

## AGAINST THE ODDS: ANTI-CORRUPTION REFORM IN INDONESIA

SOFIE ARJON SCHÜTTE\*

*The University of Melbourne, Australia*

### SUMMARY

The discourse on anti-corruption approaches during the last decade has been shaped by two extremes: those who prescribe specialized anti-corruption bodies as a remedy in any context and those who consider general governance reform a prerequisite before a specialized anti-corruption agency can function effectively. This article argues that the dichotomized discourse does not do reality justice and presents a “good enough” story from Indonesia. The Indonesian Corruption Eradication Commission (Komisi Pemberantasan Korupsi [KPK]) was established in a low-governance environment and, although applying the three-pronged Hong Kong strategy, bears considerable differences to the Independent Commission against Corruption Hong Kong’s structure and powers. Despite not following the prescribed sequencing or models, the KPK has brought previously untouchable high-profile perpetrators to jail, has recovered stolen assets, and enjoys a much higher degree of public trust and support than the other Indonesian law enforcement agencies. The Indonesian case demonstrates once more the importance of “local ownership” and public demand for sustainable change. Copyright © 2012 John Wiley & Sons, Ltd.

KEY WORDS—anti-corruption commissions; institutional change; Indonesia

### INTRODUCTION

Over the last 20 years, special task forces and new agencies to investigate corruption have been set up by the dozens, not just for economies of scale, but often as a last resort in an environment of widespread corruption. Klemencic *et al.* (2007: 6) observe

... in OECD countries specialization is often ensured at the level of existing public agencies and regular law enforcement bodies. Transition, emerging and developing countries often establish separate specialized anti-corruption bodies due to high level of corruption in existing agencies. In addition, in these countries, creation of separate specialized bodies is often in response to pressure by donor and international organizations.

Countries with endemic corruption and their foreign advisors are faced with a dilemma: On the one hand, it is difficult to fight corruption if the existing law enforcement agencies are part of the problem—“a clean broom is needed to clean a dirty floor”. On the other hand, if they pay attention to World Bank Group studies, they learn that specialized agencies are

... likely to meet with limited success in environments where corruption is rampant and the governance environment deeply flawed. In fact, in environments where governance is weak, anti-corruption agencies are prone to being misused as tools of political victimization (Shah and Schacter, 2004: 42).

---

\*Correspondence to: S. A. Schütte, Department of Management and Marketing, The University of Melbourne, Level 10, 198 Berkeley Street, VIC 3010 Australia. E-mail: sofieas@unimelb.edu.au

The author is a PhD candidate at the University of Melbourne. Research for this article is part of the author’s evolving doctoral thesis on “Triggering Institutional Change: The Indonesian Corruption Eradication Commission”, supervised by Prof. Howard Dick and Prof. Tim Lindsey. The author conducted semi-structured interviews with more than 60 decision makers, NGO representatives, and other experts on anti-corruption reforms in Jakarta in 2009.

The same argument was made by Huther and Shah (2000), Bolongaita and Bhargava (2004: 36), and others since then.

Huther and Sha's recommendations invite some critical appraisal. As Stephen Sherlock (2002: 378) has rightly observed, there "is a degree of circularity in this argument, because it makes the almost self-evident observation that if the quality of governance in a given country was high there would be little corruption". Of course, a specialized agency can work more effectively when the rule of law is soundly established and the judiciary is free of corrupt practices, but how to (re-)gain trust in the state and its legal institutions when third-party enforcement has been corrupted is the question.

At the other extreme of the discourse on anti-corruption agencies is the prescription of the Hong Kong model of an anti-corruption agency in any context (De Speville, 2010). The Independent Commission against Corruption (ICAC) has had sustainable success in controlling corruption in Hong Kong, and its former commissioner De Speville (2010) maintains that failure of commissions elsewhere is due to divergence from this model and the dilution of anti-corruption measures into general governance reform.

In this article, I argue that a dichotomized discourse does not do reality justice. I discuss the case of the Indonesian Corruption Eradication Commission (Komisi Pemberantasan Korupsi [KPK]) that was established in a low-governance environment and that, although applying the three-pronged Hong Kong strategy, bears considerable differences to the ICAC Hong Kong's design. Despite not following the prescribed sequencing or models, the KPK has brought previously untouchable high-profile perpetrators to jail, has recovered stolen assets, and enjoys a much higher degree of public trust and support than the other Indonesian law enforcement agencies. Although presenting this as a "good enough" success story (Doig, 2010), I do not claim that the Indonesian approach is the solution to other countries' problems. The Indonesian case, however, demonstrates once more the importance of "local ownership" and public demand for sustainable change that can be fostered but not substituted by strategy.

#### AGAINST THE ODDS: AN INDONESIAN CASE STUDY

In 2002, the Indonesian House of Representatives (Dewan Perwakilan Rakyat [DPR]) passed a bill that established a powerful anti-corruption agency in the midst of widespread corruption, the Corruption Eradication Commission (KPK). World Bank Governance Indicators for Indonesia showed poor performance in all six areas,<sup>1</sup> below the average of the 212 surveyed countries (World Bank Institute, 2011). Despite these unfavorable odds, there are no indications that the KPK has been co-opted by the government or any other groups to date. It has indicted members of both government and opposition parties, the legislature and executive, and to a lesser degree, the judiciary (see also Figure 1 on the office of defendants).

