparency is also what Barrie Zwicker (2006) called in his book as ‘..the fixtures of Invisible Government’. Invisible Government is the term to call people with powerful vested interest of money, the military, the corporations and intelligence agencies and own media to create such a propaganda about everything they want to control public opinions (Zwicker, 2006). It is logic to contend that when a government can not control the access of information to perpetuate the transgression between people with glory and people with the golds, then controlling the media per se is the best way to preserve the business.

II.3.2 The Laws and Legal Processing

Legal processing is part of formal social reaction which is used as a tool to analyze the chosen cases in this research. A legal process toward a certain crime is based on the laws exists in the society. Prassel (1979) in his book *Criminal Law, Justice, and Society*, argued that laws are created to be a social control in the society, in a multitude of ways to accomplish variety of purpose. Between different societies, the laws exist in both groups can be different, since laws are the implementation of societal goals, reflecting cultures owned by each society. Jerome Hall defined law distinguished by five important elements:

- 1) Origin in a center of power
- 2) Coverage of the entire society
- 3) Organization as a system
- 4) Formal adjudication
- 5) Specialized enforcement agents

Law rests upon structured authority and power. In this modern term, it can mean a state or a running government which creates the laws. The interpretation power and authority, however, does not substantially about government, because it can embody in religion, economics, or even an ideology, such as capitalism. Practically at present, the authorized party in a national context which officially creates the laws is government. Laws and government become intertwined, but it does not mean that the laws are effective as social control (Prassel, 1979). To

implement such laws, there are various legal system and those depend on the culture of the society.

The relationship between law and government or politics is not something new. The administration of criminal justice, however, is rather political than impartial, because the process is engaged in the scope of formulating and administrating the public policies. The choices in making policies must be made in various consideration among the rights of defendant, protection of people and property, justice, and freedom. The decision is also influenced politically and the relevant power of competing elites. Consequently, the administration of criminal justice is complicated and tends to have no public support. A wide range of discretionary powers are owned by legal actors during the process of engaging criminal justice. They decide who will be arrested, what charges to prosecute, and the disposition of the cases. Beside the general influence of politics in administrating the justice and legal system, political parties have been long recognized to have a heavy role in the recruitment of judges, prosecutors, and other legal officers. The intersection between law, administration, and politics results in a system in which officials who concern about political process make discretions at the legal process like arresting, charging, convicting, and sentencing the defendants. It is said that ciminal prosecutions provide opportunities for the political system to affect judicial decisions and the process to furnish favors which support political organizations. Justice system is then perceived as the composition of subunits and clientele groups in a political and social spheres. To understand the conceptual framework of the administration of justice, one needs to understand that judicial process is an open system. It means that with every changes and dynamic, even different conditions in the political system¹, judicial process has to deal with the inevitable variations in its environment (Cole, 1973). Legal process itself can generally be described as steps like these (Atiyah, 1983):

- Reporting the crime
- Investigation
- Arresting decision

¹ Charles R. Adrian and Charles Press . (1965) . *The American Political Process*. New York: McGraw-Hill). A political system involves all the interrelated institutions and processes , also involves deeds of people in interrelated roles by which the government makes decisions.

- Court
- Sentencing
- Conviction

The process of criminal justice for crimes, such as corruption, committed by people who are familiar with the power structure, often involved discretion and political influences to be whether prosecuted or not. There might be a report of the crime, but with the power of discretion, the report can be deleted. As it is argued in the book written by Francis Allen (1996), *The Habits of Legality: Criminal Justice and the Rule of Law*, that political motivations have often powerfully influenced the selection of political corruption cases for prosecution and it can hardly be doubted (Allen, 1996).

Problems related to political discretion over corruption prosecutions is not only exclusive to common law countries. Politically appointed general prosecutors in civil law countries often enjoy wide discretion in deciding to initiate, continue, or terminate prosecutions. There is need for a transparent, objective, and merit-based system for the appointment, promotion, and disciplining of prosecutors to avoid political interference. The power and special status of senior public officials may prevent the detection of such transgression (corruption and illegal financial activities) in which they or their business associates are involved. In almost all recent cases of grand corruption, the detection and investigation of the criminal activities of senior political figures occurred only after there is a change of government. When the regime has changed, there is usually a reason to blame economic factors on the previous running government, including allegations of corruption and economic mismanagement. The successor regime has an interest in exposing and investigating those activities, assuming the previous government is their political enemy. The accusations made by the current regime concerning the former senior public officials must be considered carefully, to avoid the public opinion of a political interest rather than a sincere effort to supreme the criminal justice. There have been rare cases where a criminal investigation and prosecution against a governed head of state or head of government has occurred while they were still in power (Chaikin & Sharman, 2009).

However, the legal system which is intertwined with political system can not be always seen as impartial tool for problem solving but rather a mechanism to permit those with great political power to achieve their own interest over the others. Laws are neither a reflection of general consensus or agreement about a certain value in a society nor a neutral, fairly agreed upon mechanism to solve problems. They reflect more as means and the interest of those who have political power to enforce structures related to their interest throughout the society (Morrison, 1995). The discretion made between criminal justice and the political figures is questionable as described in the book *Understanding Modernisation in Criminal Justice*, that there is contradiction between discretion and control of action (Senior, Crowther-Dowey, & Long, 2007).

II.4 Political Background of the New Order Era and the Reform Era

It is important to know the regimes chosen in this research, because the outcome of this writing does not focus only on the both cases of BLBI and Century Bank scandal, but also the effects derived from the political background when the cases occurred. This shows how political factors affect on the way the society reacts and influence the legal processing against the bank bailout cases. Using the spectacles of societal reaction and legal processing dimensions by Clinard and Quinney, the cases are described later in the Chapter 5.

Political background in a country somehow has effect on how the society reacts the crime. Should a political system has changed in a country, it changes many aspects in the society. As explained by Amy L. Freedman (2006), the essence of democracy or democratization is the process of political change toward a more open, more accountable, more fair political system. She agrees with Robert Dahl's idea that political institutions of modern democratic government are included elected officials, free, fair, and frequent elections, freedom of expression, alternative sources of information, associational autonomy, and inclusive citizenship with concerns about the power of other actors like military and corporate interests. For a political system, to reach an ideal state such concerns must be balanced with the political institution and processes which are

more transparent, and the state also the elected officials need to commit with and enforce the laws they create (Feedman, 2006).

The same literature explained how Suharto ran the country. As Suharto raised into power in 1967, the New Order era was begun. He had been generous to military side (ABRI) since he had background on military too. The military had important role in social order and political life. This is what popular as dual function of military or *dwifungsi ABRI*. The main role played by military also significant in economic sphere. Political parties as opposition existed, but generally the politic was stable due to the dominant political party, Golkar, he used as a vehicle to preserve the power, the loyalty of military, and its political and administrative powers. Golkar as dominant political party was in every level of society. Suharto also limited the number of political party into 3 parties, non-Islamic parties were merged in PDI, Islamic party were grouped in PPP, and there, Golkar as his political vehicle. In the legislative branch, the involvement of overall party was limited in Lower House or DPR (*Dewan Perwakilan Rakyat*) and Upper House or MPR (*Majelis Permusyawaratan Rakyat*). About 20% of the members at all levels of the government were chosen directly. This is an irony, because as explained in Jana Kunicová and Susan Rose-Ackerman research that electoral rules and constitutional structures can influence the level political corruption. Moreover in the proportional representation (PR) systems are more susceptible to corrupt political rent-seeking than plurality system (Kunicová & Rose-Ackerman, 2005). This was the reality of implementing what used to be called as Pancasila as the official ideology of Indonesia.

He built an economic system based on bureaucratic and military control over economic sphere. Powerful public figures, both military and civilian, gained control of potentially lucrative offices and used them to build economic powerhouses. Chinese entrepreneurs and members of Suharto's family (Cendana Family) were often the beneficiaries of government contracts and licenses that created monopolies in main industries (Feedman, 2006). By the mid-1990s bribes were sometimes insufficient to ensure that certain large and profitable projects were allowed to run. It was often necessary to give sizeable shareholdings to high-profile and respectable figures, free of cost. The recipients were typically

members of Cendana family. Free shareholdings were commonplace that investment advisors invented a special term for them like negative equity or free equity that co-investors had to fund themselves. Clearly, by the start of the 1980s, the New Order had succeeded in regulating political discourse in all facets of society like schools, media organizations, civic associations and professional guilds (O'Rourke, 2002).

Information access and public opinion were strictly controlled in his era. In the early 1990, Suharto was confident that his regime, the New Order, had established its legitimacy, he announced a new era of "Openness" and restraints on the press were relaxed. However, criticism of government policies and accusations made him to crack some media down in around July 1994. The minister of Information banned three national news magazines known for critical and investigative reporting. The media were *Tempo*, edited by Goenawan Mohamad, and the tabloids *Monitor* and *Detik*. The control over the press and other media, also the suppression of protests and critics was used to maintain political stability and masked many social problems throughout Indonesia that later led to the mass riot in 1998 which also dethroned the New Order era, beside the Asian economic crises (Collins, 2007).

When economic crises started to occur in Indonesia in the middle of 1997, many banks had problems with cash money and over reliance on short term deposits. They then turned to the central bank (Bank of Indonesia) as the 'lender of last resort'. Suharto as still ruled the regime, instructed Muhammad and Djwandono to lend central bank funds to such deficit banks, lest they defaulted on their depositors.. This lending was known as Bank Indonesia Liquidity Support, or BLBI lending. Injecting liquidity into troubled banks contradicted BI's own policy of reining in liquidity, but it was deemed necessary considering the panic spread. Later in 1998, Djwandono, as the Head of BI, was discharged from his office after protesting Suharto's economic policy (Aditjondro, 2006). However, the economic state was not getting better. Rather than heeding the advice IMF suggested, to reform rent-seeking structures, Suharto empowered a new 'Business taskforce' to recommend policy initiatives. The head of the taskforce was Anthony Salim (Salim Group), who had taken control of the

country's largest conglomerate from his father. Indeed, the technocrats were being helped to maintain the cronies (O'Rourke, 2002).

