

ENFORCING CORRUPTION LAWS

The Political Economy of Subnational Prosecutions in Indonesia

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To my Parents
for their love and encouragement
and for G.A.M. and her legacy

ABSTRACT

This thesis focuses on subnational corruption law enforcement in a new democracy: Indonesia. It seeks to understand temporal and spatial variation in corruption prosecutions in the post-Suharto era, and answer three core research questions: Why has the number of corruption cases steadily increased over the past twenty years? Why is there significant subnational variation in the investigation and prosecution of corruption? And why are some cases of local corruption investigated and prosecuted while others are ignored? The argument developed in the thesis consists of three inter-linked components: that corruption generates complex collective action problems for law enforcement; that ostensibly public law enforcement regimes in Indonesia are informally *privatised* public law enforcement regimes; and that, in the context of these hybrid regimes, the availability of resources and the formation of coalitions is critical to understanding when individuals and groups mobilise corruption laws at the subnational level.

The project uses a mixed methods research strategy—combining qualitative case studies, formal game theoretic modelling, and quantitative regression analysis—to develop and provide evidence for the argument. The research strategy required twelve months of fieldwork in Indonesia. In total over one hundred interviews in Jakarta and Central Java were conducted, and a unique dataset of local corruption cases was coded for two additional provinces. The thesis’s argument and methodological approach has implications for literature that spans the field of law and politics: the political economy of prosecution, theories of legal mobilisation, socio-legal studies, and studies of politics and power in contemporary Indonesia.

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INTRODUCTION

In late 2004, after the second post-Suharto national elections had been held, local police stations in two districts in Central Java received reports of corruption that implicated the local government heads. In one, Temanggung, a highland and mostly rural district of 700,000 people, a commissioner in the local office of the Election Commission accused senior civil servants and the *Bupati* (District Head) of embezzling funds that were allocated for the local election and totalled approximately Rp. 12.6 billion (\$1.3 million). In the other district, Semarang—the coastal capital of Central Java with a population of 1.3 million—the state audit agency found in its annual audit indications of corruption that implicated the *Wali Kota* (Mayor) and local government council in the embezzlement of approximately Rp. 10.7 billion (\$1.2 million).

Despite their evident similarities, these two cases followed vastly different trajectories and resulted in opposite outcomes. In the former, the police initially used the case to elicit funds from the accused. Some months later, however, the Bupati publicly accused the local Police Chief of corruption. The police, in retaliation, initiated an investigation and publicly named the Bupati as a suspect. Local community leaders, some of which had previously fallen out of favour with the Bupati, mobilised massive street demonstrations in support of the corruption investigation. The community leaders quickly secured support from senior civil servants, who resigned from their positions, and, within a few months, all local political parties had withdrawn their support for the Bupati. Despite the Bupati's efforts to restrict police access to local civil servants, the investigation quickly progressed. Less than twelve months after the initial report and seven months after the initiation of the investigation, the trial began in the local state

court: the Bupati was convicted and sentenced to four years' imprisonment.

Meanwhile in Semarang, just three months after the state auditor's report was released, the police transferred the case file (*berkas perkara*) to the State Prosecutor. The file was quickly deemed incomplete and returned to the police. Over the next three years, the case file went back and forth between the district police and prosecutor four times. Eventually in October 2008, almost three years later, the district State Prosecutor initiated prosecution of six former city councillors. At this time a civil society group publicly disclosed that the Wali Kota himself was also implicated in the corruption, but that law enforcement agencies had ignored his involvement; there were also accusations of police bribery. Over the next six months, and in the lead-up to the gubernatorial elections in which the Wali Kota was a candidate, local civil society groups held regular demonstrations and publicised the case in the media. The provincial High Prosecutor named the Wali Kota as a suspect six weeks before the election. However, after the election—in which the Wali Kota placed third—public pressure dissipated. There was no further progress on the case for two years. In October 2010, one month after the Wali Kota left office, the High Prosecutor terminated the investigation, claiming that there was in fact no evidence of corruption.

These cases illustrate, and are part of, a fundamental transformation in the way that Indonesia's law enforcement agencies tackle corruption. Indonesia has witnessed a dramatic increase in the investigation and prosecution of corruption since its transition to democracy. Its law enforcement agencies—which primarily consist of the national police and the state prosecutors—have become particularly focused on this task in the last five years. Figure 1 below, which relies on official figures from the Supreme Prosecutor, shows that the number of corruption cases prosecuted has increased from virtually none in the 1990s to over 1,000 cases a year from 2008.¹ The magnitude of the

¹ The data sources are as follows: for the period 2004–2012 (Official Statistics of the Supreme Prosecutor, available at www.kejaksaan.go.id), for 2003 (“270 Anggota Legislatif Korup [270 Corrupt Members of Parliament]” *Banjirmasin Pos* (Banjirmasin, June 10, 2004)), for 2002 (Efi Laila Kholis, *Putusan Mahkamah Konstitusi Nomor 28/PUU-V/2007 tentang Pengujian Undang-Undang RI no. 16 tahun 2004 Tentang Kejaksaan RI terhadap Undang-Undang Dasar 1945 (Kewenangan Penyidikan)* (Pena Multi Media 2008)), for 1998 (“KKN Rugikan Negara Trilyunan Rupiah [States Loses Trillions of Rupiah in Corruption]” *Kompas* (Jakarta, December 30, 1998) 1), for 1996 (“Jaksa Agung: Pemohon Banding dan Kasasi Melonjak 300 Persen [Supreme Prosecutor: Appeals Increase 300 Percent]” *Kompas* (Jakarta, December 29, 1996) 11), for 1993 (“Selama 6 Bulan Terbongkar 20 Kasus Korupsi Senilai Rp 33 Milyar [In

cases has also increased.² However, as a random sample of district enforcement trends from 2007 illustrates (see Figure 2), there is substantial variation at the subnational level in the number of corruption cases prosecuted, including none in some districts.

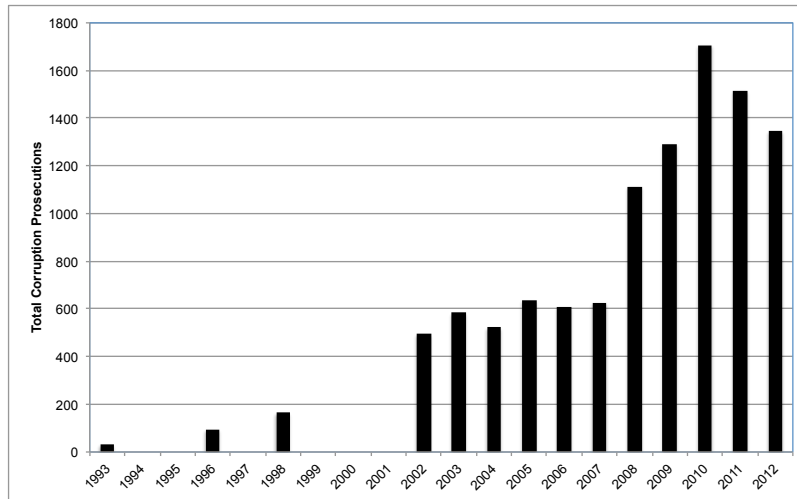


Figure 1: Corruption Law Enforcement in Indonesia (1993-2012)

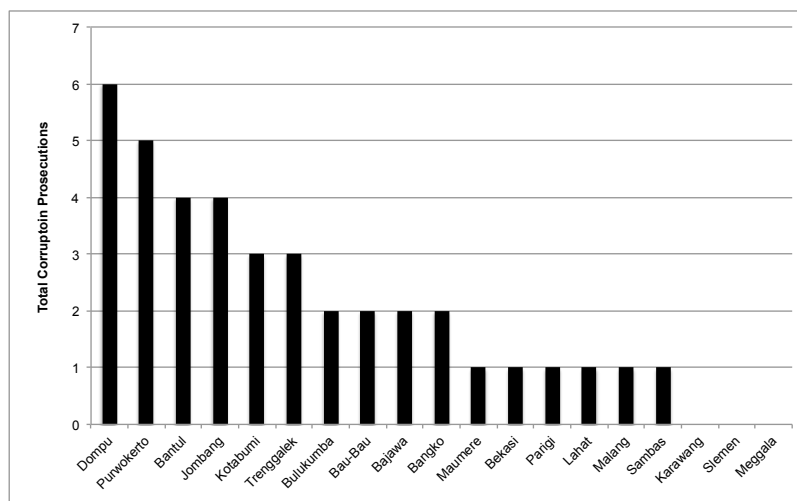


Figure 2: Corruption Law Enforcement in Random Districts (2007)

These micro differences and macro patterns provide the core research questions for this thesis: Why has the number of corruption cases steadily increased over the past twenty years? Why is there significant subnational variation in the investigation and prosecution of

6 Months 20 Corruption Cases Totalling Rp. 33 Billion Identified]" *Kompas* (Jakarta, October 14, 1993) 6). Data is missing for the years 1994–1995, 1997, and 1999–2001.

² Taufik Rinaldi, Marini Purnomo, and Dewi Damayanti, *Fighting Corruption in Decentralized Indonesia: Case Studies on Handling Local Government Corruption* (World Bank 2007) .

corruption? And why are some cases of local corruption investigated and prosecuted while others are ignored? I will seek to explain the divergent outcomes, trajectories, and patterns of subnational corruption law enforcement and, in doing so, provide a case study with a potentially global application. By providing this example from Indonesia, this thesis will shed light on how to (and how not to) tackle corruption in new democracies and developing countries around the world.

THE INDONESIA CASE AND ITS RELEVANCE

The eradication of corruption became a critical rallying cry for the Indonesian student and civil society movements that demanded the resignation of President Suharto in the late 1990s.³ As in many countries emerging from authoritarian rule, the *reformasi* era saw substantial efforts to strengthen laws and institutions that would facilitate the criminalisation and prosecution of corrupt government practices and officials. However, in the decade preceding these reforms, the record in relation to corruption eradication was markedly mixed. Paradoxically, the post-Suharto era has seen both a sustained increase in corruption prosecutions for the first time in the country's history while corruption has remained widespread.⁴ This situation is particularly evident at the subnational level.

Understanding subnational corruption law enforcement is critical to the eradication of corruption and to the well-being of ordinary citizens. The empirical study of subnational corruption law enforcement, like the empirical study of corruption law enforcement more generally, has received surprisingly little attention given academic interest in corruption in the past twenty years.⁵ The majority of the literature on corruption law enforcement is focused on cross-national comparisons, national trends, high profile cases, and national agencies, particularly national independent agencies such as Indonesia's Corruption Eradication Agency.⁶ More substantively, the global governance trend of decentralisation—the “devolution revolution”—brings policy

3 Ikrar Nusa Bhakti, “Trends in Indonesian Student Movements in 1998” in Geoff Forrester and Ronald James May (eds.), *The Fall of Soeharto* (C Hurst & Co 1998).

4 Donald K Emmerson, “Exit Sri Mulyani: Corruption and Reform in Indonesia” *East Asia Forum* (May 9, 2010).

5 Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge University Press 1999) 53.

6 For example: Simon Butt, *Corruption and Law in Indonesia* (Routledge 2011).

urgency to understanding subnational corruption law enforcement.⁷ Governments increasingly deliver basic and specialised services to citizens via subnational governments and institutional structures. Local governments in developing countries the world over now receive substantial fiscal transfers from central governments, and some also raise their own revenues. That these resources do not simply line the pockets of local officials is critical to ensuring the success of devolution reforms and to improving health, education, and economic growth in developing countries. Subnational corruption law enforcement must inevitably form part of any corruption control strategy.

THE ARGUMENT

The thesis develops a novel account of subnational corruption law enforcement and hence the trajectories, outcomes, and patterns of law enforcement that motivate the study. Existing theories of law enforcement usually attribute enforcement patterns and, by implication, outcomes, to one or more of the following factors: law, institutional arrangements, and culture. These explanations are all found in the existing literature on corruption law enforcement in Indonesia.⁸ Although insightful—particularly at the cross-country level—these theoretical accounts provide an unsatisfactory explanation of subnational phenomena. I argue that the research questions require a theoretical approach that goes beyond these three factors.

The argument I propose consists of three inter-linked components: that corruption generates complex collective action problems for law enforcement; that ostensibly public law enforcement regimes in Indonesia are informally *privatised* public law enforcement regimes; and that, in the context of these hybrid regimes, the availability of resources and the formation of coalitions is critical to understanding

⁷ Richard Snyder, “Scaling Down: The Subnational Comparative Method” (2001) 36(1) *Studies in Comparative International Development* 93–93.

⁸ On law and legal procedures, see: Benjamin B Wagner and Leslie Gielow Jacobs, “Re-tooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations” (2008) 30 *University of Pennsylvania Journal of International Law* 183–183; on institutions generally, see: Ibrahim Assegaf, “Legends of the Fall: An Institutional Analysis of Indonesian Law Enforcement Agencies Combating Corruption” in Timothy Lindsey and Howard Dick (eds.), *Corruption in Asia: Rethinking the Governance Paradigm* (Federation Press 2002); Yudi Kristiana, *Towards a Progressive Public Prosecutor’s Office: A Study of Investigation, Prosecution and Adjudication of Criminal Acts of Corruption* (Masyarakat Transparansi Indonesia 2010); and on culture, see: Timothy Lindsey, “History Always Repeats? Corruption, Culture and ‘Asian Values’” in Timothy Lindsey and Howard Dick (eds.), *Corruption in Asia: Rethinking the Governance Paradigm* (Federation Press 2002).

when individuals and groups mobilise corruption laws at the subnational level.

Corruption as a Collective Action Problem

The thesis develops a conceptualisation of corruption that emphasises its implications for the enforcement of laws. Building on a principal-agent framework, I conceptualise corruption as a type of transaction whereby officials in the public and private sectors unlawfully *or* improperly benefit themselves and/or those close to them—or induce others to do so—by misusing the position in which they are placed. According to this definition, common forms of corruption include bribery and extortion, as well as the embezzlement of public funds.

This conceptualisation highlights two important characteristics of corruption for law enforcement. The first relates to its detection, a challenge that is well-discussed in the theoretical and empirical literature. Rose-Ackerman, in one of her seminal works on the causes and consequences of corruption, notes that effective “deterrence [of corruption] is impossible unless the police can obtain relevant evidence” and explains that this is “a difficult task because often the participants are the only people who know of the corrupt deal”.⁹ Overcoming this challenge requires police to incentivise one party to divulge information about corruption via promises of leniency or even rewards. The lack of incentives to divulge information about corruption highlights a second, more general challenge for corruption law enforcement: its concentrated benefits and diffuse impacts.

Corruption generates a collective action problem for the public as a whole. Although some forms of corruption are welfare-enhancing, most theoretical and empirical research suggests it has negative impacts on society in aggregate.¹⁰ However, like many forms of economic or white-collar crime, corruption—in contrast to crimes such as assault, which have specific victims and concentrated costs—is often seen as “victimless”.¹¹ The embezzlement of government revenues is an obvious example: the cost is disbursed across a wide

⁹ Rose-Ackerman, *Corruption and Government* (see n. 5) 56.

¹⁰ Pranab Bardhan, “Corruption and Development: A Review of Issues” (1997) 35(3) *Journal of Economic Literature* 1320 ; Daniel Kaufmann, “Corruption: The Facts” [1997] (107) *Foreign Policy* 114 ; Francis T Lui, “An Equilibrium Queuing Model of Bribery” (1985) 93(4) *Journal of Political Economy* 760 ; Paolo Mauro, “Corruption and Growth” (1995) 110(3) *The Quarterly Journal of Economics* 681 ; Rose-Ackerman, *Corruption and Government* (see n. 5); Andrei Shleifer and Robert W Vishny, “Corruption” (1993) 108(3) *Quarterly Journal of Economics* 599 .

¹¹ Edwin H Sutherland, *White Collar Crime* (Yale University Press 1949) 50.

range of government activities and a large number of citizens. For example, if a bureaucrat *T* elicits bribes in the procurement for the construction of a bridge, the impacts of the lower quality bridge are distributed amongst the population who use the poor quality bridge. This amount is likely to be small. Therefore, even if corruption is detected, most citizens have little incentive to report the crime and potentially shoulder the direct and indirect costs of law enforcement.

So while it is true that detection is crucial to the control of corruption, it does not follow, as some scholars have assumed, that detection leads to enforcement and prosecution. In order to account for corruption in contexts such as Indonesia, it is necessary to consider when and how law enforcement authorities overcome the collective action problem inherent to corruption law enforcement.

The Political Economy of Corruption Law Enforcement

The second component of the argument holds that Indonesia's ostensibly public law enforcement agencies are, in practice, partially privatised. The classic economic theory of crime and law enforcement assumes that law enforcement agents are, or ought to be, social welfare-maximising; that they should balance the overall social impact of a crime against the costs of enforcement.¹² Some legal and regulatory scholarship has adopted a similar position, in the sense that it assumes or claims that law enforcement and regulatory agencies act in the public interest.¹³ This assumption is critical to the underlying rationale for the public enforcement of corruption laws, for it effectively overcomes the collective action problem inherent to corruption (as well as other crimes and behaviour that generates negative externalities for society). This assumption has, however, received sustained scrutiny and has led to the "capture theory" of enforcement and regulation.¹⁴ In the worst case scenario, models that incorporate payments between criminal suspects and law enforcement agents predict that the law is *never* enforced.¹⁵

¹² Gary S Becker, "Crime and Punishment: An Economic Approach" (1968) 76(2) *The Journal of Political Economy* 169 .

¹³ Michael Hantke-Domas, "The Public Interest Theory of Regulation: Non-Existence or Misinterpretation?" (2003) 15(2) *European Journal of Law and Economics* 165 .

¹⁴ Gary S Becker and George J Stigler, "Law Enforcement, Malfeasance, and Compensation of Enforcers" (1974) 3(1) *The Journal of Legal Studies* 1 , 3-4; George J Stigler, "The Theory of Economic Regulation" (1971) 2(1) *The Bell Journal of Economics and Management Science* 3 .

¹⁵ Abhinav Muthoo, *Bargaining Theory with Applications* (Cambridge University Press August 1999) 109-10.

The privatised public model of law enforcement developed in this thesis builds on both the principal-agent and privatisation approach to the political economy of law enforcement.¹⁶ In general, and in contrast to social welfare or public interest theories, public law enforcement officials are seen as rational and strategic agents that primarily respond to incentives. More specifically, in the context of an informally privatised public enforcement regime, law enforcement officials lack access to information (or the resources to invest in information technologies) and are also without the resources to cover the costs of enforcement. Most critically, they often lack both the positive incentives to apply the information and/or resources they have to law enforcement, and the negative incentives not to accept bribes from corruption suspects. In short, they lack the institutional incentives to enforce the law.

How, then, do privatised public enforcement regimes enforce law? This, I argue, largely hinges on two dynamic processes. Institutional incentives to enforce the law are not entirely absent from these regimes. Law enforcement officials will seek to fulfil case quotas, for example, with their limited resources; and in this way privatised public law enforcement regimes will prosecute petty corruption cases rather than difficult, substantial cases. The second dynamic relies on external actors. Individuals and groups can threaten accountability action or generate “outside options” that incentivise local law enforcement authorities to investigate and prosecute larger, more complex corruption cases. They can provide benefits to law enforcement agents for enforcing the law, including gifts, bribes, or promotions; they can subsidise the costs of the investigation and prosecution process with perks including money, expert lawyers, information, and other in-kind contributions; and they can increase expected costs of accepting bribes from corruption suspects by increasing the probability of accountability action through political mobilisation and publicity strategies. In this way, the collective action problem reappears. Individuals and groups interested in a specific corruption case must overcome a second order collective action problem to ensure law enforcement officials are

¹⁶ On the former, see: Sanford C Gordon and Gregory A Huber, “The Political Economy of Prosecution” (2009) 5 *Annual Review of Law and Social Science* 135 ; Robert Klitgaard, *Controlling Corruption* (University of California Press 1988); Michael E Levine and Jennifer L Forrence, “Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis” (1990) 6 *Journal of Law, Economics, & Organization* 167 ; on the latter, see: Becker and Stigler (see n. 14); Nuno Garoupa and Daniel M Klerman, “Corruption and Private Law Enforcement: Theory and History” (2010) 6(1) *Review of Law & Economics* ; A Mitchell Polinsky and Steven Shavell, “Corruption and Optimal Law Enforcement” (2001) 81(1) *Journal of Public Economics* 1 .

incentivised to enforce corruption laws. Thus it becomes necessary to consider when local individuals and groups might mobilise corruption laws and support corruption law enforcement efforts.

The Mobilisation of Corruption Laws

The third component of the argument holds that subnational corruption prosecutions depend on the public engaging actively in the mobilisation of corruption laws, where legal mobilisation is broadly conceptualised to refer to both the use of legal rights and institutions to achieve social and political objectives as well as the strategies adopted to successfully mobilise the law. In the context of a privatised public regime, law enforcement authorities rely on the public to secure information, augment resources, and generate demand for the accountability of enforcement authorities. Public enforcement regimes will sometimes enforce the law without external legal mobilisation when cases are small; however, more serious cases rely on the mobilisation efforts of external individuals and groups. In this way resource mobilisation is relative. Figure 3 summarises the logic.

		Resources of Suspect Coalition	
		Low	High
Resources of Enforcement Coalition	High	Enforcement highly likely	Enforcement delays ←
	Low	Enforcement unlikely	↓ Enforcement highly unlikely

Figure 3: Comparative Coalition Resources and Law Enforcement Outcomes

The “enforcement coalition” that seeks to pursue a corruption case against a suspect can command “high” levels of resources or it can control “low” levels of resources. The suspect coalition can also command “high” or “low” levels of resources with which to influence law enforcement processes. The outcome therefore depends on the relative strength of these two coalitions, and the trajectories depend on the dynamics of co-optation and defection. If the enforcement coalition is stronger relative to the suspect coalition then enforcement is

highly likely. Conversely, if the suspect coalition is stronger relative to the enforcement coalition then enforcement is *highly unlikely*. If both coalitions command similar levels of resources then delays are likely. If both coalitions are weak then enforcement is also unlikely. The situation is unstable when both coalitions mobilise high levels of resources; enforcement delays are likely and both coalitions will seek to induce defections from their opposition, or attempt to broaden their coalition. The latter will often involve attempts at “provincialisation” or even “nationalisation”; that is, attempts to escalate the case to a level above the district in order to secure a resource advantage. The arrows in the diagram indicate how defection will alter the unstable high-high situation.

This component of the argument builds on resource-centred theories of legal mobilisation. In his comparative research on “rights revolutions” in four countries, Epp concluded that “litigants cannot hope to bring about meaningful change in the law unless they have access to significant resources”.¹⁷ This emphasis on resources for legal mobilisation stems from the slow, incremental, and costly process of litigation.¹⁸ In contrast, my emphasis on resources stems from the nature of privatised public enforcement regimes. As argued above, these regimes require that individuals and groups mobilise additional resources to augment those of law enforcement authorities as well as to incentivise officials to follow standard rules and procedures. It is therefore unsurprising that I emphasise a somewhat different set of resources from the legal mobilisation literature.¹⁹ I argue that the resources necessary to successfully mobilise corruption laws include information, financial resources, and mobilisational capacity—including the ability to generate publicity and to draw on supra-local linkages.

17 Charles R Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (University of Chicago Press 1998) 3.

18 Epp (see n. 17) 18; Marc Galanter, “Why the “Haves” Come out Ahead: Speculations on the Limits of Legal Change” (1974) 9(1) *Law & Society Review* 95 .

19 As elaborated in Chapter 4, this logic of individuals and groups having to augment under-resourced enforcement agencies is not entirely absent from the legal mobilisation literature. See: Barry Boyer and Errol Meidinger, “Privatizing Regulatory Enforcement: A Preliminary Assessment of Citizen Suits under Federal Environmental Laws” (1985) 34 *Buffalo Law Review* 833 ; Nicholas Pedriana and Robin Stryker, “The Strength of a Weak Agency: Enforcement of Title VII of the 1964 Civil Rights Act and the Expansion of State Capacity, 1965–1971” (2004) 110(3) *American Journal of Sociology* 709 ; Evan J Ringquist, “Political Control and Policy Impact in EPA’s Office of Water Quality” (1995) 39(2) *American Journal of Political Science* 336 ; Paul Sabatier, “Social Movements and Regulatory Agencies: Toward a More Adequate—and Less Pessimistic—Theory of “Clientele Capture”” (1975) 6(3) *Policy Sciences* 301 .

The legal mobilisation perspective developed in this thesis also emphasises the importance of coalition dynamics—something which is often noted in the related literature but rarely theorised. The collective action problem means that often no single individual or group has sufficient incentives to use their resources to support law enforcement. If an individual or group does have an incentive, the use of finances to secure other resources is generally a political rather than an economic process that requires complex social and political allegiances. Therefore, the formation of coalitions is crucial to the control of corruption. My research suggests that three factors are critical to coalition formation and maintenance: the presence of patrons with an interest in the case outcome; the presence of political entrepreneurs to form and maintain coalitions; and the presence of trust and honest reputations. The maintenance of coalitions is also affected by the ways in which they signal their resource strength. This thesis uses a simple coalition game to analyse and illustrate the dynamics of coalition formation.

These three components constitute an argument that accounts for the three empirical puzzles that relate to the trajectory, outcomes, and patterns of subnational corruption law enforcement in Indonesia. The trajectories and outcomes of corruption investigations and prosecution are the results of the coalition dynamics associated with the mobilisation of corruption laws. The temporal and spatial patterns result from changes in the distribution of resources over time, as well as the distribution of resources and incentives for legal mobilisation across districts in Indonesia. More specifically, the secular increase in corruption law enforcement over the last decade is attributable to both organisational changes—particularly an increase in state resources for enforcement agencies as well as the introduction of corruption case quotas for district offices—and increases in legal mobilisation. In this way, the thesis links the macro-level structures of law enforcement to the micro-level decisions of individuals who are involved or interested in specific cases.

METHODOLOGY

The overall research strategy used to answer these core research questions is one of *induction-deduction*. The initial inductive research involved collecting information about Indonesia's law enforcement agencies in general, as well as the actions of various individuals involved

in four specific corruptions cases. Drawing on these empirical observations, I next used the analytic narrative method to develop a model of law enforcement that could account for the outcomes and trajectories of my four focus cases. Finally, to test the generalizability of the theory, further hypotheses were derived from the model and tested using regression analysis on an original dataset for this project.

