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PARLIAMENTARY INSTITUTE OF CAMBODIA
STRENGTHENING PARLIAMENTARY CAPACITY

Briefing Note

National Assembly Commission 6

Legislation and the Justice Sector in Indonesia and Cambodia

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September, 2019

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Table of Contents

List of Tables	ii
List of Figures.....	ii
1. Introduction.....	1
2. Parliamentary system and process for adopting laws in Indonesia	1
2.1 Parliamentary system.....	1
2.2 Roles and functions	1
2.2.1 <i>The House of Representatives (DPR)</i>	1
2.2.2 <i>The House of Regional Representatives (DPD)</i>	2
2.2.3 <i>The People’s Consultative Assembly (MPR)</i>	2
2.3 Legislative process	3
3. Parliament and the state budget system in Indonesia.....	3
3.1 National budget system.....	3
3.2 Subnational budgeting and decentralization	5
4. Structure and Budget Allocation for justice and rule of law in Indonesia and Cambodia	6
4.1 Structure of the justice sector in Cambodia and Indonesia	6
4.2 Budget allocation for the justice sector in Cambodia and Indonesia.....	7
5. Structure and budget of anti-corruption activities in Indonesia and Cambodia.....	8
6. Conclusion	9
References	11

List of Tables

Table 4-1. <i>The Structure of the justice sector in Indonesia and Cambodia</i>	5
Table 5-1. <i>Anti-Corruption Institutions of Cambodia and Indonesia</i>	7
Table 5.2. <i>Spending on anti-corruption task forces in Indonesia and Cambodia</i>	7

List of Figures

Figure 3-1. <i>Parliamentary budget authority and transparency</i>	4
Figure 3-2. <i>Expenditure by levels of government</i>	4
Figure 4-1. <i>Share of budget expenditure allocated to rule of law institutions in Indonesia and Cambodia</i>	6

1. Introduction

Indonesia is the largest economy in Southeast Asia and the tenth largest economy in the world, measured by purchasing power parity. It is an emerging middle-income country, with GDP per capita nearly quintupling over the past two decades, growing from \$807 in 2000 to \$3,877 in 2018 [1]. The percentage of the population living below the national poverty line was 10.6% in 2017 [2].

The economy grew at an average of 5.3% from 2012 to 2016 and is expected to continue at that rate until 2023 [3]. With rapidly rising incomes and the world's fourth largest population of more than 267 million people, Indonesia is on pace to be the 5th largest economy in the world by 2030 and the 4th largest economy by 2050 [4].

Indonesia is composed of 34 provinces, 416 regencies, 98 cities, 7,217 sub-districts, and 83,344 villages with highly diverse ethnic identities, cultures and languages [5].

The World Justice Project ranks the rule of law in Indonesia as 62nd out of 126 countries in 2019. At a more detailed level, civil justice in Indonesia is ranked 102nd, criminal justice is ranked 86th, fundamental rights are ranked 82nd, and regulatory enforcement is ranked 43rd [6].

Indonesia has made remarkable progress fighting corruption. According to Transparency International's Corruption Perceptions Index, Indonesia rose from the worst ranked country in 1998 to 89th place out of 180 countries in 2018 [7].

2. Parliamentary system and process for adopting laws in Indonesia

2.1 Parliamentary system

Indonesia's Parliament is named the "People's Consultative Assembly", known by the Indonesian abbreviation MPR (*Majelis Permusyawarahan Rakyat*). After 2004, the MPR became bicameral, with the House of Regional Representatives (in Indonesian: *Dewan Perwakilan Rakyat* or DPD) and the House of Representatives (in Indonesian: *Dewan Perwakilan Daerah* or DPR). The DPR is the lower house and consists of 575 representatives elected from the lists of political parties according to an open-list proportional representation (PR) system. The DPR electoral districts get three to ten seats each. The DPD, the upper house, has 136 members elected by a single-non-transferable-vote (SNTV) system. The constituencies for the election of the DPD are the provinces, and there are four seats for each province, regardless of size, population or demographics. The elected members of the DPD are non-partisan.

Members of both Houses, the DPR and the DPD, are directly elected for five-year terms in a general election (without term limits). The DPR is headed by a Speaker and four Deputy Speakers elected from and by its members, while the DPD is headed by a President and two Vice-Presidents.