The State Audit Agency in 1999 found that 48 banks together misused 95 percent of the central bank's emergency liquidity support credits, injected during the financial crisis of 1997–98 (Friend, 2003). Underlined on BPK report 1999, BLBI that distributed to the banks are about Rp. 164.536,10 trillion and the unfeasible BLBI diverted to the state is about Rp. 80,24 trillion. The report said, there are many strange data found in distributing BLBI and banking offenses; for example, manipulation and other collateral offences. That prompted BPKP (*Badan Pemeriksa Keuangan Perbankan*) audited the case in the year of 2000. The data found that there was indeed offence in distributing BLBI by the Bank of Indonesia (BI) and misusing BLBI by the private banks. The offence conducted by using BLBI not to provide money regarding the rush, but to fund another matters. The worst offences were done by 5 banks (74% of the total offences); Danamon Bank, BUN, Bank Dagang Nasional Indonesia, BCA, and BIRA. the owner is Sjamsul Nursalim (involved in Artalyta and Jaksa Urip bribery case), Soedono Salim (from Grup Salim), Usman Admadjaja, Bob Hasan (along with Tommy Suharto were convicted in Nusakambangan), dan Atang Latief (Yuntho & Rahayu, 2006).

The New Order was fallen and left the country abundant of social and political problems. In 1998 soon as Suharto announced his resignation, he appointed his vice President, B.J Habibie to run the government. This did not end the riot and protest throughout Indonesia. Students and other groups wanted to reform the government, holding a democratic election, and bringing Suharto to trial for corruption.

From 1998 until 2004 there were numerous important changes to the political system. The government that took office on October 20, 2004, is more representative of the peoples' wishes than ever before. The capstone of Reformation Era was a constitutional amendment that called for the direct election of the president (for a five-year term). The first-ever direct presidential election was held in two rounds. The initial round was in July and a run-off between the two highest vote getters was held in September. The national election on April 5

for the legislative branch showed how successful the Reformation Era has been. The final vote on September 20, 2004, resulted in a resounding victory for SBY.

The 2004 elections were significant for Indonesia for several reasons. Most importantly, they were not violence or massive fraud, and were open, free, fair, and contested by a multitude of parties and candidates. Second, they showed that reform can happen and have significant effects on the political system. Third, voters signaled that they care mostly about bread-and-butter issues such as the state of the economy and social welfare issues, but that there is growing concern about security problems and violence such as bombing. The reasons would have been impossible to happen during the New Order regime. Nevertheless, the phenomena of oligarchy are indicated by the domination of capitalists as the supporters for political parties. These are emerged by the need of financial support due to the high cost of campaign. Consequently, the parties are coopted by the stakeholders, the corporates, and that ruins the democratic process in policy making (Badoh & Dahlan, 2010).

The elections also underlined how far political reforms have come in areas beyond just transforming political institutions. Two of the areas where one sees dramatic positive change are in the independence and variety within the media and in the explosion of NGO or civil society activity. After the fall of New Order, Indonesia was viewed as the center of media freedom in the region. There are a wide variety of media outlets and opinions. The amount of critical reporting and commentary that exists is impossible under Suharto. However, these freedoms may be shrinking. Indonesia's media is increasingly subjected to lawsuits and restrictions (such as in Aceh), and physical assaults on reporters have been documented. This violence seems to have been sponsored by powerful officials and businessmen with political backing. Private business interests and the military are increasingly using the civil court system to control press coverage for any transgression.

The other highly significant shift in Indonesian politics is the formal removal of the military from political affairs. Likewise, with the 2004 elections, there are no more appointed members in either the DPR or the MPR. However,

informally, the military is still enormously powerful as retired officers have joined parties and run for elections. SBY has also spoken a great deal about the need to confront corruption head on, but there is a sense that certain political and economic elements are protected from prosecution.

The Corruption Eradication Commission (KPK) is looking into charges of kickbacks against the Indonesia Election Commission in last year's elections. On Friday, May 20, 2005, Nazaruddin Sjamsuddin, the respected head of the Election Commission, was arrested for alleged payments made by firms that won contracts to supply equipment for the elections. Other senior commissioners are also under suspicion. In addition, Minister for Justice and Human Rights Hamid Awaluddin may also be called in for questioning by the Anti-Corruption Commission. President SBY has authorized corruption probes into many of provincial officials and several national legislators. No arrests have been made in these cases. Cracking down on corruption is important for Indonesia, both for domestic and international reasons. Corruption and the perception of corruption are some of the strongest underlying reasons for popular discontent the society (Feedman, 2006).

CHAPTER III

RESEARCH METHOD

III.1 Research Design

To conduct the research Of “The Comparative Study Of BLBI Case during The New Order Era and Century Bank Case during The Reform Era (from Societal Reaction and Legal Processing Perspective)”, the research design used is case-study research. In case-study research, a researcher examines many features of a few cases over a duration of time with very detailed, varied, and extensive data in a qualitative form. The researcher carefully selects a few key cases to illustrate an issue and study it in detail and considers the specific context of each case. This contrasts with other longitudinal studies in which the researcher gathers data on many units or cases, then looks for general patterns (Neuman, 2007).

III.2 Research Type

This is a qualitative research and using documents comparative as the data collecting technique to explain and understanding the two cases from the different political regimes. The types of historical evidence that are collected as the data are primary sources, secondary sources, running records, and recollections. For this research, only secondary sources were used. Secondary sources can be defined as qualitative data and quantitative data used in historical research formation about events or settings are documented or written later by historians or others who did not directly participate in the events or setting (Neuman, 2007). This is including the newspaper clippings related to the cases for the research. To collect the related, valid, and relevant data, the documents gathered from some institutions.

III.3 Data Collecting

Overall, besides studying literatures such as books and international journals, the data used in this research about the Century Bank case mainly retrieved from CSIS (Central for Strategic and International Studies-Jakarta), as the institution collects printed media clippings and sorts them out by the themes and the categories. There are 1,180 clippings with related theme of this research were copied. The clippings are divided by the year, the main theme, the case name, and the specific issue about the case. The clippings initiated on 2008 to 2010 for Century Bank. Here are the classifications list from the clippings made by CSIS (bolded points were chosen):

2009:

- A. Bank Century Tahun 2008**
- B. Bank Century 2009**
- C. Dana Bantuan (Bailout)**
- D. Pernyataan/Reaksi SBY**
- E. Peran Boediono**
- F. Peran Menkeu**
- G. Peran KSSK**
- H. Peran LPS**
- I. Tentang Robert Tantular**
- J. Audit BPK**
- K. PPATK**
- L. Pansus**
- M. KPK didesak u/ tangani Century**
- N. Tajuk**

2010:

- A. Bank Century & Permasalahannya**
- B. Aliran Dana Nasabah**
- C. Koalisi Pengaruhi Pansus**
- D. Pansus & BI**
- E. Peran KPK**

F. Bailout

G. Artikel/Tajuk

The clippings CSIS created are started from the date 14th November 2008 until 27th July 2010. The other sources for the related case were taken from the web sources. Since the old printed media clippings were moved from CSIS library, the data about BLBI could not be found there. The data related to BLBI case were sought at Pusat Informasi Kompas using search engine at the office with keywords: bank rush; *bank & likuiditas*; BLBI; and BLBI & *hukum*, from the year 1997, as the starting year of the bank liquidity distribution, until Desember 1998, the last year of Suharto regime. There are 119 pages of related news about BLBI were printed. The clippings were sorted out to represent the societal reactions and the legal process of both cases. The other related sources were taken from web sources.

The data retrieved from two institutions which are publicly known as reliable for information resources. Here are the general descriptions of both institutions.

- CSIS. The Centre for Strategic and International Studies (CSIS) in Jakarta is an independent, non-profit organization which focuses on policy-oriented studies on domestic and international issues which was established in 1971. The studies conducted by CSIS are about economics, politics and social change, and international relations, also another issue which related to public policy making. The mission is to improve policy making through policy-oriented research, dialogue, and other public contributions. To support the studies and researches for policy making, the institution has its own library that contains many local and international books, journals, newspapers, and also clipping documents, sorted out by the events. This institution has also hosted the Indonesian National Committee for Pacific Economic Cooperation (INCPEC) for the Pacific Economic Cooperation Council (PECC), the Indonesian Member Committee for the Council for Security Cooperation in Asia Pacific (CSCAP), and the Secretariat for the ASEAN ISIS. CSIS is also a

founding institute of the Council for Asia Europe Cooperation (CAEC), as the involvements with regional and international networks¹.

- PIK or Litbang Kompas. Pusat Informasi Kompas or Pusat Penelitian dan Pengembangan Kompas is a unit in Kompas newspapers under the national publisher company, Kompas Gramedia. This unit monitors the contents of the news and comparing them to the other national newspapers, beside providing database of the printed news. Kompas newspaper is published in about 500,000 copies everyday and read by 1,850,000 people almost in all provinces of Indonesia. Kompas has 230 journalists who are placed in many cities from Java to Papua, and some other countries like Australia, US, Egypt, and China².

III.4 Limitations

This research brings out the sensitive issues. That is a significant limitation in conducting the research. Instead of relying on the data from government offices and contacting the actors to collect the data, which would take unpredictable time to finish the reseach, media sources are perceived to be adequate and reliable to describe the issues. However, some media mass as the sources of information might not cover both sides. Due to the bias the media might have, this research needs further supporting study.

¹ The overview was concised from www.csis.or.id and accessed on 1.25 WIB December 17, 2011.

² The overview was retrieved from www.kompasgramedia.com and accessed on 1.42 WIB December 17, 2011.

III. 5 Analysis Framework

The data from the sources were analyzed in an analysis framework. The analysis framework describes how the data compared and later postulated in the Chapter 5.

Table 3.1 Analysis

| Societal Reaction | BLBI (New Order Regime) | Century Bank (SBY Regime) |
|--|---|--|
| How did society react toward the corruption case during the regime? | Society reacted more visibly and explicit soon as Suharto gave up his presidency. The societal reaction was becoming less tolerant. | Societal reactions are more various and freely reported. |
| Legal Processing | BLBI (New Order Regime) | Century Bank (SBY Regime) |
| How did criminal justice system proceed the corruption case during the regime? | The law administered to the offender was lenient. | The law administered is lenient. |

CHAPTER 4

DESCRIPTIONS OF THE CASES: BLBI AND CENTURY BANK

IV.1 General Description of BLBI Case during the New Order

As Suharto raised into power in 1967, the New Order era was begun. He had been generous to military side (ABRI) because of his military background. The military had important role in social order and political life during his regime. This is what popular known as dual function of military or *dwifungsi ABRI*. The main role played by military also significant in economic sphere. Political parties as opposition existed, but generally the politic was stable due to the dominant political party, Golkar, he used as a vehicle to preserve the power, the loyalty of military, and its political and administrative powers. Golkar as dominant political party was in every level of society. Suharto also limited the number of political party into 3 parties, non-Islamic parties were merged in PDI, Islamic party were grouped in PPP, and there, Golkar as his political vehicle. In the legislative branch, the involvement of overall party was limited in Lower House or DPR (*Dewan Perwakilan Rakyat*) and Upper House or MPR (*Majelis Permusyawaratan Rakyat*). About 20% of the members at all levels of the government were chosen directly. This is an irony, because as explained in Jana Kunicová and Susan Rose-Ackerman research that electoral rules and constitutional structures can influence the level political corruption. Moreover in the proportional representation (PR) systems are more susceptible to corrupt political rent-seeking than plurality system (Kunicová & Rose-Ackerman, 2005). This was the reality of implementing what used to be called as Pancasila as the official ideology of Indonesia.