Since the KPK has taken up operations in 2004, Indonesia's corruption perception score has slowly climbed from 2.0 to 2.8 in 2009 (out of a scale from 0 to 10; Transparency International, 2010).<sup>2</sup> The World Bank Institute's "corruption control" indicator has improved from -0.91 to -0.71 (out of a scale from -2.5 to +2.5 with 0 being the worldwide average) over the same period (World Bank Institute, 2011). Thus, there has been steady improvement in the reduction of corruption, although corruption is still a bigger problem than in most of the other countries surveyed. Remarkable is the Indonesian response to the Transparency International's question about the government's effectiveness in the fight against corruption in the 2009 Global Corruption Barometer: 74% of the respondents found the government's actions to be effective (Transparency International, 2009: 33). Considering local opinion polls that compare the performance of the Indonesian law enforcement agencies, there are grounds to believe that this satisfaction is to be ascribed largely to the KPK's performance, although it is not part of the government in a legal sense. A poll conducted by the national daily *Kompas* in November 2009 found that 57% of the respondents were satisfied with KPK's performance, as compared with only 19% with the Attorney General's Office and 22% with the National Police

<sup>1</sup>Political stability—no violence, voice and accountability, government effectiveness, regulatory quality, rule of law, control of corruption.

<sup>2</sup>Notably, the score remained at 2.8 in 2010 after a series of scandals in 2009 that exposed some of the strength of vested interests and adversaries the KPK is facing.

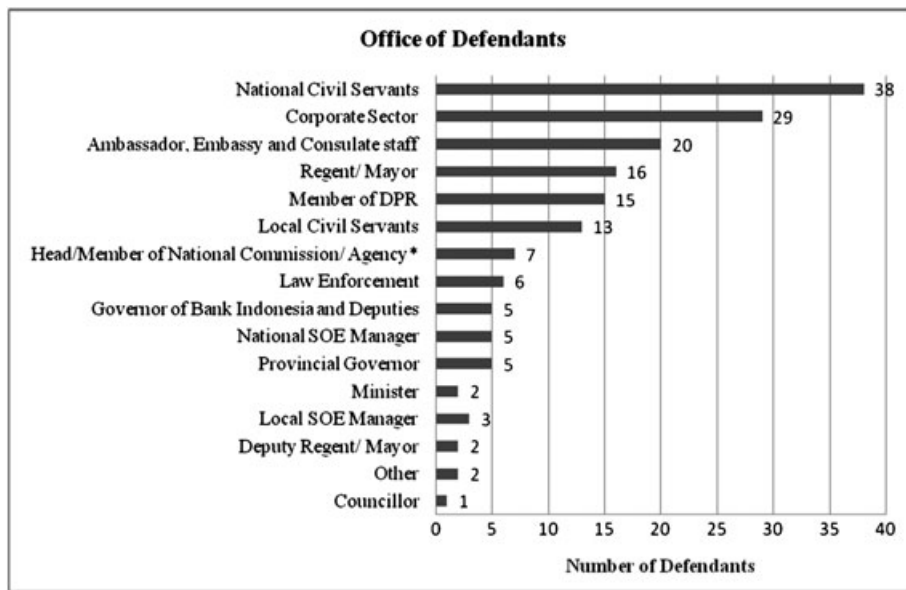


Figure 1. Office of defendants in Komisi Pemberantasan Korupsi (KPK) cases as of September 2009.

\*This includes members and/or the head of the Commission for the Supervision of Business Competition (Komisi Pengawasan Pesaingan Usaha [KPPU]), the Electoral Commission (Komisi Pemilu Umum [KPU]); the Judicial Commission (Komisi Yudisial [KY]), and the Indonesia Investment Coordinating Board (Badan Koordinasi Penanaman Modal Indonesia [BKPM]). The total number of defendants is 169 in 146 cases. Source: Compiled by author based on data obtained from KPK, 30/09/09.

(*Kompas*, 30/11/09).<sup>3</sup> A similar message was conveyed in a survey conducted by the Indonesian survey institute LSI (Lembaga Survei Indonesia) in October 2010. On a scale from  $-100$  to  $+100$ , measuring the integrity of law enforcement agencies, respondents rated only the KPK on the positive spectrum of the scale; the police, the Attorney General's Office (AGO), and the judiciary were found lacking integrity (LSI, 2010). Nevertheless, the KPK has had incidences of misconduct of its personnel, and by September 2011, an internal investigation was underway as regards accusations made against some of its commissioners and staff (*Kompas*, 04/09/11). These accusations have not left the KPK's reputation unaffected. In July 2011, 80.2% of the respondents in another *Kompas*' opinion poll no longer trusted that the KPK was free of corruption and the KPK's positive image was at a low of 36.2% (*Kompas*, 01/08/11).<sup>4</sup> After the internal investigation cleared the suspected officers, KPK's approval rate increased again (*Kompas*, 02/11/11, reporting on a poll conducted by survey institute Jaringan Suara Indonesia). This demonstrates how closely public support for the KPK is linked not only to its performance but also its perceived integrity.

#### THE MAKING OF THE INDONESIAN CORRUPTION ERADICATION COMMISSION

The KPK emerged from an experimentation process of over 50 years with special task forces and commissions to combat corruption, and it has by no means been a foreign import. None of the previous, short-lived entities had brought sustainable results: their findings were either ignored or only select personnel consequences were drawn without follow-up on institutional and organizational reforms (Mackie, 1970; Palmier, 1985; Assegaf, 2002;

<sup>3</sup>The poll was conducted by the daily *Kompas* by phone on 24–25 November 2009. Nine hundred ninety-one adult respondents were randomly sampled in 10 Indonesian cities (margin of error, 3.3% at a 95% confidence interval).

<sup>4</sup>The poll was conducted by phone on 27–28 July 2011. Eight hundred seven adult respondents were randomly sampled in 12 Indonesian cities (margin of error, 3.4% at a 95% confidence interval).

Sunaryadi, 2009). Suggestions for a specialized agency to handle corruption cases, following the example of the Malaysian anti-corruption commission *Badan Pencegah Rasuah*, had been made at least as early as 1986 (Hamzah, 1986: 146). With the downfall of the Soeharto regime and the apparent lack of capacity and/or willingness of the police, public prosecutors, and courts to address the alleged corruption by the Soeharto family and its cronies as well as other corruption cases, the proposal for an independent anti-corruption agency re-emerged. It was brought into the legislative process in 1999 by legislators who were still elected under Soeharto's New Order. They were under pressure to regain credibility in the eyes of the public and salvage their political future (MacIntyre, 2003: 147–148). They were also disenchanted with the performance of the existing law enforcement agencies.

