The Amendment of Anti-corruption Law in Indonesia: The Contribution to the Development of International Anti-corruption Law

Ratna Juwita*

1 Introduction

Corruption is categorized as an extraordinary crime that requires extraordinary measures to combat it.¹ Corruption evolves as a complex issue for civilized nations, therefore, international anti-corruption law requires adaptability to combat corruption at the domestic level. One of the adaptability issues is the balance between human rights protection and anti-corruption measures. Wiretapping, asset freeze, and revocation of the right to be elected are several examples of the intersection between anti-corruption measures and civil and political rights. The United Nations Convention Against Corruption (UNCAC) emphasizes in Article 36 the necessity to establish a national independent anti-corruption agency to effectively combat corruption.² As part of the commitment to the UNCAC, Indonesia is continuously reforming its national

* Ph. D. Candidate, Department of Transboundary Legal Studies, Faculty of Law, University of Groningen, the Netherlands; Assistant Professor, Department of International Law, Faculty of Law, Universitas Atma Jaya Yogyakarta, Indonesia.

1 JULIO BACIO TERRACINO, *THE INTERNATIONAL LEGAL FRAMEWORK AGAINST CORRUPTION: STATES' OBLIGATIONS TO PREVENT AND REPRESS CORRUPTION* 32–33 (2012); Lisa Ann Elges, *Identifying Corruption Risks in Public Climate Finance Governance*, in *HANDBOOK OF GLOBAL RESEARCH AND PRACTICE IN CORRUPTION* 138, 138–56 (Adam Graycar & Russell G. Smith eds., 2013); Larissa Gray, *Recovering Corruptly Obtained Assets*, in *HANDBOOK OF GLOBAL RESEARCH AND PRACTICE IN CORRUPTION* 359, 359–77 (Adam Graycar & Russell G. Smith eds., 2013).

2 “Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.” United Nations Convention Against Corruption art. 36, *opened for signature* Dec. 9, 2003, 2349 U.N.T.S. 41 [hereinafter UNCAC]; Indonesia ratified the UNCAC on Sept. 19, 2006. Office on Drugs and Crime, *Signature and Ratification Status*, UNITED NATIONS, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last visited Feb. 13 2020) [hereinafter Office on Drugs and Crime].

anti-corruption law. Most recently, in 2019, Indonesia reformed the *Komisi Pemberantasan Korupsi* (KPK) law in Indonesia. KPK is the specialized organ to eradicate corruption in Indonesia. The reformation of the KPK law focused on the institutional design of the KPK.³ However, the changes in the law triggered social unrest when it was announced.⁴ The protesters argued that the new KPK law will weaken the power and authority of the KPK to combat corruption. On the other hand, the Parliament argued that the reform is important to balance the protection of human rights and anti-corruption measures.⁵ To assess this debate, this article will analyze the change of every provision in the new KPK law and assess the merits of both viewpoints. Subsequently, this article will investigate the coherence of the change with the UNCAC and the International Covenant on Civil and Political Rights (ICCPR)⁶ to provide a contribution of lessons learned in the development of international anti-corruption law, especially, concerning the intersection between human rights protection and anti-corruption measures.

This article analyzes the changes through the lens of the human rights and anti-corruption strategy to answer whether the change of KPK law in Indonesia will be beneficial to both human rights protection and anti-corruption measures. This article uses a normative approach to answer the research question.

- 3 Law No. 19 of 2019 concerning the Second Amendment of Law No. 30 of 2002 (Indon.); *Indonesia Puts Anti-Corruption Agency Under Supervisory Board*, AL JAZEERA (Sept. 17, 2019), <https://www.aljazeera.com/ajimpact/indonesia-puts-anti-corruption-agency-supervisory-board-190917084614211.html>.
- 4 Ardila Syakriah, *Majority of People Oppose KPK Law Revision, Support Student Protests, New Survey Reveals*, JAKARTA POST (Oct. 7, 2019), <https://www.thejakartapost.com/news/2019/10/07/majority-of-people-oppose-kpk-law-revision-support-student-protests-new-survey-reveals.html>; Michael Buehler, *Indonesia Takes a Wrong Turn in Crusade Against Corruption*, FIN. TIMES (Oct. 3, 2019), <https://www.ft.com/content/048ecc9c-7819-3553-9ec7-546dd19f09ae>; John Mcbeth, *End of an Anti-Corruption Era in Indonesia*, ASIA TIMES (Jan. 7, 2020), <https://www.asiatimes.com/2020/01/article/end-of-an-anti-corruption-era-in-indonesia>.
- 5 Law No. 19 of 2019 explained that the synergy between law enforcement agencies (the National Police, Attorney General and KPK) has to be improved to effectively combat corruption based on the principles of equal authority and human rights protection. It also mentioned that the enforcement of KPK tasks needs to be elevated continuously whilst respecting human rights. See also Reuters, *Indonesian Parliament Passes Controversial Revisions to Law on Anti-Graft Agency*, EURONEWS (Dec. 9, 2019), <https://www.euronews.com/2019/09/17/indonesian-parliament-passes-controversial-revisions-to-law-on-anti-graft-agency>; Reuters, *Indonesia Approves Controversial Revisions to Law Governing Anti-Corruption Agency KPK*, S. CHINA MORNING POST (Sept. 17, 2019), <https://www.scmp.com/news/asia/southeast-asia/article/3027626/indonesian-parliament-passes-controversial-revisions-law>.
- 6 International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171.

The data is based mainly on legal sources, academic literature, and media reports. The two main conventions discussed in this article are the UNCAC and the ICCPR. Both treaties were chosen to study the coherence in implementation of international law in the national law of Indonesia. The General Comments (GCs) from the Committee on Civil and Political Rights (the Committee) were taken into consideration.⁷ This article studies Indonesia as a single-country study, focusing on the anti-corruption law in Indonesia, considering both substantive and procedural aspects of the institutional design of the KPK.

2 Anti-corruption Legal Framework: From International to National Anti-corruption Law and Policy

International anti-corruption law is continuously progressing throughout time. Historically, the creation of international anti-corruption law started at the domestic level in the United States of America (USA). The USA promulgated the Foreign Corrupt Practices Act (FCPA) in 1977 to combat international bribery.⁸ The FCPA was designated to target corporations under the US jurisdiction, which commit bribery abroad.⁹ However, the problem of transnational bribery cannot be solved only by a domestic approach because of the nature of transnational corruption. The USA believed that an international approach to law-making was needed to create a strong and comprehensive anti-bribery convention.¹⁰

In the Organization for Economic Cooperation and Development (OECD), international negotiations for an international anti-corruption instrument began under the leadership of the USA.¹¹ This eventually led to the creation of the International Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) in 1997. The OECD Anti-Bribery Convention entered into force in 1999 and

7 The GCs of the International Human Rights Institutions are not legally binding. Instead, their purpose is to clarify and interpret the provisions of international human rights treaties.

8 "Foreign Corrupt Practices Act: An Overview," U.S. DEP'T JUSTICE, <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act> (last visited Sept. 1, 2020).

