ISSN: 2963-931X
International Conference Restructuring and Transforming Law 2022
Volume 1 Issue 1,
(icrtlaw@ums.ac.id)

Legal Transendence Theory:

Traces and Efforts to Build Transendent Legal Paradigm

Castle[1], Wardah Yuspin[2]
[1] Muhammadiyah University of Surakarta (istanipyunus@gmail.com)
[2] Muhammadiyah University of Surakarta (wy204@ums.ac.id)

Abstract

Commitment to tackle corruption in a firm, consistent, and integrated manner is an important step to be able to produce law enforcement, provide legal certainty, and benefit the community. This writing aims to describe the comparison of the prevention of corruption by the Government of Uganda and the Government of Indonesia. This type of research is a juridical research with a qualitative doctrinal approach. The results of the study show that there are differences in the prevention of corruption by the Ugandan and Indonesian governments. Corruption countermeasures regulated by the Ugandan government regulations include the cancellation of contracts, monetary fines, bans and imprisonment of perpetrators of corruption. Indonesia'
Keywords: Combating Corruption, Comparative Law.

PRELIMINARY

The Ugandan government established several anti-corruption agencies,[110] including the Government Inspectorate (IG), Auditor General's Office (OAG), Directorate of Public Prosecution (DPP), Directorate of Ethics and Integrity (DEI), Corruption Court, Corruption Eradication Unit among others to combat endemic corruption in the country. A number of laws, including: the Government Inspectorate Act 2002; 2002 Leadership Code Act; the 2003 Public Accountability and Finance Act; the 2003 Public Assets Procurement and Disposal Law; Access to Information Act 2005; 2008 Auditing Law; 2009 Anti-Corruption Law; and the Whistle Blowers Protection Act 2010 has been enacted. Domestically developed and internationally recommended anti-corruption measures such as contract cancellations, monetary fines, debarments, asset declarations, reporting violations, imprisonment of perpetrators of corruption,

The use of different parameters to measure the effectiveness of anti-corruption measures has shown some success. For example, the Inspectorate of Government (IG) indicated in its July–December 2017 report that it recorded 1,399 complaints against corruption and maladministration across the country and 4,817 investigations were ongoing. Of the total complaints received, 947 were investigated and resolved, and 15 of the 105 corruption cases demanded were resolved with 11 convictions, two acquittal, and two dismissals. More than US$15 billion was saved through court

[110] Gumisiriza, P., & Robert, M. (2018). Anti-corruption institutional multiplicity facade in Uganda. *The Ugandan Journal of Management and Public Policy Studies*, *15*(1), 91-105.

fines, awards, and orders, while US$267,191,558 was created from administrative remediation sanctions imposed on officials in ministries, departments, government agencies, and local governments. A total of 14 major corruption cases and syndications involving 20 high-ranking public officials were resolved by arresting and prosecuting the perpetrators. Seven review cases were resolved under civil litigation, and all decisions were in IG's favor. IG has also completed verification of 10 (15%) leaders declaration, while verification of 102 leaders is ongoing.[111]

Despite the existence of several anti-corruption institutions, laws, other measures and achievements mentioned above, corruption is still rampant in Uganda. In 2017, Transparency International ranked Uganda 151 out of 176 countries in the 2016 Corruption Perceptions Index, placing it among the 25 most corrupt countries in the world.[112]

In Indonesia, corruption is a very serious concern. The crime of corruption with various modus operandi has attacked massively in the life of the nation and state in Indonesia, and it is feared that it could endanger the stability, security of the state and its people. In addition, it also spreads to various aspects, both economic, cultural and social aspects. In the era of Pancasila democracy adopted by the Indonesian people, especially with the fair and transparent elections (honest, fair, direct, general, free, secret), it is hoped that this will become a party of the people who elect wise and moral state officials, not the other way around which became a party for power seekers alone.[113]

The anti-corruption non-governmental organization Indonesia Corruption Watch (ICW) released a Report on the Trends of Corruption Cases for Semester 1 2021. Based on data collected by ICW, the number of prosecutions for corruption cases in the first six months of 2021 reached 209 cases. This number increased compared to the same period in the previous year, which was 169 cases. CW also said that the value of state losses due to corruption has also increased. In semester 1 2020, the value of state losses from corruption cases amounted to Rp. 18.173 trillion, then in semester 1 of 2021 the value reached Rp. 26.83 trillion. In other words, there was an increase in the value of state losses due to corruption by 47.6 percent. In the past four years, the value of state losses has always shown an increasing trend, while the number of prosecutions for corruption cases has fluctuated.[114]

Based on the background of the problem above, the author raises a theme about the effectiveness of handling corruption in Indonesia and Uganda. In this case, the author conducts a further study on how effective the method of handling corruption in Uganda is and how it compares with the handling of corruption in Indonesia so far.