He built an economic system based on bureaucratic and military control over economic sphere. Powerful public figures, both military and civilian, gained control of potentially lucrative offices and used them to build economic powerhouses. Chinese entrepreneurs and members of Suharto's family (Cendana Family) were often the beneficiaries of government contracts and licenses that created monopolies in main industries (Feedman, 2006). By the mid-1990s bribes

were sometimes insufficient to ensure that certain large and profitable projects were allowed to run. It was often necessary to give sizeable shareholdings to high-profile and respectable figures, free of cost. The recipients were typically members of Cendana family. Free shareholdings were commonplace that investment advisor invented a special term for them like negative equity or free equity that co-investors had to fund themselves. Clearly, by the start of the 1980s, the New Order had succeeded in regulating political discourse in all facets of society like schools, media organizations, civic associations and professional guilds (O'Rourke, 2002).

Information access and public opinion were strictly controlled in his era. In the early 1990, Suharto was confident that his regime, the New Order, had established its legitimacy, he announced a new era of "Openness" and restraints on the press were relaxed. However, criticism of government policies and accusations made him to crack some media down in around July 1994. The minister of Information banned three national news magazines known for critical and investigative reporting. The media were *Tempo*, edited by Goenawan Mohamad, and the tabloids *Monitor* and *Detik*. The control over the press and other media, also the suppression of protests and critics was used to maintain political stability and masked many social problems throughout Indonesia that later led to the mass riot in 1998 which also dethroned the New Order era, beside the Asian economic crises (Collins, 2007).

When economic crises started to occur in Indonesia in the middle of 1997, many banks had problems with cash money and over reliance on short term deposits. They then turned to the central bank (Bank of Indonesia) as the 'lender of last resort'. Suharto as still ruled the regime, instructed Muhammad and Djwandono to lend central bank funds to such deficit banks, lest they defaulted on their depositors. This lending was known as Bank Indonesia Liquidity Support, or BLBI lending. Injecting liquidity into troubled banks contradicted BI's own policy of reining in liquidity, but it was deemed necessary considering the panic spread. Later in 1998, Djwandono, as the Head of BI, was discharged from his office after protesting Suharto's economic policy (Aditjondro, 2006). However, the economic state was not getting better. Rather than heeding the advice IMF

suggested, to reform rent-seeking structures, Suharto empowered a new 'Business taskforce' to recommend policy initiatives. The head of the taskforce was Anthony Salim (Salim Group), who had taken control of the country's largest conglomerate from his father. Indeed, the technocrats were being helped to maintain the cronies (O'Rourke, 2002).

The State Audit Agency in 1999 found that 48 banks together misused 95 percent of the central bank's emergency liquidity support credits, injected during the financial crisis of 1997–1998 (Friend, 2003). Underlined on BPK report 1999, BLBI that distributed to the banks are about Rp. 164.536,10 trillion and the unfeasible BLBI diverted to the state is about Rp. 80,24 trillion. The report said, there are many strange data found in distributing BLBI and banking offenses; for example, manipulation and other collateral offences. That prompted BPKP (*Badan Pemeriksa Keuangan Perbankan*) audited the case in the year of 2000. The data found that there was indeed offence in distributing BLBI by the Bank of Indonesia (BI) and misusing BLBI by the private banks. The offence conducted by using BLBI not to provide money regarding the rush, but to fund another matters. The worst offences were done by 5 banks (74% of the total offences); Danamon Bank, BUN, Bank Dagang Nasional Indonesia, BCA, and BIRA. the owner is Sjamsul Nursalim (involved in Artalyta and Jaksa Urip bribery case), Soedono Salim (from Grup Salim), Usman Admadjaja, Bob Hasan (along with Tommy Suharto were convicted in Nusakambangan), dan Atang Latief (Yuntho & Rahayu, 2006).

The case is about how public policy made by government has been misused into transgression by both, public officials and the private actors. The economic crisis during 1997-1998 resulted national instability in economic and political sectors. The policy issued by government to overcome the crisis should have been followed by accountability and control by public.

IV.2 Societal Reaction toward BLBI Case

The first semester of 1997, the media were talking about the issue of liquidity for undercapitalized banks. This was emerged from the Summa bank case in the previous year. It was showed by a seminar held by CSIS economic

expert about “Kajian dampak dan Implikasi Peraturan pemerintah No.68 Tahun 1996 Terhadap Perbankan dan Masyarakat”¹. The media were overwhelmed by the administration of the regulation discussed on the seminar. The Head of Legal Discourse of Perbanas, Rasjim Wiraatmadja as the commissioner of several banks argued that media publications about the liquidity issue generated negative impact on society. He appointed some disturbing publications. Those publications he cited were based on opinions from some economic experts. He also noted that the regulation was based on UU Perbankan Pasal 37, not because of there was a troublesome bank². Another opinion made public also came from Kwik Kian Gie. He made statement and critic that the related public officials did not have trust on whatever the media and experts said. He concluded his article with saying that there was criminal factor in liquidity issue and suggested the monetary authority not to doubt to put the cases into law enforcement for the sake of justice³. The highlight of the first semester in 1997 shows that the issue of troublesome bank and how the government coped with it were reacted by some experts. The media itself became a battle field for those who had negative and positive opinions toward the government policy. Even when one economic expert opined that there was criminal aspect in liquidity policy, it was almost never mentioned in the publication, since the government per se chose to ignore what media published.

The second semester of 1997, eventually showed that BI injected financial support for 20 banks⁴. There were pros and cons opinion about liquidity support by BI published in this term. One article even tried to explain the issue about BI giving financial support from societal reaction concern, since the issue of troublesome banks were frustrating the society⁵. In this semester, there was not many reactions captured in the newspaper. Nevertheless, it can be concluded that what society had been worrying about finally happened. Banks were collapse.

The data indicate that in the first semester of 1998, the government was starting to freeze some banks. It was lead by suspicious commentaries by some experts that there was ineptness in administering liquidity by BI to

¹ Kompas Newspaper 10-1-1997 page 2 *Pemerintah Masih Mendua Hadapi Bank Bermasalah I* (derived from PIK)

² Kompas Newspaper 4-3-1997 page 2 *Terlalu Dini Bicara Implikasi PP Likuidasi* (derived from PIK)

³ Kompas Newspaper 10-3-1997 page 1 *Analisis Kwik Kian Gie: Manajer Langka, Kredit Macet, Likuidasi bank* (derived from PIK)

⁴ Kompas Newspaper 25-9-1997 page 2 *BI Suntik 20 Bank* (derived from PIK)

⁵ Kompas Newspaper 4-11-1997 page 4 *Tajuk Rencana: Kita Sangat Berkepentingan untuk Menjaga Ketenangan Nasabah Bank* (derived from PIK)

undercapitalized banks. One article covered an expert wondering why BI did such thing and questioning whether it was caused by the interference of other parties in distributing the liquidity support⁶. People started to push government for transparency about this banking problems⁷. The claim of BI to Indonesian Bank restructuring Agency (*BPPN*) reached Rp 101,4 trillion⁸. Until it occurred, the government still did nothing legal for the banks or public officials since the media had been publishing the indication of transgression. The first semester was ended with the reporting that Legislative Assembly (DPR) demanded the banking authority to reduce the interest rate as the solution for the current economic problem⁹.

The second semester of 1998 probably had the most publication of the current situation of the country. Beside the frustrating problem in economic sphere in the meantime, the political sphere was also in turmoil. For the first time, Legislative Assembly gave revision on APBN/National Budget since the economic condition was not getting better¹⁰. On August, the discourse of cracking down the officials and stakeholders of the troublesome banks and also the public officials of BI started to emerge. People reacted more suspicious on BLBI projects, claiming that the liquidity support was misused by the banks¹¹. In one article, the media looked more confident to publish the truth of corruption in the New Order, as quoted below:

“...Ia menambahkan, di era rezim Soeharto bukan rahasia kalau BI sering mendapat tekanan untuk memberikan Kredit Likuidasi BI (KLBI) kepada bank-bank yang tidak sehat milik keluarganya. BI juga sering diminta memberikan KLBI via bank-bank pemerintah tertentu, untuk membiayai proyek pemerintah atau proyek dari orang-orang yang terkait dengan pusat kekuasaan seperti proyek mobil nasional dan Badan Penyangga dan Pemasaran Cengkeh (BPPC).” (Kompas 14-8-1998)

Translation:

“... He added, it was not a secret in Suharto regime, if BI was often demanded to distribute Liquidity Credit BI (LCBI) to

⁶ Kompas Newspaper 5-4-1998 page 1 *Pemerintah Bekukan Tujuh Bank: Perlu Pengusutan Dana BI* (derived from PIK)

⁷ Kompas Newspaper 16-4-1998 page 4 *Advokasi konsumen Menuntut Transparansi Bank* (derived from PIK)

⁸ Kompas Newspaper 13-5-1998 page 2 *Tagihan BI Kepada BPPN Rp 101,4 Triliun* (derived from PIK)

⁹ Kompas Newspaper 16-6-1998 *DPR Desak Perbankan Turunkan Suku Bunga* (derived from PIK)

¹⁰ Kompas Newspaper 22-7-1998 page 1 *Untuk Pertama Kali DPR Ubah APBN* (derived from PIK)

¹¹ Kompas Newspaper 8-8-1998 page 3 *Manfaat Bantuan Likuiditas BI Diragukani* (derived from PIK)

undercapitalized banks owned by his family. BI was also often demanded to distribute LCBI via certain state banks to fund governmental project or a project owned by people who were close to the power, such as national car project and Clove Support and Trading Board.”

The quoted reporting tells that in the New Order regime, BI was often pushed to give liquidity support for Cendana businesses and related private actors.