2.2 Roles and functions

Practically all regular parliamentary activities are conducted by the DPR. It meets formally during certain session periods, but it is not uncommon for some members to participate in important formal or informal meetings in Jakarta throughout the year. Such sessions are particularly common for oversight and budget issues. As part of its regular legislative, oversight and budgetary powers, Parliament is involved in all matters relating to policy making in Indonesia.

2.2.1 The House of Representatives (DPR)

The role of the DPR is to formulate and adopt laws at the national level.

The DPR has a structure of 11 standing commissions. The eleven commissions (in Indonesian: *Komisi*) of the DPR are as follows [20, p. 17]:

- Commission 1: Foreign affairs, defense, information/communication
- Commission 2: Home affairs, regional autonomy, and administration
- Commission 3: Legal matters, human rights, security
- Commission 4: Agriculture, forestry/plantations, maritime and fisheries, food
- Commission 5: Transport, telecommunication, public works, public housing, rural development
- Commission 6: Trade, industry, cooperatives, SMEs, state-owned enterprises (SOE)
- Commission 7: Energy, natural resources, research, environment
- Commission 8: Religion, social affairs, women
- Commission 9: Demography, health, manpower, transmigration
- Commission 10: Education, youth, sports, tourism, and culture
- Commission 11: Finance, national development, banking and non-financial institutions

Each Commission has about 50 members, with each DPR member being a member of only one Commission. The composition of each Commission is determined by the size of the party caucuses in the DPR [21, p. 35].

Two standing committees support the work of the Commissions: the Budget Committee, whose sole function is to deliberate on the legislation that constitutes the State's annual budget, and the Legislation Committee, whose objective is to strengthen the quality of legislation produced by the DPR [21, p. 36].

2.2.2 The House of Regional Representatives (DPD)

The role of the DPD is providing legislative input to the DPR on regional issues [20, p. 17]. In this respect, it can be noted that the DPD has an important role to play in promoting decentralization in Indonesia.

Considering the purpose of the creation of the DPD, which is to increase regional participation, it therefore plays a more representative role in ensuring that regions engage in discussions with the DPR and government in the best interests of the regions [22, p. 39]. To communicate and listen to their constituents, the DPD has opened offices in all provinces in Indonesia, in accordance with Act NO 27/2009. Under this Act, the DPD is responsible for establishing offices in the regions. DPD offices in the provinces help to collect information and communicate with stakeholders such as regional governments and NGOs. The DPD offices also provide a meeting place for DPD Members and the local community to receive and discuss complaints from the public.

2.2.3 The People's Consultative Assembly (MPR)

The tasks of the MPR include the inauguration of the Indonesian President and Vice – President and, if necessary, conduct impeachment proceedings of the Indonesian President and Vice-President, as well as to assume responsibility for the amendment or deletion of certain articles and/or provisions of the Constitution [20, p. 17]. The MPR is composed of Members of the other two Houses (DPR and DPD) sitting together in a single assembly [21, p. 31]. Under the Constitution, the President and Vice-President may be impeached and removed from office if they are considered unfit to perform their

duties and have committed crimes such as corruption or treason¹. The impeachment procedure is complex and is completed when the MPR votes to take the decision to impeach the President or the Vice-President².

2.3 Legislative process

According to the official DPR website, each draft or proposed law is subject to deliberation by the DPR and the Indonesian President for joint approval. The draft or proposed law, once approved, is then submitted by the leaders of the DPR for promulgation by the President within seven working days. If the President does not sign within 30 days, the draft or proposed law still becomes law [23].

The draft or proposed law can come from the President, the DPR or the DPD. However, the DPD can only make proposals to the DPR on draft or proposed laws relating to regional autonomy, regional proliferation, the relationship between the central and regional governments in financial matters, the management of national resources, and the fiscal balance between the central and the regional governments [20, p. 17].

There is a difference between the Cambodian upper house (Senate) and the DPD. In Cambodia, the Senate has the power to review and adopt draft or proposed laws but cannot oppose the draft or proposed law adopted on last reading by the lower house (National Assembly)³. Another difference is that the Members of the DPD are elected by direct suffrage, while the Members of the Senate are elected by indirect suffrage. In addition, the Cambodian Senate can propose bills, while the Indonesian DPD can only propose bills related to specific issues, particularly in the regions.

3. Parliament and the state budget system in Indonesia

3.1 National budget system

Indonesia is in the middle of a 20-year development plan which began in 2005 and concludes in 2025. Much like Cambodia's Rectangular Strategy and National Strategic Development Plan, it is broken into 5-year priority phases. The government is currently in the third phase running from 2015 to 2020, which focuses on infrastructure development and social assistance programs related to education and health care [8].