9 *Id.*

10 Cindy Davids & Grant Schubert, *The Global Architecture of Foreign Bribery Control: Applying the OECD Bribery Convention*, in HANDBOOK OF GLOBAL RESEARCH AND PRACTICE IN CORRUPTION, 319, 319–39 (Adam Graycar & Russell G. Smith eds., 2013).

11 FRITZ HEIMANN & MARK PIETH, *CONFRONTING CORRUPTION: PAST CONCERNS, PRESENT CHALLENGES, AND FUTURE STRATEGIES* 17–28 (2018).

became the first international anti-corruption convention.¹² The problem with the OECD Anti-Bribery Convention is the limited number of State Parties, as it is only open to the members of the OECD.¹³ This hampers the enforcement of anti-corruption law in states which are not members of the OECD. Therefore, the next step was the negotiation of an international convention against corruption under the leadership of the United Nations.¹⁴

Before the negotiation for the UNCAC began, the issue of money laundering as a means of corruption had already been included within the United Nations Convention against Transnational Organized Crime (UNTOC) on 15 November 2000.¹⁵ The UNTOC entered into force in 2003 and it has three additional protocols, namely, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea, and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, and Ammunition.¹⁶ Negotiating countries considered with optimism that the UNTOC would constitute an effective tool and a necessary legal framework for international cooperation in combating, *inter alia*, such criminal activities as money-laundering, corruption, etc.¹⁷

12 Paul Cohen & Arthur Mariott, *The OECD Anti-Bribery Convention*, in INTERNATIONAL CORRUPTION 69 (Paul H. Cohen & Angela M. Papalaskaris eds., 2d ed. 2018) [hereinafter INTERNATIONAL CORRUPTION].

13 OECD has 37 member states. See *Where: Global Reach*, OECD HOME, <https://www.oecd.org/about/members-and-partners> (last visited Oct. 20, 2020).

14 SOPE WILLIAMS-ELEGBE, *FIGHTING CORRUPTION IN PUBLIC PROCUREMENT: A COMPARATIVE ANALYSIS OF DISQUALIFICATION OR DEBARMENT MEASURES* 1–2 (2012).

15 United Nations Convention against Transnational Organized Crime art. 7, Nov. 15, 2000, 2225 U.N.T.S. 209 [hereinafter UNTOC]. The Convention also considers the world's concerns as to the negative economic and social implications related to organized criminal activities, and therefore urges countries to strengthen their cooperation to prevent and combat such activities more effectively at the national, regional and global level. Matti Joutsen, *The United Nations Convention Against Corruption*, in HANDBOOK OF GLOBAL RESEARCH AND PRACTICE IN CORRUPTION, 303, 303–18 (Adam Graycar & Russell G. Smith eds., 2013).

16 UNTOC, *supra* note 15; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319; Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2241 U.N.T.S. 507; Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime, May 31, 2001, 2326 U.N.T.S. 208.

17 INTERNATIONAL CORRUPTION, *supra* note 12.

The UNCAC was adopted in October 2003 through General Assembly Resolution 58/4 and entered into force in 2005.¹⁸ The UNCAC is universally ratified by 187 countries and is considered as the umbrella treaty concerning anti-corruption on the international level.¹⁹ The UNCAC established a set of provisions that ranged from prevention, enforcement, and inter-state monitoring of corruption. The UNCAC is the culmination of the previous international and regional law and policy to combat corruption which is mentioned in the UNCAC preamble. The development of the anti-corruption legal and policy framework becomes even more progressive with the work of the International Centre for Asset Recovery (ICAR) and the Stolen Asset Recovery Initiative (StAR), which are agents for international technical anti-corruption cooperation between countries.²⁰

On the regional level, each region has its particular regional anti-corruption laws. In Europe, regional anti-corruption law was created through the Council of Europe and the European Union. The Council of Europe adopted the Criminal Law Convention Against Corruption²¹ and its Additional Protocol,²² as well as the Civil Law Convention Against Corruption.²³ The European Union approved a number of initiatives including the European Union Convention on the Protection of the European Communities Financial Interest,²⁴ the First and Second Protocol to the Convention on the Protection of the European Communities Financial Interest,²⁵ and the Convention on the Fight Against Corruption Involving Officials of the EU Member States.²⁶ The Organization of American States has its own Inter-American Convention Against

18 *Id.* at 143–44.

19 DAN HOUGH, ANALYSING CORRUPTION 107–26 (2017); Office on Drugs and Crime, *supra* note 2.

20 PHIL MASON, TWENTY YEARS WITH ANTICORRUPTION. PART 10: KEEPING THE VISION ALIVE: NEW METHODS, NEW AMBITIONS 2 (Arne Strand ed., 2020), <https://www.u4.no/publications/twenty-years-with-anti-corruption-part-10>. See also *International Centre for Asset Recovery*, BASEL INST. ON GOVERNANCE, <https://www.baselgovernance.org/asset-recovery> (last visited Apr. 25, 2021); *STOLEN ASSET RECOVERY INITIATIVE: WORLD BANK: UNODC*, <https://star.worldbank.org/> (last visited Apr. 25, 2021).

21 Criminal Law Convention on Corruption, *opened for signature* Jan. 27, 1999, E.T.S. No. 173, 2216 U.N.T.S. 225.

22 Additional Protocol to the Criminal Law Convention on Corruption, *opened for signature* May 15, 2003, E.T.S. No. 191, 2466 U.N.T.S. 168.

23 Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, 2246 U.N.T.S. 3.

24 1995 O.J. (C 316) 49.

25 1996 O.J. (C 313) 2; 1997 O.J. (C 221) 12.

26 1997 O.J. (C 195) 2.

Corruption,²⁷ as well as the African Union with its African Union Convention on Preventing and Combating Corruption.²⁸ The African region has two additional regional anti-corruption legal instruments which are the Southern African Development Community Protocol on the Fight Against Corruption,²⁹ and the Economic Community of the West African States Protocol on the Fight Against Corruption.³⁰ The Asian region does not have a legally binding regional anti-corruption instrument. The only Asian quasi-legal document against corruption is the Asian Development Bank (ADB) Framework Policy on Anti-Corruption and Integrity that was created by the ADB.³¹

On the national level, Indonesia ratified the UNCAC in 2006 through Law number 7 of 2006.³² Indonesia adopted a number of laws and regulations based on its obligations under the UNCAC. These can be found in Table 1.

The national anti-corruption legal framework develops continually. The latest development was the amendment of the KPK law by Law number 19 of 2019. In sum, to comply with the UNCAC, Indonesia has established an independent anti-corruption agency, criminalized several acts of corruption as regulated under the UNCAC, and formulated laws to ensure the participation of whistleblowers and civil society in combating and eradicating corruption.

3 The (Presumed) Problems with the Amendment of Anti-corruption Law in Indonesia: Prior and Post Institutional Design of the KPK

This section focuses on the designation of an independent anti-corruption agency. Article 6 of the UNCAC mandates that the State Party must design an

27 Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724; CARLOS A. MANFRONI, INTER-AMERICAN CONVENTION AGAINST CORRUPTION: ANNOTATED WITH COMMENTARY 2 (Richard S. Werksman ed., Michael Ford trans., 2003).

