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

**Professor Simon Butt**  
**Sydney Law School**  
**Faculty of Law, Sultan Agung Islamic University, Semarang, 9 December 2016**

## KPK v ICAC: fundamentals

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<th>KPK</th>
<th>ICAC</th>
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<td><strong>Year of establishment</strong></td>
<td>2003</td>
<td>1989</td>
</tr>
<tr>
<td><strong>Number of commissioners</strong></td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td><strong>Scope of physical jurisdiction</strong></td>
<td>National</td>
<td>NSW only</td>
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### KPK v ICAC: functions

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<th>KPK</th>
<th>ICAC</th>
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<td><strong>Formal function</strong></td>
<td>Coordinating and supervising relevant agencies and institutions; investigating and prosecuting corruption cases; preventing corruption; and monitoring state governance.</td>
<td>Minimise corrupt activities and enhance the integrity of the public administration in the state of New South Wales.</td>
</tr>
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<td><strong>Education function?</strong></td>
<td>Yes, run anti-corruption education programs;</td>
<td>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.</td>
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<td><strong>Investigative function?</strong></td>
<td>Yes, as formal investigator.</td>
<td>Yes, but not police function.</td>
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<td><strong>Inquiries open to public?</strong></td>
<td>No</td>
<td>Yes, but some also private</td>
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### KPK v ICAC: powers

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<th>ICAC</th>
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<td><strong>Power to prosecute?</strong></td>
<td>Yes</td>
<td>No. Inquisition only.</td>
</tr>
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<td><strong>“Extraordinary” authority</strong></td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td><strong>Special corruption court to hear cases?</strong></td>
<td>Yes</td>
<td>No</td>
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## KPK v ICAC: limitations and challenges

### LIMITATIONS

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<td>Express limitations on power</td>
<td>Yes</td>
<td>N/A</td>
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<tr>
<td>Jurisdictional conflicts?</td>
<td>Yes</td>
<td>None</td>
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<td>Oversight authority?</td>
<td>No</td>
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### CHALLENGES

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<th>ICAC</th>
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<td>Big fish?</td>
<td>Famously, ministers, parliamentarians, regional heads, judges.</td>
<td>Rare for criminal convictions, but political implications. 1992:</td>
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<td>Challenges to jurisdiction</td>
<td>Several</td>
<td>Rare.</td>
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### Margaret Cunneen case

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Can Indonesia Free Itself From Corruption in 2020?

Hikmahanto Juwana
Professor of Law
University of Indonesia

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
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

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
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.