However, the media were still restricted in reporting and following the case. In one article described that one of attorney general official tried to loose the microphone cable of a journalist:

“...Sebelumnya terjadi insiden dimana salah seorang staf JAM datun, Levdrik, melepaskan kabel pemancar mikrofon wireless milik kameramen AN-Teve sehingga pertanyaan wartawan tidak terekam dengan baik..” (Kompas 5-9-1998)

Translation:

“...There was an incident before that an attorney general official, Levdrik, loosen the transmitter cable wireless microphone owned by AN-Teve camera person lest the question was not recorded well..”

About 300 people demonstrated in front of the attorney general office, demanding the completion of banking cases. They demanded the legal process for all public officials of BI and The Ministry of Finance who are related to the process of liquidity support. They also asked the attorney to process legally all the bankers impartially¹². People started to assess that attorney general officials were reluctant and inconsistent in investigating the corruption regarding the misuse of BLBI¹³. The societal reactions against the case were showing more intolerant and becoming more visible.

IV.3 Legal Process toward BLBI Case

Until the first semester of 1998, there was not even one owner of the bankrupt banks had been processed legally¹⁴. On the same month, POLRI were investigating the managers and the owners of 16 banks which liquidated on

¹² Kompas Newspaper 5-9-1998 page 1 *Peter Gontha Ke Mabes Polri Bank* (derived from PIK)

¹³ Kompas Newspaper 7-9-1998 *Konsistensi Jaksa Agung Usut Korupsi Dipertanyakan* (derived from PIK)

¹⁴ Kompas Newspaper 7-8-1998 page 2 *Belum Ada Bankir yang Dihukum* (derived from PIK)

November 1997. But still, the society thought the government was too slow in processing legally the liquidity cases on those banks¹⁵. Another article reports that the attorney general would summon the bankers, but after given a chance to return the money¹⁶. The attorney general was reported waiting for the case files of managers and bank owners from BI, The Minister of Finance (MenKeu), and Indonesian Banks Restucturing Agency (BPPN). From ten out of sixteen liquidated banks, Polri has examined 70 owners or managers. Eight bankers have been given detainee status and ten other bankers were officially given status as suspect¹⁷. The legal process against the bankers was slow and reluctant. The attorney general was reported summoning some bankers, not to be processed legally, but to be asked for statements for data collecting. The attorney said that it was banking case, not entirely a criminal case¹⁸. In the legal process, the bankers did negotiate with the general attorney considering the administration of law, such as suspension for detainee status¹⁹. There is a short legal news that on September reported that the former Head of Indonesian Banks Restucturing Agency was summoned by the attorney general regarding the complicated banking problem²⁰. In the meantime, the Legislative Assembly was also questioning the transparency of Indonesian Bank Restucturing Agency (BPPN)²¹.

The surprising news were reporting that general attorney claimed there was no indication of corruption in returning BLBI, because there was no loss that government experienced, moreover, the assets returned were more than the calculation. However, the attorney general made regional economic reason as the excuse for being tolerant toward the bankers²².

Until the fall of New Order regime, the criminal justice moved too slow toward the banking scandal, BLBI. There was no supremacy of law in the late era of the New Order. The bankers were treated respectably and the criminal justice officer were tolerant by giving suspension on detainee status and doing

¹⁵ Kompas Newspaper 14-8-1998 page 1 *Mabas Polri Sidik Pengelola sembilan Bank* (derived from PIK)

¹⁶ Kompas Newspaper 26-8-1998 page 11 *Jaksa Agung Dipastikan Panggil bankir Nakal* (derived from PIK)

¹⁷ Kompas Newspaper 31-8-1998 page 15 *Soal Dugaan Bankir Korupsi Jaksa Agung Tunggu Pelimpahan dari Menkeu, BI, dan BPPN Bank* (derived from PIK)

¹⁸ Kompas Newspaper 1-9-1998 page 1 *Kejagung Panggil mantan Bankir dari Tujuh Bank Bank* (derived from PIK)

¹⁹ Kompas Newspaper 2-9-1998 page 1 *Jaksa Agung: Bankir Nakal dikejar sampai Liang Kubur Bank* (derived from PIK)

²⁰ Kompas Newspaper 25-9-1998 page 15 *Kilasan Hukum* (derived from PIK)

²¹ Kompas Newspaper 29-9-1998 page 1 *DPR Soroti Penggunaan Auditor Asing di BPPN* (derived from PIK)

²² Kompas Newspaper 1-10-1998 page 15 *Jaksa Agung: Tak Ada Indikasi Korupsi dalam Pengembalian BLBI* (derived from PIK)

negotiation with the suspects. However, this case was passed through to the next regimes until in SBY regime, some senior public officials were sentenced, including Aulia Pohan, the President's in-law. He was sentenced for 4,5 years and ordered to pay US\$20 million.

The corruption Court sentenced Wednesday former Bank Indonesia (BI) deputy governor Aulia Pohan, father in law of President Susilo Bambang Yudhyono's son, to four and a half years in jail for corruption – the Jakarta Post 17-6-2009

The quoted news above indicated that the senior public official was punished after he abdicated from the office.

IV.4 General Description of Century Bank Case during SBY Regime

The government that took office on October 20, 2004, is more representative of the peoples' wishes than ever before. The capstone of the Reform Era was a constitutional amendment that called for the direct election of the president (for a five-year term). The first-ever direct presidential election was held in two rounds. The initial round was in July and a run-off between the two highest vote getters was held in September. The national election on April 5 for the legislative branch showed how successful the Reformation Era has been. The final vote on September 20, 2004, resulted in a resounding victory for SBY.

The 2004 elections were significant for Indonesia for several reasons. Most importantly, they were not violence or massive fraud, and were open, free, fair, and contested by a multitude of parties and candidates. Second, they showed that reform can happen and have significant effects on the political system. Third, voters signaled that they care mostly about bread-and-butter issues such as the state of the economy and social welfare issues, but that there is growing concern about security problems and violence such as bombing. The reasons would have been impossible to happen during the New Order regime. Nevertheless, the phenomena of oligarchy are indicated by the domination of capitalists as the supporters for political parties. These are emerged by the need of financial support due to the high cost of campaign. Consequently, the parties are coopted by the

stakeholders, the corporates, and that ruins the democratic process in policy making (Badoh & Dahlan, 2010).

The elections also underlined how far political reforms have come in areas beyond just transforming political institutions. Two of the areas where one sees dramatic positive change are in the independence and variety within the media and in the explosion of NGO or civil society activity. After the fall of New Order, Indonesia was viewed as the center of media freedom in the region. There are a wide variety of media outlets and opinions. The amount of critical reporting and commentary that exists is impossible under Suharto. However, these freedoms may be shrinking. Indonesia's media is increasingly subjected to lawsuits and restrictions (such as in Aceh), and physical assaults on reporters have been documented. This violence seems to have been sponsored by powerful officials and businessmen with political backing. Private business interests and the military are increasingly using the civil court system to control press coverage for any transgression (Feedman, 2006).

The background of how SBY regime built on will help to understand about the Century Bank case. The case is about suspicious bailout by the Bank of Indonesia for Century Bank (Mutiara Bank). It was started from the inability of Century Bank to withdraw Rp 2 trillion of Budi Sampoerna's money. On November 20th 2008, the Bank of Indonesia delivered a mail to the Minister of Finance related the establishment of failed bank status on Century Bank and stated that the bank was in need of further action. As the Head of *Komite Stabilitas Sektor Keuangan* (Stability of Finance Sector), Sri Mulyani held a meeting to discuss about the bank. During the meeting, the Bank of Indonesia, based on data until October 31th 2008, announced that the bank's Capital Adequacy Ratio (CAR) was minus 3,52%. Decided on that time, Rp 632 billion were added up as the needed capital so it reached 8%. While some Century Bank officials and stakeholders were being banned, the bank kept receiving bailout from the insurance institution. This case involves Kabareskrim Polri Susno Duaji, who mediated the affair between Budi Sampoerna dan Robert Tantular (Century Bank stakeholder). In July 2009, KPK started to ask permission to audit the bank. During the process of the case, Century Bank kept receiving the bailout, until on

August 27th 2009, legislative called in the current Minister of Finance, Sri Mulyani, the Bank of Indonesia official and the insurance institution to explain the increased bailout for the Century Bank approximately Rp 6,7 trillion. The legislative has claimed, the government initially only asked permission for Rp 1,3 trillion as the bailout. In the meeting, Sri Mulyani avered if the bank was closed, there would be systemic impact on Indonesia banking system. In the same day, The Vice Chairman of KPK, Bibit Samad Riyanto has stated that Century Bank scandal was put on the status of investigation. On November 2009, 139 legislative members from 8 fractions offered *Hak Angket* on the investigation (TAUFIK, 2009). In 2010, after the C option was chosen by 325 members, from total 537 present members, they agreed that the process of giving the bailout for Century Bank is questionable (ANTARANEWS, 2010), the next step for KPK is to inspect the officials of *Komite Stabilitas Sistem Keuangan*.

IV.5 Societal Reaction toward Century Bank Case

The Century Bank case was emerged publicly in November 2008 when the bank failed to cash the money. As usual, BI gave support to enable the bank cashing money of the customers, together with the government via Committee of Financial Sector Stability (KSSK) decided to acquisition the bank by Deposit Insurance Agency (LPS)²³. It seems that the government chose to save the bank rather than to put the case to the court. An opinion published on Jakarta Post saying that the performance of BI to supervise the banking sector is questionable, because BI often treated Century Bank as too important to fail²⁴. The House of Representatives Commission XI deputy chairman Endin A.J Soefihara has said:

“BI’s banking supervision is a mess. I believe the Bank Century case is not merely a liquidity problem but also something else related with irregularities.” (Jakarta Post 24-11-2008)

There are many publications related to the case of Century Bank. Various mass media, like Kompas, Bisnis Indonesia, Suara Pembaruan, Republika,

²³ Kompas 22-11-2008 *Kondisi Perbankan Stabil: Bank Century Tbk Diambil Alih Lembaga Penjamin Simpanan* (derived from CSIS Clippings Catalogue)

²⁴ Jakarta Post 24-11-2008 *Weak BI supervision Blamed for Century fiasco* (derived from CSIS Clippings Catalogue)

Business News, and the Jakarta Post. Deep investigation conducted by many media and media competed to present the most interesting news. On November 25, BI launched a massive investigative audit to detect any violation that might lead to criminal prosecution. This is a fast response. However, in the first semester of 2009, the victims of fraud security product claimed the government released its responsibility about the prosecution of the case. There was no explanation for the victims from the government²⁵.