28 African Union Convention on Preventing and Combating Corruption, July 11, 2003, 43 I.L.M. 5.

29 Southern African Development Community, Protocol Against Corruption, No. 52885 (Aug. 14, 2001), <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/52885/A-52885-08000002804947e9.pdf>.

30 Economic Community of the West African States Protocol on the Fight Against Corruption (Dec. 21, 2001), https://eos.cartercenter.org/uploads/document_file/path/406/ECOWAS_Protocol_on_Corruption.pdf.

31 ADB/OECD Anti-Corruption Initiative for Asia and the Pacific: Combating Corruption in the New Millennium, *Anti-Corruption Action Plan for Asia and the Pacific* (Nov. 30, 2001), <https://www.oecd.org/site/adboecdanti-corruptioninitiative/meetingsandconferences/35021642.pdf>.

32 Office on Drugs and Crime, *supra* note 2.

TABLE 1 National anti-corruption legal framework

Law	<ol style="list-style-type: none"> 1. Law Number 8 of 1981 concerning the Code of Criminal Procedure.^a 2. Law Number 28 of 1999 concerning Good State Governance, Free of Corruption, Collusion, and Nepotism.^b 3. Law Number 31 of 1999 concerning Corruption Eradication.^c 4. Law Number 20 of 2001 concerning the Changes in Law Number 31 of 1999 on Corruption Eradication.^d 5. Law Number 30 of 2002 concerning the KPK.^e 6. Law Number 7 of 2006 concerning the Ratification of the UNCAC.^f 7. Law Number 5 of 2009 concerning the Ratification of the UNTOC.^g 8. Law Number 46 of 2009 concerning Corruption Court.^h 9. Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crime.ⁱ 10. Law Number 6 of 2011 concerning Immigration.^j
-----	--

a Wetboek van Strafrecht voor Nederlandsch-Indie [Criminal Code for the Dutch East Indies], *Kitab Undang-Undang Hukum Pidana* [Book of Criminal Law], Staatsblad 1915 No. 732, Law No. 73 of 1958, Statement on the Enforceability of the Law No. 1 of 1946 concerning the Regulation of Criminal Law in Indonesia and Changing the Law on Criminal Law (Indon.) (part of the procedural law of anti-corruption in Indonesia).

b Law No. 28 of 1999 on The State Organizer Who is Free From Corruption, Collusion, and Nepotism (Indon.) (constituting a part of Indonesia's substantive law on anti-corruption).

c Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption (Indon.) (constituting a part of Indonesia's substantive law on anti-corruption).

d Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption (Indon.) (constituting a part of Indonesia's substantive law on anti-corruption).

e Law No. 30 of 2002 on the Corruption Eradication Commission (Indon.) (constituting a part of Indonesia's procedural law on anti-corruption).

f Law No. 7 of 2006 on the Ratification of the UNCAC (Indon.) (constituting a part of Indonesia's substantive law on anti-corruption).

g Law No. 5 of 2009 on the Ratification of the UNTOC (Indon.) (constituting a part of Indonesia's substantive law on anti-corruption).

h Law No. 46 of 2009 on the Court of Acts of Corruption (Indon.) (constituting a part of Indonesia's procedural law on anti-corruption).

i Law No. 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (Indon.) (constituting a part of Indonesia's substantive law on anti-corruption).

j Law No. 6 of 2011 on Immigration (Indon.) (constituting a part of Indonesia's substantive law on anti-corruption).

TABLE 1 National anti-corruption legal framework (cont.)

	11.	Law Number 19 of 2019 concerning the Second Amendment of Law Number 30 of 2002 concerning the KPK. ^k
Governmental Regulation	1.	Government Regulation Number 71 of 2000 concerning Procedures for Implementation of Public Participation in Prevention and Eradication of Corruption. ^l
	2.	Government Regulation Number 63 of 2005 concerning KPK's Human Resources Management System. ^m
	3.	Government Regulation Number 103 of 2012 concerning the Changes in Government Regulation Number 63 of 2005 on KPK's Human Resources Management System. ⁿ
	4.	Government Regulation Number 43 of 2018 concerning the Guideline of Civil Society's Participation and Awards in the Prevention and Eradication of Corruption. ^o

- k Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission (Indon.) (constituting a part of Indonesia's procedural law on anti-corruption).
- l Government Regulation No. 71 of 2000 on Procedures for Implementation of Public Participation in Prevention and Eradication of Corruption (Indon.).
- m Government Regulation No. 63 of 2005 on KPK's Human Resources Management System (Indon.).
- n Government Regulation No. 103 of 2012 on the Changes in Government Regulation No. 63 of 2005 on KPK's Human Resources Management System (Indon.).
- o Governmental Regulation No. 43 of 2018 concerning the Guideline of Civil Society's Participation and Awards in the Prevention and Eradication of Corruption (Indon.).

independent anti-corruption agency based on the fundamental principles of its legal system.³³ The agency must have the authority to prevent corruption by:

- a. Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
- b. Increasing and disseminating knowledge about the prevention of corruption.³⁴

The State Party must also grant the agency the necessary independence to enable it to “carry out its or their functions effectively and free from any undue

33 UNCAC, *supra* note 2, art. 6(1).

34 *Id.*

influence.”³⁵ Besides, the State Party must provide “[t]he necessary material resources and specialized staff, as well as the training” to ensure the effectiveness of the agency.³⁶

The Indonesian legislative measures to implement Article 6 of UNCAC were inspired by the work of the Independent Anti-Corruption Agency (ICAC) of Hong Kong.³⁷ The ICAC Hong Kong is considered a role model for an anti-corruption agency based on its success in addressing corruption in Hong Kong.³⁸ The ICAC was designed to be independent of the police force and reported its works directly to the Governor of Hong Kong.³⁹ The initial design of KPK was on replication of ICAC Hong Kong. The stark similarity is the reliance on a three-pronged approach to combat corruption:⁴⁰ prevention of corruption, prosecution of corruption cases, and public education of anti-corruption.⁴¹

Law number 30 of 2012 followed the ICAC model. A comparison between Law Number 30 of 2002 concerning the KPK and Law Number 19 of 2019 shows several changes in the KPK structure and mandates related to the issue of corruption and human rights. These changes are found in Table 2.

Besides the changes mentioned in Table 2, other relevant changes of the KPK Law are:

- (1) The elimination of KPK’s authority to handle corruption cases that attract public attention that previously existed in Article 11 of Law number 30 of 2002.⁴² This elimination aims to improve legal certainty because there was no standard being formulated to determine the case which attracts public attention.
- (2) The clarification of the relationship between KPK and the Police and the Attorney General (AG) regarding case take-over. Article 10A(2) provides the requirements that have to be fulfilled for KPK to take over corruption

35 *Id.* art. 6(2).