The lower chamber House of Representatives has, among ASEAN countries, the strongest power to influence the budget, with unlimited authority to change revenues and expenditures, subject to deficit and borrowing rules and on condition of reaching a joint agreement with the President (no Indonesian President has withheld ratification of an annual budget law since the 'new era' began in 1998). The upper chamber plays no role in considering the draft budget bill [9].

The budget committee of the House of Representatives is one of the largest in ASEAN, a "committee of committees" consisting of around 100 members of parliament representing the 11 sector commissions that examine budget-related matters. It conducts preliminary discussions on the proposed national budget, provide suggestions to finalize the budget, and discusses the annual financial statements and Supreme Audit Authority's report on budget implementation. It frequently

¹ See Article 7B (5) of the Indonesian Constitution. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_174556.pdf [Accessed 4 Sep. 2019]

² *Ibid.*

³ See: Article 113 of the Cambodian Constitution. Available at: <file:///C:/Users/hisham.m/Downloads/Constitution%20of%20the%20Kingdom%20of%20Cambodia.pdf> [Accessed 4 Sep. 2019]

calls government ministers and officials before the committee and often broadcasts the hearings publicly, inviting the media to attend [9].

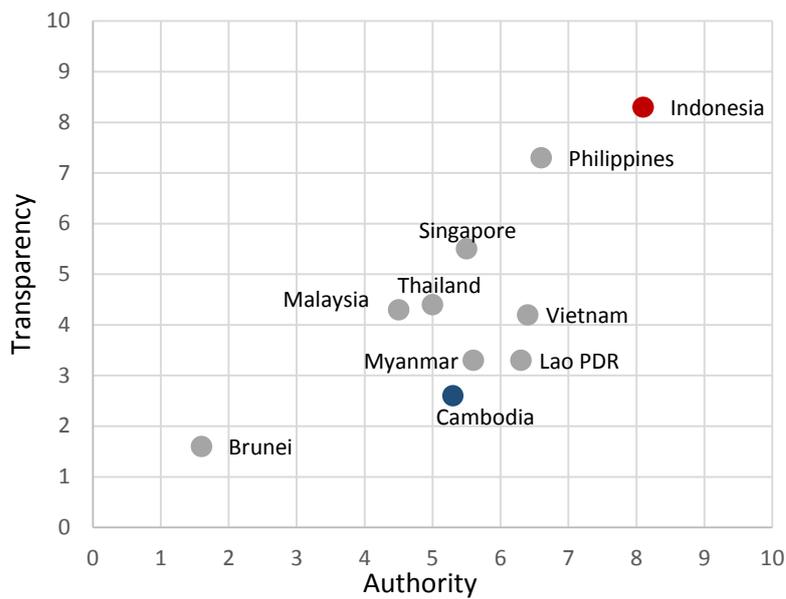
To assist committees through the budget process, the House of Representatives has a large support staff that provides in-depth budget analyses to Members of Parliament (MPs). Each of the 11 sector commissions has five staff (i.e., 55 staff in total) and the Budget Committee has 10 staff. The Budget Committee is also assisted by a budget secretariat, the 30-person Bureau of Budget Analysis and State Budget Implementation [9].

According to a study by AIPA, the Indonesian budget process is the most transparent and accountable in ASEAN, with the following features [9]:

- The government submits a pre-budget “Fiscal Policy and Budget Priorities” report to Parliament that includes a description of the macroeconomic framework, fiscal policies and priorities, deficit target, revenue projections and proposed expenditure ceilings for the upcoming budget year.
- The draft budget law submitted to Parliament includes a medium-term budget framework that is updated annually and is consistent with the budget and published publicly.
- The budget also includes a “Fiscal Risk Statement”, tax expenditures analysis, and performance information, all published publicly.
- Audited financial statements are published within six months of the end of the fiscal year.

Figure 3-1 shows Indonesia at the top of the indexes of transparency and budget authority (ability to influence budget) according to AIPA’s assessment of ASEAN parliaments.

Figure 3-1: Parliamentary budget authority and transparency



Source: AIPA 2015 [9].