The second semester of 2009, the Jakarta Post published an article about the lawmakers signed a petition letter demanding a deep investigation into the case which they perceived similar to the situation faced by BLBI 1998²⁶. Similar civil movement regarding this case was included 6 people claimed as the representative of various professions. They did class action to file a lawsuit toward the government the President, and BI. They argued that the government did negligence by saving the Century Bank²⁷.

On December 2009, the issue of Committee of Inquiry (*Panitia Hak Angket Century*) was stronger and supported by many parties. A group of people claimed as *Masyarakat Madani Indonesia Antikorupsi* or Indonesian Anti-Corruption Civil Society came to agree that they will keep following the investigation and legal process of the Century scandal. They argued that the bailout for Century Bank is crime against the state because it was not conducted following the related banking regulation²⁸. Another societal support was aimed to establish Committee of Inquiry. There were some demonstrations supporting the establishment of the committee²⁹. The first of December, the committee were endorsed as the coalition of several parties in legislative. The committee has full right to investigate the bailout scandal and to call witnesses including SBY and Sri Mulyani³⁰.

The Committee of Inquiry is a special committee established by legislative to investigate the Century Bank scandal. This is a temporary legislative tool, upon *Undang-Undang Nomor 6 Tahun 1954 tentang Penetapan Hak Angket Dewan*

²⁵ Kompas Newspaper 14-1-2009 *Bank century: Korban menilai pemerintah Lepas Tangan* (derived from CSIS Clippings Catalogue)

²⁶ The Jakarta Post 5-9-2009 *Century bank: Lawmakers take final 'toothless' shot at justice* (derived from CSIS Clippings Catalogue)

²⁷ Bisnis Indonesia 10-9-2009 *Pemerintah digugat terkait kasus century* (derived from CSIS Clippings Catalogue)

²⁸ Kompas Newspaper 1-12-2009 *Jangan Sampai Terjadi "Chaos"* (derived from CSIS Clippings Catalogue)

²⁹ Kompas Newspaper 2-12-2009 *Aspirasi rakyat: Dukungan untuk Angket Century Meluas* (derived from CSIS Clippings Catalogue)

³⁰ The Jakarta Post 2-12-2009 *House Oks Century inquiry team* (derived from CSIS Clippings Catalogue)

Perwakilan Rakyat. The first internal meeting³¹ held on December 4, 2009. The meeting has concluded that:

1. Confirmed, the committee of inquiry is still working during the trial recess time
2. Confirmed, the chairman of committee has to prepare 5 matters, agenda, schedule, working mechanism, budget, and experts to be proposed on the Plenum, december 14th 2009 at 10.00 WIB.
3. Confirmed, public aspiration can be delivered to aspiration box.
4. Confirmed, the meetings are open to consider the witness and regulations.

The next meeting³² held on the same day to arrange the work programme. Concluded that:

1. Division of tasks:
 - Drs. Mahfudz Siddiq, M.Si: arranging the work mechanism.
 - Prof. DR. T Gayus Lumbuun, SH, MH: arranging agenda, schedule meetings, and the list of experts.
 - Mayjen (Purn.) TNI Yahya Sacawiria, S.IP: arranging budget of committee.
2. The meeting has confirmed to request materials from BPK
3. The meeting has confirmed to request the experts from BPK and BPKP.
4. The meeting has confirmed that the next meeting on Monday December 7, 2009 will be receiving the delegations of students from National Campus Network (JKN)
5. The chairmen meeting will be continued on December 9, 2009 and the next internal meeting on Monday December 14, 2009

On December 11, 2009 the committee had the leaders meeting with political fractions. Concluded that:

1. The meeting was begun by the chairman at 11.05 WIB.
2. The meeting was planned to discuss the acceleration of calling the witnesses.
3. The political fractions were welcome to give opinions.

³¹ The report of the meeting retrieved at www.dpr.go.id accessed at 02.22 WIB December 22, 2011

³² *ibid*

4. The meeting has agreed:

- The period of committee is 60 days and ended on March 4, 2010
- The Assistant Teams attached come from Setjen DPR-RI and the external Assistant Team is suggested by each fraction to be confirmed by The Plenum on December 14, 2009
- Budget arrangement is based on the presence regulations
- Investigation and examination are divided into 2 steps:
 - a. Deep understanding of basic data by requesting statement of BPK, PPATK and the related institutions
 - b. Investigation/examination of witnesses and instrument to determine the witnesses both using thematic/functional approach
- The meetings of the Committee of Inquiry are held to do the investigation/examination and RDP/RDPU
- The next week will be invited the Chairmain of BPK and the Head of PPATK

The Committee of Inquiry was reported found unusual transaction on several bank accounts in Jakarta, Medan, Bali and Makassar³³. The next investigation, one of the committee made mistake by accusing one of Century Bank customer, Amiruddin Rustan that he had supported SBY-Boediono Rp 1,4 billion in the election 2009³⁴. In the same article, the committee was asked not to be reckless in doing the investigation because it affected the reputation and credibility. Another reporting said that the Century case will likely be closed since Sri Mulyani resigned from the seat of Minister of Finance. The statement was come from Pramono Anung, the vice of DPR, after following the meeting between the Supervisor Team of DPR for Century Bank case with the Head of Polri jenderal (Pol) Bambang Hendarso Danuri. He found out that the report created by Polri indicated the A option, that there is no problem with the bailout policy, whereas the Committee of Inquiry had come to conclusion to C option, that is the bailout policy is questionable. Therefore, the committee gave a chance to Polri to re-evaluate the report. Still in the same article, the meeting of supervisors with KPK

³³ Kompas Newspaper 13-2-2010 *Hak Angket Century: Pansus Temukan Transaksi Janggal (derived from CSIS)*

³⁴ Kompas Newspaper 15-2-2010 *Rekomendasi harus Diterima: Linus Akui sebagai Nasabah Bank Century (derived from CSIS)*

was not maximal. KPK has not received the case document yet. Pramono came to conclusion that there is the effort of buying time about the century case³⁵

One article explaining about the special committee of the House of Representatives having reached a critical juncture and also criticizing the performance and transparency among high-ranking officials that should have served as the cornerstone of the policy makings³⁶. Another reaction came from anti-corruption activist of ICW by his article that concerning about the next step after the Committee of Inquiry reached its conclusion. He suggested that if the legislative really intended to process the case, the next step was to ensure that this reached the Supreme Court to answer the ceaseless debate in the committee³⁷. The societal reactions recorded in media is not only about the process to complete the case legally, but also about how the government was forgetting the other important social issue and demanded the government to put the public interest as the priority³⁸. However, in May 2010, one article showed that the Chairman of Supervisor Team from DPR had a thought that KPK, Polri, and Attorney General were slow to follow up the recommendation of the Committee of Inquiry³⁹. The societal reactions toward the Century Bank case are various, yet straightforwardly said in media. Starting from the pros and cons about the government policy to give bailout to Century Bank, to the reality of political process which administered by legislative branch to influence the legal process. Yet, it is important to note as Feedman (2006) argues that powerful officials and businessmen with political backing have control over media whether they as the stakeholder of the media or they use court to prevent media coverage of transgression. Thus, public opinion might be controlled by some groups in SBY regime.

IV.6 Legal Process toward Century Bank Case

The government under SBY regime is supported by various institution to eradicate corruption. There are BPK, KPK, Corruption High Court, and PPATK.

³⁵ Kompas Newspaper 20-5-2010 *Kasus Century Akan Ditutup* (derived from CSIS)

³⁶ The Jakarta Post 4-2-2010 *Bank century scandal: a sticking point for Pansus* (derived from CSIS Clippings Catalogue)

³⁷ Kompas Newspaper 4-2-2010 *Antiklimaks "Centurygate"* (derived from CSIS Clippings Catalogue)

³⁸ Kompas Newspaper 6-2-2010 *Tajuk rencana: Wacana Kepentingan Publik* (derived from CSIS Clippings Catalogue)

³⁹ Republika Newspaper 27-5-2010 *Rekomendasi DPR tak Disentuh* (derived from CSIS Clippings Catalogue)

In this case, the law enforcement, said the BI deputy Governor, will follow the result of the investigation⁴⁰. The attorney Agung Hendarman Supanji also avered that the Attorney General kept monitoring the case and following the report of Supreme Audit Agency (BPK) regarding the bailout Rp 6,7 trillion for Century Bank⁴¹. When BPK was reviewing the Century Bank's finance, Corruption Eradication Commission (KPK) conducted a massive investigation into the findings of possible irregularities. KPK will follow up any irregularities found by BPK⁴².

Besides KPK and BPK, PPATK or the Financial Transactions Report and Analysis Center has identified 17 recipients in the form of institutions and the other individuals. Actually, BPK had requested the PPATK to examine the transfer of funds from century to accounts in 16 financial institutions and about 50 depositors. BPK alleged there were some misappropriations of bailout funds⁴³. The first semester of 2010, KPK continued questioning BI officials related to bailout for Century Banks. This was the effort to find possible fraud in Rp 6,76 trillion bailout. Century Bank, which the name changed into Mutiara Bank, was received bailout from BI to prevent systemic financial crisis. Moreover, another institution, PPATK, also found some names of political figures who received the funds related to Century Bank bailout⁴⁴.

On May 2010, a reporting said that an expert called KPK as reluctant to investigate the Century Bank scandal. Arif Nur Salam, the Executive Director of Indonesia Budget Center noted that KPK has enough data to begin next level of the legal process status from investigating to find the crime to investigation to find the evidence⁴⁵. From pre-investigation status to investigation. The various data of media about this century scandal show that the solutions to finish the legal process of Century Bank scandal never work out. The case is still open to be continued or yet, with discretion, be closed.