36 *Id.*

37 KEVIN E. DAVIS, BETWEEN IMPUNITY AND IMPERIALISM: THE REGULATION OF TRANSNATIONAL BRIBERY 29 (2019).

38 *Id.*

39 *Id.*

40 *Id.*; About ICAC, INDEP. COMMISSION AGAINST CORRUPTION (Apr. 8, 2019), <https://www.icac.org.hk/en/about/struct/index.html>.

41 *Id.*

42 Law No. 30 of 2002 on the Corruption Eradication Commission art. 11(b) (Indon.).

TABLE 2 The comparison of prior and post provisions amendment of KPK Law

Issues	Law number 30 of 2002	Law number 19 of 2019
Human rights	No provision about human rights. Article 5 stated the work principles of the KPK: a. legal certainty (<i>kepastian hukum</i>); b. openness (<i>keterbukaan</i>); c. accountability (<i>akuntabilitas</i>); d. public interest (<i>kepentingan umum</i>); e. proportionality (<i>proporsionalitas</i>). ^a	The principle of respect for human rights was introduced. ^b
The execution power of the KPK	Article 6 positioned KPK as the main institution to combat corruption in Indonesia. Its mandate is: a. coordination with the institution that has the mandate to eradicate corruption; b. supervision of the institution that has the mandate to eradicate corruption; c. to conduct pre-investigation, investigation, and prosecution of corruption; d. to take action to prevent corruption;	New Article 6 gives the KPK also the mandate to execute Courts' rulings. ^c

a Law No. 30 of 2002 on the Corruption Eradication Commission art. 5 (Indon.).
b Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission (Indon.).
c Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission art. 6 (Indon.).

TABLE 2 The comparison of prior and post provisions amendment of KPK Law (*cont.*)

Issues	Law number 30 of 2002	Law number 19 of 2019
	e. to monitor state governance. ^d The power to execute or enforce court order with the permanent ruling force was not regulated. ^e	
The legal status of KPK employees	KPK's employees are not civil servants. KPK recruits its employees without the constraint of civil apparatus law.	KPK employees are classified as civil servants.
The <i>Dewan Pengawas</i> /the supervisory organ	The highest authority in KPK bureaucratic structure was the KPK Commissioners as regulated in Article 26–37. ^f	Article 21 in connection with Chapter v of this law, establishes a supervisory organ named <i>Dewan Pengawas</i> with the mandate to monitor the implementation of tasks and authorities of the KPK; to

d Law No. 30 of 2002 on the Corruption Eradication Commission art. 6 (Indon.). In the subsequent provision, Article 7, it is emphasized that the role of coordination was bestowed upon the KPK. The KPK has the authority to:

- a. coordinate pre-investigation, investigation, and prosecution of corruption;
- b. establish a reporting system in the corruption eradication activity;
- c. solicit information concerning corruption eradication activity towards respective institution;
- d. conduct hearing or meeting with the respective institution that has the authority to eradicate corruption; and
- e. request institutional report concerning prevention of corruption.

Overview of KPK, KPK: KOMISI PEMBERANTASAN KORUPSI (Jan. 22, 2018), <https://www.kpk.go.id/en/about-kpk/overview-of-kpk>.

- e This became a problem because when conducting their work to combat corruption, in concrete cases, some KPK prosecutors executed criminal sanctions. This grey area was eliminated by the new provision of Article 6 of Law No. 19 of 2019 that gives the KPK power to execute and enforce the judicial decision.
- f Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission, arts. 26–37 (Indon.).

TABLE 2 The comparison of prior and post provisions amendment of KPK Law (*cont.*)

Issues	Law number 30 of 2002	Law number 19 of 2019
		issue permission concerning wiretapping, search and seizures; to formulate a code of conduct for Commissioners and employees of the KPK; to receive, examine and follow up reports from civil society concerning allegations of abuse of power by Commissioners and employees of the KPK or any other similar allegation; to conduct work evaluations of the Commissioners and employees of KPK annually. ^g

g *Id.* arts. 21, 29–37; News Desk, *KPK’s New Code of Ethics Promotes Synergy with Other Institutions: Supervisory Council*, JAKARTA POST (Mar. 6, 2020, 6:14 AM), <https://www.thejakartapost.com/news/2020/03/05/kpks-new-code-of-ethics-promotes-synergy-with-other-institutions-supervisory-council.html>.

cases from the Police or AGO.⁴³ Article 10A(3) regulates the period of 14 days for the Police or AG to hand over suspects and all case materials to KPK after the receipt of KPK’s request to take over the case.⁴⁴

43 Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission art. 10A(2) (Indon.).
44 Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission art. 10A(3) (Indon.).

- (3) In Article 12 of the new KPK Law, KPK can conduct the following measures only during the investigation and prosecution phases, before the amendment, KPK could conduct these measures also in the preliminary investigation phase:
- a. to instruct the relevant agency to issue a travel ban on certain individuals;
 - b. to request banks or other financial institutions information about the financial situation of the accused;
 - c. to instruct banks to block certain accounts allegedly used for money laundering;
 - d. to instruct the supervisor of the suspect to suspend the suspect from his/her position;
 - e. to request for the wealth and taxation data of the accused from the relevant agency;
 - f. to temporarily halt financial transactions, trading, and other arrangements, or temporarily revoke the permit, license, and concession that is being conducted or owned by the suspect or defendant who is suspected based on the sufficient preliminary evidence that it is related to a criminal act of corruption under that investigation;
 - g. to ask for help from Indonesian Interpol and overseas law enforcement agencies to conduct searches and arrests, and confiscate evidence abroad;
 - h. to ask the police and other relevant agencies to make arrests, search, and confiscate evidence for corruption cases.⁴⁵
- (4) Under Article 40 of Law Number 19 of 2019, KPK has the power to halt the investigation or prosecution of a corruption case. This can be done under the pre-requisite circumstance when the case cannot be resolved in two years.⁴⁶ If the KPK wishes to use this power, the KPK Commissioner issues a warrant and reports it to the Supervisory Board within a week of the issuance. Besides, the KPK must publish a notice about the warrant. The KPK Commissioner can revoke the warrant when there is new evidence that has been found or a pre-trial ruling has been issued.⁴⁷

45 Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission art. 12(2) (Indon.).

46 Before the amendment, the KPK had no power to drop the investigation once a suspect had been named. The purpose of the previous design was to prevent the KPK officers from being bribed into dropping an investigation before trial. SIMON BUTT, *CORRUPTION AND LAW IN INDONESIA 2* (2012).

47 Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission art. 40 (Indon.).

The promulgation of Law Number 19 of 2019 caused several massive demonstrations in Indonesia due to the fear that the amendment would hamper the power and authority of KPK in eradicating corruption.⁴⁸ This article continues with the analysis of whether the amendment of the KPK law hampers or strengthens its power and authority to eradicate corruption and how the changes of the KPK law contribute to the development of international anti-corruption law.

