



TRANSITIONS
FORUM



DEMOCRACY LAB

CURBING CORRUPTION: IDEAS THAT WORK | JULY 2015

The Gecko's Bite

Indonesia's anti-corruption commission
has made great strides in combating graft.
But now it risks becoming a victim of its own success.

by Rushda Majeed

www.li.com
www.prosperity.com
www.foreignpolicy.com/channel/democracy-lab/

ABOUT THE LEGATUM INSTITUTE

The Legatum Institute is an international think tank and educational charity focussed on promoting prosperity. We do this by researching our core themes of revitalising capitalism and democracy. The *Legatum Prosperity Index™*, our signature publication, ranks 142 countries in terms of wealth and wellbeing.

Through research programmes including The Culture of Prosperity, Transitions Forum, and the Economics of Prosperity, the Institute seeks to understand what drives and restrains national success and individual flourishing. The Institute co-publishes with *Foreign Policy* magazine, *Democracy Lab*, whose on-the-ground journalists report on political transitions around the world.

The Legatum Institute is based in London and an independent member of the Legatum Group, a private investment group with a 27 year heritage of global investment in businesses and programmes that promote sustainable human development.

ABOUT CURBING CORRUPTION: IDEAS THAT WORK

The *Democracy Lab* and Legatum Institute have commissioned a series of case studies that examine specific interventions against corruption which have produced positive results. The aim is to tell a set of stories that illustrate how combatting corruption works in practice, which may offer insight on some of the larger issues across the globe. The papers will form the basis of a conference in September 2015, and will focus on broader themes, such as developing methods to combat corruption, promoting good outcomes, and measuring success. The goal of this project is to identify ideas that do and don't work and share them with the wider anti-corruption and policy communities.

www.li.com/programmes/curbing-corruption-ideas-that-work/

With thanks to the Legatum Foundation for its kind sponsorship

The Legatum Institute is the working name of the Legatum Institute Foundation, a registered charity (number 1140719), and a company limited by guarantee and incorporated in England and Wales (company number 7430903)

The Gecko's Bite

Indonesia's anti-corruption commission has made great strides in combating graft. But now it risks becoming a victim of its own success.

About the author

Rushda Majeed is a researcher and consultant focused on institutional and policy reform.

Indonesia's anti-graft agency has been experiencing its share of political problems recently. Top law-enforcement officials and senior politicians all seem to have the organisation in their sights. A court recently ruled against the agency's use of independent investigators, rather than officers from the police or attorney general's office as mandated by law. And earlier this year, the agency's case against a national police chief nominee backfired when the police retaliated by opening investigations against top agency officials.

Yet the agency's current troubles can also be seen as a reflection of its remarkable success. Since its founding in 2004, the KPK—the *Komisi Pemberantasan Korupsi*, or "Corruption Eradication Commission"—has become one of Indonesia's most respected institutions. While the country continues to struggle with deeply entrenched corruption, the KPK's persistence in targeting and publicising cases of malfeasance at the highest levels—including members of parliament, the judiciary, central bank governors, and even the president's relatives—has made it popular with the public and instilled fear among bureaucrats and politicians. Its near 100 percent conviction rate speaks to its effectiveness, earning it a solid reputation in the country and worldwide.

Indonesia is no stranger to institutional corruption. Estimates of funds embezzled by President Suharto and his family during his 32-year reign (1967-1998) range from \$15 billion to \$35 billion. Since 1995, Transparency International has consistently ranked Indonesia in the bottom third of its Corruption Perception Index. Graft permeates nearly all layers of public institutions. "Indonesian people have to deal with corruption from birth to death," says Ade Irawan of Indonesia Corruption Watch, a Jakarta-based watchdog organisation. "When they're born, they have to pay a bribe for a birth certificate. And they even have to bribe for death certificates and for burials."

Over the decades, the country has made sporadic and often cosmetic attempts to dismantle corruption. President Suharto, for instance, established a corruption eradication team in 1967, a four-person commission in 1970, and a team for optimising state revenue in 1987. None of these attempts made any appreciable inroads. Nor do they appear to have been taken seriously by the public.

The end of Suharto's dictatorship in 1998 led to fresh calls to step up the fight against corruption. Momentum came from the civil society and activist groups eager for a national oversight and investigative body. "The [creation of the] KPK was pushed by civil society to answer for an ineffective attorney general's office and police department," says Irawan. "At the time, it was one of our only remaining hopes for a better administration."