1. WRITING METHOD

This research is a normative legal research conducted by examining library materials or secondary data.This research is descriptive. Descriptive research is research which is a problem

[111] Laporan Kinerja Pemerintah Dua Tahunan kepada Parlemen, Juli – Desember 2017 (2018), *tersedia di* https://www.igg.go.ug/publications /
[112] Online Available : https://www.transparency.org/news/feature/corruption_perceptions_index_2016 .
[113] Hariadi, T. M., & Wicaksono, H. L. (2013). Perbandingan Penanganan Tindak Pidana Korupsi Di Negara Singapura Dan Indonesia. *Jurnal Hukum Pidana dan penanggulangan Kejahatan*, *2*(3).
[114] Online Available : https://data.tempo.co/data/1208/icw-angka-penindakan-kasus-korupsi-semester-1-2021-naik-jika-dibandingkan-tahun-sebelumnya di akses pada tanggal 20 Maret 2022.

solving procedure investigated by describing the current state of the subject or object of research based on visible facts. In legal research, the research approach can be used a statutory approach. The statutory approach is an approach taken to various legal rules relating to criminal law related to the object of research.

2. RESULTS AND DISCUSSION

Methods of Handling Corruption in Uganda

The Ugandan government uses a Contract Cancellation approach. Contract cancellation occurs when a contract is canceled or canceled by the parties, or one of them, thereby returning the parties to the position they would have held if no contract had ever been made.[115]Contracts obtained under the influence of corruption may be canceled in whole or in part from the outset or at any time upon discovery. This action entails high costs/risks for the parties involved in corruption and has been lauded by various anti-corruption scholars and practitioners as one of the most effective measures the government can use to curb corruption.[116]In Uganda, the conditions for the cancellation of a contract are provided for in Article 2 Clause 119 (5) of the 1995 Ugandan Constitution, which stipulates the conditions that must be met in contract management. Failure to comply with the specified conditions will render such a contract null and void. The constitutional provisions are operationalized using the 2003 Law on the Procurement and Release of State Property (PPDA).

The 2003 PPDA Law stipulates the guidelines that must be met in public procurement and the conditions for the cancellation of contracts. Article 45 of the 2003 PPDA Law requires that the Procurement and Disposal Agency (PDE), bidders and providers adhere to the highest ethical standards during procurement and contract execution. Article 55 of the 2003 PPDA Law emphasizes the application of the rules, guidelines, and regulations set by the relevant agencies. Article 93 (1) of the 2003 PPDA Law requires public officials and experts involved in providing special services to sign a code of ethics. Non-compliance with these terms renders the contract illegal, void and void. According to the Sub-Clause.[117]Many public contracts found to have been secured through corruption at both the central and local government levels have been cancelled. However, in many cases of corruption, the use of contract cancellations as a deterrent to corruption in Uganda remains ineffective due to political interference, collusion between corrupt government technocrats and companies to agree or conceal contracts to be cancelled, renegotiation of contracts, failure to recover those already spent public money after the contract had been cancelled, and the compensation was expensive. For example, in 2013, the Karuma Hydroelectric Dam was initially discontinued but later renegotiated, at a cost of US$2.2 billion instead of US$1.2 billion. In 2014, EATAW (allegedly American Company) was awarded a contract to pave the 75 km Kyetume–Katosi road. However, due to fraud in the procurement process, the

[115]Sherwin, E. (2002). Nonmaterial Misrepresentation: Damages, Rescission, and the Possibility of Efficient Fraud. *Loy. LAL Rev.*, *36*, 1017.
[116]Rose-Ackerman, S. (2011). Anti-Corruption Policy: Can International Actors Play a Constructive Role?. *Yale Law & Economics Research Paper*, (440).
[117]Komakech, R. A., & Machyo, J. (2015). Public Procurement Reforms: A Disaster for Public Secondary Schools in Uganda. In *International Conference on Good Governance and Service Delivery in Developing Economies, held from 24th to 28th August*.

contract was cancelled. The renegotiated contracts cost US$254 billion instead of the initial US$165 billion, costing Ugandan taxpayers US$24 billion.[118]