4 Incorporation of Human Rights into the Anti-corruption Strategy: An Ideal Anti-corruption Agency in the Making?

Placing human rights and anti-corruption within the same agenda can create competition between them. On one hand, human rights exist to respect, protect, and fulfill human dignity from unjustifiable interference while anti-corruption focuses on combating the crime of corruption within the crime control model. It has to be noted that corruption is a white-collar crime that typically involves highly sophisticated forms of crooked practices. Therefore, these complexities of corruption compel law enforcement agencies to adopt a strict, effective, and efficient approach to unveil and combat corruption cases. Arguably, human rights norms also operate at the level of law enforcement and criminal law, which means that in the fight against corruption, human rights law must be observed. Grand corruption cases, which include high-level public officials, are an example of how difficult it is for the law enforcement agencies to prosecute the perpetrators and bring justice to the people.⁴⁹ The

48 Syakriah, *supra* note 4; Buehler, *supra* note 4; Mcbeth, *supra* note 4; Ardila Syakriah, *Pro-Law Revision Riot Breaks Out in Front of KPK Building*, JAKARTA POST (Sept. 13, 2019, 5:11 PM), <https://www.thejakartapost.com/news/2019/09/13/pro-law-revision-riot-breaks-out-in-front-of-kpk-building.html>.

49 UNITED NATIONS OFFICE ON DRUGS AND CRIME, UNITED NATIONS HANDBOOK ON PRACTICAL ANTI-CORRUPTION MEASURES FOR PROSECUTORS AND INVESTIGATORS 23 (2004), https://www.unodc.org/documents/afghanistan/Anti-Corruption/Handbook_practical_anti-corruption.pdf; Adam Graycar, *Corruption: Classification and Analysis*, 34 POLICY & SOCIETY 87, 88 (2015); Elizabeth Dávid-Barrett & Mihály Fazekas, *Grand Corruption and Government Change: An Analysis of Partisan Favoritism in Public Procurement*, 26 EUROPEAN JOURNAL ON CRIMINAL POLICY & RESEARCH 411, 411–30 (2020); Turid Hagene, *Grand Corruption in Mexico: The Convenient Disappearance of an Agrarian Community*, 108 EUROPEAN REVIEW OF LATIN AMERICAN & CARIBBEAN STUDIES 43, 43–64 (2019); *What Is Grand Corruption and How Can We Stop It?*, TRANSPARENCY INT'L (Sept. 21, 2016), <https://www.transparency.org/en/news/what-is-grand-corruption-and-how-can-we-stop-it>.

perpetrator is never willing to cooperate with the law enforcement agencies. They always fight back and use a myriad of possible measures to get away from the justice process.⁵⁰

In general, Indonesia is still struggling to combat corruption that has the country in grip since its independence. Looking at the failure of the Old Order Government to eradicate corruption, and the enhanced and continued systemic corruption of the New Order Government, corruption continues to be a major problem in Indonesia.⁵¹ Indonesia ranked 102 in the Corruption Perception Index (CPI) 2020 and the rank is relatively constant with past years. It shows that there is a significant corruption problem.⁵²

An example of how difficult it is to bring a corruptor to justice is Setya Novanto's corruption case in 2018.⁵³ It is one of the most controversial corruption cases in Indonesia because of the magnitude of corruption, the track record of the perpetrator, and the trial process.⁵⁴ He was convicted guilty of corruption in 2018 and sentenced to 15 years of imprisonment due to his role in facilitating corruption within the procurement of the national identity card project.⁵⁵ Novanto was the House Speaker in the period of 2014–2015

50 See Government of Peru, Countering Grand Corruption, Paper submitted Nov. 4, 2019 from the Government of Peru to the Conference of the States Parties to the United Nations Convention Against Corruption Sixth Session, U.N. Doc. CAC/COSP/2015/CRP.9 (Nov. 4, 2015), <https://www.unodc.org/documents/treaties/UNCAC/COSP/session6/V1507721e.pdf>; Naomi Roht-Arriaza & Santiago Martínez, *Grand Corruption and the International Criminal Court in the 'Venezuela Situation'*, 17 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 1057, 1057–82 (2019); Odd-Helge Fjeldstad & Jan Isaksen, *Anti-Corruption Reforms: Challenges, Effects and Limits of World Bank Support* 18 (Indep. Evaluation Grp., Working Paper No. 7, 2008); Mats Benestad, *Impunity for Grand Corruption – A Problem Too Big for International Community to Ignore*, TRANSPARENCY INT'L (Aug. 25, 2020), <https://www.transparency.org/en/blog/impunity-for-grand-corruption-too-big-to-ignore-ungass-2021>.

51 ADAM SCHWARZ, A NATION IN WAITING: INDONESIA'S SEARCH FOR STABILITY 110 (2009).

52 *Our Work in: Indonesia*, TRANSPARENCY INT'L, <https://www.transparency.org/en/cpi/2020/index/idn> (last visited May 25, 2021).

53 Kharishar Kahfi, *Setya Novanto Sentenced to 15 Years in Prison in E-ID Graft Case*, JAKARTA POST (Apr. 24, 2018, 2:38 PM), <https://www.thejakartapost.com/news/2018/04/24/ex-house-speaker-sentenced-to-15-years-in-prison-in-e-id-graft-case.html>; *Indonesia: Setya Novanto Sentenced to 15 Years for Corruption*, AL JAZEERA (Apr. 24, 2018), <https://www.aljazeera.com/news/2018/04/indonesia-setya-novanto-sentenced-15-years-corruption-180424072152146.html>; Agence France-Presse, *Indonesia's Former Speaker Setya Novanto Jailed for 15 Years on Graft Charges Stemming from Government ID Scheme*, S. CHINA MORNING POST (Apr. 24, 2018, 4:53 PM), <https://www.scmp.com/news/asia/southeast-asia/article/2143113/indonesias-former-speaker-setya-novanto-jailed-15-years>.

54 Pengadilan Negeri Jakarta Pusat [The District Court of Central Jakarta] Apr. 24, 2018, Decision No. 130/PID.SUS/TPK/2017/PN.JKT.PST., p. 1695–96, (Indon.).

55 *Id.*

and 2016–2017 and was allegedly involved in several corruption scandals in the past.⁵⁶ Presenting him at Court proved to be one of the most difficult processes in the Indonesian anti-corruption effort because his lawyer, Friedrich Yunadi, used various methods to prevent his client from appearing in Court. One of these was the creation of a minor traffic accident and the bribing of Dr. Sutarjo, a medical doctor at private hospital named Permata Medika Hijau, declaring Mr. Novanto unfit to attend the trial due to that minor traffic accident.⁵⁷ Both the lawyer and the doctor were found guilty under the charge of obstruction of justice by the Court.⁵⁸ Yunadi was sentenced to seven years imprisonment and Dr. Sutarjo was sentenced to four years imprisonment for deliberately obstructing justice in the law enforcement process towards Novanto.⁵⁹

Gathii who studied anti-corruption measures in Kenya, explained that corrupt high-level government officials in Kenya use human rights claims to circumvent and avoid punishment and accountability.⁶⁰ He concluded that respecting human rights can help to combat corruption, but the corruptors are also more likely to seek and defend their rights in the process.⁶¹ Based on experiences on the ground, therefore the lawmaker must consider the nexus between the civil and political rights and anti-corruption agency authority in proposing anti-corruption measures.