Law 31 of 1999 on Criminal Acts of Corruption, henceforth referred to as the Anti-corruption Law, replaced the New Order's Anti-corruption Law 3 of 1971 and thereby all criminal law provisions on corruption. Corporations could now be held accountable for corruption. Minimum penalties were established, and the death penalty was made possible for corruption in state emergency situations. Article 43 (2) stipulates that within 2 years, an Anti-corruption Commission tasked with the coordination and supervision of corruption cases, including conducting its own pre-investigations, investigations, and indictments, was to be established. The commission was to consist of members from within (civil servants) and outside government (Art. 43 (3), Anti-corruption Law). Its organizational design, tasks, and powers were to be regulated by another law within 2 years time. This provision was not in the original bill the Government had submitted to the Legislature. It was brought into the legislative deliberation by the United Development Party (*Partai Persatuan Pembangunan* [PPP]),<sup>5</sup> reportedly from the head of the PPP faction in Commission II and head of the legislative board of the House of Representatives, Zain Badjebber (Hamzah, 2005: 73). A former judge himself, he was disappointed with the outcome of the reforms of the criminal procedure code in the 1980s that could not bring extortive practices in the law enforcement process to a halt (Interview, 27/05/09).

The hangover legislature from the New Order showed more eagerness in passing anti-corruption legislation than its democratically elected successors. It took more than 3 years, instead of the statutory two, before Law 30 of 2002 on the Indonesian Corruption Eradication Commission was enacted. In hindsight, however, this delay can be considered a blessing. In 1998, a World Bank mission had warned to make such a commission the first reform and suggested to consider an amnesty for senior public officials (World Bank, 1998). That the first commissioners were endorsed only in late 2003 was certainly not based on this warning but because of a long and winding path of political bargaining. The "long gestation", as it has been aptly phrased by Crouch (2010: 228), allowed the KPK to start operations in a politically more conducive environment in 2004. The delay resulted in it being perceived less of a threat to members of the Soeharto regime, and its jurisdiction would apply only to cases after 1999. There has been some dispute on whether the KPK was allowed to investigate cases that occurred prior to the passing of the KPK Law in December 2002. A cassation verdict at the Supreme Court in 2005 (Decision No 1344 K/Pid/2005: 82) confirmed that the KPK could investigate cases that occurred after August 1999, that is when the establishment of the KPK was first announced by the Anti-Corruption Law. The chair of the drafting team of the KPK Law, Romli Atmasasmita claims that the KPK could investigate even earlier cases based on the Anti-Corruption Law No. 3 of 1971 (Interview, 15/12/09). According to a former KPK commissioner this interpretation was rejected by the majority of commissioners (personal communication, 17/05/11). The rationale behind this decision is not clear. Besides arguments of legal interpretation, more practical reasons may have played a role. The KPK might have drowned in old cases, in terms of case-load as well as in political resistance triggered by cases involving former President Soeharto and his family (for a similar argument see Butt, 2011: 384). As the Anti-Corruption Law of 1999 introduced new kinds of admissible evidence and higher penalties, it might also have appeared too cumbersome to go after cases based on the old Anti-Corruption Law of 1971.

---

<sup>5</sup>The United Development Party was established in 1973 when the Soeharto Government forced the Islamic parties to merge. After 1973, only two parties were allowed to contest the Government's *Golongan Karya* (Golkar) in elections: the PPP and the Indonesian Democratic Party (*Partai Demokrasi Indonesia* [PDI]) that evolved into the Indonesian Democratic Party-Struggle (*Partai Demokrasi Indonesia-Perjuangan* [PDI-P]) in 1998. A fourth, unelected, faction represented in the legislature with 75 seats was the Armed Forces/Police.

*Donor influence on the set-up of the Komisi Pemberantasan Korupsi*

Donor influence on the drafting and deliberation process of the KPK Law appears to have been limited. Donor attention was focused on the many other reforms Indonesia was undergoing and on other anti-corruption efforts such as a Joint Investigation Team under the Attorney General's Office (Butt and Lindsey, 2011), the National Ombudsman (Crouch, 2008), and the Public Official's Wealth Audit Commission (Sherlock, 2002). All three ultimately failed, although the Ombudsman still subsists, but constituted valuable lessons learnt for the future KPK.

The Asian Development Bank (ADB) provided assistance to the preparation of the KPK bill, but it ended just when the deliberation of the bill in the legislature started. From July 2000 to July 2001, the ADB provided technical assistance of approximately \$US 800,000 to the Indonesian Ministry of Justice. The project consisted of three components to support the establishment of the KPK: public dissemination and consultation about the commission, comparative studies of international good practices, and institutional design (ADB, 2003). An expert team under the lead of former ICAC Hong Kong Commissioner Bertrand de Speville was recruited to advise the Indonesian Government's legal steering committee under the Director General for Law and Legislation at the Ministry of Justice. Members of this drafting team were from different government agencies, universities, and NGOs; among them were future KPK commissioners.

Ultimately, the ADB technical assistance had only a very indirect influence on the drafting process through the participants in its first two components, public consultation and study tours to other anti-corruption bodies in the region. This was first due to a lack of rapport between the consultant team and the Indonesian steering committee. Second, the technical assistance, in reference to the statutory deadline for the KPK Law, was concluded by July 2001. The time gap between the end of the technical assistance (June 2001), the actual enactment of the law (December 2002), and the appointment of commissioners (December 2003) was considerable. It highlighted the limits of short-term, project-based intervention with political processes.