The first *inductive* phase involved conducting semi-structured interviews with law enforcement agents, journalists, activists, and politicians across the country. Three clear findings about Indonesia's law enforcement agencies emerged from these interviews: they are significantly under-resourced; their agents often use extra-legal means to augment their operational budgets and meagre salaries; and they are strongly hierarchical. The initial qualitative research also targeted four specific cases of political corruption in four districts in Central Java. The case analysis used process-tracing methods and a subnational comparative research design. The case selection ensured variation on the dependent variable in order to mitigate the possibility of case selection bias and the misidentification of potential explanatory variables.²⁰ The process tracing sought to construct "a detailed narrative or story presented in the form of a chronicle that purports to throw light on how an event came about".²¹ The main finding that emerged from the case analysis was the importance of subnational interest group mobilisation and support for corruption law enforcement—the formation of the "enforcement coalition".²²

Understanding local coalition formation and resource mobilisation requires deep knowledge of local political factions, economic interests, social relations, and local political resources. For the case analysis I was largely working from primary sources because none of the cases had been systematically documented nor analysed by Indonesian researchers, and certainly not by international researchers. I gathered information through more interviews, local and regional newspapers, and official documents—including court decisions, state audits, witness statements, and other internal documents collated in case files. Local newspapers were particularly useful for garnering an overview of the case trajectory. Interviews with key informants

²⁰ Gary King, Robert O Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton University Press 1994) 129-30.

²¹ Alexander L George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2005) 210.

²² For preliminary findings from this initial inductive step, see: Samuel Clark, "Court-ing Corruption: A Comparative Case Analysis of Political Signalling in the Prosecution of Corruption during Indonesia's Democratic Transition" in (ECPR General Conference, July 24, 2011, Reykjavik, 2011).

were critical to understanding the political coalitions, their motivations, and their resources.²³ I interviewed local politicians, law enforcement agents (including both local leaders as well as staff investigators and prosecutors), local and provincial journalists, community leaders, and activists. In most districts three visits were conducted, and many informants were re-interviewed as my knowledge of the institutions and case details developed.

Drawing on these observations, in the second phase I developed a model of law enforcement and legal mobilisation using game theoretic and *analytic narrative* methods.²⁴ This required stepping back from the details and intricacies of the interviews and cases in order to develop a generalizable and parsimonious account of law enforcement and the mobilisation of corruption laws. It then involved returning to my empirical case study data as well as the institutional context. Thus in many ways, embedded in this second deductive phase of the research project, was an inductive-deductive “back and fourth” between the game theoretic models and the empirical data on the institutional arrangements and the four case studies.²⁵ These two steps form the bulk of the thesis and constitute its theory building research objective.

The third research phase involved returning to fresh empirical data. This step sought to quantitatively test the *external validity* or generalizability of the legal mobilisation theory. This involved the construction of an original dataset of local corruption case trajectories and outcomes in East Java, deriving hypothesis from the model, and developing an analytical plan.²⁶ The dataset includes all incidents of local corruption reported between 2000 and 2009 in fourteen local newspapers in East Java’s 38 districts as well as one national newspaper. The coverage of corruption cases involving Bupati and Wali Kota was expanded up until 2012. In total, approximately 470,000 newspaper pages were searched and 29,996 articles reporting on local corruption

23 The term “key informant” refers to individuals with specific knowledge about a corruption case. The more general term “informant” refers to individuals who provided more general background on institutional and individual decision-making relating to corruption, law enforcement, political coalitions, civil society, and collective action.

24 Rebecca B Morton, *Methods and Models: A Guide to the Empirical Analysis of Formal Models in Political Science* (Cambridge University Press 1999); Robert H Bates et al., *Analytic Narratives* (Princeton University Press 1998).

25 Bates and his co-authors explicitly note that the analytical narrative method “blur[s] the conventional distinction between deduction and induction.” Bates et al. (see n. 24) 16.

26 The dataset covered an additional province, North Sumatra, however time constraints meant I was unable to clean and prepare the dataset for analysis in this thesis.

cases were identified, categorised, and coded. This analysis identified 3,011 incidents of reported corruption at the district-level. Of these, 1,311 cases or 44 percent were investigated; 341 cases or eleven percent were prosecuted; and 232 cases or eight percent resulted in convictions.

Construction of the dataset involved securing newspaper archives, developing a database and coding manual, recruiting and training data coders (five in total), identifying newspaper articles, coding case details, implementing a quality control mechanism, and final data cleaning. A series of variables were coded for each case, including information on the location and timing of the case, the type of corruption, the estimated state losses, the characteristics of suspects and defendants, the chronology of the investigation and court proceedings, as well as advocacy events linked to the case such as demonstrations and public statements of support for the investigation or for the defendants.

Newspapers are an established source for the generation of datasets in the social sciences.²⁷ This approach has been applied in Indonesia, particularly to the study of violence.²⁸ Although in Indonesia regional and local newspapers—in contrast to national television stations, for example—do not tend to have clearly delineated political affiliations, they do have idiosyncratic biases that influence their coverage of local corruption cases. In addition to reporting the basic facts about high-profile cases involving local politicians, many newspapers exaggerate or give more prominence to some cases and not others because of local economic interests and personal connections. In this way newspapers are a useful data source for mapping the population of high-profile corruption cases and their basic trajectory, but are less useful as a record of all corruption cases and for capturing local coalitional resource mobilisation. For this reason the dataset was mostly used as a source for the dependent variable; whereas alternative sources were used to proxy the independent variables. More detail on the methodology is provided in Chapter 8 and the Appendices, including some of the limitations of newspapers as a data source.

27 Jennifer Earl et al., “The Use of Newspaper Data in the Study of Collective Action” (2004) 30 *Annual Review of Sociology* 65 ; Roberto Franzosi, “The Press as a Source of Socio-Historical Data: Issues in the Methodology of Data Collection from Newspapers” (1987) 20(1) *Historical Methods: A Journal of Quantitative and Interdisciplinary History* 5 ; John T Woolley, “Using Media-Based Data in Studies of Politics” (2000) 44(1) *American Journal of Political Science* 156 .

28 See: United National Support Facility for Indonesian Recovery (UNSFIR) Social Violence Database; the World Bank Violent Conflict in Indonesia Study (ViCIS) Database; and the Government of Indonesia National Violence Monitoring System (NVMS).

The empirical study of corruption generates a number of challenges, both empirical and ethical. It is a sensitive topic generally and at least two cases were stagnant but legally under investigation. In some interviews, we did not discuss specific cases but rather sensitive topics relating to the way law enforcement agencies in Indonesia operate—including the role of bribery and extortion, payments for promotions, and the influence of local and national politics on investigations. In all my interviews I gave informants the option of anonymity. To my surprise, most informants were happy to be cited, although it was common for informants to provide certain pieces of information “off the record”. However, towards the end of my research some informants specifically requested that I anonymise *all* my interviews. They were concerned that, if only certain interviews were anonymised, the source of anonymous interviews could be traced through a process of elimination. For this reason, I only cite each informant’s general position, the approximate location of the interview, and the month and year the interview was conducted. Fortunately, there is an enormous amount of information on local as well as national corruption cases in the public domain, particularly in local and regional newspapers.²⁹ Thus in a limited number of situations, where I sought to confirm public accusations of impropriety through local interviews (e.g. bribery of law enforcement officials), I have left out the confirmation and relied on the public record as my source.

In sum, my approach is multi-method and pluralistic. I use qualitative research to explore and comprehend complex social phenomena; rational choice and game theoretic methods to simplify and predict case outcomes; case analysis to identify causal mechanisms and illustrate theoretical claims; and statistical analysis to test theoretical implications and account for temporal and spatial patterns. Overall, I seek to capitalise on the strengths and augment the weaknesses of a variety of research methods, with the ultimate aim of generating an account that best pieces the puzzles together in a rigorous and accessible manner.

THE PLAN OF THE THESIS

The thesis consists of nine chapters. After this general introduction, Chapter 2 clarifies key concepts that underpin my theoretical and

²⁹ Edward Aspinall and Gerry van Klinken (eds.), *The State and Illegality in Indonesia* (KITLV Press 2011) 16.

empirical research. I develop a conceptualisation of corruption that emphasises the challenges it generates for law enforcement and the collective action dilemma that is implicated in corruption control. The chapter also considers existing theories of law enforcement. Drawing on institutional theories of law enforcement, Chapter 3 discusses the distinction between public and private models of law enforcement, and argues that in many developing countries, ostensibly public law enforcement regimes are best understood as informally privatised public regimes. A chapter annex develops a number of models to illustrate the effect of information, costs, and accountability on law enforcement case outcomes.

Building on the previous two conceptual chapters, Chapter 4 develops a theory of corruption law mobilisation centred on how interest groups build alliances and use their material and non-material resources to influence law enforcement outcomes. I argue that, in the context of a privatised public law enforcement regime, we need to understand both the distribution of resources and the coalition dynamics that encourage individuals and groups to deploy their resources in support of corruption law enforcement rather than collaborate with corruption suspects. Such an understanding is, I suggest, critical to understanding case trajectories and outcomes. This logic is developed and illustrated through the iterative analysis of a coalition game. The chapter concludes by summarising the alternative expectations that this legal mobilisation theory and the existing theories generate for subnational comparative research on corruption law enforcement.

Chapter 5 introduces Indonesia as a case study, and marks a shift in the thesis from theory to empirics. The chapter focuses on corruption, corruption laws, and corruption law enforcement in Indonesia, with a particular emphasis on formal institutional changes introduced since the resignation of Suharto in 1998, and the informal institutional practices that remain prevalent. Drawing on the analytical framework developed in Chapter 3, I argue that weak accountability institutions and a continuing reliance on off-budget financing mechanisms means that ostensibly public law enforcement agencies remain partially privatised despite the reforms. The final section considers how legal and political reforms have altered the distribution of influence over law enforcement processes at the subnational level.

Chapters 6 and 7 use four case studies from Central Java to demonstrate how the legal mobilisation theory developed in Chapter 4 accounts for subnational law enforcement outcomes and trajectories bet-

ter than alternative explanations. Chapter 6 focuses on two “positive” cases of corruption involving senior district politicians that resulted in the prosecution and conviction of the local Bupati (District Head). I argue that, in the district of Cilacap, a grand coalition of local political supporters of the incumbent Bupati initially blocked local enforcement action, but then fragmented because of an exogenous shock: national intervention prior to the 2009 national elections. In contrast, in Temanggung, civil society deployment of mass mobilisational resources triggered defections from the bureaucracy and local parliament, effectively preventing access to the resources necessary to prevent progress on the investigation.

To check against the possibility of spuriousness, Chapter 7 considers two corruption investigations involving a Bupati and Wali Kota (Mayor) that did not result in prosecution. In Rembang, I argue that the Bupati was able to co-opt members of the “enforcement coalition” and dominate the resources necessary to control the corruption enforcement process. Similarly in Semarang, the incumbent Wali Kota’s coalition dominated local resources, except during a brief period when the enforcement coalition broadened in the lead-up to the gubernatorial elections. Using the analytic narrative method, these two chapters use the logic and variables of the enforcement and coalition models to analyse and present the cases.

In Chapter 8, I turn to the external validity or generalizability of the legal mobilisation theory. I present several quantitative tests of my argument to demonstrate that, consistent with the implications of the theory, resource distribution and constraints on coalition formation and maintenance influence corruption law enforcement. The first set of results focus on the investigation and prosecution of Bupati and Wali Kota in East Java between 2000 and 2012. The Logit models and various robustness tests suggest that increases in mobilisational capacity increase the probability that Bupati and Wali Kota are investigated and prosecuted. It also provides strong evidence that coalitions are critical to whether Bupati and Wali Kota are reported, investigated and prosecuted for corruption while in office. The second set of results focus on the number of cases reported, investigated, and prosecuted each year in East Java’s 38 districts between 2000 and 2009. These results are less robust. They provide some additional evidence to suggest that the distribution of resources and coalition structures influence subnational corruption law enforcement.

Chapter 9 concludes the thesis with a discussion of theoretical, methodological, and policy implications. I argue that the study of corruption generally and corruption law enforcement more specifically requires greater attention to informal institutions, historical context, and greater use of fine-grained field research. This is not a call for atheoretical, descriptive research methods and approaches. Rather I envision empirically *and* theoretically rich analysis akin to some of the recent works of comparative politics on violence, political transition, and contentious politics.³⁰ The thesis also makes a two-fold contribution to the political economy of prosecution. It provides new in-depth qualitative and quantitative empirical research to a topic that has received scant attention outside of the United States and Europe. It also develops a new hybrid model that incorporates aspects of both the principal-agent—the dominant approach to the topic—and private prosecution models. More generally, I advocate an approach to socio-legal studies and law-and-society that is oriented towards middle range theory—rather than grand theories or concepts of law—that generates empirically falsifiable hypotheses, and that can ultimately generate knowledge to develop policy responses to social issues in today’s world.³¹ For Indonesianists, I argue that the theoretical and methodological approach taken in this thesis demonstrates the analytical potential of a broadly neo-pluralist or “critical pluralist” approach to understanding power and politics in democratic Indonesia.³² More specifically, my research provides evidence that law is an increasingly important non-material resource and source of power.

A number of policy implications stem from the research. Some arise on the “supply-side”, i.e. they relate to institutional structures. These include the need to improve and reorient formal and political accountability mechanisms, to properly resource corruption law enforcement agencies, and to improve the technical monitoring and recording of local government decision-making and transactions. There are clear im-

³⁰ See, for example: Stathis N Kalyvas, *The Logic of Violence in Civil War* (Cambridge studies in comparative politics, Cambridge University Press 2006); Thomas B Pepinsky, *Economic Crises and the Breakdown of Authoritarian Regimes: Indonesia and Malaysia in Comparative Perspective* (1st ed., Cambridge University Press August 2009); Giovanni Capoccia and Daniel Ziblatt, “The Historical Turn in Democratization Studies: A New Research Agenda for Europe and Beyond” *en* (2010) 43(8-9) *Comparative Political Studies* 931 ; Dan Slater, *Ordering Power: Contentious Politics and Authoritarian Leviathans in Southeast Asia* (1st ed., Cambridge University Press August 2010).

³¹ On theories of the middle range generally, see: Peter Hedström and Peter Bearman, “Analytical Sociology and Theories of the Middle Range” in *The Oxford Handbook of Analytical Sociology* (Oxford University Press 2009).

³² Thomas B Pepinsky, “Pluralism and Political Conflict in Indonesia” (2013) 96(1) *Indonesia* 81 .

plications on the “demand-side” also. Indeed, the theory developed in this thesis argues that supply-side fixes often only shift the distribution of corruption within enforcement authorities and between corruption suspects and enforcement officials. My findings lend support to contemporary research on the importance of the “legal mobilisation support structure”, broadly conceived.³³ This could include support not only for legal aid and anti-corruption non-government organisations, but also social and economic groups that have a more general interest in ensuring government budgets are not corrupted—including the professions, labor unions, farmers groups, and chambers of commerce. My research strongly suggests that the source of this support needs to be independent from subnational interests. It also indicates the crucial role of the media and political competition more generally.

³³ Epp (see n. 17).

CORRUPTION AND ITS IMPLICATIONS FOR LAW ENFORCEMENT: CONCEPTS AND EXISTING THEORY

Corruption has attracted significant scholarly attention from various disciplines in recent years. One body of work focuses on the *causes* of corruption.¹ Another body of work focuses on *effects* of corruption.² And a third body of work focuses on the *control* of corruption.³ This thesis is broadly focused on the control of corruption. More specifically, it is tightly focused on the use of the criminal justice system to detect, investigate, and prosecute corruption. The empirical study of corruption law enforcement is a topic that has received relatively little attention in the contemporary literature associated with the “third wave” of democratisation.⁴ This is unusual given that strengthening

¹ On structural factors: James C Scott, *Comparative Political Corruption* (Contemporary Comparative Politics, Prentice-Hall 1972); On economic development: Herbert Kitschelt and Steven Wilkinson (eds.), *Patrons, Clients, and Policies: Patterns of Democratic Accountability and Political Competition* (Cambridge University Press 2007); On institutional factors: Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (Academic Press 1978); On moral codes Donatella della Porta and Alberto Vannucci, “A Typology of Corrupt Networks” in Jun’ichi Kawata (ed.), *Comparing Political Corruption and Clientelism* (Ashgate 2006).

² Mushtaq H Khan and Jomo K S (eds.), *Rents, Rent-Seeking and Economic Development: Theory and Evidence in Asia* (Cambridge University Press 2000); Pranab Bardhan, “Corruption and Development: A Review of Issues” (1997) 35(3) *Journal of Economic Literature* 1320 ; Paolo Mauro, “Corruption and Growth” (1995) 110(3) *The Quarterly Journal of Economics* 681 ; Andrei Shleifer and Robert W Vishny, “Corruption” (1993) 108(3) *Quarterly Journal of Economics* 599 .

³ Johann Graf Lambsdorff, *The Institutional Economics of Corruption and Reform: Theory, Evidence and Policy* (Cambridge University Press 2007); Robert Williams and Alan Doig (eds.), *Controlling Corruption* (Politics of corruption 4, Edward Elgar 2000); Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge University Press 1999); Frank Anechiarico and James B Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective* (University Of Chicago Press 1996).

⁴ Rose-Ackerman, *Corruption and Government* (see n. 3) 53.

criminal laws and the enforcement regime invariably feature in the recommendations of both policy reports and academic research on corruption control.⁵ It is also unusual given the centrality of legal rules to the definition of corruption.

This chapter clarifies the conceptual framework that underpins the theoretical and empirical research presented in this thesis. The first section considers the definition of corruption. It proposes a conceptualisation of corruption as a type of transaction involving three agents—a principal, a trustee, and a corruptor or bribee—and the violation of legal norms governing the relationship between the principal and the trustee. This conceptualisation distinguishes corrupt transactions from standard market transactions and crime such as theft. The second section elaborates on the challenges corruption presents for enforcement. I suggest that an appreciation of the collective action problems inherent to corruption and corruption law enforcement is critical: corruption creates a concentration of benefits in the hands of a few actors and disperses its costs to the public at large. This provides the rationale for the public enforcement of corruption laws, which is taken up in Chapter 3. In the final section I review three theoretical perspectives on law enforcement—law-, culture-, and institution-centred explanations—in light of the principal-agent conceptualisation of corruption. Although all three accounts are insightful and shed light on important aspects of corruption law enforcement, I argue that accounting for temporal and spatial variation in corruption law enforcement requires a theoretical perspective that goes beyond these standard explanations.

CORRUPTION

There is little consensus on the definition of corruption and there is no completely satisfying “one-line definition” despite the critical attention the topic has received.⁶ Some theorists argue that a definition of corruption is not possible because what is considered corruption varies as legal and social norms evolve in space and time.⁷ While there is no doubt that the specifics of what is considered corruption will change, this thesis follows the literature that conceptualises cor-

⁵ Rose-Ackerman, *Corruption and Government* (see n. 3); World Bank, *World Development Report 1997: The State in a Changing World*. (Oxford University Press 1997).

⁶ Michael Johnston, “The Definitions Debate: Old Conflicts in New Guises” in Arvind K Jain (ed.), *The Political Economy of Corruption* (Routledge 2001) 12.

⁷ See generally: Monique Nuijten and Gerhard Anders (eds.), *Corruption and the Secret of Law: A Legal Anthropological Perspective* (Law, justice, and power, Ashgate 2007).

ruption in a principal-agent framework.⁸ It understands corruption as a *type* of transaction involving three agents: a principal, a trustee, and a corruptor or bribee. This analytical distinction offers a “causal” approach to concepts in that it focuses on the attributes of corruption that are particularly relevant to corruption law enforcement.⁹

In this thesis I focus on corruption that occurs when officials in the public sector unlawfully or improperly benefit themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed.¹⁰ This requires some elaboration. This definition implies three actors and four components. It can be restated as follows: corruption occurs when (1) a trustee (T) acting for personal gain and/or the gain of those close to them, (2) violates legal or social norms governing their position, and (3) harms the interests of the trustee’s principal (P) in order to benefit a third party “corruptor” (C) who (4) rewards T for access to a good or service that C would not otherwise obtain.¹¹ P could be an individual or the public at large. T is anyone who acts on behalf of P. Thus T could be a public official acting on behalf of a politician or the public, or an employee carrying out a task set by an employer P. C is anyone affected by how T carries out its task assigned by P. The standard case of corruption occurs when C wants something that T controls (on behalf of P) but which C is not supposed to receive as determined by the rules governing the relationship between P and T.¹² Figure 4 below summarises the nature of the relationships and the corrupt exchange.¹³

A typical example involves the procurement of goods and services in the public sector. The public or the government (P) entrusts a civil servant (T) to procure items specified in a local government budget.

8 Diego Gambetta, “Corruption: An Analytical Map” in Stephen Kotkin and Andras Sajo (eds.), *Political Corruption in Transition: A Sceptic’s Handbook* (Central European University Press 2002); Lambsdorff, *The Institutional Economics of Corruption and Reform* (see n. 3); Mark Philp, “Political Corruption, Democratization and Reform” in Stephen Kotkin and Andras Sajo (eds.), *Political Corruption in Transition: A Sceptic’s Handbook* (Central European University Press 2002); Rose-Ackerman, *Corruption* (see n. 1); Rose-Ackerman, *Corruption and Government* (see n. 3); Federico Varese, “Pervasive Corruption” in *Economic Crime in Russia* (Kluwer Law International 2000).

9 I follow Gary Goertz’s causal, ontological and realist approach to concept formation. He explains that his approach is “an ontological view because it focuses on what constitutes a phenomenon. It is causal because it identifies ontological attributes that play a key role in causal hypotheses, explanations, and mechanisms. It is realist because it involves an empirical analysis of the phenomenon.” Gary Goertz, *Social Science Concepts: A User’s Guide* (Princeton University Press 2006) 5.

10 This is a slight modification on the one-line definition developed by the World Bank and cited by Gambetta, “Corruption: An Analytical Map” (see n. 8) fn 27.

11 Philp (see n. 8) 57.

12 Gambetta, “Corruption: An Analytical Map” (see n. 8) 35.

13 Adapted from: Varese (see n. 8) 100.

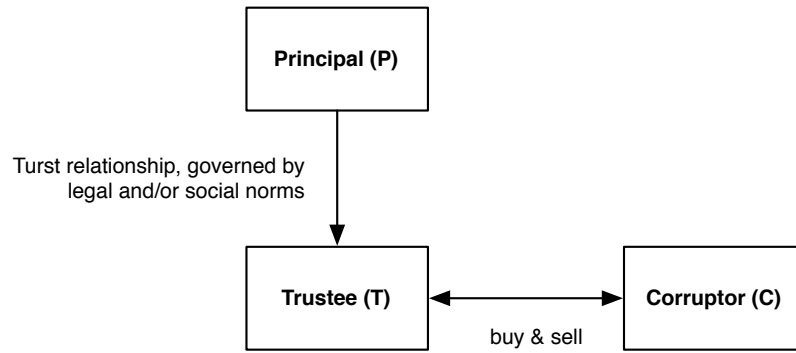


Figure 4: Corruption in a Principal-Agent Framework

There are rules that govern procurement that T is obliged to follow in this task. For example, the procurement rules require that the purchase of government vehicles are allocated to the lowest bidder, which in this hypothetical example is *not* supplier C but another supplier. In the standard case C bribes T to select him to supply the vehicles. The rules are violated *because of* the bribe paid by C. Importantly, the rules are not violated because of incompetency, i.e. the inability of T to identify the correct bidder.

The presence of the principal, P, and the relationship between P and T is part of what distinguishes corruption from a common market exchange. In a common market exchange there are only two agents, T and C. T *owns* a resource or good that C desires.¹⁴ They agree on a price, rather than a bribe, and the good is exchanged. In the case of corruption, however, the exchange harms beneficiary P. T does not own but controls a resource entrusted to it by P. Of course, a situation could arise where T does in fact own the resource or good, but that P has a legitimate claim to regulate the use of that resource, including its sale or provision to C. The sale of alcohol is an instructive example.¹⁵ In this situation, T owns the good for sale but its sale to underage teenagers is legally regulated by P, which could be the police or the public more generally. One can envisage a corrupt exchange whereby an underage teenager, C, bribes a shopkeeper, T, to obtain an alcoholic beverage, which harms P's general interest in preventing the negative health or social repercussions of underage drinking.

In addition to the presence of the principal, there must be a clear legal or social norm governing the relationship between P and T. One can conceptualise these rules as permitting a set of "right" actions, a_r , and forbidding a set of "wrong" actions, a_w , vis-a-vis the good

¹⁴ In the market exchange P and T are one actor.

¹⁵ Gambetta, "Corruption: An Analytical Map" (see n. 8) 41.

or task entrusted to T. It is generally assumed that P prefers the right actions to the wrong actions; that for P, $a_r > a_w$. In contrast, C prefers the wrong set of actions to the right set of actions; thus for C, $a_r < a_w$. The opposing interests of P and C are important. If their interests were aligned then T would not be in a position to violate the rules to the benefit of C (and T).¹⁶

Finally, it is necessary to consider the motives of T when determining whether or not an action is corruption. This relates to the first component of the definition above, i.e. that T acts for personal gain and/or the gain of those close to them. T needs to provide the benefit to C because of the bribe, not because of general incompetence. Returning to the typical procurement example mentioned above: if T has a poor grasp of the rules governing procurement and/or is generally incompetent, and in error provides a contract to C without payment of a bribe, then it is not typically corruption. It is important to emphasise that “personal gain” should be understood broadly. I do not assume that corruption requires self-enrichment.¹⁷ In countries such as Indonesia, politicians and bureaucrats do not engage in corruption solely for personal pecuniary gain, but also to generate the means to distribute patronage, maintain political power, and ensure protection.

IMPLICATIONS FOR LAW ENFORCEMENT: RULES, COLLECTIVE ACTION, AND INFORMATION ASSYMETRIES

The conceptualisation of corruption as a principal-agent problem provides a powerful framework for analysing common forms of corruption and their general implications for law enforcement. This section considers three factors in more depth: the rules that govern the relationship between P and T, the distribution of the costs and benefits of corruption, and the information asymmetries amongst the three actors.

¹⁶ As will be discussed below and in Chapter 3, it is possible that the interests of T and P become aligned if the former were to pass on some of the bribe received from C to an immediate P such as a superior responsible for overseeing T.

¹⁷ The World Bank definition, on which the one-line definition at the beginning of this section is based, restricts personal gain to self-enrichment and/or the enrichment of those close to oneself. See: Gambetta, “Corruption: An Analytical Map” (see n. 8) fn 27.