Indonesia acceded to the ICCPR in 2005 through Law number 12 of 2005.⁶² Therefore, Indonesia is bound by the international legal obligation to respect,

56 Kanupriya Kapoor, *Indonesia Jails Former Parliament Speaker for 15 Years for Graft*, REUTERS (Apr. 24, 2018, 4:54 PM), <https://www.reuters.com/article/us-indonesia-corruption/indonesia-jails-former-parliament-speaker-for-15-years-for-graft-idUSKBN1HV0MA>; Adinda Normala, *Setya Novanto: Finally Sentenced After Decades of Scandals*, JAKARTA GLOBE (Apr. 29, 2018), <https://jakartaglobe.id/news/setya-novanto-finally-sentenced-after-decades-of-scandals>.

57 News Desk, *Setya's Doctor Jailed for Obstruction of Justice*, JAKARTA POST (July 16, 2018, 5:08 PM), <https://www.thejakartapost.com/news/2018/07/16/setyas-doctor-jailed-for-obstruction-of-justice.html>; *Hospital Nurse Unveils Setya Novanto's Staged Drama*, TEMPO.CO (Apr. 3, 2018, 6:50 AM), <https://en.tempo.co/read/917212/hospital-nurse-unveils-setya-novantos-staged-drama>.

58 *Bulletin: Fredrich Yunadi's Verdict*, INDON. CORRUPTION WATCH (July 18, 2018, 12:00 AM), <https://antikorupsi.org/index.php/en/article/fredrich-yunadis-verdict>.

59 *Id.*; Pengadilan Tinggi DKI Jakarta [The High Court of Jakarta] Oct. 25, 2018, Decision No. 26/Pid.Sus-TPK/2018/PT.DKI, p. 65 (Indon.).

60 MARTINE BOERSMA, CORRUPTION: A VIOLATION OF HUMAN RIGHTS AND A CRIME UNDER INTERNATIONAL LAW? 199 (2012).

61 *Id.*

62 *UN Treaty Body Database: Ratification Status for Indonesia*, OHCHR.ORG, https://tbineternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN (last visited Sept. 2, 2020).

protect, and fulfill civil and political rights. The competing interests of human rights and anti-corruption must be balanced. There are several rights of direct relevance for the anti-corruption agency authority, namely, Article 9 on the right to liberty and security of person, Article 14 on the right to equality before the law and fair trial, and Article 17 on the right to privacy of the ICCPR.

The first point to make is that the new KPK law ensures that there will be consideration of human rights impact in every action of the KPK. As mentioned in the previous subsection, the problem with human rights and anti-corruption is to strike the balance between the two compelling notions. There will be no legitimacy for anti-corruption measures if there is no respect for and protection of human rights. By including the human rights principle in the new KPK law, the lawmakers have made a clear choice to legally recognize that human rights as an important part of anti-corruption actions. Before the establishment of the new law, the KPK was often criticized for not respecting the human rights of the accused, with this new law, there is less space for arguments from the opposition side.⁶³

In the past, the KPK had lost two pre-trial cases concerning the legality of an investigation that the KPK had conducted. The first case was the pre-trial case of Budi Gunawan and the second case was the pre-trial case of Setya Novanto. In both pre-trial cases, the judges ruled that KPK had not fulfilled procedural measures before proceeding to the trial phase. In the pre-trial case of Gunawan, who was accused of accepting gratification during his tenure as the Chief of Human Resources and Career Development at the National Police Headquarters from 2003–2006,⁶⁴ the legality of the Determination of Suspect Warrant of KPK was questioned based on the *rationale* of *Habeas Corpus* principle that an individual has the right to have his warrant be reviewed by a court of law.⁶⁵ Gunawan's lawyers emphasized the importance of Indonesia's

63 Office of Assistant to Deputy Cabinet Sec'y for State Document & Translation, *President Jokowi Has 4 Objections on KPK Law Revision*, CABINET SECRETARIAT REPUBLIC INDON. (Sept. 14, 2019), <https://setkab.go.id/en/president-jokowi-has-4-objections-on-kpk-law-revision/>; Reuters, *Indonesian Parliament Passes Controversial Revisions to Law on Anti-Graft Agency*, STRAITS TIMES (Sept. 17, 2019, 2:29 PM), <https://www.straitstimes.com/asia/se-asia/indonesian-parliament-passes-controversial-revisions-to-law-on-anti-graft-agency>; *Indonesia Puts Anti-Corruption Agency Under Supervisory Board*, AL JAZEERA (Sept. 17, 2019), <https://www.aljazeera.com/ajimpact/indonesia-puts-anti-corruption-agency-supervisory-board-190917084614211.html>.

64 Fatiyah Wardah, *Indonesian Judge Rules in Favor of Police Chief Nominee*, VOA (Feb. 16, 2015, 1:54 PM), <https://www.voanews.com/east-asia/indonesian-judge-rules-favor-police-chief-nominee>.

65 Pengadilan Negeri Jakarta Selatan [The District Court of South Jakarta] Feb. 16, 2015, Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel., p. 3 (Indon.).

ratification of ICCPR as the legal guarantee that the Government must respect, protect, and fulfill the civil and political rights of their client.⁶⁶ Based on the pre-trial decision, the judges considered the grounds of the Order of Investigation Warrant from the KPK to Budi Gunawan. These were the status of Gunawan as a public official; the loss of the State's funds; and whether the case was a public concern.⁶⁷ The judges decided that those three elements were not satisfied and partially granted the request of Gunawan's lawyer.

In the pre-trial ruling of Novanto, his lawyer argued that the investigators of the KPK did not have the legal authority to investigate the case because they were employed by both the police or AG and the KPK.⁶⁸ Law number 31 of 2002 regulated the independence of the KPK investigators by requiring the KPK investigators who come from either the police or the AG must have their employment ended in that respective institution first before being employed as the KPK investigators. Novanto's lawyer argued that this was not be done in his client's case and thus requested a pre-trial.⁶⁹

Another argument in that case, was the insufficient preliminary evidence for the determination of the suspect. Novanto's lawyer argued that the preliminary evidence for the suspect's determination by the KPK was unlawful because it was based on a Court's decision of another convicted person in the national identity card project corruption cases.⁷⁰ This was problematic because the determination of the suspect and the issuance of the Letter of Investigation Order (Sprindik No. Sprin.Dik-56/01/07/2017) came on the same day.⁷¹ The logic behind the reasoning of Novanto's lawyer is the impossibility of the KPK to obtain two minimum preliminary pieces of evidence at the same time with the beginning of an investigation order.⁷² The judge considered these matters as flaws during the process of the determination of the suspect and ruled in favor of Novanto.⁷³

The following table further illustrates the clashes between the Civil and Political Rights and Anti-Corruption measures based on those two pre-trial cases above.