Although the KPK would follow the same three-pronged approach of education, prevention, and investigations as the ICAC Hong Kong, a model strongly recommended by the ADB consultant team, it would have a different organizational structure, accountability mechanisms and powers. Regarding its powers, it is notable that the KPK, unlike the ICAC and most other anti-corruption agencies, has both investigative as well as prosecutorial functions under one roof, in fact, one department.

Simultaneously, the International Monetary Fund (IMF) that had been called to Indonesia's financial rescue made Indonesia "undergo a radical program of economic, political and social reform . . . largely driven by PWC conditionality" (Lindsey, 2007: 4).<sup>6</sup> The KPK, however, was first brought onto the agenda of the Indonesian Government's letter of intent to the IMF in December 2001. The IMF only intervened after the statutory deadline the Indonesian legislature had given itself had passed (in August 2001), and after the dissolution of the Joint Investigation Team<sup>7</sup> and the infamous Manulife case<sup>8</sup> emphasized continuing weaknesses of the justice system. The IMF made the enactment of the KPK law "prior action" in 2002. In December 2002, the Law was finally enacted 16 months after the statutory deadline. A representative of the IMF told the author that there would have been no law at that particular junction in time, if it had not been for the IMF (correspondence, 09/03/10).

<sup>6</sup>The Post-Washington Consensus (PWC) added governance reform to the deregulation and liberalization paradigm of the Washington Consensus. The term *Washington Consensus* was coined by Economist John Williamson in 1989 for a list of 10 economic reforms for Latin America that according to him reflected a consensus among "the political Washington of Congress and senior members of the administration and the technocratic Washington of the international financial institutions, the economic agencies of the US government, the Federal Reserve Board, and the think tanks" (Williamson 1990, 2003). Jayasuriya (2002: 24) stated that "the shift to the PWC should not be seen as a reversal of the structural adjustment policies that characterized the Washington consensus. Rather, it is argued that the PWC should more properly be viewed as an attempt to develop a political institutional framework to embed the structural adjustment policies of the Washington consensus." The sustainability of governance and legal reform when induced by conditionality without local demand has been questioned by authors such as, Caroll (2010), Lindsey and Dick (2002), and Stiglitz (2002). In the case of the KPK, however, strong local demand was paired with donor conditionality, as will be discussed in detail below.

<sup>7</sup>On the dissolution of the Joint Investigation Team see Chalid (2010) and Butt and Lindsey (2011).

<sup>8</sup>For a comprehensive analysis of the Manulife case, see Linnan (2008).

Rather than being a foreign legal transplant, the KPK was the result of a commonly perceived solution among Indonesian and international reformers to Indonesia's problem of enforcing its anti-corruption legislation.<sup>9</sup>

### *Important features of the commission*

Indonesian lawmakers adopted elements of other anti-corruption agencies, but always in view of the Indonesian context, and designed the blueprint for a very powerful anti-corruption agency with a far-reaching mandate in prevention and enforcement. According to article 11 of the KPK Law, the KPK has the power to investigate and prosecute cases that involve law enforcement personnel or public officials, give rise to particular public concern, and/or involve losses to the state budget of at least Rp 1 billion (approximately \$US 116 000). Although it got both investigative and prosecutorial powers, it did not get absolute jurisdiction over corruption cases. It can, however, take over cases from the police or AGO, when there is lack of progress or other problems defined in the KPK Law.

The KPK Law also established a special chamber at the district court of central Jakarta to hear the KPK's cases. The law prescribed a fixed ratio of three *ad hoc* judges and two career judges on trial, appeal and cassation level.

The original Government's bill had suggested a KPK leadership of three: one chairperson and two vice-chairpersons. This was in line with the recommendation by the ADB team that ultimate responsibility should lie with a single individual to the President. It was, however, changed considerably during legislative deliberation. Eventually, the KPK leadership was to consist of five commissioners; one of them is chairperson, and the other four are vice-chairs. The leadership is collective and, as a collective, bears the ultimate responsibility of the KPK. The term of the commissioners is 4 years and can be extended once, although the candidate has to undergo another selection process.

Both the Legislature and the President are involved in the selection process and—at the time, a novelty in Indonesia—representatives of the public. The President sets up a selection committee consisting of both government officials and eminent members of the public that calls for applications, conducts candidate screening, and provides a shortlist of 10 candidates to the President who then submits the list to the Legislature. The Legislature chooses five commissioners after a “fit and proper test”; the President swears them in (for a detailed analysis of the selection process in practice, see the study of Schütte, 2011).

The selection of the KPK leadership is intertwined with the accountability of the commission. There was an overall consensus on the importance of the independence of the commission and that it should report to both the Legislature and the President. The Government's original bill proposed that the KPK should also report to the people at large (*masyarakat*). The final law would not include “the people” but added the Supreme Audit Board (Art. 15 (c), KPK Law). In practice, however, the KPK publishes its annual reports on its website (<http://www.kpk.go.id>) and emphasizes its accountability to the Indonesian people (see, i.e., KPK, 2005: 1). In effect, the KPK Law created an agency a lot more powerful than others of its kind, both previously in Indonesia and overseas. The following sections will elaborate some of these powers in more detail and how successfully the KPK has performed them.

## ENFORCEMENT

A nationwide survey conducted by the Partnership for Governance Reform in 2001 found that the big majority of respondents wished not only that all instances of corruption should be fought, but also that corruptors should be sent to jail and their assets seized. Only about 1% favored such extremes as an amnesty or death sentences (Partnership, 2001).<sup>10</sup> People hoped for an end to impunity and that the KPK that took up operations in 2004 would catch some “big fish”. And indeed, 5 years later, the *Kompas* poll and LSI survey cited earlier registered a much higher trust in the performance and integrity of the KPK than in the other law enforcement agencies.