Legal versus Social Norms

The conceptualisation outlined above highlights the centrality of rules governing the relationship between P and T, as well as the possibility that these rules might be legal or social in nature. Three examples illustrate the importance of these rules. The first and most obvious form of corruption is bribery. As Gambetta states, in this form “C wants certain resources that T is *not* supposed to deliver to him, given the conditions of his relation to P [and] no pressure is applied by T to force C to bribe T, or by C to force T to accept a bribe”.¹⁸ Thus in this case C bribes T to *break* the rules. A second form of corruption—commonly referred to as extortion—holds a different relationship to these rules. In the case of extortion, T is entrusted with a good or service that C is supposed to receive.¹⁹ However, T demands a payment from C *to follow the rules*, a_r , and provide the resource to C. In contrast, in the third form of corruption, which can be thought of as a variant of both bribery and extortion, C pays T to deliver a good or service that *goes beyond* that which is required by the rules governing the relationship between P and T.

In addition to elucidating the different types of corruption, the emphasis in the principal-agent framework on the rules governing the relationship between P and T also facilitates analysis of the implications of corruption for law enforcement. There are three main implications. First, the centrality of rules in the principal-agent conceptualisation implies that a transaction may be considered corrupt in one country (or jurisdiction) and legitimate in another. All societies draw the boundaries between corruption and acceptable gift-giving differently; for example, in some places electoral donations to parties are acceptable and in others they are not. As Gambetta suggests, this is not a flaw of the principal-agent conceptualisation but a feature: it allows one to identify corruption as a *type* of transaction and identify the factors that distinguish various instances of corruption as *tokens* of this type.²⁰ This conceptualisation does generate measurement challenges, particularly when one is concerned with social rather than legal norms in a given context.²¹ It also means that when I code cor-

18 Gambetta, “Corruption: An Analytical Map” (see n. 8) 35-6.

19 Generally T has monopoly control or effective monopoly control over that resource such that C is unable to obtain it elsewhere.

20 Gambetta, “Corruption: An Analytical Map” (see n. 8) 34-5.

21 Arnold Heidenheimer, “Perspectives on the Perception of Corruption” in Arnold J Heidenheimer, Michael Johnston, and Victor Levine (eds.), *Political Corruption: A Handbook* (Transaction Books 1989).

ruption incidents as reported in local newspapers I am dependent on local, and at times individual, understandings of corruption that may not be upheld in court nor widely shared.²²

The framework also highlights the importance of the rules governing the principal-agent relationship for law enforcement. Central to the investigation and prosecution of corruption is the existence and identification of the relevant rules governing the relationship between P and T.²³ If the norms are unclear, or contradictory, then it becomes difficult for law enforcement agents to distinguish between α_r and α_w and thus prove corruption. This is particularly a challenge in legal contexts where law is poorly drafted. In these situations, it often becomes necessary for law enforcement agents to appeal to more general social norms, e.g. norms of public office, to justify action.²⁴ This distinction between legal and social norms suggests a third implication for corruption law enforcement.

The possibility that the legal and social norms governing the relationship between P and T might differ from one another poses a fundamental challenge for the principal-agent conceptualisation of corruption. Varese, for example, argues that in the context of pervasive corruption where corruption may indeed be considered illegal, but widely practiced and therefore to some degree tolerated, the concept of “corruption” itself loses its meaning. This is because of the contradiction between the legal and social norms governing the relationship between P and T: “formal rules specifying a bureaucrat’s duties and sanctions do exist; however, the basic trust relationship between the principal and agent is impaired.”²⁵ The legal rules governing a relationship imply corruption whereas the social rules and norms suggest otherwise, or vice versa.

I contend that the contradiction between legal and social rules governing the principal and trustee does not necessarily undermine the principal-agent conceptualisation of corruption but it does have important implications for corruption *law* enforcement. A difference between legal and social norms of behaviour is not unique to corrup-

²² Chapter 8 and Annex B provides more detail on how reports of corruption were identified in local newspapers and codified.

²³ It also involves determine whether the rules were broken. This relates to detection and is discussed in more detail below.

²⁴ This argument has been implicitly made in Indonesia, for example, with respect to both judges and prosecutors, see: M Syamsudin, “The Importance of Progressive Interpretation for Judge in Handling Corruption Cases in Indonesia” (2013) 3(2) *International Journal of Social Science and Humanity* 156 ; Yudi Kristiana, *Towards a Progressive Public Prosecutor’s Office: A Study of Investigation, Prosecution and Adjudication of Criminal Acts of Corruption* (Masyarakat Transparansi Indonesia 2010).

²⁵ Varese (see n. 8) 111.

tion. Legal realist and socio-legal scholars have long pointed out a gap between “law on the books and law in action”.²⁶ And empirical socio-legal research almost always discovers gaps between legal rules and social practice to the point where gaps are now considered the norm rather than the exception in many legal fields.²⁷ Indeed, gaps are arguably inevitable given that both legal and social norms are dynamic and mutually constitutive, in the sense that legal norms both influence social norms and are, in turn, influenced by changes in social norms and beliefs. In this way, discrepancies between the legal and social rules governing the relationship between P and T do not necessarily undermine corruption as a concept. However, it does generate a dilemma for law enforcement officials who, in the context of pervasive corruption, must decide on which cases to pursue and which to ignore. This is taken up in more detail in the fourth section of this chapter below.

Collective Action

The principal-agent framework highlights the potential for collective action dilemmas in both the establishment and enforcement of corruption laws. Collective action problems arise when there is a deviation between individual goals or self-interests and the aggregate interests of society or a group to which an individual belongs. Archetypal examples of collective action problems include the exploitation of common pool resources, negative externalities associated with pollution, or the provision of public goods such as roads. In these situations, individuals have an incentive to free-ride on the efforts of others: society has an overall aggregate interest in the outcome but no single individual has an incentive to reduce their use of a common pool resource, reduce a negative externality, or contribute to a public good. The resolution of collective action problems—and the achievement of an aggregate improvement in social welfare—generally requires finding ways to forge credible agreements to restrict use of finite resources or contribute resources to public goods.

These situations usually require the resolution of both *first order* and *second order* collective action problems. First order collective action problems refer to the substantive problem at hand, such as the

²⁶ Roscoe Pound, “Law in Books and Law in Action” (1910) 44 *American Law Review* 12 .

²⁷ Jon B Gould and Scott Barclay, “Mind the Gap: The Place of Gap Studies in Sociological Scholarship” (2012) 8(1) *Annual Review of Law and Social Science* 323 .

management of a common pool resource or the provision of a public good. Second order collective action problems refer to the challenge of coordinating and enforcing agreements for the resolution of first order collective action problem. Thus, resolving first order collective action problems requires resolution of second order collective action problems. To illustrate, consider the example of fish stocks, a common pool resource. The management of fish stocks to avoid over-fishing could involve an agreement that each fisherman only exploits a specified, limited amount. Such an agreement would resolve the first order collective action problem and ensure the resource was not over-exploited. However, for this agreement to be credible, there is a need for mechanisms to monitor and enforce the agreement. The establishment of a monitoring agency, for example, could resolve the second order collective action problem thereby facilitating resolution of the first order problem.

Corruption often generates both first and second order collective action problems. It is necessary for societies to first establish legislation that clearly governs the relationship between P and T, and then to establish arrangements that will ensure that these rules are enforced. Resolution of the first order collective action problem is often easily resolved. Although some forms of corruption are welfare-enhancing, most theoretical and empirical research on corruption suggests that corruption has negative impacts on society as a whole.²⁸ Furthermore, the negative moral connotations that “corruption” carries means that it is relatively easy to mobilise the public to establish corruption laws.

The resolution of the second order collective action problem is often more difficult, particularly in those contexts of pervasive corruption. This is because of incentives to defect from any agreement to uphold or enforce the law. Firms who wish to obtain a contract from the government each have an individual incentive to pay a bribe to ensure they are the winner. Similarly, citizens have individual incentives to concede to extortion if the costs of waiting are excessive. However, both firms and individuals would be better off if they could all agree not to pay bribes or concede to extortion. Unfortunately, not only is this difficult to coordinate but, if contracts and services are finite, these agreements are often not credible because an individual firm or citizen has incentives to defect from the agreement. There is no cred-

²⁸ Bardhan (see n. 2); Daniel Kaufmann, “Corruption: The Facts” [1997] (107) *Foreign Policy* 114 ; Francis T Lui, “An Equilibrium Queuing Model of Bribery” (1985) 93(4) *Journal of Political Economy* 760 ; Mauro (see n. 2); Rose-Ackerman, *Corruption and Government* (see n. 3); Shleifer and Vishny (see n. 2).

ible enforcement mechanism to ensure that the firms do not defect from their agreement not to use bribery or for citizens not to capitulate to extortion. Recent empirical research confirms this collective action challenge for anti-corruption efforts.²⁹

The principal-agent conceptualisation of corruption outlined above highlights how different types of corruption structure this collective action problem in different ways. Consider, for example, the three forms of corruption identified above: bribery, extortion, and service enhancement. In the case of bribery there are relatively clear incentives for the principal to enforce the rules governing its relationship with the trustee. However, this depends on how the impacts of corruption are distributed. In a private firm the principal (i.e. the owner) has a clear incentive to enforce the rules as the bribe will influence the firm's profit. However, if a bureaucrat *T* elicits bribes in the procurement for the construction of a bridge, the impacts of the lower quality bridge are relatively small for the immediate principal (i.e. a politician) and are distributed amongst the public at large. In this situation no individual P_i has a sufficient interest to enforce the rules a_i . Of course this could change if, because of the corruption, the bridge collapsed on a smaller subset of the public. In a situation such as this the impact of corruption and the incentives to enforce the rules are concentrated.

In contrast, the extortionary form of corruption can facilitate law enforcement because there is an actor *C* who has an interest in bringing it to the attention of law enforcement agents, or *P* more generally. However, in this situation the interests of *P* and *C* are opposed and therefore *P* may show indifference towards the plight of *C*. Of course, it is possible that *P*'s interests are harmed indirectly. For example, if *P* is the public at large, then police extortion of transportation companies will result in higher prices for all transported goods bought by *P*. In this way, it is feasible that *P* could cooperate with *C* to crack down on *T* but, as this example highlights, the often diffuse impact of extortion in relation to *P* amplifies the problem of collective action.

It is also difficult to see who has an interest in law enforcement when *C* pays *T* to provide a service that goes beyond the rules governing its relationship to *P*. The rules governing the relationship have not been violated, so *P* does not automatically have an interest in law enforcement. Likewise, *C* is better off because he voluntarily pays for

²⁹ Anna Persson, Bo Rothstein, and Jan Teorell, "Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem" (2013) 26(3) *Governance* 449

a better service. Obviously T is better off too. In this situation P may legalise the payments in order to capture the amount C is willing to pay T for a better service, i.e. change rather than enforce the existing rules. It is possible, however, that this form will evolve into the standard or extortionate form of corruption. T, for example, could manufacture delays in order to elicit bribes from C. This form of corruption also highlights the limitations of a corruption control strategy focused on “legalisation”: the transformation of corrupt transactions into market transactions.

Information Asymmetries

The third implication relates to motives and information. Information asymmetry between the principal and the trustee is central to the principal-agent framework and the agency problems that it captures. There are two information asymmetries involved in engaging and responding to corruption. The first information asymmetry relates to the need for corruptors, C, to identify corruptible trustees, T. As Varese explains the extent to which corruption is widely practiced influences the extent that this information asymmetry can be overcome:

an overwhelmingly corrupt setting requires much less caution. Identification of a willing bribe-taker is not difficult, for the citizen expects the agent to be one. In other words, once corruption is widespread, the ‘identification’ problem is more easily solved.³⁰

Conversely, it is possible that information asymmetries in non-corrupt contexts will prevent the emergence of corruption. Although there may be both trustees and corruptors willing to engage in corrupt transactions, the risks of identifying oneself as a corruptible trustee or offering a bribe to an incorruptible trustee deters corrupt transactions.

The second asymmetry is more relevant to this thesis; the information asymmetry that exists between the principal and trustee. As noted above, conceptualising corruption in a principal-agent framework highlights the importance of detecting the violation of rule α_1 and determining whether the rule were violated *because of* a trans-

³⁰ Varese (see n. 8) 104.

action between T and C.³¹ The principal-agent framework also helps to understand how different types of corruption affect detection and structure the incentives to provide information about corrupt transactions. In the standard bribery case, for example, only T and C have direct knowledge of their transaction, and neither party have an interest in providing this information. In contrast, in the extortionary form of corruption, the same two actors know about the corrupt transaction *but* C also has an interest in law enforcement and providing information to principal P.³²

Two final forms of corruption, or practices commonly referred to as corruption, require consideration: embezzlement and patronage. The definition of embezzlement does not usually involve a third party C. It is also not a market exchange because it only invokes P and T. That is, P entrusts a resource to T, the use of which is governed by rules α_T . However, rather than comply with these rules, T simply uses the resource for personal gain. This is usually referred to as theft or fraud. This thesis will generally refer to embezzlement—when involving public officials—as a form of corruption. This is because in complex bureaucracies embezzlement usually involves a third party accomplice, and is therefore more akin to the standard form of corruption. For example, if a politician and a bureaucrat from the finance office cooperate to embezzle local government funds, there are three agents at play; however, it is difficult to distinguish between T and C. This form of corruption generates law enforcement challenges similar to the standard form. Both C and T clearly benefit from the transaction and therefore detection is more difficult as neither have an incentive to report the other.

The status of patronage hinges on the rules governing the relationship between P and T. If the rules authorise T to distribute a resource P entrusts to T as she sees fit, then patronage does not qualify as corruption. For example, “constituency funds” often provide politicians with complete discretion to allocate these funds as they see fit.³³ However, if T behaves *as if* she were a patron when she is in fact bound to P’s rules, and if she violates these rules in the distribution of the

³¹ The information asymmetry also highlights the difficulties of using local newspaper to analyse corruption. It is simply not possible to assess all reported accusations of corruption for their compliance with the definition elaborated above.

³² Kingston develops a formal model that captures the possibility for cooperation between P and C, see: Christopher Kingston, “Parochial Corruption” (2007) 63(1) *Journal of Economic Behavior & Organization* 73 .

³³ For a general discussion, see: Albert van Zyl, *What is Wrong with the Constituency Development Funds?* (Budget Brief, 10, International Budget Partnership 2010) .

resource, then patronage does qualify as corruption.³⁴ Thus, similar to the standard bribery form of corruption, it is unlikely for P and C to join forces to enforce the rules governing the relationship between P and T. P, however, has a clear interest in law enforcement as the violation of the rules, by definition, violates P's interests.³⁵

In summary, it is worth reiterating the general implications of corruption for law enforcement. The definition of corruption adopted in this thesis and the analysis above highlights three critical components: rules, the impacts of corruption, and information. The general definition of corruption relies on legal and social norms to identify specific instances of corruption. This definition allows for the same action to be considered corruption in one place and at one point of time, and be considered legitimate behaviour in another. The analysis also highlights how different forms of corruption structure the impacts of corruption differently. Finally, it also highlights how information asymmetries might impede corruption law enforcement. The next section turns to theories of law enforcement, and how these theories might account for when corruption laws are enforced.

STANDARD EXPLANATIONS OF LAW ENFORCEMENT

The section above highlighted some key implications of corruption for law enforcement. This section now turns to theories of law enforcement. It reviews three standard explanations: law-centred, culture-centred, and institution-centred explanations. I examine the logic of these explanations by asking how they might account for divergent trajectories, outcomes, and patterns of subnational law enforcement—the key empirical puzzles that motivate the thesis. The review concludes that each explanation provides important insights but that none provide an entirely satisfactory explanation. This suggests the need for a theoretical perspective that goes beyond law, culture, and institutions.

³⁴ Gambetta, "Corruption: An Analytical Map" (see n. 8) 49.

³⁵ The possibility exists that P is better off when T violates the rules because P's economic interests and ideological preferences diverge. Gambetta highlights the example of the distribution system in the USSR, the violation of which ensured better resource allocation and incentives but violated ideological principals. Similarly, in developing country contexts such as the Solomon Islands, the public B may pay lip service to international governance standards in order to receive aid, but may lack the capacity to comply with these rules without creating significant overheads such that P lacks incentive to enforce these rules. See: *ibid.*, 53.

Law-centred Explanations

The law-centred explanation holds that the law itself is the main determinant of law enforcement outcomes and therefore patterns of law enforcement. The implication of this account is that one need only, or largely, consider the law in order to understand and account for case trajectories, outcomes, and therefore patterns of law enforcement.³⁶ In addition to individual case outcomes, the law is thought to have profound effects on society in the *longue dure'e*; it is generally believed that laws provide the norms and opportunities to which leaders, organisations, and society will naturally respond and ultimately realise. The theoretical perspective justifies both a policy and intellectual focus on getting the laws right.

This theoretical approach underlies a significant amount of literature on corruption law enforcement and underlies international efforts to standardise domestic corruption laws. The general argument is that the legal definition of corruption determines the extent to which corruption laws are enforced. For example, in his review of corruption legislation in the United States, Stern argues that the legal distinction between bribery and extortion has precluded conviction of local corruption under the Hobbs Act.³⁷ Greene, in the case of Canada, argues that the lack of “conflict of interest” prosecutions, a euphemism for corruption, can be explained by the absence of a clear doctrinal link between the substance of the rules and the basic principles of the Canadian constitution.³⁸ It is also often argued that laws that incorporate asymmetric penalties—for example, leniency for the bribee but not the trustee—facilitate corruption law enforcement.³⁹ Methodologically, these theories justify a narrow focus on corruption

36 David Dixon, *Law in Policing: Legal Regulation and Police Practices* (Clarendon Press 1997) 1.

37 Herbert J Stern, “Prosecutions of Local Political Corruption under the Hobbs Act: The Unnecessary Distinction between Bribery and Extortion” (1971) 3 *Seton Hall Law Review* 1 ; on the UK Bribery Act of 2010, see Bruce W Bean and EmmaH MacGuidwin, “Expansive Reach – Useless Guidance: An Introduction to the U.K. Bribery Act 2010” [2012] SSRN eLibrary .

38 Ian Greene, “Conflict of Interest and the Canadian Constitution: An Analysis of Conflict of Interest Rules for Canadian Cabinet Ministers” (1990) 23(2) *Canadian Journal of Political Science / Revue canadienne de science politique* 233 .

39 Prior to 2005, the Turkish criminal code did not criminalise bribe-giving if bribees inform enforcement authorities. In contrast, the Codigal Penal Code in Chile in the 1990s criminalised bribe-giving (C) but not bribe-receiving (T). Such asymmetric penalties are thought to facilitate enforcement, but Lambsdorff and Nell also argue that this undermines the reciprocity that underpins corrupt transactions and therefore deters corruption. See: Johann Graf Lambsdorff and Mathias Nell, *Fighting Corruption with Asymmetric Penalties and Leniency* (CEGE Discussion Paper, 59, University of Goettingen 2007) .

legislation and legal doctrine.⁴⁰ This approach has spawned an international corruption law treaty and a global effort to standardise corruption laws in domestic criminal codes.⁴¹

The law-centred explanation and its methodologies are analytically powerful if one can assume the rule of law, a capable and resourced bureaucracy, and rule-conforming enforcement agents. These assumptions are difficult to maintain in many contexts in new democracies and developing countries where the rule of law is often weak, state resources are scarce, and “second order corruption” within law enforcement agencies is rampant. In some contexts—e.g., developed countries—these assumptions may be appropriate; that legal rules and principles play a fundamental role in determining the behaviour of those responsible for its enforcement and those subject to its jurisdiction. But, even in these contexts, socio-legal scholars, criminologists, regulatory specialists, and political scientists have challenged these assumptions.⁴² In the United States, the broad discretion afforded to prosecutors has led some close observers to conclude that “federal criminal law [is] less like a compendium of prohibitions than a series of broad criminal jurisdictional grants to agencies”.⁴³ As such, an analytical approach that relies on such fundamental assumptions does not provide a solid theoretical foundation for subnational law enforcement in new or post-authoritarian democracies and suggests a need to consider factors that influence those responsible for the enforcement of laws.

Culture-centred Explanations

The culture-centred approach is broadly focused on how cultural norms and popular opinion influence law enforcement. It stems from the insight that similar institutions function differently in different social contexts and that, as discussed above, the interpretation and application of laws evolve over time. Three main mechanisms are emphasised: that the attitudes of enforcement officials reflect those of

⁴⁰ For example, Coldham reviews corruption legislation in Africa, although ultimately concludes that “toughening” criminal law is not a quick-fix solution to overcoming corruption. Simon Coldham, “Legal Responses to State Corruption in Commonwealth Africa” (1995) 39(2) *Journal of African Law* 115 .

⁴¹ United Nations Convention against Corruption .

⁴² See, for example: Dixon, *Law in Policing* (see n. 36); Doreen J McBarnet, *Conviction: Law, the State and the Construction of Justice* (Macmillan 1983); Jerome H Skolnick, *Justice without Trial: Law Enforcement in Democratic Society* (John Wiley 1975).

⁴³ Daniel Richman, “Political Control of Federal Prosecutions: Looking Back And Looking Forward” (2009) 58 *Duke Law Journal* 2087 – 2090.

society; that law enforcement officials adapt their enforcement strategies to local cultural values and norms; and that cultural norms influence how the public identifies and therefore reports crime.

Various studies have used a culture-centred approach to look at corruption and other economic crimes. Solomon, for example, emphasises public attitudes as a key reason why laws relating to economic crimes, including corruption, are rarely enforced. He notes that “Crimes against property, or more generally economic crimes [...] are of much lower public priority, and indeed are often greeted with public indifference. This unresponsive attitude has been especially pronounced with respect to those activities referred to as ‘white collar crimes,’ e.g., embezzlement, fraud, and securities theft.”⁴⁴ In the 1930s, for example, the Great Depression resulted in changes in public attitudes towards business, which were thought to explain an increase in enforcement of economic crimes against corporations.⁴⁵ Similarly, Lynch and Ray suggest that shifts in public opinion in response to the Watergate scandal were largely responsible for the prioritisation of white-collar crime in the mid-1970s.⁴⁶ In Italy, Alberti argued that changes in public perception and opinion of corruption triggered massive investigations in the early 1990s.⁴⁷ Along these lines, the concept of legal culture and a specific “Asian legal culture” has been used to explain law reform and law enforcement in Asia generally.⁴⁸ In this way, changes to cultural norms or public opinion are thought to explain periods when corruption laws are rarely enforced as well as periods when corruption laws receive attention.

The explanations that emphasise cultural norms and public opinion can be useful, but they offer an incomplete picture for at least two reasons. First, this explanation overlooks the material constraints on reporting corruption and ensuring cases are enforced. The culture-centred explanation implicitly assumes the existence of a well resourced and honest public enforcement regime; that members of society need only report cases to law enforcement authorities for enforcement to follow. It also relies on the existence of accountability

44 Henry Solomon, “The Economist’s Perspective of Economic Crime” (1976) 14 *American Criminal Law Review* 641 , 642.

45 Edwin H Sutherland, *White Collar Crime* (Yale University Press 1949) 27.

46 Richard P Lynch and Frank A Ray, “The National District Attorneys Association Economic Crime Project: A National Experience in Prosecution Confederation” (1976) 14 *American Criminal Law Review* 781 , 782.

47 Adriana Alberti, “Political Corruption and the Role of Public Prosecutors in Italy” (1995) 24(4) *Crime, Law and Social Change* 273 .

48 See generally Timothy Lindsey, “History Always Repeats? Corruption, Culture and ‘Asian Values’” in Timothy Lindsey and Howard Dick (eds.), *Corruption in Asia: Re-thinking the Governance Paradigm* (Federation Press 2002).

institutions to generate incentives for leaders and officials to learn of, and respond to, cultural norms and public opinion. Second, it is unclear how culture-centred explanations might account for rapid shifts in individual case trajectories. The literature on public opinion and corruption often references key events or scandals that lead to a dramatic shift in public attitudes.⁴⁹ It seems this mechanism could lead to a general shift in attitudes towards corruption and therefore account for a temporal change in enforcement patterns. However, it seems less plausible that this mechanism could apply to individual cases as it would require rapid shifts in public opinion on a case-by-case basis. These two weaknesses suggest that cultural norms cannot alone account for societal demand.

The culture-centred explanation offers a useful corrective to the law-centred explanation. However, like the law-centred explanation, it relies on strong assumptions about the identification and aggregation of cultural norms. This suggests a need to consider the institutions responsible for law enforcement, and the mechanisms at their disposal for learning about culture norms as well as the incentives to take them into consideration.

Institution-centred Explanations

The third explanatory approach focuses on the institutions that are involved in law enforcement. The underlying logic is that law enforcement institutions and organisations account for outcomes and patterns of law enforcement. There is enormous variety of institutional and organisational theories that have been applied to law enforcement generally and to the criminal justice system specifically.⁵⁰ Some accounts adopt a rational choice approach to institutions and emphasise rules and incentives, whereas others adopt a normative approach to institutions and emphasise organisational values and norms.

There is an enormous institutional and organisational literature that ranges from studies that focus on macro-level factors such as constitutional arrangements to micro-level factors such as criminal pro-

⁴⁹ See, for example: Stephen J Choi, Adam C Pritchard, and Anat Carmy Wiechman, "Scandal Enforcement at the SEC: Salience and the Arc of the Option Backdating Investigations" [2011] SSRN eLibrary ; Graeme C Moodie, "On Political Scandals and Corruption" in Arnold J Heidenheimer, Michael Johnston, and Victor Levine (eds.), *Political Corruption: A Handbook* (Transaction Books 1989); Lawrence W Sherman, "The Mobilization of Scandal" in Arnold J Heidenheimer, Michael Johnston, and Victor Levine (eds.), *Political Corruption: A Handbook* (Transaction Books 1989).