66 *Id.* at 13–15.

67 BOERSMA, *supra* note 82.

68 Pengadilan Negeri Jakarta Selatan [The District Court of South Jakarta] Sept. 29, 2017, Decision No. 97/Pid.Prap/2017/PN.Jkt.Sel., p. 19 (Indon.).

69 *Id.* at 18.

70 *Id.*

71 *Id.* at 9.

72 *Id.* at 245.

73 *Id.*

TABLE 3 Civil and political rights at the nexus of human rights and anti-corruption

Article	Civil and Political Rights	Clashes between the Civil and Political Rights and Anti-corruption Measures
9	The right to liberty and security of a person ^a	In the case of Gunawan's pre-trial, his defense team argued that Gunawan did not receive any information of charges against him from the KPK before the determination of the suspect was disclosed to the public. ^b In the case of Novanto, his defense team argued that the period between the determination of the suspect and the issuance of the Letter of Investigation Request, issued on the same day, does not fulfill the procedural laws. The right to liberty and security of person guarantees that every individual accused of a crime must be informed promptly about his/her charges and be summoned in the investigation phase.
14	The right to equality before the law ^c	In the case of Gunawan and Novanto, their defense teams argued that both individuals had the right to be treated equally before the law and with the presumption of innocence. The pre-trial decision stated that procedural laws matter in the determination of a suspect and when the procedural requirements to determine an individual as a suspect is not satisfied then the whole case must be dropped for the sake of justice. ^d
17	The right to privacy ^e	Although not a basis for pre-trial arguments in both cases, the use of wiretapping by the KPK has been

a International Covenant on Civil and Political Rights art. 9, ¶ 1, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

b Pengadilan Negeri Jakarta Selatan [The District Court of Central South Jakarta] Feb. 16, 2015, Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel., p. 3 (Indon.).

c ICCPR, *supra* note 96, art. 14.

d Pengadilan Negeri Jakarta Selatan [The District Court of Central South Jakarta] Feb. 16, 2015, Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel., p. 3 (Indon.); Pengadilan Negeri Jakarta Selatan [The District Court of Central South Jakarta] Sept. 29, 2017, Decision No. 97/Pid.Prap/2017/PN.Jkt.Sel., p. 19 (Indon.).

e ICCPR, *supra* note 96, art. 17, ¶ 1.

TABLE 3 Civil and political rights at the nexus of human rights and anti-corruption (*cont.*)

Article	Civil and Political Rights	Clashes between the Civil and Political Rights and Anti-corruption Measures
		the object of discussion between legal experts in Indonesia. The Justice Minister explained that the new KPK Law will ensure that wiretapping will be utilized based on human rights regulations. ^f The interference to the right to privacy can only be done when it is being regulated by law as stated in General Comment Number 16 concerning the Right to Privacy. ^g Interference authorized by States can only take place based on law, which itself must comply with the provisions, aims, and objectives of the Covenant. ^h

f Heru Andriyanto, *Justice Minister Details Reasons Why KPK Needs New Law*, JAKARTA GLOBE (Sept. 21, 2019), <https://jakartaglobe.id/news/justice-minister-details-reasons-why-kpk-needs-new-law>.

g U.N. Hum. Rts. Committee, CCPR General Comment No. 16: Article 17 (Right to Privacy): The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation at the Thirty-Second Session of the Human Rights Committee ¶ 1 (Apr. 8, 1988) [hereinafter CCPR General Comment No. 16].

h *Supra* note 63.

The determination of suspects based on the KPK system has to be decided based on the collective collegial principle. It means that all KPK Commissioners agree with the determination of the suspect. This will strengthen legal certainty and also prevent abuse of power that might lead to human rights violations of the suspect. Based on the Constitutional Court Decision on the collective collegiality principle of KPK Commissioners, the Court emphasized that the KPK is a super body that has the mandate to eradicate corruption as an extraordinary crime. Therefore, the KPK is weaponized with an extraordinary power beyond the traditional legal power of a law enforcement agency. This extraordinary power has to be guided with caution and due diligence and that becomes the reason why the determination of a suspect has to be decided by the collective collegial principle of the whole KPK Commissioners.⁷⁴ It is also the reason

74 *Id.*

why the KPK did not have the power to halt the investigation even though after amendment, the KPK Commissioners can issue the warrant to halt the investigation with the aims to ensure the right to a fair trial of the suspect.⁷⁵

The second point revolves around the introduction of the *Dewan Pengawas* KPK as the supervisory organ of KPK. Based on the Weberian bureaucracy system,⁷⁶ the structure of *Dewan Pengawas* KPK fulfills the Weberian rational-legal principles for the bureaucratic system. Max Weber proposed the idea of ideal bureaucracy based on the rational-legal model,⁷⁷ in which, a bureaucracy consists of individuals with “professional, impersonal, passion-free, rational” behavior.⁷⁸ It must be “[h]ighly trustworthy, filled with professional experts selected within a system of meritocracy.”⁷⁹ Rubinstein and Maravick observe that in the Weberian ideal conception of the rational-legal model, “[t]he guiding norm of bureaucratic authority is a strict hierarchy with a clear separation of tasks and functions following the principle of division of labor.”⁸⁰

Indonesia has a long history of a Weberian disaster due to a high level of corruption, collusion, and nepotism during the New Order era.⁸¹ As a country that had been suffering from a pseudo-democratic regime for 32 years, Indonesia has a problem with ensuring peaceful leadership succession based on a meritocratic system. As a newly democratic country, specifically designed laws and policies to select leaders have to be formulated. This is important to ensure peaceful leadership succession. Otherwise, Indonesia will forever rely on the uncertain selection of charismatic leaders. The amendment of the KPK law is a step towards progress from a charismatic style of bureaucracy that depends on certain charismatic leadership to a rational-legal meritocratic bureaucracy.⁸² Concretely, the law mandates that the selection

75 Pengadilan Negeri Jakarta Selatan [The District Court of Central South Jakarta] Feb. 16, 2015, Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel., p. 3 (Indon.); Mahkamah Konstitusi [Indonesian Constitutional Court] Nov. 14, 2013, Decision No. 49/PUU-XI/2013 (Indon.).

76 William D. Rubinstein & Patrick von Maravic, *Max Weber, Bureaucracy, and Corruption*, in *THE GOOD CAUSE: THEORETICAL PERSPECTIVES ON CORRUPTION* 21, 26 (Gjalt de Graaf et al. eds., 2010) [hereinafter Rubinstein & Maravic].

77 Marcus Felson, *Corruption in the Broad Sweep of History*, in *HANDBOOK OF GLOBAL RESEARCH AND PRACTICE IN CORRUPTION* 12, 12–17 (Adam Graycar & Russell G. Smith eds., 2013).

78 Rubinstein & Maravic, *supra* note 106, at 32.

79 *Id.*

80 *Id.* at 32–33.