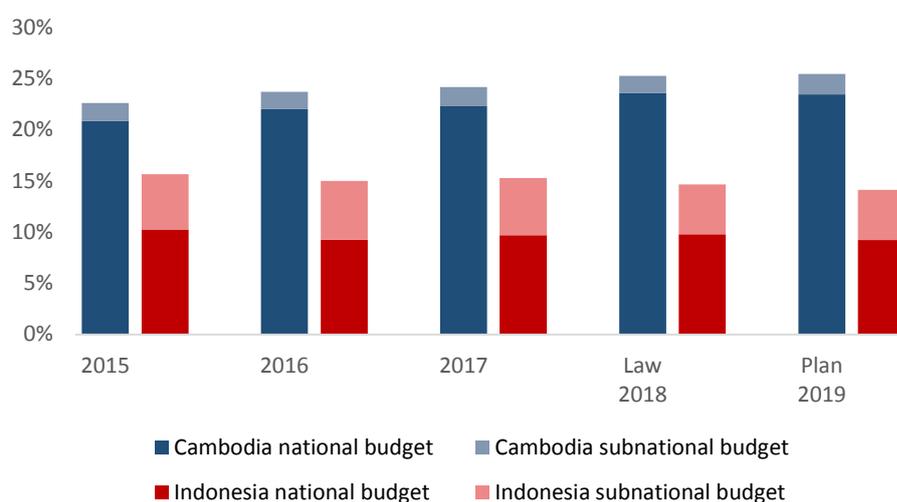
3.2 Subnational budgeting and decentralization

Parliamentary approval of the national budget occurs two months before the new fiscal year begins. The early approval of appropriations allows sub-national legislatures to anticipate subnational transfers to finalize and approve their budgets before the beginning of the new fiscal year.

Indonesia is among the most decentralized countries in ASEAN and the world. Following the “Big Bang” decentralization movement from 1998 to 2001, its 400 local governments (now numbering 508, including regencies and cities) were given responsibility for public works, healthcare, education, cultural and social affairs, labor, environment protection, land, citizenship and investment, youth and sport, telecommunications, housing, and transportation [10]. Almost 30% of spending in Indonesia occurs at the subnational level, compared to less than 10% of spending at the subnational level in Cambodia (Figure 3-2).

The central government retained responsibility only for areas of national security, foreign policy, justice, governance and planning, and religious affairs. Subnational parliaments adopt their own budgets, but local governments must

Figure 3-2: Expenditure by levels of government (% of GDP)



Source: Budget Implementation Laws of Indonesia from 2015-2016 and Budget Laws of Indonesia 2017-2019; and the Budget Implementation Laws of Cambodia from 2015-2017 and Budget Laws 2018-2019 [11, 12, 13].

submit their budgets and have them approved by the national government. There are also significant constraints on local government borrowing, including a complete ban on foreign borrowing.

Overall, the general government sector plays a larger—and growing—role in Cambodia, at around 25% of the economy, compared to a roughly stable 15% in Indonesia [11, 12, 13].

4. Structure and Budget Allocation for justice and rule of law in Indonesia and Cambodia

4.1 Structure of the justice sector in Cambodia and Indonesia

Table 4-1 compares the institutions in Indonesia and Cambodia that promote the rule of law. The two countries have several institutions in common, for example the Corruption Eradication Commission in Indonesia (with the well-known abbreviation KPK for *Komisi Pemberantasan Korupsi*) and the Anti-Corruption Unit (ACU) in Cambodia.

Indonesia also has some institutions that Cambodia does not. For example, Indonesia has a permanent Human Rights Court that hears and rules on cases of gross violations of human rights such as genocide and crimes against humanity. This is similar to Cambodia’s ad hoc Extraordinary Chambers in the Courts of Cambodia (ECCC) which is winding down following the conclusion of the Khmer Rouge tribunal [14].

Indonesia also has an Ombudsman’s office in nearly every province to handle complaints from the public about government services, including complaints related to negligence, neglect, illegal conduct, and corruption. While Cambodia does have some district ombudsmen and complaint mechanisms, it does not appear to have a specific independent budget allocation for such a channel⁴.

Indonesia also has a Witness and Victim Protection Agency that provides security to witnesses and victims of crimes, particularly if they provide information to the court. Witnesses and victims of a crime are granted rights, enforced by the agency, that include protection for witnesses, victims, and

⁴ Ombudsman offices have been created under sub-national administration and mostly located within One-Window Service offices. See sub-decree #19 in 2017 on the Establishment of Ombudsman Mechanism, available at: <http://ncdd.gov.kh/wp-content/uploads/2017/09/2017-Anukret-18-OWSO-mechanism-small.pdf>

their families and properties; the right to receive information on the case and the court verdict; the right to receive legal advice; and the right to get new identities. Victims of certain crimes may also receive financial compensation from the government [15].