In quantitative terms, the number of cases indicted by the KPK compared with the case load of the police and the AGO is marginal: The KPK handled not even 3% of the overall number of corruption cases in Indonesia from 2004 to mid-2009 (Table 1). So, how did it come that the public has been more satisfied with the KPK's performance?

<sup>9</sup>The KPK Law acknowledges the “not yet effective and efficient” performance of law enforcement agencies in addressing corruption, which has “damaged the state budget, the country's economy and impeded on national development” (considerations a and b, KPK Law).

<sup>10</sup>The total sample size was 2300 respondents in 14 provinces consisting of 650 public officials, 1250 households, and 400 business enterprises.

Table 1. Indictments of corruption cases per law enforcement agency, 2004–2009

Year	Indictments originating from the police	Indictments originating from AGO	Indictments originating from KPK
2004	157	460	2
2005	187	542	17
2006	279	515	23
2007	200	512	27*
2008	178	1114	37*
2009, Jan–Aug	113	536	23
Total	1114	3679	129

\*These numbers differ from numbers stated by the KPK itself (19, 35, respectively; correspondence with KPK, 15/02/09).

Source: Kejaksaan (2009).

A likely explanation for the difference in satisfaction with the law enforcement bodies' performance is the number of actual guilty verdicts that resulted from the indictments made by the AGO and the KPK. As Moran *et al.* (2001: 81) noted, the number of prosecuted cases can be a measure of success, but a high number of prosecutions lose significance when there are no convictions.

The NGO Indonesia Corruption Watch (ICW) reported that from 2005 to mid-2009, only 51% of the defendants indicted by the AGO and heard by the general courts were found guilty. By comparison, until very recently (October 2011), 100% of the defendants indicted by KPK have been found guilty by the Anti-corruption Court. The average sentence for those indicted by the public prosecutors' offices and found guilty by the general courts in the first semester of 2009 (69 guilty verdicts out of 222 defendants) was 6.2 months in jail (ICW, 2009: 2). The average sentence for those indicted by the KPK and found guilty by the Anti-corruption Court (32 defendants, all guilty) was 57.75 months or 4.81 years (ICW, 2009: 4). Thus, the KPK defendants tried during this period spend considerably more time in prison than those indicted by the AGO. This notable difference in verdicts between the two indictment processes does not unequivocally prove a difference in the quality of indictments. It could as well be interpreted as a difference in the quality of the court proceedings and/or differences in the severity of the actual cases themselves. The rigor of the Anti-corruption Court has frequently been attributed to the majority of non-career (*ad hoc*) judges on the judges' panel. Simon Butt (2010: 303) observed that "... the ordinary career judges could not continue past practices of acquittals or leniency toward defendants in corruption cases because they were outnumbered by *ad hoc* judges on the Corruption Court. The Court, in fact, split along *ad hoc* and career lines in several cases".

In fact, ICW had published the cited report on corruption verdicts to bring attention to the importance of the composition of the judges' panel at the future Anti-corruption Courts that are to be established across districts in Indonesia (ICW, 2009: 5–6). A decision by the Constitutional Court in December 2006 (012-016-019/PUU-IV/2006) required a new legal basis for the Anti-corruption Court. The Constitutional Court found the existence of two different courts for the same kind of crime conflicting with the constitutionally provided equality before the law (Art. 28 D (1) of the Indonesian Constitution). All corruption cases, both from the KPK and the AGO, are now heard by specialist anti-corruption chambers at the general court closest to the *locus delicti*.

Regarding the performance of the KPK and the court, the heated debate on the composition of the judges' panel during the deliberation of the new Anti-corruption Court Law underlines the crucial importance ascribed to the ratio of *ad hoc* and career judges on the outcome of court proceedings. Lawmakers decided to leave the composition of the judges' panel to the head of each general court, a career judge, where the anti-corruption chamber will be placed (Law 46 of 2009 on the Anti-corruption Court; Butt, 2010). Since the beginning of 2011, a natural experiment can be observed: the direct comparison of indictments by the KPK and the AGO. It is also possible now to observe the impact of different kind of ratios of career and *ad hoc* judges on the panels.

Before 2011, the performance of the KPK was difficult to separate from the performance of the Anti-corruption Court. The *ad hoc* judges interviewed for this research in 2009 stressed the importance of their role and

independence from the Supreme Court's career system as well as the high public expectations they felt accountable to, but they said that then 100% conviction rate of KPK cases was due to the strong evidence presented by KPK prosecutors (Interviews, 30/11/09; 22/12/09).

The quality of evidencing can be attributed partly to a peculiarity of the KPK Law: Once it starts an official investigation, the case has to be brought to court. This was meant as a remedy against the dubious overuse of orders to halt investigations by the existing law enforcement agencies. Instead of establishing public oversight in the selection of cases, as in Hong Kong, the discretion to continue or drop a case was simply eliminated. The inability to halt an investigation has prompted KPK to be extra cautious in the selection of cases it brings to the investigation stage. Only if it has strong initial evidence to prove its case will the KPK move a case to the official investigation stage. Fenwick (2008: 410) observes

... preliminary investigations are often drawn out in order to gather as much information as possible before proceeding with a case. This can create difficulties, as under Indonesian criminal procedure law coercive powers (such as arrest and seizure of evidence) can only be executed once the formal investigation has commenced. It has also, however, delivered significant benefits. Investigators have learned to develop better skills in what are considered 'non-traditional' investigation techniques, including questioning suspects and gathering information through surveillance.

Despite this pressure on initial evidence collection, the KPK has managed to bring a number of high-office holders to justice and revoked the perception of impunity for white collar crime in Indonesia. Figure 1 lists the defendants in KPK cases up to September 2009 by their office. By late 2010, the number of legislators who were indicted by the KPK had risen to 43, from parties within the government coalition as well as the opposition (KPK, 2011: 61).