Added pressure to create an anti-corruption commission came from international organisations such as the International Monetary Fund (IMF) and World Bank. The IMF tied a \$43 billion bailout package to the establishment of an anti-corruption commission. This local and international pressure yielded results. In 1999, the Indonesian parliament drafted anti-corruption legislation that gave authorities the

mandate to create a commission, and a 2002 law outlined the new agency's privileges and responsibilities. In December 2003, President Megawati Sukarnoputri heeded the recommendation of a justice ministry selection committee and asked the parliament to fill three top KPK posts from 10 nominees.

The appointment of the commissioners set the stage for the establishment of the KPK as a special public agency to fight high-level corruption. As a special agency, KPK was empowered with investigative, prosecutorial, and preventive powers that equipped it to tackle corruption in public institutions or in instances of public interest when corrupt practices had cost the treasury upwards of \$100,000.

In accordance with this mission, the KPK's architects went to great lengths from the outset to ensure it would be independent from the executive, the legislature, and the judiciary. In addition to initiating cases, the commission can override the police or the prosecutor's office and take over graft cases if it suspects delays, tampering, or incompetence. It can audit the wealth of officials and monitor government agencies. And, since 2010, the KPK has used a revised money-laundering act that gives it access to reports from the Financial Transaction Reports and Analysis Center, a prominent anti-money laundering agency. Access to such critical information has resulted in the successful prosecution of Anas Urbaningrum, a Democratic Party chairman, and Rudi Rubiandini, former head of the powerful oil and gas regulatory body, SKK Migas.

The KPK's investigative powers are far-reaching, even when compared to other similar institutions around the world, such as Hong Kong's Independent Commission Against Corruption, Singapore's Corrupt Practices Investigation Bureau, or the Malaysian Anti-corruption Commission. It can authorise wiretaps without judicial approval, impose travel bans, access financial information of suspects, freeze assets, and demand cooperation from other law enforcement agencies. It can also conduct searches, detain and interrogate suspects, and make arrests.

Under its first set of commissioners (2003-2007), the KPK started by targeting relatively low-level figures, ranging from mid-level civil servants to regional leaders, as it deliberately took on open-and-shut cases to build public support and political capital. It soon progressed to higher-profile suspects. In 2005, the commission arrested the country's seven highest-ranking election commissioners and a state auditor in a case involving kickbacks worth \$530,000.

These initial case choices were tactical, designed to win public support without alienating politicians. The election commission, for instance, had few fans in government, and it did not have the clout of a ministry. "KPK 1 [the commission between 2003-2007] was cautious because it understood that it needed to be cautious to be credible," notes Paul Rowland, a Jakarta-based political analyst and a fellow at the Institute for Peace and Democracy in Bali. It would take the next batch of commissioners to go after parliamentarians and ministers.

The commissioners of the KPK's second term (2007-2011), whose tenure coincided with the second term of President Susilo Bambang Yudhoyono, starting in 2009, took on cases that brought greater public attention. In 2008, the commission named

the central bank governor and four deputy governors as graft suspects. The KPK charged the governors with misusing \$10 million of the public's funds in legal fees for bank officials and to pay off lawmakers. To the shock of many, one of the deputy governors, Aulia Pohan, happened to be the father-in-law of the president's son. That the KPK was willing to go after such high-ranking figures—and that it managed to secure convictions for the governor and all the deputies, including Pohan—gave an added boost its public prestige.

Soon after the July 2009 elections, the commission successfully indicted 28 politicians for receiving bribes worth \$2.7 million in exchange for reappointing a deputy governor to the Bank of Indonesia, the country's central bank. The same year, the KPK led an inquiry into the Bank of Indonesia's 2008 \$700 million bailout of Bank Century amid allegations of bribery and misuse of funds. (The parliament had approved a bailout package of only about \$200 million.) The vice president of Indonesia at the time, Boediono (who uses only one name), served as a witness.

Between 2004 and 2011, the commission achieved a near 100 percent conviction rate in over 250 cases. It successfully prosecuted members of parliament, central bank governors, ruling coalition senior officials, ministers, judges, top police officers, and executives in state-owned enterprises. (The attorney general's office, by comparison, achieved a 51 percent conviction rate between 2005 and 2009.) By 2011, the KPK had also recovered state assets totalling over \$100 million.