Furthermore, the Government of Uganda uses a monetary fines approach, Monetary fines are fees levied on individuals or entities for breaches of contracts, rules, or violations of the code of ethics or non-compliance with agreed procedures.[119]The size of the penalty is sometimes linked to the value of the contract or reflects the severity of the breach, taking into account the size of the company, the fault, and other factors such as the loss caused by the breach.[120]Monetary fines encourage self-reporting as companies seek leniency. Through monetary fines, resources are transferred from one party to another without further social costs. They are criminal in nature, designed to punish offenses and prevent future offenses by the accused. In Uganda, the use of monetary fines as a punishment for corruption has been embraced and spread across various laws. The 2009 Corruption Eradication Law regulates penalties for corruption crimes committed. A person convicted of an offense under sections 2, 3, 4, 5, 6, 7, 8, 12, and 13 may be subject to a prison term of not more than 10 years or a fine of not more than 240 currency points, or both. In Uganda, the police and courts are mandated to impose fines on people who commit violations such as corruption, embezzlement, abuse of public resources, and neglect of duty. a person who commits a crime under the Act will face 5–15 years in prison or be subject to a fine ranging from Ush 660,000,000 (660 million Ugandan shillings) to 2,000,000,000 (2 billion Ugandan shillings) (approximately US$ 2,575–780,8340). For legal entities, the fines imposed on entities range from US$1,400,000,000 (1 billion 400 million Ugandan shillings) to US$4,000,000,000 (4 billion Ugandan shillings) (approximately US$ 546,240–1,560,680). 23 However, the monetary fines provided for in the anti-corruption law are weak and only a small part of what is embezzled. For example,[121]

Furthermore, the Government of Uganda is using a blocking approach. Debarment occurs when a company or individual is officially barred from bidding for or participating in a project funded by a government or multinational agency if they are found to be involved in corruption (either to secure a contract on a current or past project with that agency or government).[122]In Uganda, debarment is regulated in law and adopted in practice. Article 94 of the PPDA Law and Article 351 of the PPDA Regulation empower the PPDA Authority to suspend providers who do not comply with procurement regulations or guidelines after a thorough investigation. PPDA may suspend the provider (company) from engaging in any public procurement and disposal processes for a period ranging from 1 to 10 years. However, the practice of blocking and cross blocking has been criticized for being an inefficient type of paper. They are not well publicized, fail to include

[118]Gumisiriza, P., & Mukobi, R. (2019). Effectiveness of anti-corruption measures in Uganda. *Rule of Law and Anti-Corruption Center Journal*, *2019*(2), 8.
[119]Zucker, J. S. (2004). The Boeing Suspension: Has Increased Consolidation Tied the United States Department of Defence's Hands?. *Public Procurement Law Review*, 260-276.
[120]Kohler, J. C., & Dimancesco, D. (2020). The risk of corruption in public pharmaceutical procurement: how anti-corruption, transparency and accountability measures may reduce this risk. *Global Health Action*, *13*(sup1), 1694745.
[121]Gumisiriza, P., & Mukobi, R. (2019). Effectiveness of anti-corruption measures in Uganda. *Rule of Law and Anti-Corruption Center Journal*, *2019*(2), 8.
[122]Arnáiz, T. M. (2008). THE EXCLUSION OF TENDERERS IN PUBLIC PROCUREMENT AS AN ANTI-CORRUPTION MEAN. *Pridobljeno*, *10*, 2016.

large companies with proven records of involvement in corruption, and are subject to many technicalities such as reluctance to ban due to lack of solid evidence, lack of court orders,[123]

Furthermore, the Government of Uganda is using a confiscation approach. The Leadership Code Act 2002, Anti-Corruption Act 2009, and Anti-Money Laundering Act 2013 give IG and the Directorate of Public Prosecutions the power to freeze, confiscate and confiscate the proceeds of corruption. Money recovered from prosecuting corrupt officials or companies is directly paid to institutions that suffer losses. Some of the money is also held in an Asset Recovery Account managed by IG. A critical analysis of the implementation of asset recovery laws shows little progress in making remedies especially as corrupt officials register their assets in the names of their spouses, children, associates, relatives or friends. Investigation of such cases is difficult, as they are not regulated by law.[124]