It is difficult to come by comprehensive information on the losses caused to the state in Indonesia's corruption cases, not to speak of the other damages caused. The information available on just a few cases dwarfs all numbers on assets actually recovered. According to the correspondence with the KPK Bureau for Planning and Finance, from 2004 to 2010, it returned assets recovered from criminal cases worth Rp 805.6 billion to the state budget (Table 2). This includes seized assets, fines paid by the defendants, compensation payments, and case fees. The KPK's own total expenditures, reported in its annual reports from 2004 to 2010, amount to Rp 1135.6 billion. Based on these numbers, the KPK has recovered assets amounting to 71% of its own expenditure over the same period. It has thus not fully, but to a large part, earned its keep by its enforcement operations alone. Further restitution is important, not just as an exercise of justice, but also to return to the state budget what should and can be used for public benefit.

Even with the relatively limited number of convictions and the return of only a small percentage of recovered assets in the face of ongoing corruption, the KPK has dented the perception of impunity for white-collar crime. Crouch (2010: 229) observes that the KPK's convictions "brought a dramatic change in the atmosphere and provided a deterrent that had been largely absent in the past." In December 2010, one and a half years after the enactment of the Anti-corruption Court Law, the first Anti-corruption Courts were established at the district courts of provincial capital cities Surabaya (East Java), Semarang (Central Java) and Bandung (West Java). By April 2011, the Supreme Court

Table 2. Assets from criminal cases returned to state budget by KPK in Rp. billion and expenditure, 2004–2010

Year	Assets returned to state budget	KPK expenditure*	Returned assets/expenditure (%)
2004	Not specified	39.3	–
2005	6.9	52.3	13.2
2006	12.8	221.8	5.8
2007	45.6	149.8	30.4
2008	407.9	190.9	21.4
2009	143	217.2	65.8
2010	189.4	264.3	71.7
TOTAL	805.6	1135.6	70.9

\*This is the total organization expenditure including the restoration of new office facilities in 2006.

Source: KPK (2005, 2006, 2007, 2008, 2009, 2010, 2011); correspondence with KPK, 28/04/11.



announced the launching of Anti-corruption Courts in further 14 provincial capitals<sup>11</sup> (Mahkamah Agung, 28/04/11). With the new Anti-corruption Courts also came the first acquittals. At first, it were only cases submitted by the regional public prosecutors offices, but on 11 October 2011 the KPK lost its first case at the Anti-corruption Court in Bandung (*Jakarta Globe*, 12/10/11; Butt, 2011: 381). The KPK announced that it would appeal (*Kompas*, 24/10/11).

### INTEGRITY MAINTENANCE AND PREVENTION

Considering that the KPK was established out of a crisis of trust in the existing law enforcement agencies, the importance of keeping this new agency free of malpractice and establishing a culture of rejection among its officers toward undue influence cannot be overestimated. The integrity of the organization was a necessary condition before any credible attempts in cleaning up the bureaucracy could be made.

To avoid the distortive incentives set by the existing civil service system, the first KPK leadership negotiated with the Government for 2 years before there was agreement on the autonomous management of its human resources in 2005. By the end of 2009, the KPK had recruited 650 staff, consisting of KPK officers and seconded civil servants from other agencies.

All staff are subject to the same human resources and performance management system. The salary structure is much simpler, more transparent, and performance oriented than in the civil service: Staff get paid a monthly base salary considerably higher than in the civil service, a fixed transport allowance, and possibly bonuses based on the previous year's performance. KPK staff, however, are not allowed to have other sources of income such as the maze of the official and unofficial allowances civil servants, particularly in structural positions,<sup>12</sup> have access to. Seconded civil servants get a topping up if their civil servant salary is below the KPK levels.

Compensation, competencies enhancement, and training programs, as well as key performance indicators, have set clear incentives to work toward organizational goals and raised the opportunity costs to be discharged. Internal oversight mechanisms and increased criminal punishment for KPK staff (by law) have set strong disincentives to engage in common corrupt and extortive practices. Although the KPK's integrity has stood out in public perception surveys, its role in preventing corruption in the public sector at large has been much less visible. This is partly due to the biased nature of media in favor of criminal cases and scandals and the difficulty to quantify the benefits of prevention. It is, however, also because there has been less dramatic change through prevention than through enforcement. Attempts to tackle the core problems behind bureaucratic corruption, that is civil service reform at large, have dwindled. It is in prevention that the KPK has most cooperated with donors, often not being the immediate recipient of assistance, but supporting its deliverance to other agencies in need (see, i.e., KPK, 2010). Bureaucratic reform at the national level is clearly an area that needs more leadership from the Indonesian Government.<sup>13</sup>

Furthermore, citizens should be taught not only to reject corruption but also how to reject it and what mechanisms to implement to control extortive attempts by those with discretion. Preventive measures such as the revision of malfunctioning systems may not fit the alliteration of this special issue (retribution, restitution, rejection), but they are crucial for sustainable change. It is not enough to invest in awareness raising and education, which in terms of the Hong Kong model are not subsumed under prevention, anyway. There is no point of anti-corruption curricula in schools and universities, when bribes are still necessary to be admitted and pass through these institutions. Initiatives such as honesty kiosks (*warung kejujuran*), booths stocked with drinks and snacks in public offices that encourage honesty by leaving the right amount of cash behind, are touching but have been found to experience losses, even the one in the KPK reception area (*Kompas*, 30/12/08).

<sup>11</sup>Banjarmasin, Medan, Padang, Pekanbaru, Palembang, Tanjung Karang, Serang, Yogyakarta, Pontianak, Samarinda, Makassar, Mataram, Kupang and Jayapura.

<sup>12</sup>The Indonesian Civil Service distinguishes between two main types of positions: structural and functional. Structural positions are management positions. Functional positions are non-management positions that require specific expertise of a subject (Synnerstrom, 2007: 160–61).