Table 4-1: The Structure of the justice sector in Indonesia and Cambodia

Indonesia	Cambodia
Courts	Courts
Constitutional Court	Constitutional Council of Cambodia
Judicial Commission	Supreme Council of Magistracy
Attorney General's Office	Prosecution Department
Ministry of Law and Human Rights	Ministry of Justice
Indonesian National Police	Judicial Police
Corruption Eradication Commission	Anti-Corruption Unit
National Human Rights Commission	Cambodian Human Rights Committee
Permanent Human Rights Court	No dedicated and permanent human rights court
Legal Profession	Royal Academy for Judicial Professions
Parliamentary commissions	Parliamentary commissions
Witness and Victim Protection Agency	No dedicated witness and victim protection agency
Ombudsman of the Republic of Indonesia	Ombudsman services, but does not appear to have an independent budget allocation
General Elections Commission	National Election Committee

Source: *Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration. Indonesia: The Human Rights Resource Centre (2016) [15].*

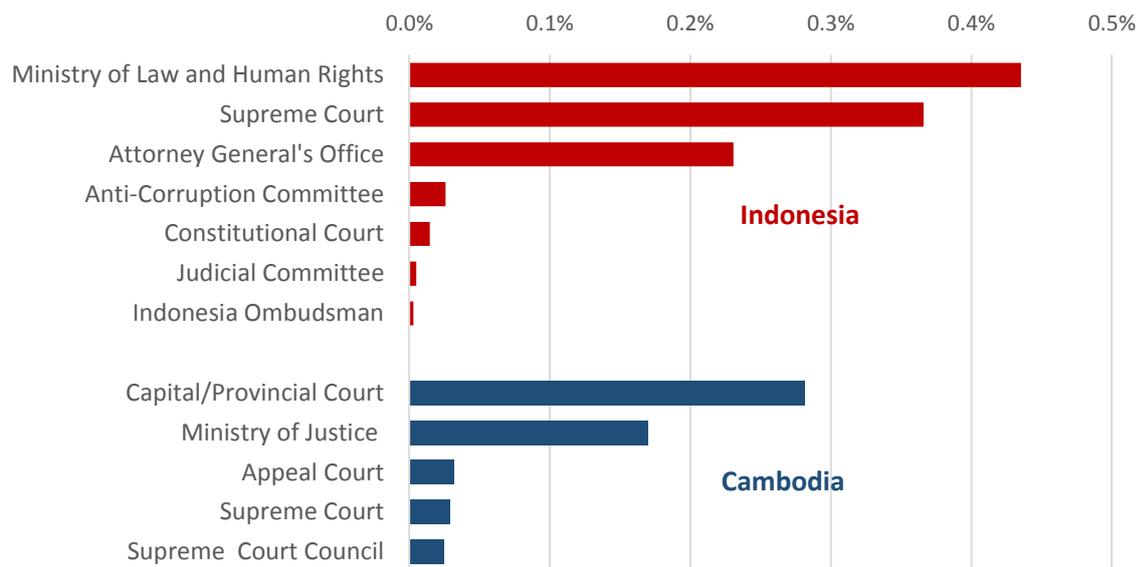
4.2 Budget allocation for the justice sector in Cambodia and Indonesia

There is limited data available from Indonesia that can quickly be processed for the report (although Indonesia has high levels of budget transparency, much of it is published in Indonesian and would require translation and the assistance of domestic experts). Data on a consolidated basis is published in international sources with a considerable lag, with the latest being available for 2014.

Figure 4-1 provides a high-level comparison of resources for the justice sector. Among Indonesia's six institutions, the Ministry of Law and Human Rights accounted for the greatest share of spending, at 0.44% of total national expenditure on average from 2010-2014, followed by the Supreme Courts accounting for 0.37%. The Attorney General's Office was around 0.23% on average from 2010-2014, while the Constitutional Court's share was 0.01%.

Among Cambodia's five institutions, the capital/provincial court (Court of First Instance) accounts for the largest share of spending, 0.28% of total national expenditure on average from 2015 to 2019, followed by the Ministry of Justice, accounting for 0.17%. The Supreme Court accounted for around 0.03% on average for the past five years.

Figure 4-1: Share of budget expenditure allocated to rule of law institutions in Indonesia and Cambodia



Source: The World Bank, *Indonesia Data: 2010-2014 and the Implementation Budget Laws 2015-2017 and Budget Laws of Cambodia 2018 and 2019* [12, 13, 16].