⁵⁰ Robert Baldwin, Martin Cave, and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press 1999) 53.

cedures and local social relations. Some of the variants that are more relevant to corruption law enforcement include those that emphasise the role of criminal procedure,⁵¹ the independence of the criminal justice system from political institutions,⁵² the institutional mechanisms for selecting agency leadership,⁵³ institutional mechanisms for overcoming principal-agent problems,⁵⁴ external accountability mechanisms,⁵⁵ as well as organisational culture,⁵⁶ and local “courtroom communities”.⁵⁷

- 51 Wagner and Jacobs argue that without “an infrastructure of procedural provisions supporting law enforcement’s case-making activities, the many new corruption crimes added to the statute books in developing countries may well remain mere window-dressing.” Benjamin B Wagner and Leslie Gielow Jacobs, “Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations” (2008) 30 *University of Pennsylvania Journal of International Law* 183–186.
- 52 Anne van Aaken, Lars P Feld, and Stefan Voigt, “Do Independent Prosecutors Deter Political Corruption? An Empirical Evaluation across Seventy-eight Countries” (2010) 12(1) *American Law and Economics Review* 204–220; Alberti (see n. 47); Grant Poulton, “Independence in Investigation and Prevention: The Role of the New South Wales Government’s Independent Commission against Corruption” in Cyrille Fijnaut and LW Huberts (eds.), *Corruption, Integrity, and Law Enforcement* (Kluwer Law International 2002); Carlo Rossetti, “The Prosecution of Political Corruption: France, Italy and the USA—A Comparative View” (2000) 13(2) *Innovation: The European Journal of Social Science Research* 169–180.
- 53 Timothy Besley and Stephen Coate, “Elected versus Appointed Regulators: Theory and Evidence” (2003) 1(5) *Journal of the European Economic Association* 1000–1010; William J Boyes and John M McDowell, “The Selection of Public Utility Commissioners: A Re-examination of the Importance of Institutional Setting” (1989) 61(1) *Public Choice* 1–15; Sanford C Gordon, “Assessing Partisan Bias in Federal Public Corruption Prosecutions” (2009) 103(04) *American Political Science Review* 534–548; Kenneth J Meier and Thomas M Holbrook, ““I Seen My Opportunities and I Took ‘Em:” Political Corruption in the American States” (1992) 54(1) *The Journal of Politics* 135–150; Walter J Primeaux and Patrick C Mann, “Regulator Selection Methods and Electricity Prices” (1986) 62(1) *Land Economics* 1–10; Richman, “Political Control of Federal Prosecutions: Looking Back And Looking Forward” (see n. 43); Kenneth W Shotts and Alan E Wiseman, “The Politics of Investigations and Regulatory Enforcement by Independent Agents and Cabinet Appointees” (2010) 72(01) *The Journal of Politics* 209–220.
- 54 Sanford C Gordon and Gregory A Huber, “Citizen Oversight and the Electoral Incentives of Criminal Prosecutors” (2002) 46(2) *American Journal of Political Science* 334–350; Gordon (see n. 53); Arnold Heidenheimer, “Problems of Comparing American Political Corruption” in Arnold J Heidenheimer, Michael Johnston, and Victor Levine (eds.), *Political Corruption: A Handbook* (Transaction Books 1989); Meier and Holbrook (see n. 53); Daniel Richman, “Prosecutors and Their Agents, Agents and Their Prosecutors” (2003) 103(4) *Columbia Law Review* 749–780.
- 55 Ronald F Wright and Marc L Miller, “Worldwide Accountability Deficit for Prosecutors, The” (2010) 67 *Washington and Lee Law Review* 1587–1600.
- 56 Janet B Chan, *Changing Police Culture: Policing in a Multicultural Society* (Cambridge University Press 1997); David Dixon, *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press 1999); Jacqueline Hodgson, “The Police, the Prosecutor and the Juge D’Instruction” (2001) 41(2) *British Journal of Criminology* 342–350; Robert A Kagan, “Regulatory Enforcement” in David H Rosenbloom and Richard D Schwartz (eds.), *Handbook of Regulation and Administrative Law* (Marcel Dekker Inc February 1994).
- 57 Michael W Carey, Larry R Ellis, and Joseph F Savage, “Federal Prosecution of State and Local Public Officials: The Obstacles to Punishing Breaches of the Public Trust

An appreciation of the institutional arrangements is critical to understanding subnational law enforcement. Indeed, as will be further analysed in the next Chapter, how private and public models of law enforcement acquire information, fund enforcement costs, and structure accountability influences which cases are reported, investigated, and prosecuted. However, institutional analysis can only assist in the understanding of broad patterns of law enforcement activity. For example, the political independence thesis—that is, the theory that the relationship between the criminal justice system and political institutions is critical to corruption law enforcement—can tell us that corruption prosecutions are more likely when the criminal justice system is independent but it cannot predict specific case outcomes. This suggests that an appreciation of institutional incentives and organisational arrangements is critical but that a comprehensive account requires consideration of what society demands of these institutions and organisations.

In sum, accounts of enforcement usually attribute enforcement patterns and, by implication, outcomes, to one or more of the following factors: legal rules and procedures, political and organisational leadership, organisations, and culture. These explanations are all found in the literature on corruption law enforcement generally and these perspectives have also been applied to Indonesia. Although insightful, these theoretical accounts provide an unsatisfactory explanation for subnational law enforcement and individual case trajectories and outcomes. There is a need for a theoretical approach that goes beyond law, leaders, organisations, and cultures.

CONCLUSION

This chapter has clarified the thesis's conceptualisation of corruption and law enforcement. I advocate for understanding corruption as a transaction involving three agents: a principal, a trustee, and a corruptor. This conceptualisation draws attention to the importance of the legal and social norms that underlie the relationship between princi-

and a Proposal for Reform, Part One" (1991) 94 West Virginia Law Review 301 ; James Eisenstein, Roy B Flemming, and PeterF Nardulli, *The Contours of Justice: Communities and their Courts* (University Press of America May 1999); James Eisenstein and Herbert Jacob, *Felony Justice: An Organizational Analysis of Criminal Courts* (Little, Brown 1977); Roy B Flemming, PeterF Nardulli, and James Eisenstein, *The Craft of Justice: Politics and Work in Criminal Court Communities* (University of Pennsylvania Press 1993); Jeffery T Ulmer and JohnH Kramer, "Court Communities Under Sentencing Guidelines: Dilemmas of Formal Rationality and Sentencing Disparity" (1996) 34(3) Criminology 383 .

pals and trustees, as well as how corrupt transaction distribute the costs and benefits of corruption. It also highlights the challenges of information asymmetries for law enforcement. These characteristics generate complex collective action problems and provide the rationale for the use of public law enforcement regimes to control corruption.

As I will elaborate in the following chapter, understanding how individuals and groups are affected by corruption—or, as it turns out, how they are *not* affected by corruption—is necessary to understand both the model of law enforcement that a society adopts for a particular behaviour as well as the patterns of law enforcement that these models generate. Specifically, public law enforcement regimes seek to socialise the costs of enforcement and to ensure that public interest drives decision-making within enforcement authorities. However, in many developing countries, public law enforcement regimes are best understood as privatised public regimes. In these contexts the second order collective action problem inherent to enforcement remains at best partially resolved.

PRIVATIZED PUBLIC LAW ENFORCEMENT: A HYBRID MODEL

One of the most important strategies that large and complex societies have devised in order to overcome—or at least attempt to overcome—collective action problems is the establishment of a legal system.¹ The legal system usually involves some kind of law-making institution, such as a national parliament, and some kind of law enforcement institution, such as courts, police, and regulatory agencies. These two institutions allow for society to make agreements—such as laws criminalising corruption—and ensure they are enforced. In this way, the presence of a legal system helps obviate the need for firms and citizens to coordinate. Instead the ability to report bribery and extortion, and the threat of punishment, can reduce the incentives to engage in corruption. Legal institutions are therefore central to most anti-corruption reforms, although they are not the only way to reduce corruption.²

These legal and political institutions facilitate the resolution of collective action problems; but they do not completely obviate the need for collective action. For example, the enactment of anti-corruption laws requires resolution of a collective action problem; in most jurisdictions it requires that a majority of politicians vote for the legislation in parliament. Various political and social actors and institutions are often involved in the resolution of this problem, including political parties, civil society organisations, the media, and also international organisations and donors.³ Furthermore, once enacted,

¹ Robert H Bates, “Contra Contractarianism: Some Reflections on the New Institutionalism” (1988) 16(2-3) *Politics & Society* 387–391-2.

² World Bank, *Helping Countries Combat Corruption* (Washington, D.C, 1997) 43-4.

³ Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge University Press 1999) 198-212.

legislation generally requires a suitable enforcement regime. In the case of corruption, most countries rely on the criminal justice system, particular the police and public prosecutors, but also specialised anti-corruption agencies. The game theoretic literature on collective action and political economy provides a framework for understanding the underlying logic of these enforcement institutions and their contribution to the resolution of collective action problems.⁴

This chapter shifts the focus from the principal-agent model of corruption to models of law enforcement. The first section elaborates on a simple model of enforcement that provides the analytical underpinnings for understanding law enforcement. The second section then distinguishes between private and public models of law enforcement, and suggests that two factors distinguish these models: the sources of control and financing. Building on this discussion, I argue in the third section that in many developing countries ostensibly public law enforcement regimes are best understood as informally *privatised* public law enforcement regimes. The section also summarises the implications of this model of corruption law enforcement. A technical chapter appendix uses game theoretic methods to elaborate on the incentives a privatised public law enforcement regime generates for corruption law enforcement. These three sections and the technical appendix provide the conceptual and analytical orientation for analysing law enforcement.

A SIMPLE MODEL OF ENFORCEMENT

To illustrate the importance of second order collective action problems to corruption law enforcement, consider the following example. Figure 5 presents a sequential enforcement game in extended form.⁵ As discussed in the previous section, corruption involves three players: a trustee, T, who is entrusted with a good; a principal, P, who has entrusted the good to T; and a third-party, C, who wishes to obtain the good entrusted to T. From the top of the tree, C moves first and must choose whether to pay a bribe to obtain the desired good. I assume that the bribe is less than the value of the good and that the good has little value for T other than what she can obtain from C. If C decides to bribe, T moves next and decides whether to accept or reject the bribe. If T accepts, P then moves and must choose whether to re-

⁴ William D Ferguson, *Collective Action and Exchange: A Game-Theoretic Approach to Contemporary Political Economy* (Stanford University Press 2013).

⁵ The basic logic follows Ferguson's example of a reporting game *ibid.* 47-8.

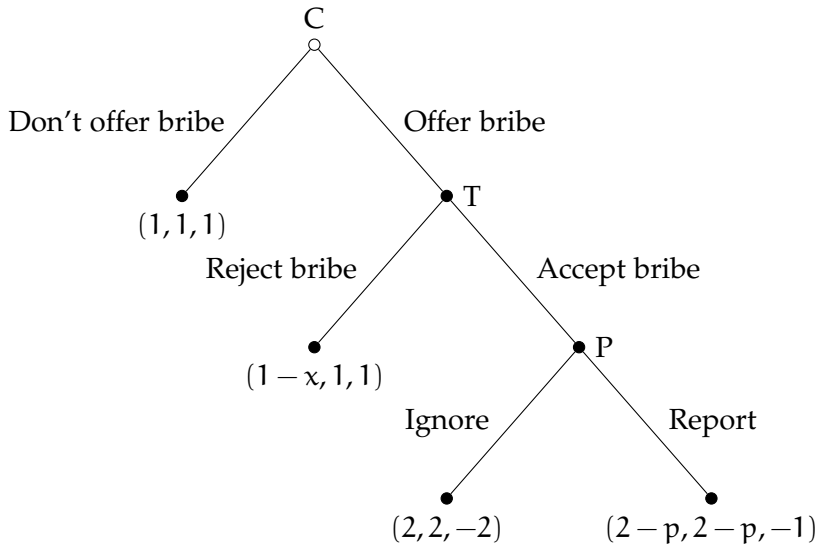


Figure 5: Simple Enforcement Game

port the bribe to law enforcement officials or not. There are therefore four possible outcomes: C does not offer to bribe and therefore both T and P are not required to make decisions about whether accept the bribe and report respectively; C offers to bribe but T rejects; C offers to bribe, T accepts, and P decides to report; and C offers to bribe, T accepts, but P decides not to report.

The payoffs for the four possible outcomes are shown in parentheses at the end of the four branches.⁶ I have given the payoffs real numbers to simplify and better illustrate the implications of the game. If C does offer to bribe, all three players receive 1 unit of utility. If C offers to bribe but T rejects then each player also receives 1 unit of utility, with the exception of C who incurs costs, x , involved in making an offer to bribe. If T accepts the bribe and P reports, C and T receive $2 - p$ units of utility where p is a punishment, and P receives -1 . And if T accepts the bribe but P does not report, C and T receive 2 and P receives -2 . By backward induction we conclude that if T accepts the bribe, P will always report because the payoff -1 is better than -2 . Moving backwards in the tree logic, T, observing P's payoffs, will choose not to accept a bribe as long as $p > 1$. And given $x > 0$, C will choose not to offer a bribe to T. In this situation, the threat of punishment successfully deters corruption.

It is important to note the assumptions that underlie the outcome in this simple illustration. First, the model assumes that P can observe

⁶ For each outcome in this model, the payoff for C is listed first, then the payoff for T, and the payoff for P is listed third.

the bribe, should it occur, at no additional cost. Second, it assumes that reporting the bribe to the law enforcement authorities does not incur costs for P. Third, it assumes that the law enforcement official always punishes C and T if P reports. Fourth, it assumes that the punishment is relatively high, i.e. in this example $p > 1$. And finally, it also assumes that P does not report C and T, perhaps for malicious reasons, when a bribe is *not* paid. Each of these assumptions could easily be violated with important implications for the conditions under which an enforcement regime overcomes the second order collective action problem. Three of these assumptions are particularly relevant to this study: those relating to information about the bribe, those relating to the costs of law enforcement, and those relating to the potential for “second order corruption”, i.e. the payment of bribes to law enforcement authorities. The chapter appendix considers each of these assumptions in detail and considers their implications for law enforcement.

The assumption that P can observe the bribe and that it can be observed without cost has important implications. Information costs associated with monitoring are similar to enforcement costs, except they must be borne even if C decides not to engage in corruption. These costs could involve monitoring, but if P were to report the bribe it could involve retaliation from C (and T). Again, as long as these costs are sufficiently low, P will cover them in order to ensure that the game ends with the outcome (1, 1). In the game above, if information costs $i > 3$ then P is indifferent to monitoring and reporting bribes and simply ignores the potential for bribes. Furthermore, a free-rider or coordination problem entails if P is a group of individuals (N) that must agree to contribute to cover these costs. There also exists the possibility that the information technology does not allow P to observe C with total accuracy. This introduces probabilities (see Model I in the chapter appendix). If the probability of observing the bribery is low, C may decide to risk the bribe.

The assumption that there are no costs to law enforcement is particularly important. To appreciate this, consider the payoffs when P must bear the costs of law enforcement (Model II in the appendix provides more detail). The example above assumed that P did not have to contribute to meting out punishment (p) if he reported the bribe. We could, however, incorporate a cost (c) that P must contribute if he reports the bribe. In this situation, P would still report the bribe as long as $c < 1$ and therefore C would still choose not to bribe. How-

ever if, for example, $c = 2$, then P would be better off ignoring the bribe, because $-1 - 2 < -2$. Knowing this, C would therefore choose to bribe and we end up at the socially inferior outcome where the aggregate payoffs are 0 instead of 2. The presence of law enforcement costs are even more problematic when P is not a single individual but a large group of N individuals who must each agree to contribute a portion of c to ensure law enforcement. This introduces a free-rider problem; each individual P within the group has an interest in law enforcement because preventing corruption makes them better off, but they would rather someone else contribute c to enforcement.⁷

A fundamental assumption of the simple enforcement game is that the law enforcement authority is honest and automatically punishes C . The centrality of this assumption is well recognised in rational choice models of law enforcement, which assume that law enforcement agents are social welfare-maximising and only care about the overall social impacts of crime.⁸ It would be possible, for example, to extend the game and provide an opportunity for C to bribe the law enforcement authority if P reported the initial bribe (Model III in the chapter appendix extends the model in this way). Recall in the game presented above: C receives 1 unit of utility if she does not bribe, and 2 units if she bribes and P does not report. It is not difficult to imagine that C could agree to spilt the 1 unit gain she obtains from getting away with bribery, such that she ends up with $1 \frac{1}{2}$ units and the law enforcement authority receives $\frac{1}{2}$ unit of utility. In the extreme, models that incorporate payments between the suspect and the law enforcement agent predict that the law is *never* enforced.⁹ This is because of the assumption that law enforcement agents receive no benefit from enforcing the law; and hence law enforcement agents *always* prefer a bribe to enforcing the law. It can also lead to framing and extortion; that is, the law enforcement agent could pay P to report C to ensure that the law enforcement authorities can extract a bribe.¹⁰

These examples suggest that the extent to which legal institutions overcome the second order collective action problem involved in tackling corruption requires consideration of how law enforcement institutions influence these core assumptions relating to the costs of

⁷ This free-rider problem is considered in more detail in Chapter 4.

⁸ Becker and Stigler acknowledge the importance of this assumption, see: Gary S Becker and George J Stigler, "Law Enforcement, Malfeasance, and Compensation of Enforcers" (1974) 3(1) *The Journal of Legal Studies* 1, 13-6.

⁹ Abhinav Muthoo, *Bargaining Theory with Applications* (Cambridge University Press August 1999) 109-10.

¹⁰ A Mitchell Polinsky and Steven Shavell, "Corruption and Optimal Law Enforcement" (2001) 81(1) *Journal of Public Economics* 1.

law enforcement, information costs, and “second-order corruption”. The next two sections turn to how private and public models of law enforcement modify these variables to achieve different enforcement outcomes.

PRIVATE AND PUBLIC MODELS OF LAW ENFORCEMENT

This thesis adopts an analytical conceptualisation that distinguishes between public and private models of law enforcement. In the spirit of novelist L. P. Hartley’s proverbial observation “*the past is a foreign country: they do things differently there*”, this section will draw on historical literature concerning these two models.¹¹ The aim is to remind the reader that contemporary institutions in modern, developed societies have historical antecedents and are not how they have always been. Historical debates about the effectiveness of these two models also highlight their implications for law enforcement.

The public model of law enforcement involves the use of government agents to detect, investigate, and sanction violators of legal rules. This includes auditors, tax collectors, police, prosecutors, inspectors, and many other agencies and positions. The public model dominates the enforcement of criminal law in the modern world.¹² It is, however, a relatively recent phenomenon and some countries still allow for private prosecution.¹³ Public enforcement of criminal law was first introduced in Europe in the seventeenth and eighteenth centuries.¹⁴ The United States was also an early adopter of public prosecutions under the influence of the Dutch and French colonies, although private individuals often augmented the resources of public prosecutors.¹⁵ Surprisingly, one of the last countries to adopt public prosecution of criminal law was England. Although numerous reformers from the late eighteenth century onwards—including Jeremy Bentham—attempted to introduce public police and prosecutors, their models were repeatedly rejected.¹⁶ The public law enforcement model

¹¹ L P Hartley, *The Go-Between* (NYRB Classics 1953) 1.

¹² Yue Ma, “Exploring the Origins of Public Prosecution” (2008) 18(2) *International Criminal Justice Review* 190 .

¹³ The United Kingdom, for example, retains the right of private prosecution: *Prosecution of Offences Act (UK) 1985*, 6(1).

¹⁴ Ma (see n. 12) 197.

¹⁵ Robert M Ireland, “Privately Funded Prosecution of Crime in the Nineteenth-Century United States” (1995) 39(1) *The American Journal of Legal History* 43 .

¹⁶ Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750 - Volume 3: Cross-Currants in the Movement for the Reform of the Police* (Stevens and Sons Limited 1956) 258-9.

was first introduced to enforce criminal law but it is now used to regulate a broad range of activities. Many countries, for example, use the public model to enforce environment law, consumer protection law, financial and securities law, civil rights law, and trade practices and antitrust laws.

The private model of law enforcement, on the other hand, involves the use of private individuals or groups to detect, investigate, and sanction violators of legal rules. There is a long history of private enforcement of criminal law.¹⁷ For centuries crime was a private affair and the victim of a crime was responsible for bringing an accusation before court. Even as late as the nineteenth century, police were not public servants but professionals for hire; for example, Radzinowicz, in his multi-volume history of criminal law in England, noted that a police officer who

was paid extra for performing such simple routine functions as serving a warrant or attending the court, naturally also expected a reward for any special duty he might undertake, or for any manifestation of extraordinary zeal ... [and that] well into the middle of the nineteenth century, he was much more a member of a liberal profession, whose fortune and standing in life depended on the goodwill of his private clients.¹⁸

To this day, many countries outsource certain aspects of criminal law enforcement including contracting criminal prosecution to private attorneys,¹⁹ and some have advocated for a greater role for private enforcement of criminal law and public law more generally.²⁰ The private model continues to dominate many areas of law, including contract law, tort law, property law, family law, labour law, and corporate law.

One way to distinguish between public and private law enforcement is to compare the models along two dimensions: *control* and *financing*. The control dimension refers to the individual or entity that

¹⁷ David D Friedman, "Making Sense of English Law Enforcement in the Eighteenth Century" (1995) 2 University of Chicago Law School Roundtable 475 .

¹⁸ Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750 - Volume 2: The Clash between Private Initiative and Public Interest in the Enforcement of the Law* (Stevens and Sons Limited 1956) 247, 255.

¹⁹ Roger A Fairfax, "Delegation of the Criminal Prosecution Function to Private Actors" (2009) 43 U.C. Davis Law Review 411 , 416.

²⁰ Jonathan R Hay and Andrei Shleifer, "Private Enforcement of Public Laws: A Theory of Legal Reform" (1998) 88(2) The American Economic Review 398 ; Barry Boyer and Errol Meidinger, "Privatizing Regulatory Enforcement: A Preliminary Assessment of Citizen Suits under Federal Environmental Laws" (1985) 34 Buffalo Law Review 833 ; Becker and Stigler (see n. 8).

has control over key law enforcement procedures, including detection as well as prosecutorial discretion. For example, as noted above, in the private model individual victims control the decision to report and pursue the perpetrator in court or to cut their losses and move on. The private system maximises the liberty and autonomy of the individual or organisation, and enlists the self-interest of the victim in the pursuit of justice. In contrast, in the public model, public servants or agencies monitor for violations and determine whether to pursue a crime or violation in court or not.

The financing dimension refers to how law enforcement is funded. This is intuitive. The private model, as the term suggests, relies on private actors to fund their law enforcement efforts. As difficult as it is to imagine, this approach was also applied to criminal law enforcement. For example, in nineteenth-century England, if a victim of crime wanted a police officer to apprehend and prosecute the perpetrator in court, he was expected to pay the expenses.²¹ This arrangement clearly prevails in many areas of private and civil law.²² For example, in the areas of contract, torts, and property law, the state confines its role to the provision of courts and leaves the litigation costs for plaintiffs and defendants to burden. From as early as the sixteenth century, although prosecution was private, the government sought to provide individuals with assistance in the preparation of their case through the establishment of public constables and justices of the peace.²³ Contemporaneously, many governments provided public financing for “public interest litigation” in an ostensibly private system of law enforcement; a practice widely thought to have led to contemporary rights revolutions in many countries.²⁴ Along similar lines, legal aid programs play an important role in the enforcement of family law, economic, social, and cultural rights.²⁵ Figure 6 illustrates these two dimensions and incorporates some of the examples mentioned above.

There are both ideological and instrumental arguments for the adoption of private and public models of law enforcement. The private model has historically been associated with greater liberty and avoid-

21 Friedman (see n. 17) 476.

22 Alan Paterson and Tamara Goriely, *A Reader on Resourcing Civil Justice* (Oxford University Press 1996).

23 John H Langbein, “The Origins of Public Prosecution at Common Law” (1973) 17 *American Journal of Legal History* 313 ; Ma (see n. 12) 193–96.

24 Charles R Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (University of Chicago Press 1998).

25 Francis Regan, *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press 1999).

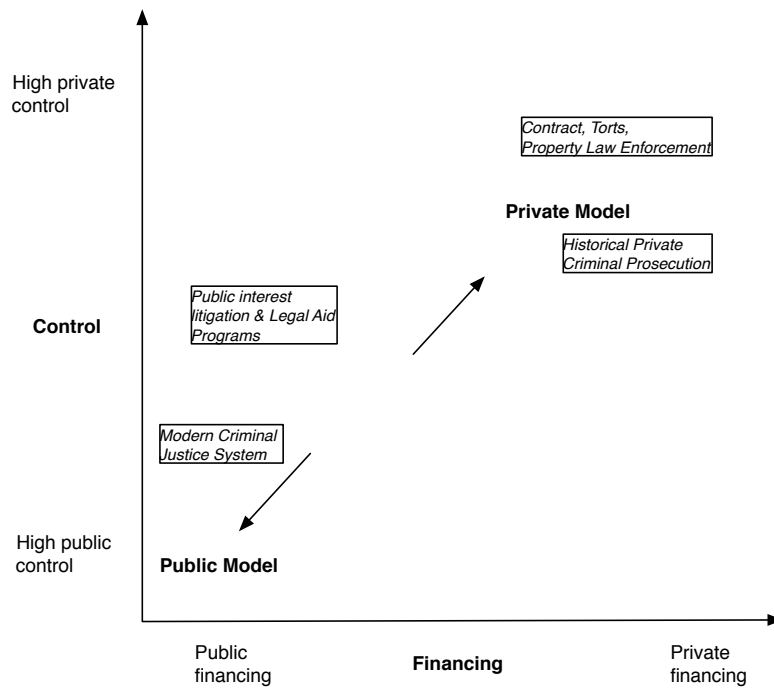


Figure 6: Constitutive Dimensions of Public and Private Law Enforcement: Examples

ance of state tyranny. For example, Radzinowicz notes that the “process of building up the [public] machinery for keeping the peace in this country [was] continually hampered by the conflict between centralisation, preached in the name of efficiency and economy, and traditional local control, defended in the name of freedom.”²⁶ More recently, privatisation of law enforcement has been proposed because of systemic corruption and politicisation of state legal systems in, for example, former communist countries.²⁷ The private model is also thought to be more efficient and facilitate access to information.²⁸ For example, the victim of a crime or tort is often best placed to provide information to the courts and therefore a private model is thought to establish a more efficient system of information provision for law enforcement.²⁹

The public model is often justified on the grounds of efficiency, equity, and externalities. Many reformers in the nineteenth century noted that the private model of criminal law enforcement was ineffi-

26 Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (see n. 18) 405.

27 Hay and Shleifer (see n. 20).

28 Becker and Stigler (see n. 8).

29 A Mitchell Polinsky and Steven Shavell, “The Theory of Public Enforcement of Law” in A Mitchell Polinsky and Steven Shavell (eds.), *Handbook of Law and Economics* (Elsevier 2007) vol. Volume 1, 406.

cient and argued that reforms were required to “relieve individuals of the annoyance, expense and responsibility for criminal prosecutions”.³⁰ The public model is thought to be superior when individuals cannot easily identify who injured them, and where the detection of violations requires investment in elaborate monitoring and information systems.³¹ The public model is also justified on equity grounds. The private model, which dominated both criminal and civil law in the nineteenth century, was widely thought to advantage the wealthy who could more easily afford the services of lawyers as well as the official and unofficial fees of law enforcement officials.³² The private model of law enforcement not only affects who pursues law enforcement but is also thought to influence the development of law and legal rights.³³

Law enforcement, and particularly criminal law enforcement, is thought to generate positive externalities in the form of deterrence of future crime.³⁴ Generally the private model will under supply law enforcement because it is unable to capture these externalities.³⁵ In contrast, the public model of crime control and criminal prosecution is oriented to the public interest and will deliver criminal prosecution even when an individual victim may not have the means to, or the interest in, pursuing the case. As this analysis suggests, the private and public models have very different implications for the collective action problem involved in the enforcement of corruption laws.

privatised PUBLIC LAW ENFORCEMENT

This section builds on the conceptual distinction between public and private law enforcement developed in the previous section. I argue that in many developing countries the criminal justice system is best understood as a *privatised* public law enforcement regime. That is, it is a hybrid model that retains elements of both the public and private models of law enforcement *in practice*. Recall that in the simple

30 Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (see n. 16) 401.