The visibility of these achievements helped to boost the agency's reputation in the eyes of the public. A 2008 survey found that Indonesians thought of the KPK as the country's most trustworthy public institution other than the presidency. A 2010 comparison of law enforcement agencies revealed that the positive public perception of the KPK exceeded the negative perception by 15 percentage points, whereas for the police, attorney general's office, and courts, the reverse was true.

Even so, limited budget, staff, and office space have hobbled the KPK's work. Hong Kong and Singapore allocate 0.5 percent of the national budget to their reputable anti-corruption commissions. By contrast, Indonesia only allocates 0.05 percent of its budget to the KPK. It has a staff of 1,100 for a population of 240 million, while Hong Kong's commission—which served as a model for Indonesia—employs 1,200 people for its 7 million people, and Malaysia's 2,500 for 30 million people.

Despite the disparities in resources, KPK has largely succeeded in building a formidable reputation because of its strategic leadership and structure, not to mention its vast legal powers and the public's support. The KPK's tight resources make it imperative to place a premium on cases that are high profile and realistic to investigate. Researchers select approximately 70 cases a year. An investigator and prosecutor work closely on each case, while asset-tracing, rapid movement (for tracking suspects), technology, and forensic units provide support.

Yet perhaps the KPK's biggest headaches have come from its assertive use of its own powers. Among the suspects in the Bank Century case was the head of the national police's criminal investigations unit. The police fought back by charging two KPK

commissioners with graft and arresting the chairman for murder. That case thus marked the first in a series of confrontations between the KPK and the national police force, one of the country's most powerful institutions.

The public dubbed this first conflict a battle between “gecko and crocodile,” a characterisation that reflected the modest bureaucratic standing of the KPK when compared with the police's immense manpower of over 350,000 personnel and its \$3.3 billion budget. Tensions between the two sides intensified in a second gecko-crocodile match when the police tried to arrest a high-ranking KPK investigator, Novel Baswedan, in 2012. That prompted anti-corruption activists to surround the KPK building, forcing the police to retreat.

Lawmakers have also tried to rein in the KPK by cutting its budget and proposing amendments to the KPK law. In 2009, the parliament tried to curtail the commission's powers to conduct warrantless wiretapping and prosecute suspects. Though they ultimately failed to do that, legislators did succeed in decentralising the KPK anti-corruption court. Modelled on the Philippines's anti-corruption court, KPK's special Jakarta-based anti-corruption court has two career and three ad hoc judges. With decentralisation, its branches will eventually operate in all 33 provinces, thus diluting the powers of the original court in Jakarta. District courts would weigh in on judicial appointments to these provincial courts, creating opportunities for biased appointments. The parliament has not yet approved the budget for a new KPK building, and a draft bill is under discussion to alter the procedure to appoint commissioners. Irawan of Indonesia Corruption Watch says, “Almost every year, the parliament tries to change the KPK law.”

The commission's original design attempted to ensure maximum internal accountability. Within the agency, five commissioners—who include the chairman—share equal decision-making power. Under them, five offices for managing organisational policies, investigation and prosecution, prevention and research, information and data sharing, and internal monitoring and public complaints are given equal importance. But critics point out that the mechanisms which supervise the agency are not as robust.

The KPK reports to the president and parliament, and submits itself to a comprehensive yearly audit. Parliament approves the KPK's budget annually and appoints commissioners for a four-year term from a list submitted by the president. Still, the commission has limited parliamentary or judicial oversight, and its ability to both investigate and prosecute cases has turned it into a “super agency.” By comparison, its Hong Kong counterpart—considered to be one of the world's most successful—only performs investigations, which may include searching and arresting suspects. Privileges such as wiretapping give the KPK access to huge amount of information on top public servants, politicians, prosecutors, and justices. Such powers have isolated it from other agencies, especially ones with which it needs good relationships to successfully investigate and prosecute suspects.

Since its appointment in 2011, the third KPK commission has continued to pursue high-profile suspects, but some of its actions have cast doubt on its decisions. In the

Bank Century case, for instance, apart from graft charges, the new chairman chose to investigate the deputy governor for policy decisions he had taken in facilitating loans for the failed bank, reasoning that they had caused huge losses to the state. And earlier this year, the chairman came under fire for all-too-overt politicking, after he attempted to get himself nominated as the running mate for President (then candidate) Jokowi in 2014.

