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The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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Indonesia's KPK and NSW's ICAC: comparisons and contrasts

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KPK v ICAC: fundamentals

	KPK	ICAC
Year of establishment	2003	1989
Independent statutory agency?	Yes Law 30/2002 on the Corruption Eradication Commission.	Yes Independent Commission Against Corruption Act, 1988 (NSW)
Number of commissioners	5	1
Scope of physical jurisdiction	National	NSW only



KPK v ICAC: functions

	KPK	ICAC
Formal function	Coordinating and supervising relevant agencies and institutions; investigating and prosecuting corruption cases; preventing corruption; and monitoring state governance.	Minimise corrupt activities and enhance the integrity of the public administration in the state of New South Wales.
Education function?	Yes, run anti-corruption education programs;	Yes. To educate public authorities, officials and members of the public about corruption. Issues reports (eg Investigation into Corruption Risks Involved in Lobbying) and recommends legal reforms.
Investigative function?	Yes, as formal investigator.	Yes, but not police function.
Inquiries open to public?	No	Yes, but some also private

KPK v ICAC: powers

	KPK	ICAC
Power to prosecute?	Yes	No. Inquisition only.
Rules of evidence?	More accommodating than under Code of Criminal Procedure (<i>Kitab Undang-undang Hukum Acara Pidana</i> , or KUHP)	Limited controls on admissible evidence.
'Extraordinary' authority	Yes	Yes
Special corruption court to hear cases?	Yes	No

KPK v ICAC: limitations and challenges

LIMITATIONS

	KPK	ICAC
Express limitations on power	Yes	N/A
Jurisdictional conflicts?	Yes	None.
Oversight authority?	No	Yes, Inspector of the Independent Commission Against Corruption.

CHALLENGES

	KPK	ICAC
Big fish?	Famously, ministers, parliamentarians, regional heads, judges.	Rare for criminal convictions, but political implications. 1992:
Challenges to jurisdiction	Several	Rare.

Margaret Cunneen case



Can Indonesia Free Itself From Corruption in 2020?

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Unthinkable

- It would be unthinkable if Indonesia would be free from corruption today, in 2020 or even beyond
- No countries is able to free themselves from corruption
- The focus is not on freeing a country from corruption, but the need of workable legal mechanism to punish corruptors and deter people from corrupt practices

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KPK and Special Court for Corruption Offenses

- ◉ Indonesia has a workable legal mechanism to punish those who are involved in corruption offenses
- ◉ The KPK and the Special Court is the workable and reliable mechanism
- ◉ Not only those found guilty sentenced to prison, but they are made poor and in some instances their political rights are revoked

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The Challenge

- ◉ The Challenge for Indonesia is how to replicate what KPK has done to the Police Force and Prosecutor Office
- ◉ KPK and the Special Court alone cannot fight corruption: The Police Force and Prosecutor Office need to be empowered

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- The other challenge for Indonesia is how to make sure that fighting corruption, not be used as
 - political commodity
 - label to bring down good people (in the Soeharto days it was PKI, the Indonesian Communist Party)
 - to cause anxiety for individuals within the bureaucracy or state owned enterprise that their decision would create loss to State budget
 - a means for individual within authorities to obtain financial gain
 - All these will result in good and clean people from entering the government

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Thank You

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