⁴⁰ The Jakarta Post 25-11-2008 *Century back in action as BI looks for signs of crime* (derived from CSIS Clippings Catalogue)

⁴¹ Kompas Newspaper 5-9-2009 *Perbankan: Jaksa Pantau Kasus Bank Century* (derived from CSIS Clippings Catalogue)

⁴² The Jakarta Post 31-8-2009 *Century audit may see KPK step in over irregularities* (derived from CSIS Clippings Catalogue)

⁴³ The Jakarta Post 28-11-2009 *PPATK spots 17 recipients of Century bailout funds* (derived from CSIS Clippings Catalogue)

⁴⁴ The Jakarta Post 12-1-2010 *Century Inquiry: KPK continues questioning BI officials on Century bailout* (derived from CSIS Clippings Catalogue)

⁴⁵ Kompas Newspaper 10-5-2010 *KPK Dinilai tak Berani* (derived from CSIS Clippings Catalogue)

CHAPTER 5

ANALYSIS OF BLBI AND CENTURY BANK CASES FROM SOCIETAL REACTION AND LEGAL PROCESS PERSPECTIVE

V.1 Comparison of BLBI Case and Century Bank Case from Societal Reaction Perspective

Started in 1997 during the end period of the New Order regime, until the fall of the era, and now 14 years after, the case of BLBI never meets the end. Many researches, reports, and investigations done as the attempts to solve or merely to find the most suitable recommendation of reaction. It is known publicly that until the presidency has changed several times, this country still suffers the loss of trillions rupiahs. The leaders and, supposedly, the most powerful person in Indonesia, the Presidents, none of them has succeeded to uphold the criminal justice system fairly and strictly. This is surely one of mega-case examples which underlines and compresses the long journey of corruption in Indonesia. It is not redundant but an ugly truth. Where did the money go? That is a question one should ask to understand why the case matters and why the people of Indonesia should mourn.

The Corporates, the stakeholders of sovereignty and the power behind the figure of “Bapak Pembangunan Bangsa”, Suharto. As some books reviewed in the Chapter 2 trying to explain the New Order Era that the long-preserved regime of Suharto was supported by the corporates. The government under his regime and the corporates had reciprocity and benefited each other. This is what Sutherland called as white-collar crime. *Korupsi, Kolusi, and Nepotism* (KKN) were spreadingly notoriety in the New Order era. Those are economic offenses, including bribery and antitrust offense (Agnew, Piquero, & Cullen, 2009).

White-collar crime is hard to define precisely, because it is involved the aspects of the offender, the crime per se, and the victims. Criminologist tried to divide the type of offender to individual or organizational context. BLBI case was involving more than one party. At least, BI, the government, the Indonesian Bank Restructuring Agency (BPPN), and the corporates. The conspiracy between them creates such a complexity to define which one who started it or simply to

determine which one the culprit is. Clinard and Quinney (1973:189) defined corporate crime as the crime committed by the employer for the corporation and the crimes of the corporation itself. If the banks who received BLBI then committing such transgression, then it is clear to define that this is a corporate crime, since the banks misused the allocation of BLBI and some of them did not meet the requirement to receive it. Then come to rise a disturbing question, why did the government and BI let them took the money? Corruption, the abuse of public office to achieve vested interest, is the best term to describe the offense committed in the governmental institutions and it involves clandestine exchange such as bribery of an exchange of 'favours' between state and non-state actors (Green & Ward, 2004). Theoretically, BLBI case has to be viewed as a form of corruption, because the offenses did not only involve the private sectors, but also the public officials and authority. The lack of transparency created such opportunity to commit the exchange. During this regime, as Collins (2007) argues, information access and public opinions were strictly controlled to maintain political stability. Nevertheless, the access of information has role to reduce corruption (DiRienzo, Das, Cort, & Jr, 2007).

Corruption is a type of occupational crime committed by public officials. The cornerstone to analyze the case is societal reaction and legal process dimension by Clinard & Quinney for a typology of criminal behavior. The case of BLBI will be assessed to what extent it confirms the dimension of societal and legal process by Clinard and Quinney. The important thing to underline is, this research only attempts to analyze the societal reaction and legal process toward BLBI during the New Order era. It means the analysis only from the year of 1997 to 1998, before the new election held.

Societal reactions are affected by the visibility of the offense and the degree to which the criminal behaviour corresponds to the interests of the power structure of society. Furthermore, types of criminal behaviour vary in the ways that they are processed through the legal system. Patterns of detection, arrest, prosecution, conviction, sentencing, and punishment exist for each type of criminal behaviour (Clinard & Quinney, 1972). They stated that societal reaction toward the corruptors have been traditionally mild, but public reaction is

becoming more intolerant. Referring to the findings in the Chapter 4 the societal reactions toward the case was indeed becoming less tolerant. This is due to the political background in the New Order regime. However, the power structure affected in how people reacted to the crime and how criminal justice system administering the legal process. Long before the many banks received the BLBI from BI, media had reported the opinions of Indonesian economic experts arguing about the implication of the liquidity regulation. This was somehow ignored by the government and the crony as seen in the first semester of 1997 with a seminar held by CSIS economic expert about "*Kajian dampak dan Implikasi Peraturan pemerintah No.68 Tahun 1996 Terhadap Perbankan dan Masyarakat*". The seminar discussed about the implication of the regulation for national economy. Another opinion made public also came from Kwik Kian Gie. He made statement and critic that the related public officials did not have trust on whatever the media and experts said. He concluded his article with saying that there was criminal factor in liquidity issue and suggested the monetary authority not to doubt to put the cases into law enforcement for the sake of justice. It is clearly seen that the society reacted by discussing openly the policy government made to overcome the economic crises during the time, trying to criticize. There was media involvement in spreading the information, affecting the knowledge of people about the current problem. This is also argued by Richard Quinney in the Social Reality of Crime, that responses to crime from the perspective of individual are influenced by knowledge about crime and also perceptions about the understanding of crime (Quinney, 1970). In the first semester of 1998 which is between January and June, the banks were freezed by BI as they were unable to cash money for the customer. It was lead by suspicious commentaries of some experts that there was ineptness in administering liquidity by BI to undercapitalized banks. One article showed in Chapter 4 covered an expert wondering why BI did such thing and questioning whether it was caused by the interference of other parties or not in distributing the liquidity support.

The society began to demand action from government as they had suspicion on the distributing of BLBI. This shows that the society in the meantime could not agree with the liquidity for undercapitalized banks, not that the policy is wrong,

but more like to disagree with the transgression emerged in distributing the money. The reaction from society itself became more visible as Soeharto resigned from the power on May 1998, as one article reported that people reacted more suspicious on BLBI projects, claiming that the liquidity support was misused by the banks. The society also thought the government was too slow in processing legally the liquidity cases on those banks. After the fall of the President, however, the government was still not changed, only the President was changed by the vice President, B.J Habibie. The media reporting telling about how the society became more intolerant toward the case and the law concerning the crime committed during BLBI distribution. The society also started to be less fear to give public opinion about the occurrence related to the government. This direct quote below proves the previous statement:

*“...Ia menambahkan, di era rezim Soeharto **bukan rahasia** kalau BI sering mendapat tekanan untuk memberikan Kredit Likuidasi BI (KLBI) kepada bank-bank yang tidak sehat milik keluarganya. BI juga sering diminta memberikan KLBI via bank-bank pemerintah tertentu, untuk membiayai proyek pemerintah atau proyek dari orang-orang yang terkait dengan pusat kekuasaan seperti proyek mobil nasional dan Badan Penyangga dan Pemasaran Cengkeh (BPPC).”* (Kompas 14-8-1998).

Translation:

“... He added, it was not a secret in Suharto regime, if BI was often demanded to distribute Liquidity Credit BI (LCBI) to undercapitalized banks owned by his family. BI was also often demanded to distribute LCBI via certain state banks to fund governmental project or a project owned by people who were close to the power, such as national car project and Clove Support and Trading Board.”

Under Suharto regime, it was known that critics for government were prohibited. That is shown also by the quote above, the person who delivered the opinion using the words bolded “*bukan rahasia*” or “it is not a secret”. Nonetheless, the freedom of information was not necessarily given place rightly after the resignation of Suharto.

“...Sebelumnya terjadi insiden dimana salah seorang staf JAM datun, Levdrik, melepaskan kabel pemancar mikrofon wireless milik kameramen AN-Teve sehingga pertanyaan wartawan tidak terekam dengan baik..”(Kompas 5-9-1998).

Translation:

“...There was an incident before that an Attorney General official, Levdrik, loosen the transmitter cable wireless microphone owned by AN-Teve camera person lest the question was not recorded well..”

The direct quote above manifests that the reaction of one of legal official who was trying to loosen the microphone cable in order to prevent the voice recording, which is the proof that the government still had paranoia of transparency and the openness. Oppositely, independent media need to exist to achieve a civil society, because people need to be better organized and equipped to control government and create transparency and accountability (Szeftel, 2000). Such independent media and freedom of speech are the tools to control the legal process of crime.

The increasing intolerance of society in the second semester of 1998 proved by demonstration conducted by 300 people in front of the Attorney General office, demanding the completion of banking cases. They demanded the legal process for all public officials of BI and The Ministry of Finance who are related to the process of liquidity support. They also asked the attorney to process legally all the bankers impartially. These findings are enough to say that soon after the fall of the New Order regime, the societal reaction toward BLBI case has been becoming more intolerant. This happened because the government under Soeharto regime controlled what should be published in media and supervised any critics toward the government. Collins confirms this, by arguing that the control over the press and other media, and the suppression of protests and critics are used to maintain political stability and masked many social problems throughout Indonesia (Collins, 2007).

Another finding included in Chapter 4 underlines that statement by Clinard and Quinney about societal reaction that has been traditionally mild is confirmed in this BLBI case under Suharto regime. People started to assess that Attorney

General officials were reluctant and inconsistent in investigating the corruption regarding the misuse of BLBI. It was reported in September 1998 that the public reactions were also becoming less tolerant. It is perceivable to understand that the political background influences society in reaction toward corruption. The influence of media accessibility as a public control of government, especially on corrupt activities, can not be denied (Sanyal & Samanta, 2002).

The Century Bank case is another banking drama in Indonesia. It is not exaggerating to call it as the same old drama, but different commercial break as the previous case, BLBI. Private bank collapse, and here BI as the ‘lender of last resort’. This case occurred under SBY regime in the Reform Era, almost 10 years after the fall of the New Order era. What happened in this case actually another involvement of a business firm, the government via BI, the Committee of Financial Sector Stability (KSSK), and the Deposit Insurance Agency (LPS). The societal reaction is used to analyze how public reacts and how the effort of government to crack down the related people in this banking scandal case compared to the reaction toward BLBI case. The important knowledge to understand the case is, this happened in the Reform Era, where one of significant transformations is the independence of media. Conforming by Barrie Zwicker (2006), the media is a symbol of transparency. The increasing transparency should be expected to decrease the corrupt activities (DiRienzo, Das, Cort, & Jr, 2007).

