Indonesian court overturns conviction of Tommy Suharto

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The ruling by Indonesia's highest court on October 1 to overturn last year's fraud conviction of Hutomo "Tommy" Mandalaputra, son of the country's former military strongman Suharto, has come as an unwelcome shock to the government of President Megawati Sukarnoputri, as well as the financial markets.

Tommy Suharto's conviction was seen as a first step toward curbing the power of the Suharto family and its business cronies, given their close connections to the military and state apparatus, including the courts. Attempts to prosecute General Suharto himself had failed after his lawyers successfully pleaded that he was not medically competent to stand trial.

But in September last year, Supreme Court judge Syafiuddin Kartasamita found Tommy Suharto guilty of defrauding the state of $US11 million. Along with Ricardo Gelael, his partner in the retail firm Goro Batara Sakti, Tommy Suharto had swapped a worthless parcel of land for a prime site belonging to the state National Logistics Agency (Bulog) in order to build a superstore.

Since last November, however, when he was due to begin an 18-month jail term, Suharto has been in hiding and has evaded the at times farcical police attempts to track him down. At the same time, his lawyers have been conducting a legal appeal.

The three-judge Supreme Court panel overturned the original decision on the flimsiest of grounds, on the basis that Suharto had not been a commissioner of the firm in 1996 and therefore was not responsible for the fraud. As a spokesman for Attorney-General Muhamad Abdul Rachman pointed out, the information was not new as claimed by the Supreme Court panel and had already been dealt with by the courts. The Attorney-General's office announced that it would seek a further review of the case but a number of legal experts have indicated that the decision is irreversible.

The court ruling was unexpected not only because Suharto is a fugitive but also because police claim to have evidence that he was involved in the murder of Syafiuddin Kartasamita, the judge who originally sentenced him, as well as a number of bombings in Jakarta. According to police, the two men arrested for the drive-by shooting of the judge on July 26 have admitted they were paid $10,000 by Suharto and provided with the gun. The judge's wife claims that her husband had refused a $200,000 bribe from Suharto prior to his conviction.

A number of lawyers, politicians and political activists immediately attacked the court's ruling. Riot police were moved into the suburb of Jakarta where most of the Suharto family lives in anticipation of angry riots. So widespread was the contempt for the verdict that the court's chairman Bagir Manan had to publicly deny rumours that the judges had been intimidated by the murder of their colleague.

The significance of the case goes far beyond the $11 million defrauded from Bulog. General Suharto and his children are estimated to have used their connections with the state apparatus and business to amass fortunes totaling over $US45 billion. They stood at the top of a vast network of crony business relations involving the military and the ruling party Golkar, based on state monopolies and inside deals.

In the wake of the 1965-66 CIA-sponsored military coup that brought Suharto to power, the major powers and corporations tolerated such business dealings. But as investment and production became globalised in the 1980s and 1990s, foreign investors increasingly came to regard the system of patronage and personal preference as an intolerable barrier to their operations in Indonesia. In the midst of the turmoil that erupted

following the 1997 Asian economy crisis, the US and the IMF insisted that "crony capitalism" had to be dismantled in Indonesia and elsewhere, and when Suharto baulked at the demands, backed his removal.

Since then one of the key demands of foreign investors has been for the cleaning up of the courts—to guarantee that foreign-owned corporations are treated on the same basis as Indonesian-based companies, to break up the web of crony business relations and to ensure that failed businesses are formally bankrupted. The willingness of the courts to convict one of the Suharto clan on charges of corruption was widely viewed as a key test of legal reforms.

The overturning of Tommy Suharto's conviction has thus been interpreted as evidence that the Suharto family still exercises considerable political and economic clout behind the scenes. As a result, the markets reacted sharply on news of the Supreme Court decision. On October 2, the day after the ruling, the rupiah fell to 10,120 against the US dollar, down 2.4 percent from the day before, and the JSX Composite share market index declined by 2.9 percent.

An editorial in the *Jakarta Post* declared that the ruling "has destroyed what little credibility was left on what is supposed to be the last bastion of justice in this country". The *Kompas* newspaper lamented: "In the eyes of many, our legal world now is so decayed that it cannot be trusted anymore." The sharp drop in Indonesian share values on October 2 came on top of eight consecutive days of falls as investor concerns mounted over threats to US businesses in Indonesia amid the US war build-up against Afghanistan.

International financial commentators have long been critical of the Indonesian government's failure to adequately reform the legal system and create "a level playing field" for investors. One of the widely reported cases was that of Canadian insurer Manulife Financial Corp, which late in 2000 paid $US18 million to buy out its bankrupt local partner in Indonesia's fourth largest insurer PT Asuransi Jiwa Manulife Indonesia.

One of Manulife's partners was a company owned by tycoon Suyanto Gondokusumo—PT Dharmala Sakti Sejahtera (DSS)—which, unusually, had been declared bankrupt in a commercial court. Objections were raised to a court-controlled sell-off of DSS assets by a lawyer who claimed that they had already been sold in a series of deals to someone else.

While the claim on DSS assets proved in the end to be bogus, the police detained the Indonesian vice-president of Manulife for three weeks and the court receiver for a month. Thugs physically threatened other Manulife executives. The Manulife businessman was only released after Canadian Prime Minister Jean Chretien personally intervened and wrote to Indonesian President Abdurrahman Wahid warning of the consequences of such actions for foreign investment in the country. Canadian trade commissioner Ken Lewis explained that the arrests "have basically threatened international investors".

The Supreme Court decision to overturn Tommy Suharto's conviction is a further blow to President Megawati Sukarnoputri, who came to power only two months ago following the drawn-out political battle that resulted in the impeachment of Abdurrahman Wahid. Sharp divisions are already opening up in the fragile ruling coalition as Islamic-based parties insist that the government break off relations with the US following the bombing of Afghanistan. The Suharto decision, as well as the fact that Megawati is politically dependent on Suharto-era forces, including Golkar and the military, will make it all the more difficult to attract the $20 billion in foreign investment she needs to rescue the floundering Indonesian economy.