METHODS

Handling Corruption in Indonesia

In general, in the criminal law system in Indonesia, especially in relation to the crime of corruption, there are several main related provisions, including the Criminal Code as a basic criminal provision and Law Number 31 of 1999 jo. Law Number 20 of 2001, Law Number 8 of 2010 concerning Money Laundering, and others. In this case, the lex specialist derogat legi generale applies, namely the related law as lex specialist and the Criminal Code as lex generale.[125]In the perspective of positive law in Indonesia, the definition of corruption is explained in several articles in Law no. 31 of 1999 and Law no. 20 of 2001, and the law also mentions sanctions for those who violate, including the following:

1. Corruption crime by enriching oneself, another person, or a corporation as referred to in Article 2 paragraph (1), shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of not less than 4 (four) years. a little Rp. 200,000,000.00 (two hundred million Rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion Rupiah). Even in paragraph (2) of this article the punishment can be increased, namely the death penalty;
2. Corruption crime by abusing the authority, opportunity, office facilities, or position as referred to in Article 3, shall be punished with life imprisonment or with a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a fine of not more than 1 (one) year. a little Rp. 50,000,000.00 (fifty million Rupiah) and a maximum of Rp. 1.000.000.000,00 (two hundred and fifty million Rupiah). This formulation was adopted from the former article 210 of the Criminal Code. 3. The Corruption Crime of bribery by giving or promising something as referred to in Article 5, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 5

[123]Schooner, S. L., Collins, S., Bednar, R. J., Shaw, S. A., Brian, D., McCullough, J. J., ... & Pafford, A. J. (2004). Suspension and Debarment: Emerging Issues in Law and Policy. *Available at SSRN 509004*.
[124]Su, Y. Y. (2005). The Effects of the Kyoto Protocol on Taiwan (cont.). *Sustainable Dev. L. & Pol'y*, *6*, 68.
[125]Hariadi, T. M., & Wicaksono, H. L. (2013). Perbandingan Penanganan Tindak Pidana Korupsi Di Negara Singapura Dan Indonesia. *Jurnal Hukum Pidana dan penanggulangan Kejahatan*, *2*(3).

(five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million Rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million Rupiah).

Efforts to prevent corrupt practices are also carried out within the executive or state administrators, where each agency has an Internal Control Unit (supervisor and control unit within the agency) in the form of an inspectorate. The function of the inspectorate is to supervise and examine the implementation of development activities in their respective agencies, especially the management of state finances.[126] In addition, there is also supervision and inspection of development activities, namely the Supreme Audit Agency (BPK) and the Development Finance Supervisory Agency (BPKP). Externally there are non-governmental organizations such as ICW (Indonesian Corruption Watch), but in practice these institutions only supervise in a limited scope. In terms of the flow of financial funds, in Indonesia there are institutions in charge of overseeing the flow of funds, especially in the banking world, namely PPATK (Financial Transaction Reports and Analysis Center) and OJK (Financial Services Authority). In fact, there are 3 institutions that are clearly visible in handling corruption cases in Indonesia, namely the Prosecutor's Office, the KPK, and the Indonesian National Police.[127]

The Corruption Eradication Commission (KPK) is a state institution that carries out its authority and duties independently and free from the influence of any power. The KPK was established based on Law no. 30 of 2002 concerning the Corruption Eradication Commission. The KPK is given the authority to conduct research, study, and investigation of agencies that carry out their duties and authorities related to eradicating corruption and public service agencies.[128]According to Article 6 of Law No. 30 of 2002, the KPK is given the task and authority, among others, to coordinate with institutions authorized to eradicate corruption; become the coordinator/supervisor of the agency authorized to eradicate corruption; conduct investigations, investigations and prosecutions of criminal acts of corruption involving law enforcement officers; take measures to prevent corruption; monitor the state government administrators.

The enforcement of criminal law in the context of overcoming corruption is the only hope. It is in this aspect of law enforcement that the success of Indonesia as a state of law is at stake.[129]That success will be measured if justice becomes an item that is very easy to find in people's lives, when justice is no longer there, it is certain that justice that lives in norms and rules needs to be criticized, until justice is really felt by the community in the context of law enforcement. . From that, it is time for corruption crimes to be stopped or at least reduced by punishing the perpetrators according to the provisions of the existing laws and regulations.

[126]Kurniasih, D. (2013). Kebijakan Sistem Dan Prosedur Pengawasan Di Lingkungan Inspektorat Kabupaten Bandung Barat. *JIPSI-Jurnal Ilmu Politik dan Komunikasi UNIKOM*, *1*.
[127]Anggraini, D., Triharyati, E., & Novita, H. A. (2019). Akuntansi Forensik dan Audit Investigatif dalam Pengungkapan Fraud. *COSTING: Journal of Economic, Business and Accounting*, *2*(2), 372-380.
[128]Sugiarto, T. (2013). Peranan Komisi Pemberantasan Korupsi KPK Dalam Pemberantasan Tindak Pidana Korupsi di Indonesia. *Jurnal Cakrawala Hukum*. Vol 18 2.
129 Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro, 2002), cetakan II, hlm. 7.