31 Polinsky and Shavell, “The Theory of Public Enforcement of Law” (see n. 29) 406.

32 Douglas Hay, “Property, Authority and the Criminal Law” in *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (Pantheon 1976).

33 Marc Galanter, “Why the “Haves” Come out Ahead: Speculations on the Limits of Legal Change” (1974) 9(1) *Law & Society Review* 95 .

34 Tyler Cowen, “Law as a Public Good: The Economics of Anarchy” (1992) 8(02) *Economics and Philosophy* 249 .

35 Mark Koyama, “Prosecution Associations in Industrial Revolution England: Private Providers of Public Goods?” (2012) 41(1) *The Journal of Legal Studies* 95 .

enforcement game above, there were three key assumptions that underpinned the ability for law enforcement institutions to resolve, or help to resolve, the second order collective action problem inherent in the use of legal institutions to control corruption. These assumptions relate to information, enforcement costs, and the possibility of “second order corruption”.

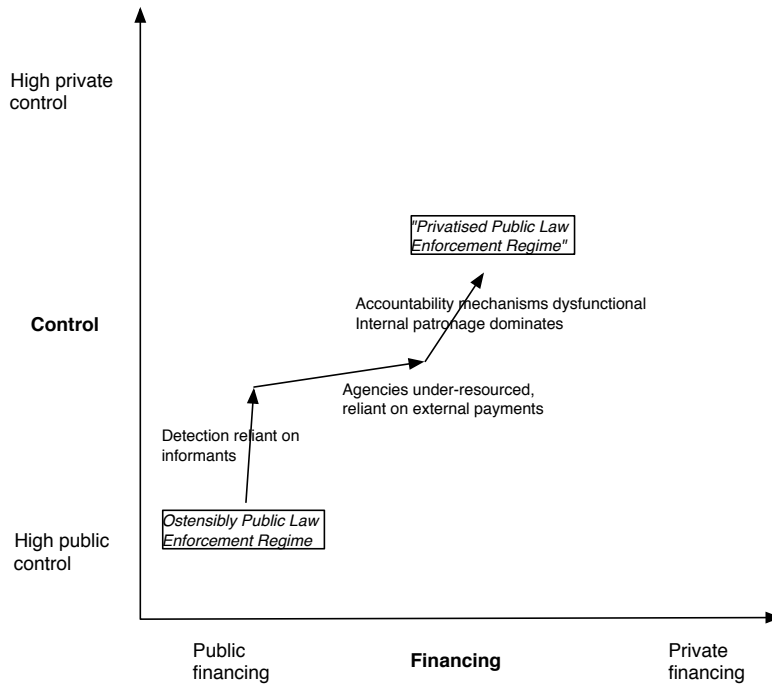


Figure 7: The Shift from Public to Private Law Enforcement: An Example

Figure 7 maps these three institutional characteristics onto the two constituent dimensions of law enforcement to illustrate how an ostensibly public law enforcement regime can function like a private regime. The lack of technological tools to detect corruption and secure evidence means that public law enforcement agents are dependent on the cooperation of private individuals or groups. This shifts *control* over detection, a critical step in corruption law enforcement given its diffuse impacts and clandestine nature, from public agencies to private actors. The systemic under-resourcing of government agencies responsible for corruption law enforcement and their staff mean that these agencies often themselves resort to corruption and extortion to augment operational resources and official salaries. The implication is that *financing* shifts from public to private hands, which has implications for who can and cannot pursue law enforcement. Finally, weak accountability arrangements shift both the control and financing dimensions further towards the private model.

Information

Detecting and securing evidence of a crime or legal violation is central to criminal law enforcement and regulation more generally. The challenge of securing information is particularly problematic for white-collar crimes such as corruption because of their secretive nature and diffuse impacts.³⁶ Silbert, for example, has argued that “successful investigation of these conspiratorial crimes, which frequently involve complex financial transactions and voluminous records, is wholly dependent on the ability to compel the production of documents and the testimony of witnesses, particularly those with inside knowledge”.³⁷ Indeed, some scholars suggest that these difficulties preclude the application of the standard punitive approach to the control of white-collar crime such as corruption.³⁸

There are two general ways to secure the information that is necessary for law enforcement: to rely on victims implicated in, or informants that are aware of, a crime, or to rely on technological tools that allow for external monitoring of violations. The informant-based approach to information collection and the consensual provision of evidence is one of the most effective ways for law enforcement agencies to acquire evidence and solve crimes.³⁹ The technology-based approach to information collection deploys technological tools and institutional mechanisms to detect and secure evidence of corruption, including undercover operations, electronic surveillance devices, financial transaction monitoring tools, information technology expertise, as well as forensic accounting capacity.⁴⁰ In contrast to the informant-based approach, these tools and mechanisms are not dependent on the incentives of informants.

36 Kip Schlegel and David Weisburd, “White-Collar Crime: The Parallax View” in Kip Schlegel and David Weisburd (eds.), *White-Collar Crime Reconsidered* (Northeastern University Press 1992) 11; Earl J Silbert, “Defense Counsel in the Grand Jury - The Answer to the White Collar Criminal’s Prayers” (1978) 15 *American Criminal Law Review* 293 .

37 Silbert (see n. 36) 293.

38 David Nelken, “White-Collar and Corporate Crime” in Mike Maguire, Rodney Morgan, and Robert Reiner (eds.), *The Oxford Handbook of Criminology* (5th ed., Oxford University Press 2012) 642-3.

39 In relation to crime generally, Rejali notes that “a large body of research has shown that unless the public specifically identifies suspects to the police, the chances that a crime will be solved falls to about 10 percent” (Darius Rejali, *Torture’s Dark Allure* (2004)). Similarly, the FBI in the United States notes “the testimony provided by government whistleblowers may be the best evidence for proving a case.” (Carleen A Botsko and Robert C Wells, “Government Whistleblowers: Crime’s Hidden Victims” (1994) 63(7) *FBI Law Enforcement Bulletin* 17 18).

40 OECD, *Corruption: A Glossary of International Standards in Criminal Law* (OECD 2008) 71.

The private model of law enforcement tends to rely on the informant-based approach to securing information required to report and proceed with law enforcement. This approach is often thought to ensure that the private model of law enforcement is more economically efficient.⁴¹ The reporting game outlined above assumed that P both observed the bribe and had an interest in reporting the bribe. It is possible, as discussed above, that P would not observe the crime and/or that even if P was aware of a possible collusion, T and C would often lack an incentive to cooperate with P. For example, threats of retaliation from T would discourage C from providing information about bribes and extortion. Indeed, there is ample evidence to suggest that firms are often uninterested in cooperation with enforcement authorities because of concerns it will jeopardise future relationships with those in control of procurement.⁴² Model I in the technical appendix incorporates information constraints into the simple enforcement model.

The public model of law enforcement, on the other hand, relies on both informant- and technology-based approaches to information. The same limitations of the informant approach apply. However, the public model often involves the use of various mechanisms to incentivise, and even compel, informants to come forward with information, including bounties, paid informants, whistle-blower protections, anonymous reporting channels, and mechanisms that allow prosecutors to exchange immunity or sentence reductions for inside information.⁴³ The success of these mechanisms, if available, depend on whether they increase an informant's payoffs to the point where they are better off providing than withholding information. Theoretically the private model of law enforcement can also rely on these mechanisms.⁴⁴ They are, however, costly. The private model would effectively require a group of P individuals to contribute to the costs of providing these incentives.

In sum, the private model of law enforcement tends not to resolve the collective action problem inherent in ensuring corruption is de-

41 Mitchell Polinsky, "Private versus Public Enforcement of Fines" (1980) 9 *The Journal of Legal Studies* 105 .

42 Tina Søreide, "Beaten by Bribery: Why Not Blow the Whistle?" (2008) 164(3) *Journal of Institutional and Theoretical Economics* 407 ; Judith A Truelson, "Blowing the Whistle on Systematic Corruption: On Maximizing Reform and Minimizing Retaliation" (1987) 2 *Corruption and Reform* 55 .

43 Paul Latimer, "Reporting Suspicions of Money Laundering and 'Whistleblowing': The Legal and Other Implications for Intermediaries and Their Advisers" (2002) 10(1) *Journal of Financial Crime* 23 , 23; Truelson (see n. 42) 607.

44 William M Landes and Richard A Posner, "The Private Enforcement of Law" (1975) 4 *Journal of Legal Studies* 1 , 2.

tected and reported. It therefore tends to protect those involved in corruption, i.e. T and C. In contrast, the public model creates incentives for the provision of information. Furthermore, the public model's allocation of public resources to the detection of corruption and acquisition of evidence independent of informants helps to overcome the collective action problem involved in groups of citizens P coordinating to fund these activities. It is worth noting that these incentives and technological tools can potentially "empower" law enforcement authorities to use the threat of legal proceedings for malicious reasons. Indeed, this is thought to be one of the main reasons why England was so late in its establishment of public prosecution services.⁴⁵ This danger highlights the importance of accountability regimes for law enforcement authorities. This is discussed below after consideration of enforcement costs and resources more generally.

Costs

There is a substantial literature on the impact of budgets on law enforcement outcomes. It has received particular attention in the criminology literature on white-collar crime, which shares many similarities to corruption in that it is secretive in nature and its impacts are often diffuse.⁴⁶ For example, a former attorney from the United States Department of Justice argued that "while most prosecutors share the public's disgust at the favoured treatment given the white-collar criminal [which he defined to include corruption], there is little they can do about it, given the woefully inadequate resources and other deficiencies built into the criminal justice system."⁴⁷ More recently, empirical evidence from the United States shows that greater prosecutor resources leads to, *ceteris paribus*, more corruption convictions.⁴⁸

The private model, as the term suggests, relies on private actors to fund their law enforcement efforts. This approach was also applied to criminal law enforcement. For example, in nineteenth-century England, if a victim of crime wanted a police officer to apprehend and

45 Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (see n. 18) 405.

46 Nelken (see n. 38) 644; Henry N Pontell, Kitty Calavita, and Robert Tillman, "Corporate Crime and Criminal Justice System Capacity: Government Response to Financial Institution Fraud" (1994) 11(3) *Justice Quarterly* 383 ; W G Carson, "White-collar Crime and the Enforcement of Factory Legislation" (1970) 10(4) *British Journal of Criminology* 383 .

47 Robert W Ogren, "The Ineffectiveness of the Criminal Sanction in Fraud and Corruption Cases: Losing the Battle against White-Collar Crime" (1972) 11 *American Criminal Law Review* 959 , 959.

48 James E Alt and David Dreyer Lassen, "Enforcement and Public Corruption: Evidence from US States" [2011] EPRU Working Paper Series .

prosecute the perpetrator in court he was expected to pay the expenses.⁴⁹ This arrangement clearly prevails in many areas of private and civil law.⁵⁰ For example, in the areas of contract, torts, and property law, the state confines its role to the provision of courts, and leaves the burden of litigation costs to the plaintiffs and defendants. There are also instances where disputants rely on private dispute resolution forums rather than state courts; and recent reforms in the UK require that litigants should cover a greater proportion of court costs through substantial increases in court fees.⁵¹

The allocation of law enforcement costs on those who report or use legal institutions has important implications for when cases are reported. Again recall the logic of the simple enforcement game above. It is assumed P was not burdened with the costs of law enforcement. However, if P must cover or contribute to these costs then P's interest in the outcome and his financial capacity become pertinent. Corruption's diffuse impacts mean that it is unlikely that any one individual would cover such costs. It is also possible that P is simply unable to carry the burden of these costs, even if failing to do so results in significant negative effects. These inequalities can result in the provision of public subsidies for private law enforcement as discussed above. Model II in the technical appendix extends the simple enforcement game to include costs and an analyses of their implications.

The public law enforcement model, as the name also suggests, relies on public funds to cover its costs. Usually this involves the allocation of tax revenues, although a publicly mandated insurance scheme can achieve similar outcomes.⁵² However, for various reasons, public resources are sometimes insufficient. Thus, in the same way that public authorities subsidise the use of private enforcement regimes, private individuals sometimes augment the resources of public law enforcement authorities. Historically it was common for private actors to augment the capacity of public law enforcement agents in the United States and United Kingdom, which could include the provision of material resources as well as non-material resources. For example, in nineteenth-century England a police officer "was paid extra for performing such simple routine functions as serving a war-

49 Friedman (see n. 17) 476.

50 Paterson and Goriely (see n. 22).

51 Catherine Baksi *Civil Courts to Turn a Profit under Fee Reforms* (London, December 4, 2013) .

52 David Rosenberg, "Mandatory-Litigation Class Action: The Only Option for Mass Tort Cases" (2002) 115(3) *Harvard Law Review* 831 (ArticleType: research-article / Full publication date: Jan., 2002 / Copyright © 2002 The Harvard Law Review Association) .

rant or attending the court [and] naturally also expected a reward for any special duty he might undertake, or for any manifestation of extraordinary zeal".⁵³ Similarly, in the United States "deficiencies in the office of public prosecutor [meant that] privately funded prosecutors constituted a significant element of the state criminal justice system throughout the nineteenth century".⁵⁴ This approach has received renewed interest in developed country contexts where government budgets are under increasing strain.⁵⁵ More specifically, strategies that enlist the support of private resources and interests in security have been proposed as ways to overcome chronic resource constraints in weak and fragile states.⁵⁶

The ability of the public model of law enforcement to overcome the second order collective action problem inherent in corruption law enforcement is therefore dependent on the provision of sufficient public resources. If these authorities are sufficiently funded then a key assumption of the simple enforcement game holds. P is only required to report the bribe to law enforcement officials and, regardless of his financial capacity, the law enforcement authorities will burden the costs of any associated law enforcement effort. However, if law enforcement authorities require (or demand) resources to process a reported case the free-rider problem entails. No longer is it sufficient for P simply to report the bribe but he must also mobilise sufficient resources to see the case through the criminal justice system. Alternatively, he can simply ignore the violation or free-ride on the efforts of other P. This is not to suggest that a private law enforcement regime will *never* enforce corruption laws. The possibility exists, for example, that a single individual sufficiently affected by the bribe will burden the costs of law enforcement himself. It is also possible that a group of P citizens coordinate to raise the necessary resources. In other words, the private model can enforce corruption laws if *other* institutions can step in to resolve the collective action problem involved in resource mobilisation. Chapter 4 considers this coordination challenge in more detail.

53 Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (see n. 18) 247.

54 Ireland (see n. 15) 43.

55 Peter N Grabosky, "Using Non-Governmental Resources to Foster Regulatory Compliance" (1995) 8(4) *Governance* 527 .

56 Benoît Dupont, Peter Grabosky, and Clifford Shearing, "The Governance of Security in Weak and Failing States" (2003) 3(4) *Criminal Justice* 331 , 334.

Performance and Accountability

The simple enforcement game assumes an honest legal system that only cares about the overall social impacts of crime. The enforcement authority is seen as either rule-following or social welfare-maximising. Both assumptions are difficult to maintain in developing country contexts where law enforcement agencies are known to engage in “second order corruption”.⁵⁷ In the extreme, models that incorporate payments between the suspect and the law enforcement agent predict that the law is *never* enforced.⁵⁸ These models fall prey to another assumption—that law enforcement agents receive no benefit from enforcing the law, and hence they *always* prefer a bribe, which can also lead to framing and extortion.⁵⁹ Model III in the technical appendix considers the implications of “second order corruption”.

There are two main approaches to overcoming these limitations. One adopts a principal-agent framework, emphasising the monitoring of law enforcement agents as well as the sanctions that apply to corruption law enforcement agents.⁶⁰ The basic logic is that increasing detection of and/or penalties for bribery between criminal and law enforcement agents deters such transactions. Of course, this approach faces the same critique—one may ask *who guards the guardians?* Indeed, in many developing countries, it is erroneous to assume that principals are principled; corruption is institutionalised and principals, after detecting corruption, simply demand a portion of the bribe.⁶¹ In this situation accountability and tougher sanctions affect the distribution of the bribe within a law enforcement regime. Another approach focuses on the benefits law enforcement agents gain from prosecution.

An alternative approach focuses on private benefits law enforcement agents gain from prosecution. As noted above, the simple enforcement game assumes that law enforcement agents receive no individual reward for enforcing the law. One way to change this is

57 Becker and Stigler, for example, acknowledge the importance of this assumption, see: Becker and Stigler (see n. 8) 13-6.

58 Muthoo (see n. 9) 109-10.

59 Polinsky and Shavell, “Corruption and Optimal Law Enforcement” (see n. 10).

60 Timothy Besley, *Principled Agents? The Political Economy of Good Government* (Oxford University Press 2007); Roger Bowles and Nuno Garoupa, “Casual Police Corruption and the Economics of Crime” (1997) 17(1) *International Review of Law and Economics* 75 .

61 Nuno Garoupa and Daniel Klerman, “Optimal Law Enforcement with a Rent-Seeking Government” (2002) 4(1) *American Law and Economics Review* 116 .

through performance-based promotion systems.⁶² Another, more radical proposal in its normative implications, is to privatise law enforcement.⁶³ The basic logic is that rewards or bounties for law enforcement create an “outside option” for the law enforcement agent; that is, the agent has an alternative to accepting a bribe. The implication of this model is that the outside option simply increases the minimum amount that the law enforcement agent demands and that—unless the outside option is higher than the amount the suspect is willing to pay—the outside option affects the distribution of corruption between corruptors and law enforcement agents. This logic is elaborated upon in Model III in the technical appendix.

CONCLUSION

The previous chapter drew attention to the importance of the legal and social norms that underlie the relationship between principals and trustees, as well as the concentrated benefits and diffuse costs of corruption. These characteristics generate complex collective action problems and provide the rationale for the use of public law enforcement regimes to control corruption. Specifically, public law enforcement regimes seek to socialise the costs of enforcement and to ensure that public interest drives decision-making within enforcement authorities. However, in many developing countries, public law enforcement regimes are best understood as informally privatised. In these contexts the second order collective action problem inherent to enforcement remains at best partially resolved.

The public and private models approach information, enforcement costs, and performance and accountability in very different ways. The public law enforcement model has the potential to overcome the second order collective action problem inherent to the enforcement of corruption laws whereas private models do not. This helps to explain why the public model tends to dominate areas of law enforcement involving large negative externalities, costly detection and enforcement, and scope for collusion, e.g., corruption law, antitrust law, environment law, and finance and security law. This does not suggest, however, that a private model of law enforcement will never enforce

62 Stephanos Bibas, “Rewarding Prosecutors for Performance” (2009) 6 *Ohio State Journal of Criminal Law* 441 .

63 Nuno Garoupa and Daniel M Klerman, “Corruption and Private Law Enforcement: Theory and History” (2010) 6(1) *Review of Law & Economics* .

corruption laws, nor that the public model of corruption law enforcement will not face challenges.

In the chapter appendix, I capture the logic of *privatised* public law enforcement as a three-player extended form game that involves the principal (P), the trustee (T) that engages in corruption, and an enforcement player (E). Building on the simple enforcement game, four models illustrate how changes to the probability of detection (information), enforcement costs, second order bribes, and sanctions determine prospects for law enforcement. There are four main findings: first, trustees (T) and corruptors (C) will risk engaging in corrupt transactions when the probability of detection is low; second, even if detected, the public (P) will prefer not to report corruption when costs outweigh benefits, i.e. costs less than the amount returned to the public; third, the public (P) will never contribute to costs—and those engaged in corruption (T and C) will never bribe enforcement authorities (E)—if the threat of enforcement is not credible, i.e. E does not face possible sanctions for not enforcing the law; and fourth, the possibility that enforcement authorities (E) will face sanctions for overlooking reports both ensures E can elicit bribes from T, and incentivises P to report some cases.

The following chapter returns to the empirical puzzles that motivate the thesis. It uses the concepts and analytical tools outlined in this chapter to develop an account for when and why privatised public law enforcement regimes generate corruption investigations and prosecutions. Specifically it considers when and how public actors overcome the second order collective action problem on an individual case basis and mobilise the resources required to ensure the enforcement of corruption laws. It also considers how suspects (trustees and/or corruptors) counter-mobilise resources to preclude corruption law enforcement.

The concepts and analytical tools are also put to work in Chapter 5. The chapter uses the two constitutive dimensions of law enforcement—control and financing—to analyse law enforcement reforms introduced in the post-Suharto *reformasi* period. This analysis suggests that Indonesia's ostensibly public law enforcement institutions are best conceptualised as a informally privatised public regime. It then considers how subnational law enforcement authorities secure information and cover their costs, as well as how the accountability mechanisms function. This analysis provides a basis for understanding how influence

over law enforcement processes is distributed in democratic and de-centralised Indonesia.

APPENDIX

This technical appendix analyses the implications of the three core assumptions that underpin the simple enforcement game as outlined earlier in the chapter. These relate to information, enforcement costs, and performance and accountability. I progressively elaborate on the assumptions with four models: Model I considers the importance of information by incorporating the probability of detection; Model II incorporates enforcement costs; Model III considers the implications of “second order corruption”; and Model IV analyses the implications of accountability through the inclusion of sanctions for law enforcement authorities. I begin with the simple enforcement game as outlined earlier in the chapter because it serves as the baseline model on which the others are built.

In the chapter above, I conceptualised corruption as a three-person transaction, where the benefits accrued to a trustee (T) and bribee (C), and the costs were distributed to the public (P). P entrusts a good, g , to T. T must dispense the good in accordance with rules. If T violates the rules, P is assumed to be worse off. Corruption involves a third agent, C. C bribes T to violate the rules. Thus T has an incentive to violate the rules and keep g for him or herself.⁶⁴ The case size is therefore the amount g that T corrupts from the public P. To simplify, I assume that P loses g if T engages in corruption and T gains g if she engages in corruption. The net welfare is the same and therefore, in the models presented here, corruption affects the distribution of goods only. Initially I assume that if E enforces the law then g is returned to the public P. Later, I modify this assumption and consider its implications.

The Simple Enforcement Game: Perfect Exogenous Enforcement

Recall the simple enforcement game from earlier in the chapter. To simplify, I focus on the strategic decision of T and P. I assume that T’s decisions to violate the rules governing its relationship with P involves C opting to bribe or collude with T. Therefore, as shown in Figure 8, T moves first. She can decide either to obey or to violate the rules governing the relationship between P and T. P moves next if T violates the rules, as she decides whether to report or ignore the violation. There are then three possible outcomes with associated payoffs. If T complies, then T receives 0 and P receives g , where $g > 0$.

⁶⁴ To simplify, I ignore that g will usually be split between T and C.

If T violates and P ignores, then the payoffs reverse, and T receives g and P receives 0. If P reports then, by assumption, T is penalised p and g is returned to P. By backward induction, it is apparent that P will always report because $g > 0$. Therefore T will always comply. Thus perfect exogenous enforcement effectively deters T from engaging in corruption.

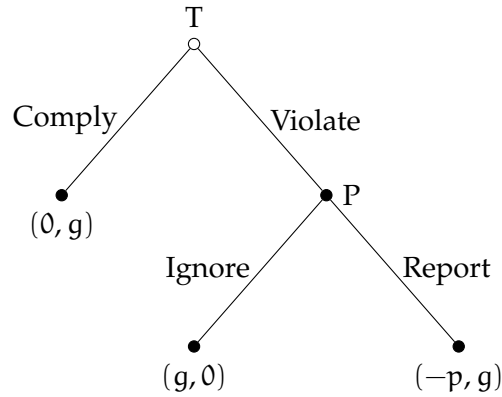


Figure 8: Simple Enforcement Game: Perfect Exogenous Enforcement

Model I: Exogenous Enforcement with Asymmetric Information

I now extend the model to incorporate the probability of detection. The basic setup is the same. However, there is now a chance move that determines whether P detects the corruption. This is denoted in Figure 9 as C. Thus the game begins with T's decision to engage in corruption. Nature moves next. The probability that the corruption is detected is denoted q and thus the probability that the corruption is *not* detected is equal to $1 - q$. P only moves if the corruption is detected and must decide whether to report. The payoffs are as follows. If T complies with the rules and does not engage in corruption the payoffs are $(0, g)$, as in the simple enforcement game above. If T violates the rules but the corruption goes undetected, the payoffs are $((1 - q)g, 0)$. If the corruption is detected but P ignores the violation, then the payoffs are $(qg, 0)$. Finally, if the corruption is detected and P reports, then the payoffs are $(-qp, qg)$.

We again use backward induction to calculate when T will engage in corruption. From the bottom of the tree we see that P will always report corruption *when it is detected*. This is because, as above, $0 > qg$ by definition. Therefore T will engage in corruption when the payoff from corruption that goes undetected is greater than the payoff from corruption that is detected and then reported. That is, T will

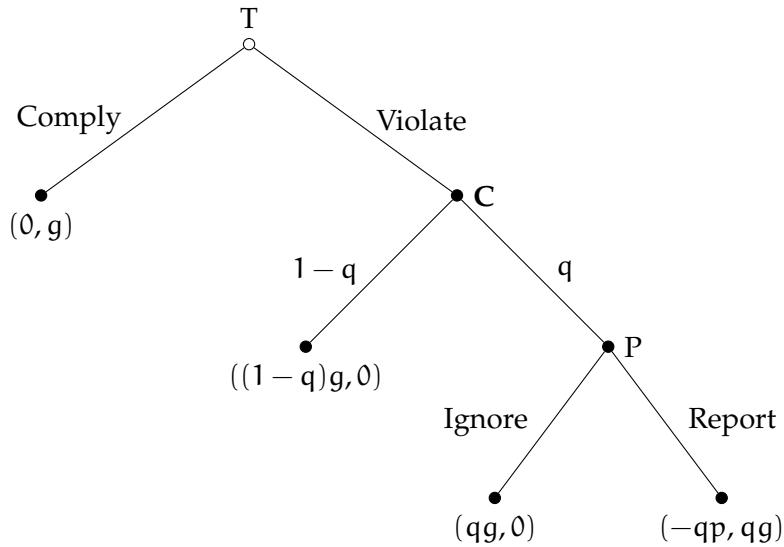


Figure 9: Two-Stage Game Tree: Enforcement with Detection Probabilities

engage in corruption when $(1 - q)g \geq qp$. Solving for q we find that P will engage in corruption when the probability of detection $q \leq \frac{g}{g+p}$. Thus, as the punishment p increases, the probability of detection must be lower for corruption to pay off. Conversely, if the probability of detection is low (i.e. $q < \frac{1}{2}$) then punishment p must be greater than the good corrupted g . We therefore conclude that the secretive nature of corruption (i.e. low probability of detection) means that punishment must be high if law enforcement is to deter corruption.