The mass published media are the tools to spread the opinions of expert or common people. The spreading news are consumed by the general society, influence public opinion, and create the social reality of crime, which is explained before by Richard Quinney (1970). This reality determines how society reacts toward the crime, the offender, and the legal processing. As in this case, media maximalized the situation to report anything related to the case. One article inserted in Chapter 4 says The House of Representatives Commission XI Deputy Chairman, Endin A.J Soefihara, gave argument:

“BI’s banking supervision is a mess. I believe the Bank Century case is not merely a liquidity problem but also something else related with irregularities.” - (Jakarta Post 24-11-2008).

That direct quote shows that the legislative member made opinion about the irregularities in bailout for Century Bank. From this statement, it can be concluded that the legislative branch and executive might have different opinions about policy making. The Century Bank case itself is a policy made by government with its committee, KSSK, which was chaired by Sri Mulyani, who no longer is the Chair of KSSK. However, in the first semester of 2009, the victims of fraud security product claimed the government released its responsibility about the prosecution of the case. There was no explanation for the victims from the government. The news has been reported from Jakarta Post, telling about the victims who demanded government for an explanation. This is a manifestation of the freedom of speech, where the people are freely to give opinion or an aspiration toward the government. In the New Order era, this would be impossible to happen.

Another societal reaction toward the case as seen in Chapter 4 that the civil movement regarding this case was included 6 people claimed as the representative of various professions. They did class action to file a lawsuit toward the government the President, and BI. They argued that the government did negligence by saving the Century Bank. The Reform Era results the audacity of society to sound their inner voice, to establish association, moreover, a class action. The article mentioned before proves that civil movement is something possible to happen, after Indonesia suffered the suppression of people power.

On December 2009, the issue of Committee of Inquiry (*Panitia Hak Angket Century*) was stronger and supported by many parties. A group of people claimed as *Masyarakat Madani Indonesia Antikorupsi* or Indonesian Anti-Corruption Civil Society came to agree that they would keep following the investigation and legal process of the century scandal. They argue that the bailout for Century Bank is a crime against the state because it was not conducted following the related banking regulation. This finding also shows that society is welcome to follow up the case that concerns public interest and also support the plan to establish Committee of Inquiry, which is appeared in some demonstrations supporting the establishment of the committee as a political reaction to investigate the case. The political reaction never really existed in the Suharto regime.

Beside the support for the committee, in the first semester of 2010, the society made opinion about the performance of the Committee of Inquiry established by legislative as a political reaction toward the irregularities of Century Bank bailout and also criticizing the high-ranking officials who were supposed to have transparency in policy making. People need to know why the government had to give liquidity support for Century Bank and reason it as the prevention of systemic economic loss. The similar reaction came from anti-corruption activist of ICW by his article that concerning about the next step after the Committee of Inquiry reached its conclusion. He suggested that if the legislative really intended to process the case, the next step was to ensure that this reached the Supreme Court to answer the ceaseless debate in the committee. It shows that the activist tried to emphasize the goal of the Committee of Inquiry to ensure the recommendation reached the Supreme Court to continue the legal process.

The societal reactions recorded in media are not only about the process to complete the case legally, but also about how the government was thought forgetting the other important social issue and demanded the government to put the public interest as the priority. People wanted to demand the government to consider other public matters, instead of unraveling the ceaseless perplexity of Century Bank case. Bold responses published in various media are the common findings in this research. On May 2010, a reporting said that an expert called KPK as reluctant to investigate the Century Bank scandal. Arif Nur Salam, the Executive Director of Indonesia Budget Center noted that KPK has enough data to begin next level of the legal process status from investigating to find the crime to investigation to find the evidence. The finding shows how society assessed the legal process toward the case. An expert judged KPK of being reluctant to investigate the case. Because the article writer thought the data findings were enough to process the case in the next level of criminal justice, from status investigation to find the crime, to investigation to find the evidence. It is important to emphasize that a wide range of discretionary powers are owned by legal actors during the process of engaging criminal justice. They decide who will be arrested, what charges to prosecute, and the disposition of the cases. The

intersection between law, administration, and politics, however, results in a system in which officials who concern about political process make discretions at the legal process like arresting, charging, convicting, and sentencing the defendants (Cole, 1973).

Societal reaction toward this case are various from publishing opinions to filing the government for crime. Political background has also influence on this matter. The SBY regime under the Reform Era is known for the independence of media. After the fall of New Order, Indonesia was viewed as the center of media freedom in the region. There are a wide variety of media outlets and opinions. The amount of critical reporting and commentary that exists is impossible under Suharto. However, these freedoms may be shrinking. Indonesia's media is increasingly subjected to lawsuits and restrictions (such as in Aceh), and physical assaults on reporters have been documented. This violence seems to have been sponsored by powerful officials and businessmen with political backing. Private business interests and the military are increasingly using the civil court system to control press coverage for any transgression (Feedman, 2006).

Both cases occurred in the different time, different political background, but have the same main theme. Banking scandals. Although BLBI case was also resulted by regional economic crisis that forced the government to give liquidity support, but the transgressions could not be denied. There was conspiracy between governmental and non-governmental actors. The Century Bank case appeared as the potential systemic economic problem. Strangely, the situation only occurred in one bank only, the Century Bank (Now, Mutiara Bank). The bailout reached Rp 6,7 trillion.

The societal reaction between BLBI and Century scandal cases have been influenced by political background, as the research attempts to explain. In the New Order regime, Suharto suppressed the societal aspirations through media limitation and the control over political right of the people. He built an economic system based on bureaucratic and military control over economic sphere. Powerful public figures, both military and civilian, gained control of potentially lucrative offices and used them to build economic powerhouses. Chinese entrepreneurs and members of Suharto's family (Cendana Family) were often the

beneficiaries of government contracts and licenses that created monopolies in main industries (Feedman, 2006). Such fatal tradition piled the social and economic problems. In the Reform Era, under SBY regime, there might not be such blatant family conspiracy, but still, there is need of further research to prove that there is none. As explained in the previous chapter, the phenomenon of oligarchy which is indicated by the domination of capitalists as the supporters for political parties somehow exists in his regime to support the campaign. Consequently, the parties are coopted by the stakeholders, the corporates, and that ruins the democratic process in policy making (Badoh & Dahlan, 2010). However, SBY as the president did not make policy to totally control the media as Suharto did. Moreover, under his regime, media are well-spread from published media to cyber media. As Richard Quinney (1970) stated that reactions of the society are based on the knowledge that constructed the reality of crime. Consequently, how people reacted toward BLBI case in the New Order era was influenced oleh how the government control the media and the societal reactions toward the Century scandal is also based on the knowledge the people receive from media.

Referred to the preposition of Clinard and Quinney that societal reaction toward corruption has been traditionally mild, but then public reaction is becoming less tolerant. The both cases conform with the preposition. In the New Order era, people were giving opinions in the media, but the reactions are not as bold as the reaction after the fall of the regime or the societal reaction toward the Century Bank case.

During the regime of Suharto, the discussion held by an economic expert or either an opinion published in the media show the forms of societal reactions, but not more than that. Soon as Suharto was out of his office, people reacted more suspicious on BLBI projects, claiming that the liquidity support was misused by the banks, but still the society thought the government was too slow in processing legally the liquidity cases on those banks and assessed that Attorney General officials were reluctant and inconsistent in investigating the corruption regarding the misuse of BLBI. Demonstration as civil movement began to appear in the second semester of 1998, demanding the legal process toward the banks owners. After the fall of Suharto people were starting to be brave to give opinion,

moreover, conducting demonstration pushing the government to crack down the transgression. Those findings can conclude the fact that societal reaction is becoming intolerant toward corruption in the New Order era.

Societal reactions in the Reform Era under SBY regime toward the Century case appeared bolder than the reaction toward BLBI case. It is not only because it is the era of media independency, but also the freedom to establish non-governmental organization or other civil society associations, such as ICW which is the manifestation as people power to control the government. People arranged such class action to support the legal process and the establishment of legislative committee, the Committee of Inquiry. Those findings prove that the societal reaction toward Century case in SBY regime is not only becoming less tolerant, but also becoming bolder. The societal reaction toward this case also conforms the preposition of Clinard and Quinney. People are brave to voice their minds, to file the government for crime, and to form such association to support the legislative interference, the Committee of Inquiry in solving the case.

V.2 Comparison of BLBI Case and Century Bank Case from Legal Process Perspective

The second substance of Clinard and Quinney dimension is the legal process. They aver that official penalties have been lenient and restricted to the sanctions given by the professional associations. In the further explanation, this means, the laws directed at those offenders are lenient because of the high social status of them. In the case of crime by government, the public reaction is not usually strong to begin with, because the public has been led to believe that whatever the government does is right and must by definition be legal (Clinard & Quinney, 1972).

The legal process toward the BLBI case has not actually been solved yet until now, in the matter of returning the money to the government. Simply, it is because the leniency of the laws administering toward the offender, confirming the preposition of Clinard and Quinney. In the first semester of 1998 when some banks started to be frozen, from the findings, there was not legal process toward

the owners and managers of the banks, or the public officials of BI and The Ministry of Finance. The legal process began in the second semester of 1998.

On August 1998, the discourse of cracking down the officials and stakeholders of the troublesome banks and also the public officials of BI started to emerge. The findings show that the government moved slowly to crack down the offender. This has proved the proposition of Clinard and Quinney that the laws directed to the offender have been lenient under Suharto regime.

The media, moreover, had reported before that there was indication of transgression in distributing the BLBI to the banks during the crises, but then, the government paid null attention. The Attorney General was reported summoning some bankers, not to be processed legally, but to be asked for statements for data collecting. The Attorney General would summon the bankers but after the chance given for them to return the money was up. It was likely that even the law enforcer acted kindly to the bankers, the corporates, as the second article confirm that kindness.

Another surprising finding is that Attorney General claimed there was not any indication of corruption in returning BLBI. The attorney also said that it was banking case, not entirely a criminal case because there was not any loss that government experienced, moreover, the assets returned were more than the calculation. In the legal process, the bankers did negotiate with the general attorney considering the administration of law, such as suspension for detainee status. The negotiation between legal official and the suspects about the detainee status, and the Attorney General himself claiming it was not a corruption case and making the economic crisis situation an excuse for being tolerant are enough evidents to prove the leniency of law administration and show the similar highlight of how the criminal justice administered toward the people related to the scandal of BLBI. The law enforcer has absolutely lost the supremacy of law. The indication could actually foresee the ending of the case. Either the charges being dropped or simply forgotten, as Clinnard and Quinney avered about the laws aimed to the offender.