5. Structure and budget of anti-corruption activities in Indonesia and Cambodia

Both governments of Indonesia and Cambodia have programs to combat corruption. In Indonesia, three main institutions play important roles in the fight against corruption: The Corruption Eradication Commission, the National Anti-corruption Courts and the Attorney General’s office.

Of these, the Corruption Eradication Commission is the most important and has had significant success. It is largely responsible for Indonesia’s rise in Transparency International’s corruption perceptions index from last in 1995 to 89th out of 180 in 2018.

The Commission was established in 2002, running with complete independence, in parallel to police, the attorney general’s office, and the court system, with extraordinary investigative and wiretapping powers without a judge’s permission (as Indonesia’s judiciary itself was suffering from corruption). The Commission has conviction rates of nearly 100 percent with over 1,000 corrupt public officials sentenced [17].

In Cambodia, the anti-corruption unit (ACU) is the main institution combating corruption. This unit was established under the law on anti-corruption in 2010. Table 5-1 shows the functions of the above institutions in both Cambodia and Indonesia.

Table 5-1: Anti-Corruption Institutions of Cambodia and Indonesia

Indonesia	Cambodia
<i>Corruption Eradication Commission (KPK)</i>	<i>Anti-Corruption Unit (ACU)</i>
The KPK investigates and prosecutes with the Special Court on Anti-Corruption, which consists of five judges, three from ad hoc judges who are selected by a special selection Committee under the Supreme Court.	Combats corruption by receiving complaints and proactively investigating all forms of corruption [18].
<i>National Anti-Corruption Court</i>	N/A
A court specializing in anti-corruption, established simultaneously with the Anti-Corruption Commission in 2002.	NA
<i>Attorney General's Office</i>	<i>Cambodian Royal Prosecution</i>
Has a role to counter corruption and duties to conduct prosecution and implement court decisions which have legally binding force including investigations into certain criminal activity related to corruption	The Cambodian Royal Prosecution can also conduct prosecution and implement court decisions which have legally binding force including investigations into certain criminal activity related to corruption.

Source: *Anti-Corruption Law of Cambodia and Transparency International 2018 [17, 19]*.

Table 5.2 below shows that Indonesia spending on Indonesia's KPK was roughly \$0.11 per person annually from 2010 to 2014 and a roughly constant share of the total national budget at 0.03%.

Spending on the ACU in Cambodia was roughly \$0.48 per person annually, and roughly constant over the last five years at 0.2% of the national budget. Although spending was budgeted to remain roughly constant in dollar terms in 2018, it is expected to increase by 50% in 2019⁵.

Table 5.2: Spending on anti-corruption task forces in Indonesia and Cambodia

Cambodia's ACU	2015	2016	2017	2018	2019	Average
Spending (USD millions)	5.9	6.7	7.6	7.6	11.5	7.9
Share of total national expenditure	0.2%	0.2%	0.2%	0.1%	0.2%	0.2%
Growth rate	-	13%	13%	1%	50%	19%
Spending per capita (USD)	\$0.37	\$0.41	\$0.46	\$0.46	\$0.69	\$0.48
Indonesia's KPK	2010	2011	2012	2013	2014	Average
Spending (USD millions)	18.8	21.0	23.5	32.7	39.1	27.0
Share of total national expenditure	0.03%	0.02%	0.02%	0.03%	0.03%	0.03%
Growth rate	-	12%	12%	39%	20%	21%
Spending per capita (USD)	\$0.08	\$0.09	\$0.09	\$0.13	\$0.15	\$0.11

Source: *The World Bank, Indonesia Data: 2010-2014 and the Implementation Budget Laws 2015-2017 and Budget Laws of Cambodia 2018 and 2019 [12, 13, 16]*.

6. Conclusion

Indonesia has made significant strides in the last two decades to improve its justice system and crackdown on corruption.

The efforts of Indonesia's KPK Corruption Eradication Commission have improved the country's rank in Transparency International's corruption perceptions index from last place in 1995 to 89 out of 180 in 2018.

⁵ The spending increased from USD7.6 million in 2018 to USD11.5 million in 2019, according to the National Budget Law of Cambodia 2019.

Indonesia spends over three times as much on its anti-corruption task force than Cambodia in nominal U.S. dollars, but far less per capita (\$0.11 per person in Indonesia versus \$0.48 per person in Cambodia) [12, 13, 16].

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