Model II: Exogenous Enforcement with Costs

I now extend the simple enforcement game to incorporate enforcement costs. The setup is the same as above. However, now I assume that P incurs costs, c , if he decides to report. In a public enforcement regime we can think of these as opportunity costs. P will be inconvenienced by the enforcement process. In a private enforcement regime we can think of these as what P must pay to the enforcement authority. As Figure 10 indicates, P 's payoff if he reports is now $g - c$; that is, the good entrusted to T minus the costs of enforcement. If P ignores the violation, his payoff is still 0. Therefore P will only report when the costs are less than the benefit g , when $c < g$. By backward induction, therefore, P will comply with the rules if the cost of enforcement is less than g , and violate the agreement when the costs are higher than

c. T can ignore the enforcement regime because P's threat to report T is not credible when enforcement costs are high.

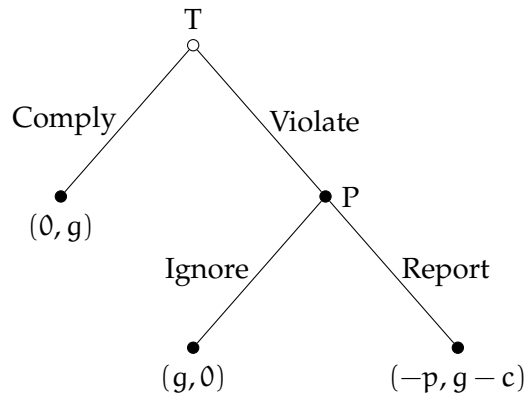


Figure 10: Two-Stage Game Tree: Exogenous Enforcement with Costs

This highlights the logic behind why ordinary villages and communities will prefer that corrupted funds are returned to the community. In Indonesia, for example, law enforcement officials are generally required to return fines and assets seized during corruption investigations to the national treasury rather than directly to the agency or program from which the funds were corrupted. This significantly reduces the incentive for communities to report because the payoff becomes $-c$.

Model III: Enforcement with "Second Order Corruption"

Thus far the models have not explicitly incorporated the decision of the law enforcement agent; I assumed that the law enforcement authorities enforce the law if a case is reported. I now incorporate the strategic decision of the law enforcement authority, which I denote E. To simplify, I assume C and T are a single actor. As above, I assume that C and T have engaged in corruption and that P has knowledge of this transaction. In Figure 11 I build on the extended form game tree from above to first illustrate the possibility of "second order corruption". This means that T now has the opportunity to bribe the law enforcement authority E. I also explicitly model the decision of E to enforce the corruption laws. There are now three decisions to consider and payoffs for five outcomes.

The game starts with the decision of P who must decide whether to report or ignore. T moves next. She has the opportunity to provide a bribe, C , to the law enforcement agent E. Finally, E moves last

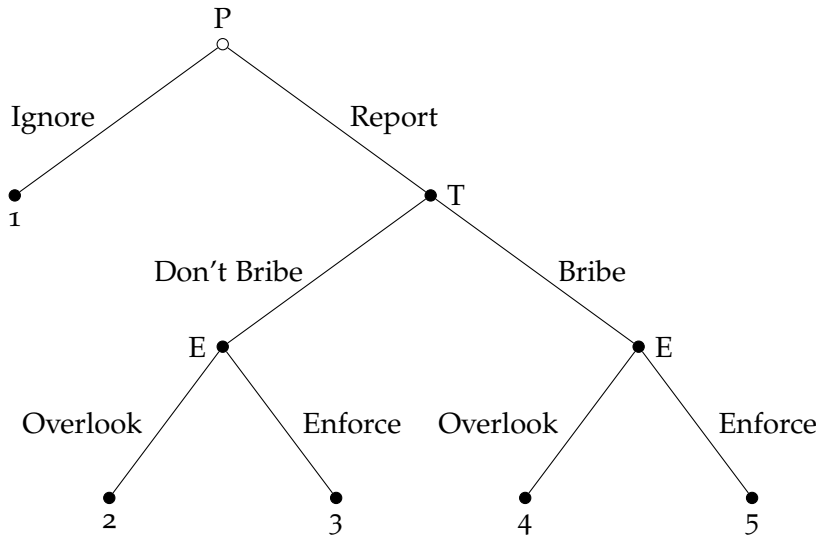


Figure 11: Three-Stage Game Tree: Enforcement with “Second Order” Corruption

and must decide whether to enforce the law. The payoffs for the five outcomes are as follows:

- Ignore : $(0, g, 0)$
- Report, Don't Bribe, Overlook : $(-c, g, c)$
- Report, Don't Bribe, Enforce : $(g - c, -p, 0)$
- Report, Bribe, Overlook : $(-c, g - b, c + b)$
- Report, Bribe, Enforce : $(g - c - b, -p, b)$

By backward induction, we find that E never enforces the law, T never bribes, and P never reports. To see this consider the decision of E at the last stage. Regardless of whether T has bribed, E prefers not to enforce the law. This is because E prefers to absorb costs c rather than use this to enforce the law against T. More precisely, if T bribes then E's payoff is C if he enforces the law and $b + c$ if he does not. If T does not bribe then E's payoff is 0 if he enforces the law and c if he does not. By definition $c > 0$ and $c + b > b$, and thus E always prefers not to enforce the law. If we move back (or up) a level, P will never bribe because E's threat to enforce the law is not credible. Finally, if we move back (or up) a level, P must choose between Outcome 1 or Outcome 2. The payoff for Outcome 1 is greater if we assume $c > 0$. Outcome 1 prevails because P cannot ensure E uses c to enforce the

law. In this context the anti-corruption laws are completely irrelevant, and the public never (or rarely) uses the “public” law enforcement regime. Furthermore, the public law enforcement authority is unable to benefit from its monopoly on the corruption laws to elicit bribes from T.

Model IV: Enforcement with Accountability

I now incorporate the possibility that the enforcement authority E can be held to account for overlooking reported corruption and/or accepting bribes from corruption suspects (T). This involves a new variable, s , that captures the possibility that E may face sanctions. If E accepts c but does not enforce the law—or accepts costs c and bribe C but does not enforce the law—then E faces the sanction s . This variable is therefore incorporated into E’s payoffs when he chooses to overlook law enforcement.⁶⁵ The setup is the same as the previous model (See Figure 11).

The game starts with the decision of P who must decide whether to report or ignore. As discussed above, the decision to report incorporates the decision to cover the costs, c , of law enforcement. T moves next. She has the opportunity to provide a bribe, C , to the law enforcement agent E. Finally, E moves and decides whether to enforce the law. As the diagram indicates, there are then five possible outcomes. If P ignores the violation, no further decisions are required and the game ends. If P reports the violation, T must decide whether to bribe or not, and subsequently E must decide whether to enforce the law or not. These two decisions generate four additional outcomes: two that involve enforcement of the law and two that do not. To understand which outcome occurs we need to consider the following key variables: the size of the case (g), the enforcement costs (c), the bribe T pays E (C), as well as the sanctions that E faces if a reported case goes unenforced (s). On the basis of these four variables, I can specify player payoffs for each of the five outcomes, where the player payoffs follow the order of play (P, T, E):

⁶⁵ The variable is usually negative but one can also think of it as a reward and thus it could be positive.

$$\begin{aligned}
 \text{Ignore} & : (0, g, 0) \\
 \text{Report, Don't Bribe, Overlook} & : (-c, g, c - s) \\
 \text{Report, Don't Bribe, Enforce} & : (g - c, -p, 0) \\
 \text{Report, Bribe, Overlook} & : (-c, g - b, c + b - s) \\
 \text{Report, Bribe, Enforce} & : (g - c - b, -b - p, b)
 \end{aligned}$$

The payoff function for E when he does not enforce the law therefore becomes $c - s$ if T does not bribe, and $b + c - s$ if T bribes. Again, we can use backward induction to predict the outcome. E will now enforce the law if $c < s$ and $b + c < s$, depending on whether T does or does not provide bribe C. Somewhat counter-intuitively, the introduction of accountability creates an incentive for T to bribe because the threat of enforcement is credible. If we move back (or up) in the game tree, if $c < s$, T has an incentive to contribute $b \geq s - c$. That is, if the sanctions are less than the costs then the same situation as in the previous model remains; E still has an incentive to absorb c rather than enforce the law. Furthermore, if the sanctions s are greater than C and c combined, then T again has no incentive to bribe because E will proceed to enforce the law regardless. In this situation, the accountability ensures enforcement. However, the assumptions that restrict c and C to be less than g require further consideration.

In this enforcement with accountability model, the problem of enforcement is resolved when sanctions are larger than the bribes and costs. If we assume that T will provide up to half the resource g to E in the form a bribe and that P will contribute costs c up to the value of g minus the bribes, then it follows that the accountability resolves the enforcement problem so long as the sanctions are greater than the entrusted resource g .

$$\begin{aligned}
 s & \geq b + c \\
 \text{if } b & = \frac{g}{2} \text{ and } c = g - b \\
 s & \geq \frac{g}{2} + g - \frac{g}{2} \\
 s & \geq g
 \end{aligned}$$

Three examples illustrate how sanctions will ensure enforcement in small cases, but not medium or large cases.

SMALL CASE Consider a “small” case where $g = 4$ and $s = 10$. By assumption $b = \frac{g}{2} = 2$ and $c = 4 - \frac{g}{2} = 2$. We use the same setup as in Figure 11 and the payoffs from Model IV, and use backward induction to solve the game. E must choose to either enforce or overlook the case. If T has bribed, E faces the payoffs $b = \frac{g}{2} = 2$ and $c + b - s = 2 + 2 - 10 = -6$. E prefers the former because $2 > -6$. If T has not bribed, E faces the payoffs 0 and $c - s = 2 - 10 = -8$. E prefers the former because $0 > -8$. In other words, E *will always enforce the law even if T bribes E*.

MEDIUM CASE Consider a “medium” case where $g = 15$ and s remains 10.⁶⁶ We can calculate the bribe $b \geq \frac{g}{2} = 7.5$ and the costs $c \geq \frac{g}{2} = 7.5$. By backward deduction, E faces the payoffs $c + b - s = 7.5 + 7.5 - 10 = 5$ and $b = \frac{g}{2} = 7.5$ when T bribes. Alternatively, when T does not bribe, E faces the payoffs $c - s = 7.5 - 10 = -2.5$ and 0. Moving up one level, T must decide whether to bribe. If T bribes, E will overlook the case, however, if T does not bribe, E will enforce because the sanctions s mean the costs c are not worth absorbing. T will therefore bribe. Knowing this, P will not report. We can also observe that E *now has an incentive to request P to report the case because it will allow him to demand a bribe C from T*.

LARGE CASE Now consider a “large” case where $g = 100$ but s still equals 10. By assumption $b = \frac{g}{2} = 50$ and $c = 100 - 50 = 50$. Now, if T has bribed, E faces the payoffs $b = \frac{g}{2} = 50$ and $c + b - s = 50 + 50 - 10 = 90$. Alternatively, if T has not bribed the payoffs are 0 and $c - s = 50 - 10 = 40$. E will obviously prefer T to bribe. However, the threat of enforcement is not credible and T will not bribe.

⁶⁶ The assumption that sanctions do not increase as the case size increases is somewhat unrealistic. However it helps to illustrate the point that law enforcement regimes’ accountability mechanisms must be proportionate to the seriousness of the cases that a regime must enforce. The logic of these examples holds so long as sanctions increase at a slower rate than case size, which is arguably a more realistic assumption.

THE MOBILISATION OF CORRUPTION LAWS: THEORY

Many countries emerging from periods of non-democratic rule make the eradication of corruption a priority—they develop new or strengthened anti-corruption laws and make a feature of high-profile prosecutions. However, despite new laws and political commitments, efforts to control corruption during and after periods of democratisation are often deficient. Standard explanations of law enforcement, as summarised in Chapter 2, emphasise law, culture, and institutions. Although insightful—particularly at the cross-country level—these theoretical accounts provide an incomplete picture of individual case trajectories and outcomes, and subnational patterns of corruption law enforcement. This suggests the need for a theoretical perspective that goes beyond law, culture, and institutions. Drawing on a legal mobilisation perspective, this chapter presents a theory of corruption law enforcement centred on how individual and groups interested in corruption case outcomes form coalitions to influence case outcomes.

In this chapter, I argue that the enforcement of corruption laws depends on the public actively engaging in the legal mobilisation of corruption laws. In the context of a privatised public regime, law enforcement officials rely on the public to secure information, augment resources, and generate demand for the accountability of enforcement authorities. Often public enforcement regimes will ostensibly enforce the law, but do this without external legal mobilisation efforts; they will use their own resources, for example, to fulfil performance targets by enforcing the law in relatively minor cases. However, the more serious the case—in terms of the amount corrupted, the interests implicated, and its technical complexity—the greater the importance of legal mobilisation efforts and the more resources required.

In this way, resource mobilisation is relative. The “enforcement coalition” that seeks to pursue a corruption case against a suspect can command “high” levels of resources or it can control “low” levels of resources.

However, the presence of an “enforcement coalition” and its control of resources will not in itself ensure law enforcement. The suspect coalition can also command “high” or “low” levels of resources with which to influence law enforcement processes. The likelihood of corruption law enforcement depends on the *relative strength* of these two coalitions. If the enforcement coalition is stronger relative to the suspect coalition then enforcement is highly likely. Conversely, if the suspect coalition is stronger relative to the enforcement coalition then enforcement is highly unlikely. If both coalitions command similar levels of resources then delays are likely. There is little interest in the case where both coalitions command low levels of resources, and thus enforcement is unlikely unless law enforcement officials need to meet case quotas. The situation is unstable when both coalitions mobilise high levels of resources. Enforcement delays are likely until coalition members from the enforcement coalition defect to the suspect coalition and vice versa, or new individuals or groups join one of the coalitions. Figure 12 summarises the argument; the arrows indicate how defection will change the unstable high-high situation.

		Resources of Suspect Coalition	
		Low	High
Resources of Enforcement Coalition	High	Enforcement highly likely	Enforcement delays ←
	Low	Enforcement unlikely	Enforcement highly unlikely ↓

Figure 12: Comparative Coalition Resources and Law Enforcement Outcomes

The argument and its implications for comparative subnational research are presented in three main sections. The first two sections introduce the legal mobilisation perspective and present my resource-focused account of corruption law enforcement. In contrast to the legal mobilisation literature, I conceptualise individuals and groups involved in the mobilisation of corruption laws as private interest

groups rather than public advocates. This provides the rationale for conceptualising legal mobilisation as a strategic game. Building on the analytical tools of the previous chapter, in the third section I model legal mobilisation as a coalition game. This game highlights how three important factors influence coalition formation: how patrons play a central role in legal mobilisation efforts because of their political and economic interests beyond individual cases under consideration; how political entrepreneurs coordinate resource contributions from multiple individuals and groups, and prevent defections; and how information asymmetries, signals, and trust influence the maintenance (and collapse) of both enforcement and suspect coalitions. In the final section, I review the alternative expectations that the different theoretical explanations generate for subnational comparative research.

A LEGAL MOBILISATION PERSPECTIVE ON CORRUPTION LAW ENFORCEMENT

Studies of legal mobilisation tend to go beyond the confines of the theories discussed above. The term legal mobilisation is widely understood to refer to as the process by which a “desire or want is translated into a demand as an assertion of rights”.¹ Studies of legal mobilisation therefore focus on when and how individuals and groups use the law to achieve personal and social objectives, including the strategies they use to secure preferred legal decisions, as well as when and how law and court decisions can help to generate social change.² Early studies of legal mobilisation sought to debunk the myth that law or courts could generate social change and instead emphasised “bottom-up” political mobilisation of law and rights.³ The legal mobilisation perspective has tended to focus on areas subject to public litigation—including civil rights groups, environmental movements, labour movements, marriage equality advocacy, disability groups, and consumer groups—and is largely focused on North America and to a lesser extent Europe. Many of these areas also face

¹ Frances Kahn Zemans, “Legal Mobilization: The Neglected Role of the Law in the Political System” (1983) 77(3) *The American Political Science Review* 690–700.

² Lisa Vanhala, “Legal Mobilization” in *Oxford Bibliographies Online: Political Science* (Oxford University Press 2011).

³ Stuart A Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (Yale University Press 1974).

collective action dilemmas.⁴ More recently it has been fruitfully applied to the use of law in non-court fora and to a wider range of countries, including developing countries.⁵

The *privatised* nature of public law enforcement—as elaborated in the previous chapter—provides the general rationale for the application of a legal mobilisation perspective to corruption law enforcement. The public model of law enforcement is designed to avoid the question of who has an interest in—and is therefore willing to pay for—the investigation and prosecution of crime. Criminalising corruption in the context of a public model of criminal justice ought therefore to resolve the need for individuals or groups to engage in legal mobilisation. However, systematic weaknesses in ostensibly public enforcement regimes mean that individuals and groups are often required to support them. The lack of technological tools to detect corruption and secure evidence means that public law enforcement agents are dependent on the cooperation of private individuals or groups. The systemic under-resourcing of government agencies responsible for corruption law enforcement and their staff means that individuals and groups must augment operational budgets and official salaries. Finally, weak accountability mechanisms mean that legal and political forms of accountability fail to aggregate public interest in corruption law enforcement.

These institutional conditions specify the scope of the legal mobilisation account of corruption law enforcement in this thesis. These conditions are particularly applicable to developing countries where state capacity is weak, state resources are scarce, and accountability is limited.⁶ It is not, however, unique to developing countries. Many

4 In an early article Handler suggests that legal mobilisation was an approach that sought to overcome collective action problems in generating social change. See: Joel F Handler, *Social Movements and the Legal System: A Theory of Law Reform and Social Change* (Academic Press 1978).

5 See, for example: Neil Jeffrey Diamant, Stanley B Lubman, and Kevin J O'Brien, *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford University Press January 2005); Tamir Moustafa, "Mobilising the Law in an Authoritarian State: The Legal Complex in Contemporary Egypt" in Terence C Halliday, Lucien Karpik, and Malcolm Feeley (eds.), *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism* (Hart 2007); Kevin J O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* (Cambridge University Press 2006); Bruce M Wilson and Juan Carlos Rodríguez Cordero, "Legal Opportunity Structures and Social Movements: The Effects of Institutional Change on Costa Rican Politics" (2006) 39(3) *Comparative Political Studies* 325 .

6 See: Ronald J Daniels and Michael Trebilcock, "The Political Economy of Rule of Law Reform in Developing Countries" (2004) 26 *Michigan Journal of International Law* 99 ; Antonio Estache and Liam Wren-Lewis, "Toward a Theory of Regulation for Developing Countries: Following Jean-Jacques Laffont's Lead" (2009) 47(3) *Journal of Economic Literature* 729 .

public enforcement regimes in developed countries often rely, at different points of their organisational lifespan, on external actors to provide additional resources and capacity, overcome institutional weaknesses, mitigate the tendency for “clientele capture”, and generate political support.⁷ It is therefore in these contexts that understanding when and why individuals and groups mobilise the law is of particular analytical relevance.

The theoretical account of corruption law enforcement developed in this thesis draws upon and develops resource-focused explanations of legal mobilisation. The legal mobilisation literature has developed at least three general theoretical explanations to account for when and why groups mobilise the law. This literature often draws on social movement theory more generally. One theoretical branch of legal mobilisation emphasises opportunities: drawing on political process models and institutional theories, it identifies a broad range of structural and institutional factors that influence access to legal institutions and their outcomes, including legal norms, standing rules, judicial attitudes, as well as the lack of opportunities in alternative political fora.⁸ A second, more instrumental branch emphasises resources.⁹ In a classic formulation, Epp, in his account of the “rights revolution”, argues that legal mobilisation “is not in any simple way a direct response to opportunities [but] depends on resources [including] rights-advocacy lawyers, rights advocacy organizations, and sources

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- 7 Barry Boyer and Errol Meidinger, “Privatizing Regulatory Enforcement: A Preliminary Assessment of Citizen Suits under Federal Environmental Laws” (1985) 34 *Buffalo Law Review* 833 ; Nicholas Pedriana and Robin Stryker, “The Strength of a Weak Agency: Enforcement of Title VII of the 1964 Civil Rights Act and the Expansion of State Capacity, 1965–1971” (2004) 110(3) *American Journal of Sociology* 709 ; Evan J Ringquist, “Political Control and Policy Impact in EPA’s Office of Water Quality” (1995) 39(2) *American Journal of Political Science* 336 ; Paul Sabatier, “Social Movements and Regulatory Agencies: Toward a More Adequate—and Less Pessimistic—Theory of “Clientele Capture”” (1975) 6(3) *Policy Sciences* 301 .
- 8 Ellen Ann Andersen, *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation* (University of Michigan Press September 2006); Rachel A Cichowski and Alec StoneSweet, “Participation, Representative Democracy, and the Courts” in Bruce E Cain, Russell J Dalton, and Susan E Scarrow (eds.), *Democracy Transformed?: Expanding Political Opportunities in Advanced Industrial Democracies* (Oxford University Press February 2006); Chris Hilson, “New social movements: the role of legal opportunity” (2002) 9(2) *Journal of European Public Policy* 238 ; Clement E Vose, *Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases* (University of California Press 1959); Wilson and Rodríguez Cordero (see n. 5); Emily Zackin, “Popular Constitutionalism’s Hard When You’re Not Very Popular: Why the ACLU Turned to Courts” (2008) 42(2) *Law & Society Review* 367 .
- 9 Marc Galanter, “Why the “Haves” Come out Ahead: Speculations on the Limits of Legal Change” (1974) 9(1) *Law & Society Review* 95 ; Deborah L Rhode, *Access to Justice* (Oxford University Press 2004); Sabatier (see n. 7).

of financing".¹⁰ Finally, a third branch draws on framing and sociological institutionalism to emphasise the way discourses, ideas and cultural symbols inform and frame the strategic decisions of individuals and organisations to use law and engage in legal mobilisation.¹¹

This thesis extends resource-focused explanations of legal mobilisation in five ways. First, considering that studies of legal mobilisation have primarily focused on public advocacy organisations and public law, it opens up the relatively new thematic area: to date there have been few studies related to crime and specifically economic crime.¹² One exception is Black's early study on the role that citizens played in bringing criminal cases to the attention of law enforcement authorities.¹³ In contrast, the legal mobilisation perspective—broadly construed—is not entirely new to studies of corruption, particularly those focused on corruption control. Corruption scholars as well as anti-corruption experts have long emphasised the role that civil society organisations and the media play in generating public support for anti-corruption efforts and galvanising law enforcement authorities.¹⁴

Second, the thesis narrows its focus to those resources critical to law enforcement in contexts of privatised public enforcement regimes. Existing legal mobilisation literature emphasises a range of resources including legal counsel and advice, non-legal research, financial resources, technical skills, publicity capacity, political capital, and com-

10 Charles R Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (University of Chicago Press 1998) 18.

11 Patricia Ewick and Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998); Michael Paris, "Legal Mobilization and the Politics of Reform: Lessons From School Finance Litigation in Kentucky, 1984-1995" (2001) 26(3) *Law & Social Inquiry* 631 ; Nicholas Pedriana, "From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women's Movement in the 1960s" (2006) 111(6) *American Journal of Sociology* 1718 ; Lisa Vanhala, "Disability Rights Activists in the Supreme Court of Canada: Legal Mobilization Theory and Accommodating Social Movements" (2009) 42(04) *Canadian Journal of Political Science* 981 .

12 McCann notes that legal mobilisation studies of corporate legal practice are likely to become important. Michael McCann, "Litigation and Legal Mobilization" in Keith E Whittington, RDaniel Kelemen, and Gregory A Caldeira (eds.), *The Oxford Handbook of Law and Politics* (Oxford University Press 2008) 535.

13 Donald J Black, "The Mobilization of Law" (1973) 2 *Journal of Legal Studies* 125 .

14 See, for example: Timothy Besley and Andrea Prat, "Handcuffs for the Grabbing Hand? Media Capture and Government Accountability" (2006) 96(3) *The American Economic Review* 720 ; Eric C C Chang, MiriamA Golden, and SethJ Hill, "Legislative Malfeasance and Political Accountability" (2010) 62(2) *World Politics* 177 ; Michael Johnston (ed.), *Civil Society and Corruption: Mobilizing for Reform* (University Press of America 2005); Pierre Landell-Mills, *Citizens Against Corruption: Report from the Front Line*. (Troubador Publishing 2013); Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge University Press 1999) 165-71; Lawrence W Sherman, "The Mobilization of Scandal" in Arnold J Heidenheimer, Michael Johnston, and Victor Levine (eds.), *Political Corruption: A Handbook* (Transaction Books 1989).

munication networks.¹⁵ Indeed, drawing on resource mobilisation theories of social movements, resources can refer to “anything from material things such as incomes, savings, material goods and services, to non-material items such as authority, moral commitment, trust, skills or camaraderie”.¹⁶ Building on the analysis in the previous chapter, I emphasise four key resources: information, financial resources, mobilisational capacity, and supra-local linkages. These are discussed in more detail below.

Third, my account of corruption law enforcement conceptualises those involved in legal mobilisation as private interest groups rather than public advocates. Most accounts of legal mobilisation emphasise the perspective of public advocates and generally assume that these groups are primarily motivated by the social objectives they aim to bring about.¹⁷ In contrast, I do not assume that those engaged in the mobilisation of corruption laws are primarily—or even secondarily—motivated by the anti-corruption rhetoric they espouse as part of their legal mobilisation efforts. The mobilisation of corruption laws is, more often than not, a means to an end. For local politicians and bureaucrats it is an opportunity to extract concessions from the executive or potentially remove a political opponent; for local civil society organisations it is an opportunity to gain resources from the local government; for local political entrepreneurs it is an opportunity to transition into politics or senior government; and for the central government it is an opportunity to intervene in local politics for political advantage. I follow the maxim: “there are no good guys”.¹⁸ The depiction of corruption law enforcement as a morality play is often misleading and arguably unhelpful to the degree that it distracts attention from much needed institutional reforms of law enforcement agencies.