The legal process for Century Bank case is generally lenient as for BLBI case under Suharto regime. Nevertheless, in this Reform Era, there are various

governmental institutions which established to overcome the related cases, such as KPK, PPATK, KSSK, BPK, BPKP, and LPS. Especially for KPK, the Corruption Eradication Commission which has authorization to investigate allegedly corruption cases, included this banking scandal.

On 25 November 2009, BI launched a massive investigative audit to detect any violation that may lead to criminal prosecution. The law enforcement, said the BI deputy Governor, would follow the result of the investigation. The attorney Agung Hendarman Supanji also avered that the Attorney General kept monitoring the case and following the report of Supreme Audit Agency (BPK) regarding the bailout Rp 6,7 trillion for Century Bank. When BPK was reviewing the Century Bank's finance, Corruption Eradication Commission (KPK) conducted a massive investigation into the findings of possible irregularities. KPK would follow up any irregularities found by BPK.

Along with KPK and BPK, PPATK or the Financial Transactions Report and Analysis Center has also identified 17 recipients in the accounts of institutions and the other individuals. Previously, BPK had requested the PPATK to examine the transfer of funds from century to accounts of 16 financial institutions and about 50 depositors. BPK alleged there were some misappropriations of bailout. The findings above show the inter-institutional corporation to solve the problem, between BI, KPK, BPK, and PPATK. KPK as the special commission is supposed to follow up the findings from the related institutions. However, the legal process is still continuing until now and has not yet come to the final conclusion.

Another reporting said that the century case will likely be closed since Sri Mulyani resigned from the seat of Minister of Finance. The statement was come from Pramono Anung, the vice of DPR, after following the meeting between the Supervisor Team of DPR for Century Bank case with the Head of Polri jenderal (Pol) Bambang Hendarso Danuri. He found out that the report created by Polri indicated the A option, that there is no problem with the bailout policy, whereas the Committee of Inquiry had come to conclusion to C option, that is the bailout policy is questionable. Therefore, the committee gave a chance to Polri to re-evaluate the report. Still in the same article, the meeting of supervisors with KPK

was not maximal. KPK has not received the case document yet. Pramono came to conclusion that there is the effort of buying time about the century case

After the Committee of Inquiry established in the late of December, in 2010, they came to one conclusion that bailout policy is questionable, therefore, the case should be proceeded by law as soon as possible. However, from the summarized article above, one of legislative member had an opinion that there is an effort to procrastinate the legal process of the case. KPK and Polri together did not show the intention to work maximally.

The legal process in the Century Bank is somehow complicated. Political reaction in the form of the Committee of Inquiry, and the reluctance of criminal justice officer and KPK officials have made it more complicated. The process of criminal justice for crimes, such as corruption, committed by people who are familiar with the power structure, often involved discretion and political influences to be whether prosecuted or not. There might be a report of the crime, but with the power of discretion, the report can be deleted. As it is argued in the book written by Francis Allen (1996), *The Habits of Legality: Criminal Justice and the Rule of Law*, that political motivations have often powerfully influenced the selection of political corruption cases for prosecution and it can hardly be doubted (Allen, 1996). Until now, those institutions and the political interference are still trying to either solving the case or simply wearing out the patience of the society.

Clinard and Quinney argues that official penalties have been lenient and restricted to the sanctions given by the professional associations. Further explanation by Clinard and Quinney is that the action of authority influences the legal process. The charges are dropped, the defendants are cleared, or may be dismissed from his former responsibilities. The political action which influences the legal process can be perceived as the political interference. The BLBI case simply conforms the prepositions that the laws directed to the offender are lenient. This is because under his regime, almost no legal process has been made. After Suharto stopped ruling this country, Polri were investigating the managers and the owners of 16 banks which liquidated on November 1997. But still, the society thought the government was too slow in processing legally the liquidity cases on

those banks. Both findings prove that after the resignation of Suharto, Polri started to investigate the bank owners and managers. The action has been taken after Suharto no longer is the President. The only action toward the BLBI case was to freeze some banks.

The legal process of BLBI during the New Order Era is humour. The bankers did negotiate with the general attorney considering the administration of law, such as suspension for detainee status. The negotiation or discretion making between the law enforcement officer and the suspects dishonoured the supremacy of law and the tenet of “all before the law” during the New Order. This BLBI case finally was passed to the next regimes.

The corruption Court sentenced Wednesday former Bank Indonesia (BI) deputy governor Aulia Pohan, father in law of President Susilo Bambang Yudhyono’s son, to four and a half years in jail for corruption – the Jakarta Post 17-6-2009

The article above shows that under SBY regime, he ordered Aulia Pohan as the former BI deputy governor during BLBI case to be sentenced. This is such an irony compared to what he has done to Century Bank case. Under SBY government, the legal process is known to be lenient toward the public officials and the entire people related to the case of Century Bank bailout. The power and special status of senior public officials may prevent the detection of such transgression (corruption and illegal financial activities) in which they or their business associates are involved. In almost all recent cases of grand corruption, the detection and investigation of the criminal activities of senior political figures occurred only after there is a change of government. When the regime has changed, there is usually a reason to blame economic factors on the previous running government, including allegations of corruption and economic mismanagement. The successor regime has an interest in exposing and investigating those activities, assuming the previous government is their political enemy. The accusations made by the current regime concerning the former senior public officials must be considered carefully, to avoid the public opinion of a political interest rather than a sincere effort to supreme the criminal justice. There have been rare cases where a criminal investigation and prosecution against a

governed head of state or head of government has occurred while they were still in power (Chaikin & Sharman, 2009).

This is what happens in the Reform Era under SBY regime. He sentenced Aulia Pohan, who has been dismissed from BI office, but SBY has not done the same thing to Budiono (now, the Vice President of Indonesia) who was the deputy governor of BI when Century Bank was granted bailout.

From political reaction side, after establishing the special committee, the legislature formed a special team whose role to follow the investigation of the case. However, the performance of other institutions somehow created such procrastination of the case. Based on the finding, said that the Century case will likely be closed since Sri Mulyani resigned from the seat of Minister of Finance. The statement was come from Pramono Anung, the vice of DPR, after following the meeting between the Supervisor Team of DPR for Century Bank case with the Head of Polri Jenderal (Pol) Bambang Hendarso Danuri. He found out that the report created by Polri indicated the A option, that there is no problem with the bailout policy, whereas the Committee of Inquiry had come to conclusion to C option, that is the bailout policy is questionable. Therefore, the committee gave a chance to Polri to re-evaluate the report. Still in the same article, the meeting of supervisors with KPK was not maximal. KPK has not received the case document yet. Pramono came to conclusion that there is the effort of buying time about the century case. The article shows how the legislative member concluded that the performance of Polri and KPK were not conducted correctly. Similar with another article on May 2010, a reporting said that an expert called KPK as reluctant to investigate the Century Bank case. Arif Nur Salam, the Executive Director of Indonesia Budget Center noted that KPK has enough data to begin next level of the legal process status from investigating to find the crime to investigation to find the evidence.

KPK as the commission established specially to solve cases like this seems reluctant to rise the status of investigation from investigation to find the crime, to investigation to find the evidence. Those findings prove that the legal process of both cases are lenient as what cited in the proposition of Clinard and Quinney. The visible differences from both cases are, the legal process of the Century Bank case

involved the political reaction, manifested in the establishment of the Committee of Inquiry which also helped by some experts to make a recommendation for the legal process. This kind of reaction was not found in the previous era of the New Order. From societal reaction, the fact that in the Reform Era (SBY government), media are free to report such corruption cases, the freedom to establish non-governmental organization, and to conduct such civil movement. These reactions would be impossible occurred in the New Order Era.



CHAPTER VI

DISCUSSION

6.1 Conclusion

The extent of societal reaction and legal process toward Century Bank case under the SBY regime compared with BLBI during Suharto regime have been influenced by political background in each regime. Both cases appeared in the different regimes, but still in the same theme of banking scandal. This research initially attempts to see to what extent the proposition of Clinnard and Quinney about societal reaction and legal process conform in both regime, the regime of Suharto, known as the New Order and the regime of SBY under the reform Era, using the banking cases of BLBI and Century Bank.

Clinnard and Quinney (1972) postulated that societal reaction has been traditionally mild. Official penalties have been lenient and restricted to the sanction given by the related professional institutions. Public reaction is becoming less tolerant. Both cases generally conform the propositions.

In the New Order era, the societal reaction was increasingly becoming more intolerant soon the regime was falling, when the legal process toward the BLBI case has been lenient. After the presidency even has changed for several times, the legal process never meets the end for this case, the bankers have not returned all the money to the government, tho some actors have been punished. There is nothing solved and the country still suffers trillions rupiahs. It is not far different from the Century bank case in the Reform Era. The societal reaction is surely becoming less tolerant toward the bailout scandal. Various civil movements appeared. These societal reactions however distinct from those in the New Order era, because under the Reform Era, there is media independency and the freedom to voice civil aspirations. The legal process of the case is also lenient, although the process has been influence by the political process embodied in the Commitee of Inquiry which was established by the legislative to give recommendation in solving the case. However, in the Reform Era, SBY has ordered law to eventually punished the former Deputy Governor of BI during BLBI case, but he has not

done the same decision to former Deputy Governor of BI when Century Bank case occurred, his Vice President.

To sum up, the prepositions from Clinnard and Quinney has conformed in the both cases from different regimes, the societal reaction is becoming less tolerant and the legal process has been lenient. However, the political background has role to influence those both aspects, societal reaction and the legal process in both similar cases. If there is no will to solve the case, to put the law above all impartially, and to make public matter as the priority, the case will only end up to be the stack of papers ready to be the flaw in the history of Indonesia. Political system has indeed such positive influence, but without the positive will, what remains to stay is the other axis.

6.2 Recommendations

Referring to the conclusion above, there are some recommendations for the government, the society, the criminal justice officials, and the politicians:

- The administration of criminal justice toward the corruption case which involves the political interest has to be rigid. The law enforcement agents should not treat the white-collar criminals differently with other criminals. The legal process should be administered equally to people, regardless the economic and sosial status.
- The government and the politicians should never chase the vested interest to avoid the collision of interests by committing corruption and other clandestine exchange. If personal interest is greater than public interest, there is always a chance to resign this country. Indonesia is indeed still in need of clever entrepreneurs to support the economic system.
- Public policy is made based on the constitution as the basic tenet of this country which should consider the involvement of people in policy making and control of regulation. Thus, the law enforcement agents should not do any repressive action toward civil movement supporters in demonstration.
- The people power should be encouraged to unite as one huge civil movement to eradicate the corruption in the government. Effective protection toward anti-corruption activists should be prevailed.

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