<sup>13</sup>In December 2010, a "Grand Design for Bureaucracy Reform 2010–2025" was launched by presidential regulation 81 of 2010 and completed by a 5-year road map (2010–2014) per ministerial decree.

## CONCLUSION

Against the odds of low governance indicators and straying from prescribed models, by its seventh anniversary, the Indonesian KPK has demonstrated that corruption by public officials in high offices and their private sector collaborators does no longer enjoy impunity. It has been supported by a rigorous Anti-corruption Court, watchful NGOs, and a public willing to go to the streets when it saw the KPK under threat.

In a critique of the International Finance Institutions' intervention in Indonesia during the Asian Financial Crisis, Dick (2002: 77–8) warned against donors treating societal learning to a standardized school curriculum. Using this analogy, in the field of corruption control, it was home schooling with some guest teachers that led to the emergence of the Indonesian Corruption Eradication Commission. The overall influence of donors on the design of the KPK appears limited, particularly when compared with donor intervention in Indonesia's economic sector. IMF influence, however, may have ensured that the KPK came to life at that particular point in time. Nevertheless, the 3-year deliberation process of the KPK Law has been genuinely "owned" by its proponents and adversaries to write in the language of the Paris Declaration.

This article demonstrated that the KPK is not only a result of the demand for change after the downfall of the Soeharto regime; it has also begun to fulfill its mission to trigger a change in perceptions, behavior, and partly institutions. Despite this notion of change, corruption is still entrenched in Indonesia, and the KPK meets considerable resistance. Further alliances with reform-friendly government agencies and leverage beyond the support of civil society seem in need in order to reach a critical mass where corruption becomes the exception rather than the rule. Sustainable progress will depend particularly on increased cooperation from and with the other law enforcement agencies.

## REFERENCES

- ADB. 2003. Technical assistance completion report on the establishment of an Anticorruption Commission (TA 3381-INO). Copy on file with author.
- Assegaf I. 2002. Legends of the fall: an institutional analysis of Indonesian law enforcement agencies combating corruption. In *Corruption in Asia: Rethinking the Good Governance Paradigm*, Lindsey T, Dick H (eds). Federation Press: Annandale, NSW; 127–146.
- Bolongaite EP, Bhargava VK. 2004. *Challenging Corruption in Asia: Case Studies and a Framework for Action*. World Bank: Washington.
- Butt S. 2010. Asian law in translation: translator's note on the Indonesian corruption court law. *Australian Journal of Asian Law* 11(2): 302–308.
- Butt S, Lindsey T. 2011. Judicial mafia: the courts and state illegality in Indonesia. In *The State and Illegality in Indonesia*, Aspinall E, van Klippen G (eds). KITLV: Leiden; 189–213.
- Caroll T. 2010. *Delusions of Development. The World Bank and the Post-Washington Consensus in Southeast Asia*. Palgrave Macmillan: Basingstoke.
- Chalid H. 2001, 18 October 2001. A personal experience in combating corruption in Indonesia: the wrongful dissolution of the joint investigating team against corruption. Paper presented at the Australia-Indonesia Legal Fellowship Seminar, Asian Law Centre, Faculty of Law, University of Melbourne.
- Crouch H. 2010. *Political Reform in Indonesia after Soeharto*. ISEAS: Singapore.
- Crouch M. 2008. Indonesia's national and local ombudsman reforms: salvaging a failed experiment? In *Indonesia: Law and Society* (2nd edn, Lindsey T (ed). Federation Press: Leichhardt; 382–405.
- De Speville B. 2010. Anticorruption commissions: the "Hong Kong model" revisited. *Asia-Pacific Review* 17(1): 47–71.
- Dick H. 2002. Corruption and good governance: the new frontier of social engineering. In *Corruption in Asia: Rethinking the Good Governance Paradigm*, Lindsey T, Dick H (eds). Federation Press: Annandale, NSW; 71–86.
- Doig A. 2010. Matching workload, management and resources. Setting the context for 'effective' anti-corruption commissions. In *Governments, NGOs and Anti-corruption*, De Sousa L, Larmour P, Hindess B (eds). Routledge: London/New York; 65–84.
- Fenwick S. 2008. Measuring up? Indonesia's anti-corruption commission and the new corruption agenda. In *Indonesia: Law and Society* (2nd edn), Lindsey T (ed). The Federation Press: Annandale, NSW; 406–429.
- Hamzah A. 1986. *Korupsi di Indonesia. Masalah dan Pemecahannya*. Gramedia: Jakarta.
- Hamzah A. 2005. *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. RajaGrafindo Persada: Jakarta.
- Huther J, Shah A. 2000. *Anti-corruption Policies and Programs*. Policy Research Paper 2501. The World Bank: Washington, DC
- ICW. 2009. Hakim Karir Juara Bebasan Terdakwa Korupsi. Jakarta: ICW. Retrieved on 23 July 2010 from <http://antikorupsi.org/docs/bahan-rilisputusanbebaspengadilanumumsemesterI20095agustus2009.pdf>
- Jakarta Globe* 12/10/11. End of KPK's Perfect Court Record. Retrieved on 12 October <http://www.thejakartaglobe.com/home/end-of-kpks-perfect-court-record/471060>
- Jayasuriya K. 2002. Governance, post-Washington consensus and the new anti-politics. In *Corruption in Asia. Rethinking the Governance Paradigm*, Lindsey T, Dick H (eds). Federation Press: Annandale, NSW; 24–36.
- Kejaksaan. 2009. Data Perkara Korupsi di Indonesia Ditangani oleh Polri, Kejaksaan RI dan KPK, Periode Tahun 2004 S.D. 2009. Copy on file with author.