Fourth, my theory of legal mobilisation places coalition formation and counter-mobilisation at the centre of the analysis. Most studies of legal mobilisation focus on single organisations. If coalitions or alliances of entrepreneurs and organisations are considered, their for-

¹⁵ Epp (see n. 10) 19; Galanter (see n. 9); Sabatier (see n. 7).

¹⁶ Vincenzo Ruggiero and Nicola Montagna (eds.), *Social Movements: A Reader* (Routledge 2008) 88.

¹⁷ This is most clearly seen in the closely-related literature on “cause lawyering”. See, for example: Austin Sarat and Stuart Scheingold (eds.), *Cause Lawyering: Political Commitments and Professional responsibilities* (Oxford University Press 1998); Austin Sarat and Stuart A Scheingold (eds.), *Cause Lawyering and the State in a Global Era* (Oxford socio-legal studies, Oxford University Press 2001).

¹⁸ This is not to suggest there are *never* individuals or groups primarily motivated by their ideals and commitment to eradicate corruption; these individuals and groups do exist but they are few and far between.

mation tends to be assumed rather than analysed and theorised. The distribution of both the impacts of corruption and the resources with which one can mobilise corruption laws necessitates consideration of coalition formation. This is also made necessary by the tendency for corruption suspects to counter-mobilise. Legal mobilisation studies have recently begun to consider “counter-mobilisation” by conservative or reactionary groups, including how these groups use legal mobilisation strategies to achieve their vision of society and also their efforts to disrupt the legal mobilisation efforts of progressive groups.¹⁹ Although I avoid referring to the two sides in normative terms, understanding the trajectory and outcomes of corruption investigations in the context of private-public enforcement regimes requires consideration of how corruption suspects mobilise to defend themselves.

Finally, and in light of the previous two points, I emphasise strategic decision-making and use game theoretic models to highlight strategic interactions and payoffs for groups and alliances engaged in the mobilisation of corruption laws. This is a marked difference from the existing scholarship, which tends to “view the choices of actors who generate litigation as well as their effects or impacts as typically complex, indeterminate, and contingent”.²⁰ Game theory has been productively applied to litigation, disclosure, contract, and antitrust law but it has yet to be applied to strategic decision-making in the context of legal mobilisation.²¹ This is unfortunate given that game theory—both as a method of formal analysis as well as “a way of thinking” about strategic decision-making—can provide important insights into challenges and opportunities at the centre of legal mobilisation, including collective action, coalition formation, information asymmetry, signalling, and trust.

RESOURCES IN PRIVATISED PUBLIC REGIMES

The resources available to individuals and groups depend on the institutional context. In the previous chapter, I argued that three institutional arrangements were critical in determining whether a given law enforcement regime could be characterised as public or private. This, I argued, had important implications for law enforcement generally and corruption law enforcement specifically because of the way

¹⁹ McCann (see n. 12) 534.

²⁰ *ibid.*, 524.

²¹ Douglas G Baird, RobertH Gertner, and RandalC Picker, *Game Theory and the Law* (Harvard University Press 1994).

these arrangements distribute influence to private and public actors. Table 1 summarises the types of resources that are empowered by the institutional arrangements of privatised public enforcement regimes.

Table 1: Privatised Public Enforcement Regimes and the Distribution of Resources

Dimension	Resource
Information	Direct access to information (evidence) that supports corruption investigation Ability to protect/threaten those with access to information
Budgets	Access to financial resources to subsidise law enforcement costs Access to technical/legal resources to subsidise law enforcement case preparation
Accountability	Capacity to deliver votes or rents to political principals Capacity to generate negative/positive publicity for/against political and judicial principals

Information about a corruption case under investigation can be understood as a resource. Those who possess this information, or the means to obtain it, have a resource that they can use to influence the law enforcement process. If no one with information is willing to come forward in a regime where law enforcement agencies rely on informants, it is difficult for a law enforcement process to proceed. Thus, those with information about a corruption investigation can use it to support enforcement or, alternatively, use it to leverage concessions from the suspect. However, as the previous chapter demonstrated, information alone is insufficient to ensure enforcement. Someone must cover costs and enforcement authorities must face the possibility of sanctions.

Liquid financial assets are therefore also a critical resource that individuals or groups require if they are to influence law enforcement processes. This becomes particularly significant in contexts where law enforcement agents are under-resourced and are reliant on private actors or groups to subsidise their costs. Those with financial assets—i.e. income, savings, and other liquid financial assets—can provide subsidies to law enforcement agencies directly or via intermediaries. Alternatively, rather than provide fungible resources, some individuals or groups may control resources that they can use to subsidise the law enforcement process indirectly. For example, lawyers, aca-

demics, or private detectives—and those who can afford the services of these professionals—can provide direct assistance to law enforcement agents in the identification of evidence and the preparation of the case. However, as again demonstrated in the previous chapter, the ability to finance enforcement costs will not suffice if the threat of enforcement is not credible. Specifically, if authorities lack incentives to enforce the law, those who cover the costs of law enforcement risk losing their resources.

Thus access to principals that have control or influence over law enforcement accountability mechanisms is an important resource. This allows individuals or groups to ensure enforcement officials face the possibility of sanctions if they ignore reports, embezzle costs, or accept bribes rather than enforce laws. There are various accountability mechanisms that can be relevant, depending on the context. If political accountability mechanisms are critical, then individuals and groups with the capacity to deliver votes or rents to political principals hold a resource that can influence law enforcement processes. Similarly, if internal performance and promotion mechanisms are critical, then individuals and groups with leverage over these mechanisms hold an important resource. Alternatively, if judicial accountability mechanisms pertain, then those with the ability to use these mechanisms hold a resource that they can use to ensure similar incentives.

The need to deploy all three resources to ensure enforcement in the context of hybrid regimes highlights the need for coalitions. It is feasible that one individual or group will possess all three resources and to a certain degree some resources are fungible. For example, one can use liquid financial resources to mobilise publicity to ensure accountability. More generally, however, individuals and groups will possess different resources and therefore successfully pursuing a corruption case in a privatised public regime will require the formation of “resource coalitions”.

COALITION DYNAMICS

Chapter 2 argued that the impact of corruption—and therefore of the benefits of corruption law enforcement—is often diffuse. Corruption law enforcement also generates positive externalities in the form of deterrence but this, by its very nature, is difficult for individuals or groups to capture. This provides the general rationale for the public

enforcement of corruption laws. However, systematic weaknesses in these ostensibly public institutions mean that they tend not to resolve the second order collective action problem. These hybrid regimes do, however, distribute resources to various individuals and groups that can then use these resources to influence law enforcement processes and outcomes. Of course, the collective action dilemma often still prevails as one individual or group will rarely control all resources capable of influencing these processes. Furthermore, many corruption suspects have an incentive to provide bribes that go beyond the benefits implicated in a given case.

The models in the previous chapter assume that the public (P) is a single actor. However, in practice P is often a group of individual actors (N). The implications are two-fold. First, the impacts of corruption are distributed amongst a large group N such that each individual only experiences a small loss. This means that no single individual has an incentive to report and cover the costs of enforcement. Second, and more critical to the collective action problem in the context of a private-public law enforcement regime, the costs of law enforcement are distributed amongst N individuals. This creates a collective action problem of the public good or free-rider variety. More specifically, this is the second order collective action problem that exists when the costs of law enforcement are not socialised (e.g., via taxation) or the benefits of law enforcement are disbursed to the population in general (e.g., P is not a single actor that gains all benefit g when the law is enforced).

The models in the previous chapter also assumed that T will pay bribes up to the value of corruption. This assumption led to the conclusion that law enforcement authorities would enforce the law so long as the sanctions were higher than the amount corrupted. However, in contexts where corruption is institutionalised and patronage is central to the way politics functions, trustees are often involved in multiple incidents of corruption. Indeed, trustees will gain a flow of patronage benefits—which we can denote as π —that are much bigger than the benefits g from a single incident of corruption that P may detect and report. In this situation, the corruption suspect or trustee will pay bribes to enforcement authorities greater than the amount g in order to stay in power. These two dilemmas further exacerbate the second order collective action problem for legal mobilisation in the context of a privatised public regime.

Legal Mobilisation as a Coalition Game

I capture the logic of these dilemmas and their implications with a coalition game. The previous section discussed three resources that individuals and groups can use to influence law enforcement outcomes, and to keep things simple, I use the variable γ to encapsulate all three resources. This allows us to consider, in a general sense, how resources and resource distribution amongst individuals and groups influence legal mobilisation. Building on the sections above, as well as the previous chapter, consider a situation involving four players: T, P₁, P₂, and E. As above, assume that T has engaged in corruption that generates benefit g for itself. Assume also that the public (either P₁ or P₂) has detected the corruption and must decide whether to mobilise the law. I assume that if E decides to enforce the law then T is always convicted.²² If E decides not to enforce the law, T retains g .²³ If E decides to enforce the law, then g is returned to “the public”. The agents T, P₁, and P₂ have resources γ_T , γ_{P_1} , and γ_{P_2} that they can use to influence E. In contrast to the model above—in which the outcome depended on the interaction between variables g , c , b , and s —I assume that E will favour which ever coalition has a resource-weighted majority. This critical assumption follows from the observation above that these variables are less relevant to the outcome when T is willing to pay bribes beyond g to retain access to patronage flows π where $\pi > g$.

I first use this setup to illustrate how the collective action problem is overcome when the benefits of law enforcement are captured by a small group of players. Suppose that $\gamma_T > \gamma_{P_1} > \gamma_{P_2}$ and all γ are less than $1/2$ so that the agents must form a coalition. Also suppose that benefit g is only shared amongst the winning coalition. There are four possible winning coalitions: (T, P₁), (T, P₂), (P₁, P₂), and the grand coalition (T, P₁, P₂). The payoffs for each player depend on the resources they contribute to the coalition.²⁴ In the coalition (T, P₁), for example, the proportion of g that T receives is $\frac{\gamma_T}{\gamma_T + \gamma_{P_1}}$ and the proportion of g that P₁ receives is $\frac{\gamma_{P_1}}{\gamma_T + \gamma_{P_1}}$. In the coalition (T, P₂), T receives $\frac{\gamma_T}{\gamma_T + \gamma_{P_2}}$ and P₂ receives $\frac{\gamma_{P_2}}{\gamma_T + \gamma_{P_2}}$. Because $\gamma_{P_1} > \gamma_{P_2}$, T is better off forming a coalition with the weakest agent P₂ than the second

²² An extension of the model could consider how shifts in the probability of conviction would influence coalition formation.

²³ Some of which may be shared with E as outlined above.

²⁴ The Nash bargaining solution predicts that two players will divide an amount in accordance with each player’s “bargaining power”.

strongest agent P_1 . However, in this situation, P_1 and P_2 are both better off forming a coalition together than cooperating with T . In the coalition (P_1, P_2) , P_1 receives $\frac{\gamma_{P_1}}{\gamma_{P_1} + \gamma_{P_2}}$ and P_2 receives $\frac{\gamma_{P_2}}{\gamma_{P_1} + \gamma_{P_2}}$. Because P_1 has more resources than P_2 but less than T , P_1 can secure a greater proportion of g from P_2 than he can from T . Likewise, because P_2 has fewer resources than T (but enough to ensure a winning coalition), P_2 can secure a greater proportion of g from a coalition with P_1 than he can from a coalition with T . In this situation, it is relatively easy for the two weaker parties to join forces to enforce the law against T . This is because of the assumption that the benefit g is distributed to the agents in the winning coalition based on their individual resources. In this example, the collective action dilemma is easily overcome because the agents do in fact capture the benefit g of law enforcement.

When the corruption is distributed to the public, a slightly different coordination dilemma emerges. In this example, I assume that if E decides to enforce the law, the benefit g is distributed to all citizens N , where N is a large number. In this way, if P_1 and P_2 form a coalition to enforce the law, as citizens, the amount they each receive is small and approaches zero as g decreases and/or N increases: $\frac{g}{N} \rightarrow 0$. However, to keep it simple I assume that citizens do not control resources that can influence E , and therefore only the same three players are involved in the coalition game. One can think of these three players as elites. In this example, T still stands to benefit from corruption g if E opts not to enforce the law. There are again four possible winning coalitions and the payoffs for the coalitions (T, P_1) and (T, P_2) are as above. However, the payoffs for P_1 and P_2 in the coalition (P_1, P_2) are now $\frac{g}{N}$ each. In this situation, both P_1 and P_2 are better off forming a coalition with T . Because the resources of P_2 are less than P_1 , T will opt to form the coalition (T, P_2) rather than (T, P_1) . Thus, if we assume that no P is willing to contribute resources above what they stand to gain if they win (i.e. more than $\frac{g}{N}$) then either all N must coordinate to contribute, or the law will go unenforced.

The same outcome prevails even when P_1 and P_2 dominate the resource required to enforce the law, e.g., $\gamma_T < \gamma_{P_1} < \gamma_{P_2}$. In fact it even prevails when either P_1 or P_2 controls sufficient resources to enforce the law without building a coalition, e.g., $\gamma_T + \gamma_{P_1} < \gamma_{P_2}$. In the latter, P_2 could single-handedly enforce the law and receive payoff $\frac{g}{N}$ or form a coalition with T and receive $\frac{\gamma_{P_2}}{\gamma_T + \gamma_{P_2}}$. Because $\gamma_{P_2} > \frac{1}{2}$, P_2 's payoff from a coalition with T is always greater than

$1/2$, implying that P_2 would only be better off using his resources to enforce the law when N was less than 2, i.e. when only P_2 would benefit from the corruption law enforcement. In this situation, P_2 is effectively in the same situation as T , that is, P_2 nets the entire benefit g and does not distribute it to the public. The general implication is that *even when the opposition groups control sufficient resources to enforce corruption laws, they will not deploy these resources because they are better off joining forces with the corruptor than enforcing the law.*

These examples highlight the classic challenge for collective action. Following the work of Mancur Olson, I consider that individuals or groups of P might join a coalition in support of law enforcement when the incentives favour defection to corruption suspects. Prior to Olson's work, the dominant theory of interest group mobilisation assumed that interest groups would naturally form to pursue common interests in response to social pressures.²⁵ Olson, however, focussed on the individuals that constitute interest groups and their self-interest. He argued that interest groups could not restrict access to their achievements and that therefore individuals had an incentive to free-ride on the efforts of others. This problem was exacerbated when interests were diffuse and required the mobilisation of large groups. Olson suggested that collective action dilemmas could only be overcome if groups could selectively coerce or induce participation:

Only a separate and 'selective' incentive will stimulate a rational individual in a latent group to act in a group-oriented way ... [t]hese 'selective incentives' can be either negative or positive, in that they can either coerce by punishing those who fail to bear an allocated share of the costs of the group action, or they can be positive inducements offered to those who act in the group interest.²⁶

Although Olson's theory has received sustained criticism, a focus on incentives remains central to many accounts of group and coalition formation.²⁷ Since Olson, various mechanisms for generating "se-

²⁵ Arthur Fisher Bentley, *The Process of Government: A Study of Social Pressures* (Belknap Press of Harvard University Press 1967); David B Truman, *The Governmental Process: Political Interests and Public Opinion* (Knopf 1951).

²⁶ Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory* (Harvard Economic Studies, Harvard University Press 1965) 51.

²⁷ Gerald Marwell and Pamela Oliver, *The Critical Mass in Collective Action: A Micro-Social Theory* (Studies in rationality and social change, Cambridge University Press 1993) 133; Anthony J Nownes and Grant Neeley, "Public Interest Group En-

lective incentives" have been identified. I focus on two mechanisms: patrons and political entrepreneurs.

Patrons

One influential theory of group formation emphasises the role of patrons. This perspective sought to explain the dramatic increase in the number of interest groups in the United States in the second half of the twentieth century. Walker argued that the "... the number of interest groups in operation, the mixture of group types, and the level and direction of political mobilization in the United States at any point in the country's history will largely be determined by the composition and accessibility of the system's major patrons of political action".²⁸ According to this theory, interest groups do not *overcome* the "free-rider" problem but *by-pass* it by attracting resources from patrons.²⁹ This mitigates the need to mobilise small contributions from a large number of individuals or groups interested in a specific issue.

My account of legal mobilisation in this thesis emphasises the political and economic interests of patrons. The theoretical literature on patrons and group formation identifies at least three main reasons why patrons provide their resources. Some research emphasises the personal beliefs and ideological commitment of patrons.³⁰ Similarly, some political sociologists suggest that the interests of patrons generally mirror the political agenda.³¹ In contrast, other theorists emphasise the economic interests of patrons, and my empirical research suggests that economic interests are the main motivation for patrons who support efforts to mobilise corruption laws. There are two main ways that patrons stand to gain politically and economically from corruption law mobilisation. First, corruption law enforcement is a means to remove competitors from positions of influence. Thus, individuals or groups that stand to gain from removing a corruption suspect from power via corruption enforcement can gain beyond the impacts of the corruption itself. These individuals or groups therefore have an incentive to act as a patron, which can include the creation of "selective incentives" for other coalition members. Second, support for

trepreneurship and Theories of Group Mobilization" (1996) 49(1) Political Research Quarterly 119 , 122.

28 Jack L Walker, "The Origins and Maintenance of Interest Groups in America" (1983) 77(2) The American Political Science Review 390 , 403.

29 Nownes and Neeley (see n. 27) 124.

30 Walker (see n. 28) 401.

31 Nownes and Neeley (see n. 27) 141.

corruption law enforcement provides an opportunity for individuals and groups to burnish their anti-corruption credentials (and tarnish the image of their opponents). In this way, individuals or groups may deploy their material and non-material resources in support of corruption law enforcement if they can reap the payoffs these external incentives provide.

I can incorporate the role of patrons into the coalition game with the addition of two variables: one that captures the external benefit and one that captures the possibility for transfers within a coalition. Again suppose that $\gamma_T > \gamma_{P_1} > \gamma_{P_2}$ and all γ are less than $1/2$ so that the agents must form a coalition. As above, assume that the benefit g when the law is enforced is returned to the public at large so that each agent receives $\frac{g}{N}$ where N is a large number. In addition, one member of the coalition *that enforces the law* gains an additional benefit x . As above, there are four possible winning coalitions: (T, P_1) , (T, P_2) , (P_1, P_2) , and the grand coalition (T, P_1, P_2) . The coalition payoffs are also the same as above with the exception of coalition (P_1, P_2) . For this coalition, the payoff for P_1 is $\frac{x + g\gamma_{P_1}}{\gamma_{P_1} + \gamma_{P_2}}$ and for P_2 $\frac{\gamma_{P_2}}{\gamma_{P_1} + \gamma_{P_2}}$. In this situation P_1 has an external interest in the “enforcement coalition” but P_2 still prefers to defect to T . Thus the patron must transfer some proportion of x to P_2 to prevent defection. For the coalition (P_1, P_2) to constitute the *core* of the coalition game (the strategy players P_1 and P_2 cannot improve upon), we need to calculate the value x that would prevent P_1 and/or P_2 from defecting to T . Thus, for P_1 $\frac{g\gamma_{P_1}}{\gamma_{P_1} + \gamma_{P_2}} \leq \frac{x\gamma_{P_1}}{\gamma_{P_1} + \gamma_{P_2}}$ where the left-hand side is the payoff from joining forces with T and the right-side is the payoff for joining forces with P_2 . We can re-calculate this as follows: $x \geq \frac{g(\gamma_{P_2} + \gamma_{P_1})}{\gamma_{P_1} + \gamma_T}$.

This equation for x suggests two counter-intuitive results: first, as P_1 and P_2 gain more resources, *greater* external benefits are required to sustain the “enforcement coalition”. This is because these agents can use these resources to leverage greater benefits from T instead of enforcing the law. Second, and conversely, *lower* external benefits are required as T gains resource strength. This is because the payoffs for defection to T are lower for P_1 and P_2 . Of course if γ_T passes the resource-weighted majority threshold (i.e. $\gamma_T > \frac{1}{2}$), external benefits have no effect on the formation of the enforcement coalition because T can single handedly ensure E does not enforce the law. In this situation, P_1 and P_2 would need to attract additional players (i.e. from outside the district) to join the game and provide their resources.

Political Entrepreneurs

An alternative theoretical perspective on group formation emphasises the role of political entrepreneurs. This literature holds that entrepreneurs mobilise resources that they can use to provide material benefits to interest group members who participate in group activities.³² In many ways, the entrepreneur is similar to the patron.³³ The difference lies in the resources and strategies: the entrepreneur uses his social ties and charisma to co-ordinate the contribution of resources, whereas the patron effectively subsidises the coalition.

Political entrepreneurs can play an important role in both coalition formation and coalition maintenance. In the absence of a patron with a strong external incentive in the case, individual players face a “first mover disadvantage”. The first player to support enforcement is unlikely to reach the threshold required to ensure enforcement.³⁴ The political entrepreneur can therefore help to co-ordinate a coalition with either sufficient resources to attract other potential members or with sufficient resources to ensure enforcement. Along similar lines, the political entrepreneur can seek to draw new players into the game. Consider, for example, the situation where T controls the majority of resources, i.e. $\gamma_T > \frac{1}{2}$. In this situation, the only way the enforcement coalition can form is if a fourth player joins the game, where the fourth player’s resources $\gamma_{P_3} > \gamma_T - \gamma_{P_1} - \gamma_{P_2}$ such that γ_T no longer commands a resource-weighted majority, i.e. $\gamma_T < \frac{1}{2}$. Of course, in this situation it will also be necessary to prevent defections of any P_i from the enforcement coalition to the suspect coalition. Indeed, it is possible that P_3 will join the game *in order to defect to the suspect coalition* and thus receive payoff $\frac{\gamma_{P_3}}{\gamma_T + \gamma_{P_3}}$ in contrast to payoff 0 for non-participation in the game.

The political entrepreneur can also help to maintain the coalition once it has been established. For example, if an “enforcement coalition” forms, the suspect will attempt to cajole members to defect; indeed, many members will join an enforcement coalition to extract concessions from the suspect. There is also a “first mover” defection advantage in the sense that suspects only need to cajole sufficient op-

32 Nownes and Neeley (see n. 27); Robert H Salisbury, “An Exchange Theory of Interest Groups” (1969) 13(1) *Midwest Journal of Political Science* 1 .

33 In Salisbury’s earlier formulation, for example, “the group entrepreneur’ invests his capital to create a set of benefits which he offers at a price to a market”. Salisbury (see n. 32) 17

34 Recall that the coalition game above assumed that the decisions of E simply followed whomever held the most resources.

position members in order to reach the resource-weighted majority. In the examples above we assumed that the coalition members in the “enforcement coalition” could defect to the “suspect coalition” without cost. Thus the political entrepreneur, through the use of peer and public pressure, can raise the costs of defection. Of course, these costs are unlikely to prevent defection when the material disparities are large. However, they could prove decisive when coalitions are evenly matched or when the entrepreneur has the support of a patron.

Information, Signals and Trust

Thus far the coalition games presented in this chapter—together with the enforcement models in the previous chapter—have assumed complete information.³⁵ For example, the simple enforcement game in Chapter 3 assumed that all the players were aware of payoffs that the others faced. The assumption of complete information is difficult to maintain in real life and it has important implications for the decisions of strategic actors.³⁶ It is particularly difficult to maintain in relation to illegal behaviour, such as corruption, and in environments where sources of reliable information are scarce, such as developing countries. Furthermore, in these contexts there are huge incentives for the players involved to misrepresent or exaggerate their position. For example, the law enforcement authority E in the reporting game has an incentive to signal that he faces tough sanctions to increase the bribe payments from T.

Information asymmetries—the situation where information is distributed unequally amongst some groups—has important implications for outcomes in the coalition game. Indeed, all players can benefit from convincing other players that their personal resources γ or their coalition’s aggregate resources are larger than they are because of their conflicting interest in the case outcome.³⁷ For example, both the trustee player T and the public players P_1 and P_2 gain benefit from exaggerating their resources. Consider the following simple modification to the first example above. Recall that there are three players—T, P_1 , and P_2 —that stand to benefit g in accordance with their resources. In the example above, P_1 and P_2 will form a coalition if their combined resources $\gamma_{P_1} + \gamma_{P_2} > \gamma_T$. In this situation T

³⁵ The exception in Chapter 3 is Model II.

³⁶ Baird, Gertner, and Picker (see n. 21) 79.

³⁷ Diego Gambetta, “Signaling” in Peter Hedström and Peter Bearman (eds.), *The Oxford Handbook of Analytical Sociology* (Oxford University Press 2009) 172.

clearly has an incentive to exaggerate her resources; specifically she has an incentive to claim that her resources are $\gamma_T \geq \gamma_{P_1} + \gamma_{P_2}$. If T convinces P_1 and P_2 of this, they will not form the “enforcement coalition”. Conversely, both P_1 and P_2 have an incentive to exaggerate their resources. Not only would this influence the distribution g amongst the “enforcement coalition” but if P_1 and P_2 can convince E that they possess more resources than T, then E will enforce the law in their favour.

The presence of information asymmetries has implications for the role of political entrepreneurs as well as coalition members generally. The ability of T’s coalition to respond to new information depends on qualitative factors such as trust, leadership, and charisma. For example, when new information about a player’s resources is discovered it will often require a renegotiation amongst coalition members. In the illustration above, for example, if P_1 or P_2 learn the real resource level, T will be forced to negotiate a distribution of g to avoid enforcement. These skills become particularly important when the distribution of resources are closely balanced. If, for example, it turns out that T and P_2 possess similar resources, then trust and charisma is likely to play an important role in the decision of P_2 .

ALTERNATIVE EXPECTATIONS FOR SUBNATIONAL COMPARATIVE RESEARCH

The discussion in this and the previous chapter has different implications for the empirical analysis of subnational corruption law enforcement. One can ask the overarching question: how would these alternative explanations account for subnational trajectories, outcomes, and patterns of corruption law enforcement? If the *law-centred explanation* is correct, to account for spatial patterns of corruption law enforcement we should expect to find either a correlation between subnational territorial jurisdictions (e.g. federal criminal justice systems) and corruption law enforcement patterns or, alternatively, a correlation between levels of actual corruption and corruption law enforcement. To account for individual case outcomes, there should be sound legal reasons that can account for corruption investigations that did and did not lead to prosecution. Finally, to account for individual case trajectories, one would expect to find relatively constant progress on corruption investigations or, alternatively, clear events with legal repercussions, such as the discovery of new evidence or

new legal precedents that can account for shifts in case trajectories (delays, terminations, etc.).