The KPK showed a similar political clumsiness after Jokowi's election, when he nominated old-regime politician Budi Gunawan to run the national police, prompting the KPK to suddenly open a graft case against him. Although Jokowi ultimately revoked the appointment, the commissioners miscalculated in going after Gunawan, who managed to dodge the charges and even succeeded in gaining the second highest level post in the police, namely the deputy police chief. Two KPK commissioners, on the other hand, have been forced to resign and now face their own investigations. "Up until the Budi Gunawan case, the KPK had been amassing power effectively," says political analyst Rowland. But in recent cases it has exposed itself to criticism of miscalculation or overreach.

Despite his reformist ambitions, President Jokowi himself may have unwittingly contributed to the commission's diminished stature. Last October, he chose to vet ministers to his cabinet through the KPK, and then refrained from consulting the commission for other appointments. "It put the KPK in the position of making political judgements that never went to court and were never tested," says Rowland. "And that began to erode the remaining political support it had."

Meanwhile, the third gecko-crocodile standoff continues. On May 1, police arrested Baswedan, the same star KPK investigator they had tried to arrest in 2012, after reopening an older case for which he had already faced disciplinary action. The president weighed in on the same day, asking the police to release Baswedan, restore trust with the KPK, and keep the legal process fair and transparent. The police only released Baswedan a day later, and the investigation remains in progress. How the KPK reacts and protects its own now remains to be seen. "The crocodile seems to have more teeth this time," says Rowland.

Attacks have come from other quarters as well. In May, constitutional justices ruled that defendants could challenge prosecutors for designating them as suspects, potentially opening the KPK to legal challenges from people named in graft cases. By going after high profile public officials, the KPK has now made enemies in the police, constitutional courts, judiciary, and the parliament.

Although the attacks aren't over, there are encouraging signs. President Jokowi has appointed a reputable nine-member committee to shortlist candidates for the fourth set of commissioners. In June, he quashed yet another attempt by the parliament to revise the 2002 KPK law.

Despite the commission's current woes, its track record remains solid in going after high-level corruption and successfully prosecuting influential public figures. Widely respected around the world, the institution has maintained a largely clean

reputation, achieved impressive results, and thus kept public opinion firmly on its side. Despite the attacks against it, its performance has helped it maintain credibility among ordinary Indonesians. Rowland says, “Public support for the KPK as a whole hasn’t diminished. It has been weakened before and [its] commissioners removed on heavy charges, but that hasn’t really impacted how people feel about it. And in the gecko versus the crocodile cases, people have supported the KPK.”

Given the daunting scale of corruption in Indonesia, however, there is still a long way to go. Although the KPK’s conviction rate attests to its success, the cases it pursues are still a drop in the bucket when compared to how many cases are reported to it. The KPK receives at least 30 reports of alleged corruption in a single day, but is equipped to handle only a fraction of these. Moreover, its convictions represent only three percent of the country’s total corruption indictments. (The attorney general’s office contributes roughly 73 percent and the police 24 percent.)

More resources, clearer delineation of responsibilities among agencies, such as the national police’s anti-corruption unit and the attorney general’s office, and a fuller presence—not just of anti-corruption courts—in all 33 of Indonesia’s provinces would strengthen the KPK. Transparent and public measures of performance of the agency and its personnel would enhance its effectiveness while answering critics’ concerns about the lack of oversight. Allowing the parliament to negotiate a level of oversight over the KPK without compromising the agency’s existing powers and responsibilities would create additional checks and balances.

The KPK could also strengthen its engagement with the public for added accountability and to manage the public’s high expectations and maintain popular support. Not only could it strengthen programmes that focus on educating citizens but also build mechanisms for their participation in its anti-corruption and prevention programmes.

Moreover, the commission can hardly be expected to eliminate corruption on its own. Deep reforms in other public institutions—including the national police, the judiciary, the attorney general’s office, and oversight agencies such as the general audit office, internal auditor of the president, and inspector general in ministries—would do much to bolster the anti-graft agency’s work. To this end, the KPK must build bridges as well. So far it has carried out anti-corruption work on its own, pitting itself against one and all in government. Moving forward, it should work to mend strained relationships and create synergy with the other institutions that have a similar mandate. The KPK’s fight has been a lonely one so far. Strong allies might be just the thing to ensure its lasting success.



LEGATUM INSTITUTE

11 Charles Street
Mayfair
London W1J 5DW
United Kingdom

t: +44 (0) 20 7148 5400

Twitter: @LegatumInst

www.li.com

www.prosperity.com

978-1-907409-87-5



JULY 2015