- Klemencic G, Stusek J, Gaika I. 2007. *Specialized Anti-corruption Institutions. Review of Models: Organisation for Economic Co-operation and Development*. Anti-corruption Network for Eastern Europe and Central Asia.
- Kompas. 30/12/08. Warung Kejujuran Malah Rugi. Retrieved on 27 November 2010 from <http://nasional.kompas.com/read/2008/12/30/20451377/warung.kejujuran.kpk.malah.rugi>
- Kompas. 30/11/09. Jajak Pendapat "Kompas". Seriuskah Negara Memberantas Korupsi? p. 5.
- Kompas. 01/08/11. Citra KPK di Tubir Jurang. Retrieved on 28 September 2011 from <http://nasional.kompas.com/read/2011/08/01/09552959/Citra.KPK.di.Tubir.Jurang>
- Kompas. 04/09/11. Komite Etik Segera Periksa Pimpinan KPK. Retrieved on 6 September 2011 from <http://nasional.kompas.com/read/2011/09/04/21210091/Komite.Etik.Segera.Periksa.Pimpinan.KPK>
- Kompas 24/10/11. KPK Susun Memori Kasasi Mochtar Mohamad. Retrieved on 25 October 2011 from <http://nasional.kompas.com/read/2011/10/24/1753572/KPK.Susun.Memori.Kasasi.Mochtar.Mohamad>
- Kompas 02/11/11. JSI: Polri Lebih Dipercaya daripada KPK. Retrieved on 11 November 2011 from <http://nasional.kompas.com/read/2011/11/02/18145297/JSI.Polri.Lebih.Dipercaya.daripada.KPK>
- KPK. 2005. Annual Report 2004. KPK: Jakarta.
- KPK. 2006. Annual Report 2005. KPK: Jakarta.
- KPK. 2007. Annual Report 2006. KPK: Jakarta.
- KPK. 2008. Annual Report 2007. KPK: Jakarta.
- KPK. 2009. Annual Report 2008. KPK: Jakarta.
- KPK. 2010. Laporan Tahunan 2009. KPK: Jakarta.
- KPK. 2011. Laporan Tahunan 2010. KPK: Jakarta.
- Lindsey T, Dick H. 2002. *Corruption in Asia: Rethinking the Good Governance Paradigm*. Federation Press: Annandale, NSW
- Lindsey T. 2007. Legal infrastructure and governance in post-crisis Asia: the case of Indonesia. In *Law Reform in Developing and Transitional States*, Lindsey T (ed). Routledge: NY; 3–41.
- Linnan DK. 2008. Commercial law enforcement in Indonesia: the Manulife case. In *Indonesia: Law and Society* (2nd edn, Lindsey T (ed). Federation Press: Leichhardt; 586–619).
- LSI [Lembaga Survei Indoensia]. 2010. Ketidakpercayaan Publik pada Lembaga Pemberantasan Korupsi. Survei Opini Publik Nasional 10–22 Oktober 2010. Retrieved on 24 November 2010 from <http://www.lsi.or.id/riset/398/Rilis%20LSI%207%20November%202010-Korupsi>
- MacIntyre AJ. 2003. *The Power of Institutions: Political Architecture and Governance*. Cornell University Press: Ithaca.
- Mackie JAC. 1970. The Commission of Four Report on Corruption. *Bulletin of Indonesian Economic Studies* 6(3): 87–101.
- Mahkamah Agung [Supreme Court]. 28/04/11. Peresmian Pengadilan Tipikor Dipusatkan DI PN Banjarmasin Oleh Ketua MA. Retrieved on 28 April 2011 from <http://www.mahkamahagung.go.id/rnews.asp?bid=1911>
- Minogue M. 2004. Public management and regulatory governance: problems of policy transfer to developing countries. In *Leading Issues in Competition, Regulation, and Development*, Cook P (ed). E. Elgar: Cheltenham, UK; Northampton, MA; 165–181.
- Moran J, Doig A, Watt D. 2001. Managing anti-corruption agencies. *Forum on Crime and Society* 1(1): 69–87.
- Palmier LH. 1985. *The Control of Bureaucratic Corruption: Case Studies in Asia*. Allied Publishers: New Delhi.
- Partnership for Governance Reform in Indonesia. 2001. A national survey of corruption in Indonesia. *Final Report*. Jakarta: Partnership for Governance Reform in Indonesia.
- Schütte SA. 2011. Appointing top officials in a democratic Indonesia: the corruption eradication commission. *Bulletin of Indonesian Economic Studies* 47(3): 355–379.
- Shah A, Schacter M. 2004. Combating corruption: look before you leap. *Finance & Development* 40–43.
- Sherlock S. 2002. Combating corruption in Indonesia? The ombudsman and the assets auditing commission. *Bulletin of Indonesian Economic Studies* 38(3): 367–383.
- Sunaryadi A. 2009. The future of KPK. Presentation at the United Nations Office on Drugs and Crime Talk Series. Jakarta, 02 June 2009.
- Stiglitz J. 2002. *Globalization and its Discontents*. Penguin: London.
- Synnerstrom S. 2007. The civil service: towards efficiency, effectiveness and honesty. In *Indonesia. Democracy and the Promise of Good Governance*, McLeod R, MacIntyre AJ(eds). ISEA: Singapore.
- Transparency International. 2009. *Global Corruption Barometer 2009*. Transparency International: Berlin.
- Transparency International. 2010. Corruption perceptions index 2010 results. Retrieved on 25 November 2010 from [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results)
- Williamson J. 1990. *Latin American Adjustment: How Much Has Happened?* Institute for International Economics: Washington, DC.
- Williamson J. 2003. From reform agenda to damaged brand name. A short history of the Washington consensus and suggestions for what to do next. *Finance & Development* 40(3): 10–13.
- World Bank. 1998. Combating corruption in Indonesia: aide memoire of the World Bank team, September 13–20, 1998. Excerpts on file with author.
- World Bank Institute. 2011. Aggregate governance indicators 1996–2008. Retrieved on 27 April 2011 from <http://info.worldbank.org/governance/wgi/pdf/wgidataset.xls>