CONCLUSION

There are fundamental differences between the Government of Uganda and the Government of Indonesia in tackling corruption. The Ugandan government has implemented several sanctions as an effort to combat corruption, namely: 1). Cancellation of contracts, where contracts obtained under the influence of corruption can be canceled in whole or in part from the beginning or at any time after it is known; 2). Monetary fines, fees levied on individuals or entities for breaches of contracts, rules, or violations of the code of conduct or non-compliance with agreed procedures; 3). Debarment, occurs when a company or individual is officially barred from bidding for or participating in a project funded by a government or multinational agency if they are found to be involved in corruption; and 4). Money recovered from prosecuting corrupt officials or companies is directly paid to institutions that suffer losses. Meanwhile, the Indonesian government in efforts to prevent corrupt practices is also carried out within the executive or state administrators, where each agency has an Internal Control Unit (supervising and controlling unit within the agency).

REFERENCES

Sherwin, E. (2002). Nonmaterial Misrepresentation: Damages, Rescission, and the Possibility of Efficient Fraud. Loy. LAL Rev., 36, 1017.

Anggraini, D., Triharyati, E., & Novita, H. A. (2019). Akuntansi Forensik dan Audit Investigatif dalam Pengungkapan Fraud. COSTING: Journal of Economic, Business and Accounting, 2(2), 372-380.

Arnáiz, T. M. (2008). THE EXCLUSION OF TENDERERS IN PUBLIC PROCUREMENT AS AN ANTI-CORRUPTION MEAN. Pridobljeno, 10, 2016.

Gumisiriza, P., & Robert, M. (2018). Anti-corruption institutional multiplicity facade in Uganda. The Ugandan Journal of Management and Public Policy Studies, 15(1), 91-105.

Hariadi, T. M., & Wicaksono, H. L. (2013). Perbandingan Penanganan Tindak Pidana Korupsi Di Negara Singapura Dan Indonesia. Jurnal Hukum Pidana dan penanggulangan Kejahatan, 2(3).

Kohler, J. C., & Dimancesco, D. (2020). The risk of corruption in public pharmaceutical procurement: how anti-corruption, transparency and accountability measures may reduce this risk. Global Health Action, 13(sup1), 1694745.

Komakech, R. A., & Machyo, J. (2015). Public Procurement Reforms: A Disaster for Public Secondary Schools in Uganda. In International Conference on Good Governance and Service Delivery in Developing Economies, held from 24th to 28th August.

Kurniasih, D. (2013). Kebijakan Sistem Dan Prosedur Pengawasan Di Lingkungan Inspektorat Kabupaten Bandung Barat. JIPSI-Jurnal Ilmu Politik dan Komunikasi UNIKOM, 1.

Muladi, Kapita Selekta Sistem Peradilan Pidana, (Semarang: Badan Penerbit Universitas Diponegoro, 2002),

Online Available : https://data.tempo.co/data/1208/icw-angka-penindakan-kasus-korupsi-semester-1-2021-naik-jika-dibandingkan-tahun-sebelumnya di akses pada tanggal 20 Maret 2022.

Online Available : https://www.transparency.org/news/feature/corruption_perceptions_index_2016 .

Rose-Ackerman, S. (2011). Anti-Corruption Policy: Can International Actors Play a Constructive Role?. Yale Law & Economics Research Paper, (440).

Schooner, S. L., Collins, S., Bednar, R. J., Shaw, S. A., Brian, D., McCullough, J. J., ... & Pafford, A. J. (2004). Suspension and Debarment: Emerging Issues in Law and Policy. Available at SSRN 509004.

Su, Y. Y. (2005). The Effects of the Kyoto Protocol on Taiwan (cont.). Sustainable Dev. L. & Pol'y, 6, 68.

Sugiarto, T. (2013). Peranan Komisi Pemberantasan Korupsi KPK Dalam Pemberantasan Tindak Pidana Korupsi di Indonesia. Jurnal Cakrawala Hukum. Vol 18 2.

Zucker, J. S. (2004). The Boeing Suspension: Has Increased Consolidation Tied the United States Department of Defence's Hands?. Public Procurement Law Review, 260-276.