81 Ross H. McLeod, *Soeharto's Indonesia: A Better Class of Corruption*, 7 *AGENDA* 99, 99–112 (2000).

82 Richard Mulgan & John Wanna, *Developing Cultures of Integrity in the Public and Private Sectors*, in *HANDBOOK OF GLOBAL RESEARCH AND PRACTICE IN CORRUPTION*, 416, 416–28 (Adam Graycar & Russell G. Smith eds., 2013).

of first term *Dewan Pengawas* KPK be the prerogative right of the President. President Widodo selected six people whom he believes have fulfilled the requirements to become a member of *Dewan Pengawas* KPK. Those individuals are Tumpak Hatorangan Panggabean as the Chief of *Dewan Pengawas* KPK, Artidjo Alkostar, Syamsuddin Harris, Hardjono, and Albertina Ho.⁸³

The *Dewan Pengawas* KPK acts as the protector of the due process system in anti-corruption proceedings. It ensures the check and balance model within the KPK. Before the amendment, the KPK's power was balanced by the classical *trias politica*, which are the executive, legislative, and judiciary. The executive is represented by the President, the legislative by Parliament, and the judicative by the judicial institutions. The classic *trias politica* is the external check and balance system but the existence of *Dewan Pengawas* KPK acts as the internal check and balance system.⁸⁴ It does not only act as the organ to prevent the abuse of power, but also to provide legality and legitimacy for KPK's decisions. For instance, the problems with the right to privacy and fair trial, when wiretappings are used, can be prevented by the existence of *Dewan Pengawas* KPK.

Concerning the right to a fair trial, *Dewan Pengawas* KPK becomes an organ that is responsible for ensuring that the right of the defendants is guaranteed because *Dewan Pengawas* KPK has the mandate to monitor the conduct and decisions of the KPK. Any conduct that might lead to a violation of a defendant's fair trial can be reported to the *Dewan Pengawas* KPK, and the question

83 Marchio Irfan Gorbiano, *Jokowi Inaugurates Five Members of Newly Formed KPK Supervisory Council*, JAKARTA POST (Dec. 20, 2019), <https://www.thejakartapost.com/news/2019/12/20/jokowi-inaugurates-five-members-of-newly-formed-kpk-supervisory-council.html>; Marchio Irfan Gorbiano, *Oversight Body Marks New KPK Dawn*, JAKARTA POST (Dec. 21, 2019), <https://www.thejakartapost.com/news/2019/12/21/oversight-body-marks-new-kpk-dawn.html>; "Tumpak Hatorangan Panggabean, who was acting KPK chairman between 2003 and 2007 and had a long track record in the judiciary, is set to lead the supervisory council. The members of the council include Artidjo Alkostar, a former Supreme Court justice who was known for handing down heavy sentences for corruption convicts. Jokowi also appointed deputy head of the Kupang High Court Albertina Ho. Albertina led the trial of former tax official Gayus Tambunan, who was found guilty of massive tax corruption. Former Election Organization Ethics Council (DKPP) chief Harjono, another former Constitutional Court justice, will also serve in the council along with Indonesian Institute of Sciences (LIPI) senior political researcher Syamsuddin Harris." *Anti-Graft Agency Gets Oversight Body*, STAR (Dec. 22, 2019), <https://www.thestar.com.my/news/regional/2019/12/22/anti-graft-agency-gets-oversight-body>.

84 See also Jakarta Statement on Principles for Anti-Corruption Agencies (Nov. 26–27, 2012), https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf (regarding the importance of internal accountability of anti-corruption agencies).

of whether such conduct will constitute a violation will be analyzed and if it does, such conduct can be stopped from the beginning. *Dewan Pengawas KPK* provides an important safeguard if analyzed objectively, suggested in many, often emotional reactions to the amendment, contrary to what has been, it will not weaken the power of KPK.

Concerning the right to privacy, the UN Human Rights Committee suggested that the existence of an organ to monitor the exercise of arbitrary lawful interference is mandatory. In paragraph 6, the Committee considered that a State party should report the creation of the authorities and organs set up within its legal system which is competent to authorize interferences allowed by the law.⁸⁵ There is also an obligation of the State Party to ensure that the information extracted from wiretapping activity will be kept with utmost security and caution to protect the right to privacy.⁸⁶ The existence of *Dewan Pengawas KPK* is directly fulfilling the requirements of the Committee because *Dewan Pengawas KPK* has the responsibility to assess and subsequently grant permission for the KPK to conduct wiretapping measures towards the suspect of corruption, as regulated in the Article 37 (B) of Law number 19 of 2019.

Before the amendment of Law number 31 of 2002, KPK's wiretapping was monitored by the collective collegial principle of the KPK Commissioners and if necessary, the KPK Commissioners could establish an ethical committee to assess if there was any ethical misconduct. The creation of *Dewan Pengawas KPK* is a step towards creating an anti-corruption agency with internal control over the execution of its powers. This is in conformity with the UNCAC in article 5, especially Article 5 b (3), which obliges the State Party to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency, and accountability.⁸⁷ The State Party shall also endeavor to periodically evaluate relevant legal instruments and administrative measures to determine their adequacy to prevent and fight corruption.⁸⁸ International anti-corruption law progresses along three trajectories: international, regional, and national. The national challenges of domestic implementation of the UNCAC can be seen in Indonesia. The initial creation of the KPK modeled after the ICAC Hong Kong led to problems in law enforcement as exemplified in the cases of Gunawan and Novanto. Both pre-trial rulings showed that the old

85 CCPR General Comment No. 16, *supra* note 102, ¶ 6.

86 *Id.* ¶ 8.

87 UNCAC, *supra* note 2, art. 5.

88 *Id.*

KPK law had several flaws that required comprehensive solutions, *inter alia*, the creation of the *Dewan Pengawas* KPK to establish checks and balances and to provide assurances for human rights protection. These best-practices can be regarded as pivotal for the progression of international anti-corruption law in the future.

5 Conclusion

With the amendment, specific flaws within the previous KPK law have been repaired. The problem with the ambiguity of legal terms and potential abuse of power within the agency has been addressed with the new KPK law. This will be beneficial for the future of KPK, most importantly the KPK Commissioners and the employees within the agency. The previous problems such as the accusations of human rights violations during the law enforcement, ambiguity in legal terms, and the lack of an internal supervisory organ were covered by the new KPK law. The amendment also reduces the chances of human rights being manipulated by corruptors for their private gain during the justice process because human rights considerations are legally firmly embedded in the new KPK law. With hopes and optimism, the amendment will make the KPK able to carry on its mandate with robust legal certainty and continuous oversight to prevent any potential abuse of power from within the agency. This is the contribution of Indonesian anti-corruption law to the international anti-corruption law. The fear that the new KPK law would undermine corruption eradication in Indonesia was unwarranted. On the contrary, the specific legal and institutional changes have improved it. It is one important step, but continued reviews on the law and policy will be needed to make anti-corruption measures more effective.

Acknowledgements

The author would like to thank Professor Marcel Brus and Dr. Antenor Hallo de Wolf for their helpful advice and comments on this article. This research was fully funded by the Indonesia Endowment Fund for Education (LPDP).