If the *culture-centred explanation* is correct, to account for temporal patterns of corruption law enforcement there should exist a correlation between changing cultural norms relating to corruption and levels of corruption law enforcement. Similarly, we should be able to point to variations in local cultural norms or attitudes towards corruption to account for spatial patterns of subnational corruption law enforcement as well as different outcomes in similar cases. Finally, to account for shifts in individual case trajectories, research should identify either attitudinal changes or, perhaps, changes in the information law enforcement agents have about local cultural norms or that local communities have about an individual case.

If the *institution-centred explanation* is correct, we should expect to find a relationship between subnational law enforcement agencies and corruption law enforcement. More specifically, we should expect to find different formal institutional arrangements or different informal organisational norms, routines, and personnel that can account for spatial patterns of corruption law enforcement at the subnational level. At the individual case level, there should exist institutional rules or organisational norms that can account for why some cases are prosecuted and some are not. Generally, one should not find dramatic shifts in individual case trajectories and, if we do, we should be able to attribute these shifts either to changes in institutional rules, new information that might influence how existing rules and norms deal with a case, or changes in personnel.

If these explanations provide an incomplete or unsatisfactory account of corruption law enforcement trajectories, outcomes, and patterns, then we can consider the following: if a resource-focused theory of legal mobilisation is correct, there should be a relationship between resource mobilisation and corruption law enforcement trajectories, outcomes, and patterns. To account for patterns of corruption law enforcement, we should expect to find a correlation between the distribution of resources and the presence of patrons and political entrepreneurs that help individuals and groups to overcome collective action dilemmas and incentivise them to support corruption law enforcement. To account for individual case outcomes, there should be a relationship between the resource strength of support and suspect alliances and case outcomes—that is, there should be relatively strong opposition alliances where corruption cases are prosecuted

and relatively weak opposition alliances where corruption cases are ignored. To account for shifts in case trajectories, we should expect to find a relationship between changes in opposition-incumbent alliance strength and case trajectory shifts. These changes could be gradual, i.e. as an entrepreneur builds an opposition coalition, or rapid if new information triggers a collapse in either suspect or enforcement coalitions. Furthermore, to convince ourselves that the relationship is not spurious or that the causal direction runs the other way (i.e. that alliances shift after case progress is made), we should find that coalition changes *predate* shifts in case trajectories. Table 2 summarises the expectations for the different accounts considered in this chapter.

Table 2: Alternative Explanations for Corruption Law Enforcement Outcomes and Patterns

Explanation	Temporal variation	Spatial variation	Case Trajectories
Law	Changes to corruption and related criminal laws	Different levels of corruption	New evidence, legal debates
Culture	Shifts in cultural norms and public opinion	Variation in subnational cultural norms and public opinion	Scandals or new information trigger changes in public opinion
Institutions	Increases in resources, personnel appointments, institutional reforms, etc.	Variation in subnational organisational norms and practices, personnel, etc.	Rotation of personnel
Legal mobilisation	Changes in the interests and incentives of patrons, political entrepreneurs	Subnational variation in the distribution of resources, patrons, political entrepreneurs, etc.	New information about coalition resources, changes in patron incentives, defections.

CONCLUSION

This chapter specified a theoretical account for when and how privatised public law enforcement regimes generate corruption investigations and prosecutions. It argued that—in the absence of a robust public enforcement regime that can secure information, socialise operational costs, and ensure accountability within its own organisation—legal mobilisation by individuals and groups is central to corruption law enforcement outcomes. The diffuse impacts on individuals

and groups as well as the need to mobilise a range of resources means individual or groups interested in corruption case outcomes need to engage in coalition building. Drawing on interest group theory and the logic of game theory, I argued that patrons and political entrepreneurs play a critical role in coalition formation. In addition, the presence of information asymmetries and conflicts of interest amongst members—many of whom may join “enforcement coalitions” to extract concessions from corruption suspects—mean that coalitions are fragile and can easily collapse.

The next four chapters shift attention from theory to empirics. In the chapter that follows, I introduce the focus case of Indonesia. The analytical objectives of this chapter are two-fold: it first seeks to consider the extent to which the criminal justice system in Indonesia can be characterised as a privatised public regime; and secondly, it identifies the specific institutional arrangements of subnational law enforcement as they relate to information, enforcement costs, and accountability. The next two chapters focus on four cases of corruption involving Bupati (Mayors). These cases are arguably those that a privatised public regime is *least likely* to investigate and prosecute without external assistance because of the resources that the corruption suspect controls. Chapter 6 focuses on two cases that resulted in prosecution of Bupati whereas Chapter 7 focuses on two cases where Bupati were investigated but not prosecuted. Together these chapters shed light on both the enforcement processes as well as coalition formation dynamics. Chapter 8 again broadens the focus. It uses quantitative methods to test key hypotheses that derive from the account of law enforcement developed in this and the previous chapter.

CORRUPTION AND CORRUPTION LAW
ENFORCEMENT IN INDONESIA: REFORM AND ITS
IMPLICATIONS

Throughout Indonesia's history corruption has been a regularly feature of politics and governance. Officials of the Dutch East India Company used their position to embezzle company funds, which is thought to have contributed to the collapse of the company in 1800.¹ In the colonial period, the Dutch policy of indirect rule involved tolerance of corruption—the use of public office for private gain—amongst the indigenous, semi-feudal elite.² Similarly, in the Suharto period, the distribution of opportunities for corruption and rent-seeking were critical to the maintenance of the dictator's regime.

In the post-Suharto democratic period, corruption played a similar functional role in the bureaucracy and state; bureaucratic agencies and politicians still rely on additional revenues raised through a combination of bribery, extortion, and embezzlement to fund operational and strategic activities, augment meagre salaries, and fund the distribution of political patronage and election campaigns. However, the pervasiveness of corruption, its functional role in the state, and societal tolerance for it does not mean that corruption is not considered a problem. Efforts to eradicate—or at least control or lessen—corruption have almost as long a history in Indonesia as corruption itself.

This chapter focuses on corruption, corruption laws, and corruption law enforcement in Indonesia, with a particular emphasis on for-

¹ J S Furnivall, *Netherlands Indies: A Study of Plural Economy* (Cambridge University Press 1944) 49-50; Clive Day, *The Dutch in Java* (Oxford University Press 1966) 100-2.

² Max Havelaar, *Multatuli: Or the Coffee Auctions of a Dutch Trading Company* (Penguin 1987).

mal institutional changes introduced since the resignation of Suharto in 1998 and the informal institutional practices that remain prevalent. It makes four main arguments in four sections. First, despite continuity in the pervasiveness and forms of corruption, changes to state institutions have altered the distribution of corruption's costs and benefits. In a general sense the benefits are no longer as centralised and the costs are no longer as disbursed as they were during Suharto's authoritarian New Order regime. By no means has this resolved the fundamental collective action problem involved in addressing corruption, as discussed in Chapters 2 and 3, but it has meant that there are now more individuals and institutions with an interest in addressing corruption. The second argument relates to the role of corruption laws in accounting for the puzzles outlined in Chapter 1, particularly the substantial increase in corruption law enforcement in the last decade. I argue that the new laws are insufficiently different from previous laws to alone account for the substantive increase in corruption law enforcement. Corruption law enforcement in the context of Indonesia is therefore less a challenge of legal norms than a challenge of the formal and informal institutions that underlie the operation of law. The remainder of the chapter turns to these institutions.

Drawing on the public-private conceptualisation of law enforcement developed in Chapter 3, I argue that—despite efforts to exert both greater public control over law enforcement institutions and increased public financing of law enforcement—weak accountability institutions and a continuing reliance on off-budget financing mechanisms means that public law enforcement agencies remain, in practice, partially privatised. There are two main markets: an external market consisting of brokers, which in Indonesia is referred to as the “judicial mafia”, and an internal market involving the purchase of career promotions and the regular payment of tribute to superiors. The final section considers subnational law enforcement. Formally, law enforcement in Indonesia is highly centralised. However, informal institutional arrangements distribute influence to a broad range of national and local individuals and institutions. The central government retains the ability to intervene in local cases if its interests are at stake; but local actors can also influence law enforcement because of the reliance of these institutions on local sources of financing and information.

CORRUPTION

Corruption is pervasive in Indonesia; it was ranked the most corrupt country in the world in the first Corruption Perception Index (CPI) published in 1995, which was based on surveys conducted in 1992–1994.³ Over the period under consideration in this thesis—the first decade or so since the corruption laws were overhauled in 1999—there has been little change in the level of perceived corruption in the archipelago. Figure 13, which contrasts Indonesia with three other countries, indicates that the CPI has improved slightly from 1.7 in 1999 and 2000 to 3.1 in 2012. These figures are consistent with the World Bank’s Worldwide Governance Indicators, which indicate a statistically insignificant improvement in the control of corruption from 20.0 to 27.3 from 2000 to 2010.⁴

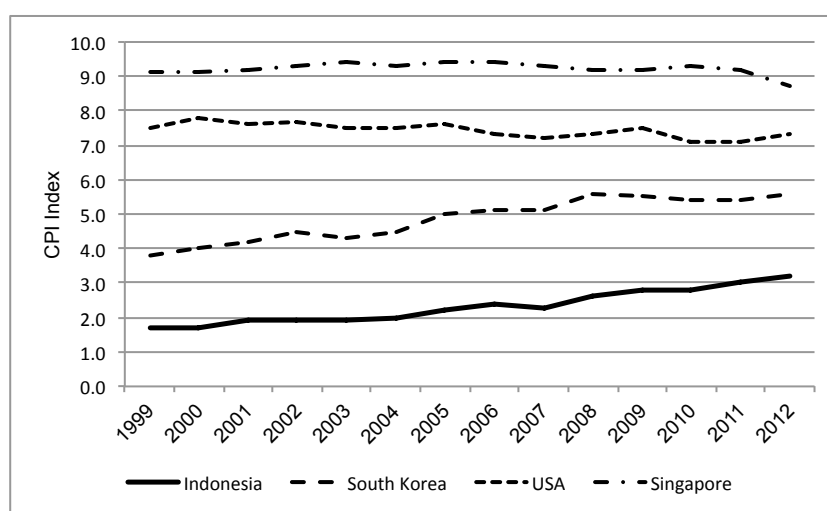


Figure 13: TI Corruption Perceptions Index – Indonesia (1999-2012)

Surveys conducted within Indonesia indicate that there is little substantial variation in perceived levels of corruption at the subnational level. Figure 14, which shows the distribution of perceived levels of corruption in fifty districts within Indonesia in 2008, indicates that most districts score between three and five.⁵ The distribution does not suggest that corruption is confined to some districts and not to

3 Johann Graf Lambsdorff, *1995 TI Corruption Index: Explanatory Note* (Transparency International & University of Goettingen 1995) .

4 Maira Martini, *Causes of Corruption in Indonesia* (U4 Anti-Corruption Resource Centre 2012) 2.

5 The different methodologies mean that the international and subnational indexes are not comparable. That is, it is not possible to conclude that corruption in the fifty districts surveyed is lower than the average for Indonesia. Frenky Simanjuntak, *Measuring Corruption in Indonesia: Indonesia Corruption Perception Index 2008 and Bribery Index* (Transparency International Indonesia 2009) 12-3.

others, although there are some outliers at the lower end scoring 2–3, and at the higher end scoring 6–7.⁶ Rather, the distribution suggests that corruption is widespread at the local level. Despite little change in the overall levels of corruption in the last decade, there have been important changes in the distribution of the benefits and impacts of corruption. These changes have important implications for corruption control generally and corruption law enforcement specifically, because changes in the costs and benefits of corruption influence the prospects for collective action in response to corruption.

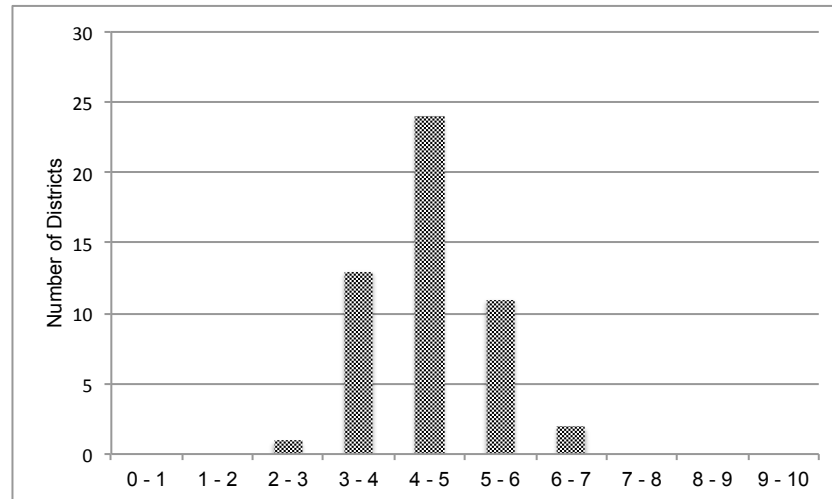


Figure 14: Distribution of TII Corruption Perceptions Index – 50 Districts (2008)

Corruption was pervasive but centralised during the Suharto era; corruption and rent-seeking were critical to the President’s “franchise system” of government.⁷ This system created a set of incentives that ensured loyalty to the regime and allowed a small elite to “use the coercive power of the government privately to tax the general public and redistribute the tax revenue” to itself.⁸ This franchise system consisted of five branches: a political branch, a bureaucratic branch, a judicial branch, a military branch, and a commercial branch encompassing state-owned enterprises and politically-connected commercial firms. Its underlying logic meant that individuals or firms would, like a franchise, buy into the regime by purchasing positions in government or business monopolies. These “franchisees” then used the positions to recoup their investment, returning excess profits to those

6 The report does not provide confidence intervals.

7 Ross H McLeod, “Inadequate Budgets and Salaries as Instruments for Institutionalizing Public Sector Corruption in Indonesia” (2008) 16(2) South East Asia Research 199 .

8 *ibid.*, 200.

in higher positions, while keeping some for themselves. In this way, politicians extracted payments from businesses, bureaucrats extorted fees from licensing and service delivery, the judiciary made decisions that benefited moneyed interests and maximised the likelihood of gifts, the military and police extorted payments from businesses, and state and private firms reaped the benefits of monopolies and colluded to increase prices. The system operated at all levels:

Provincial governors, mayors and heads of districts, subdistricts and even villages, along with their bureaucrats and administrators, were encouraged—indeed, expected—to act in a similar manner. When opportunities existed for government officials at any level to use their authority in ways that generated excess profits for favoured businesses, this was precisely what occurred.⁹

The system concentrated the benefits of corruption and rent-seeking amongst a small, politically connected elite and distributed the impacts of corruption widely. For example, the monopolies on cloves or plywood distributed the impacts to consumers of these products, while the embezzlement of oil and gas revenues arguably affected the entire population through reduced government revenue for social programs. Furthermore, the system ensured that those who were outside the system or only benefited marginally were either compromised or disempowered; for example, both salaries and operational budgets were kept to a minimum so that ostensibly public agencies and agents were required to raise off-budget revenues through bribery and corruption in order to fulfil their mandate and augment their meagre salaries.¹⁰ This distribution of corruptions' costs and benefits made collective action particularly difficult.

There were, however, some efforts to address corruption during the Suharto years. These efforts highlight the collective action challenge involved in addressing corruption. In 1970 and again in 1977, university students (one of the few groups in society not compromised by the regime) sought to protest against corruption, organising mass demonstrations in a number of large cities. However, these campaigns were easily put down through a mix of promises and coercive action.¹¹ After the oil boom of the late 1970s and early 1980s exposed

⁹ *ibid.*, 203.

¹⁰ *ibid.*

¹¹ Theodore M Smith, "Corruption, Tradition and Change" (1971) 11 *Indonesia* 21 ; Heri Akhmadi, *Breaking the Chains of Oppression of the Indonesian People: Defense State-*

economic inefficiencies generated by corruption, well-connected businesses also began to demand efforts to reign in excessive corruption. This was an arguably more successful campaign in terms of its short-term impact on reducing specific incidents of corruption. For example, in 1985, Suharto responded to complaints from businesses about excessive bribes from customs by contracting a private Swiss company to manage the provision of customs services.¹² These businesses held leverage over the regime because of their ability to move capital out of the country when the business environment deteriorated.¹³ More generally, these examples highlight the challenges of addressing corruption in an authoritarian regime: impacts are large but generally disbursed, there are few groups or institutions not compromised, and only the connected and wealthy have access and the means to illicit a response from the dictator.

Fundamental changes to the state's political and fiscal institutions has had a significant impact on the distribution of corruption's costs and benefits. Four reforms warrant a mention. First, the managed elections of the New Order regime—where President Suharto's Golkar party consistently won 70 percent of the vote—was replaced by a highly competitive party system. Since 1999 a multimember, proportional representation electoral system has been used in Indonesia, which was favoured over a majoritarian system so as not to endanger Indonesia's ethnic and religious pluralism.¹⁴ At both the national and local level it has led to an increasingly fragmented political system in which no single party dominates. The average political fractionalisation of district councils (DPRD) increased from 0.722 in the 1999 elections, already a very high-level, to 0.819 in 2004.¹⁵ A second important political reform was the introduction of direct elections for heads of government. In 2004, the President was directly elected and, beginning in 2005, direct elections for provincial Governors as well as district Bupati and Wali Kota were introduced. This strengthened the executive vis-a-vis the legislative. However, both at the national

ment at His Trial on Charges of Insulting the Head of State, Bandung, June 7-10, 1977 (SEAP Publications 1981).

12 Fiona Robertson-Snape, "Corruption, Collusion and Nepotism in Indonesia" (1999) 20(3) *Third World Quarterly* 589–595.

13 Andrew Macintyre, "Institutions and the Political Economy of Corruption in Developing Countries" in *Workshop on Corruption at Stanford University* (2003) vol. 31, 13-4.

14 Edward Aspinall, "The Irony of Success" (2010) 21(2) *Journal of Democracy* 20–26.

15 It is generally thought to have increased further in 2009. For example, in East Java, average political fractionalisation of district councils increased from 0.67 in 1999, to 0.77 in 2004, and then 0.86 in 2009.

and local level, government heads must still build cross-party coalitions in order to work with fragmented legislative institutions.¹⁶ The distribution of patronage has been the primary method of coalition building.¹⁷ A third important reform was the decentralisation of the state budget, which empowered local politicians and bureaucrats to control local government expenditure (although the central government remains the provider of block grants to local budgets). And fourth reform involved a radical reduction in state subsidies for political parties, which has undermined hierarchical relations within parties and requires parties to source alternative sources of funds from oligarchs, local businessmen, and the bureaucracy.¹⁸

Democratisation and decentralisation have distributed the benefits of corruption downwards, making local politicians and bureaucrats the clear winners in the post-Suharto era. Politicians in local district councils enjoy more control over local budgets and local bureaucrats exercise greater control over procurement. It is generally thought that this has increased local opportunities for corruption rather than having led to significant improvements in service delivery and development expenditure.¹⁹ The corruption methods involve both old strategies practised during the Suharto era as well as new strategies in response to the new institutional context. Examples include the local governments' embezzlement of revenues, local councils' extortion of the local executive, the sale and purchase of local civil servant recruitment and promotions, kick-backs from capital development projects, the marking-up of goods and services procured by the local government, the manipulation of credit provided by local banks and credit cooperatives, and the collection of illegal fees for local licences and regulations.²⁰ The extent to which distribution of corruption has

16 Aspinall, "The Irony of Success" (see n. 14) 27.

17 Vedi R Hadiz, *Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective* (Stanford University Press January 2010); Gerry van Klinken, "Patronage Democracy in Provincial Indonesia" in Olle Tornquist, Neil Webster, and Kristian Stokke (eds.), *Rethinking Popular Representation* (Palgrave Macmillan 2009); Dan Slater, "Indonesia's Accountability Trap: Party Cartels and Presidential Power After Democratic Transition" (2004) 78 *Indonesia* 61.

18 Marcus Mietzner, *Money, Power, and Ideology: Political Parties in Post-Authoritarian Indonesia* (NUS Press 2013) 65-85.

19 See, for example: Michael Buehler, "Decentralisation and Local Democracy in Indonesia: The Marginalisation of the Public Sphere" in Edward Aspinall and Marcus Mietzner (eds.), *Problems of Democratisation in Indonesia: Elections, Institutions, and Society* (Institute of Southeast Asian Studies 2010); Samuel Clark and Blair Palmer, *Peaceful Pilkada, Dubious Democracy: Aceh's Post-Conflict Elections and their Implications* (Indonesian Social Development Papers, 11, World Bank 2008); Hadiz (see n. 17).

20 Taufik Rinaldi, Marini Purnomo, and Dewi Damayanti, *Fighting Corruption in Decentralized Indonesia: Case Studies on Handling Local Government Corruption* (World Bank 2007) 31-4.

changed is evidenced by comments that many local-level positions are more lucrative than some positions in the provincial or national government.²¹

The victims of corruption are arguably also more diverse. For example, ordinary voters will often sell their vote to politicians, recouping a portion of corruption that funds election campaigns, and communities that vote in blocks can negotiate basic infrastructure in exchange for their vote at election time.²² Corruption involving local politicians is often motivated by the need to recoup election campaign costs.²³ Corporations working in the natural resource sectors must also cope with a plethora of local government demands and no longer have an omnipotent partner in the national government that can cut through the local politics.²⁴ And the state is also no longer protected from itself. For example, the president, ministries, and SOEs must make payments to the parliament and its commission to pass annual budgets, appointments, legislation, and ensure friendly accountability hearings.²⁵ Similarly, and as will be elaborated on below, accountability agencies demand payments from other state agencies for favourable audits or to avoid investigation.

These changes to the distribution of corruption's costs and benefits have not removed the collective action problem involved in addressing corruption. The benefits of corruption are still more concentrated than its costs. More fundamental, however, have been changes to the institutional mechanisms that coordinate efforts to address corruption. As noted above, these had been highly centralised during the Suharto regime. But the same reforms that have altered the distribution of both the costs and benefits of corruption have also altered influence over the mechanisms for addressing corruption, particularly law enforcement institutions. The following three sections turn to these reforms and their implications.

21 Interview with Anonymous, senior investigator, Jakarta, October 2011.

22 Clark and Palmer (see n. 19).

23 Hadiz (see n. 17) 113; Marcus Mietzner, "Soliders, Parties and Bureaucrats: Illicit Fund-raising in Contemporary Indonesia" (2008) 16(2) South East Asia Research 225.

24 Personal Communication with Kym Holthouse, PhD Candidate, Jakarta, 10 September 2011.

25 Howard Dick and Jeremy Mulholland, "The State As Marketplace: Slush Funds and Intra-Elite Rivalry" in Edward Aspinall and Gerry van Klinken (eds.), *The State and Illegality in Indonesia* (KITLV Press 2011) 76.

CORRUPTION LAWS

Corruption laws have existed in Indonesia since the colonial period and have been strengthened on numerous occasions since independence from the Dutch in 1945. Corruption or “positional offences” were included in the criminal code since at least 1915.²⁶ The Indonesian *Criminal Code* of 1981 includes bribery and embezzlement, and extortion.²⁷ The first specific corruption laws in Indonesia were established in 1957 and 1958 when the country was under martial law,²⁸ and these regulations applied to the military.²⁹ In 1971, in response to widespread student protests the previous year, the government passed a revised corruption eradication law that sought to strengthen the law in a number of important ways.

The new law sought to reduce technical flaws that allowed suspects to avoid prosecution.³⁰ First, instead of requiring prosecutors to prove criminal intent, it was sufficient to show that an official had “violated the law” by enriching himself.³¹ Second, corruption was conceptualised as a formal rather than a material offence.³² This circumvented the need for prosecutors to prove that the violations had caused state losses and was meant to preclude suspects from returning funds to avoid prosecution.³³ Third, the new law distinguished between active and passive bribery, criminalising both those who initiated and those who participated in corrupt transactions.³⁴ Despite these improvements in the law, as well as a commitment from then President

26 Wetboek Van Strafrecht (WVS): Kitab Undang-Undang Hukum Pidana [Criminal Code of Indonesia] 1915.

27 Articles 415 criminalise embezzlement, articles 149, 418, 419, 420 respectively criminalise bribery in relation to elections, public office and the judiciary, articles 421–423 and 425 criminalise extortion, and article 435 criminalise official profiteering from government procurement Kitab Undang-Undang Hukum Pidana [Criminal Law Code] 1981.

28 Peraturan Penguasa Militer No PRT/PM-06/1957 tentang Pemberantasan Korupsi [Military Authority Regulation No PRT/PM-06/1957 on the Eradication of Corruption] 1957; Peraturan Penguasa Perang Pusat No Prt/Peperpu/013/1958 tentang Pengusutan, Penuntutan dan Pemeriksaan Perbuatan Korupsi Pidana dan Penilikan Harta Benda [Military Authority Regulation No PRT/Peperpu/013/1958 on the Investigation, Prosecution and Examination of Corruption and Inspection of Properties] 1958.

29 Hartanti (2007), 22.

30 Hartanti (2007), 24–5.

31 Undang-Undang No 3 Tahun 1971 Tentang Pemberantasan Tindak Pidana Korupsi [Law No 3 of 1971 on the Eradication of Corruption] 1971, 1(1).

32 *ibid.*, 1(2).

33 *ibid.*, 1(1).

34 *ibid.*, 1(1).

Suharto that he would personally lead the fight against corruption, the laws went largely unenforced.³⁵

The laws were again revised after the resignation of Suharto. One of the first pieces of legislation passed by the newly elected parliament in 1999 was a strengthened corruption law that sought to overcome previous enforcement challenges. For example, the new law allowed for investigators to intercept communications related to corruption and to freeze bank accounts thought to hold funds obtained from corruption.³⁶ Importantly, in terms of securing reports of corruption and evidence, the new law also provided some, albeit limited, protections for whistle blowers and witnesses.³⁷ It also allowed for the limited reversal of proof,³⁸ and it permitted trials *in absentia*.³⁹ Finally, in recognition of the weakness of law enforcement and judicial corruption, the new law flagged the establishment of an independent corruption eradication commission, and also instituted minimum punishments for corruption. The law was again revised in 2001. The revised law modified evidentiary requirements to allow new electronic forms of evidence, including electronic documents, recordings, photographs, and other media.⁴⁰ It also strengthened the statutes related to reversal of the burden of proof (*pembuktian terbalik*). The 1999 law provided defendants with a right to prove their innocence by accounting for their assets, whereas the 2001 revisions required defendants to account for their assets. It then permitted judges to consider the failure of defendants to explain their assets in their assessment of guilt.⁴¹

The core challenge for these laws has always been implementation. These reforms of corruption laws have undoubtedly contributed to the increase in corruption prosecutions over the last ten years. However, it is equally apparent that the 1999 and 2001 laws could easily have languished like their predecessors were they not accompanied by even more substantive reforms to the political framework. Indeed, they did languish initially and many commentators concluded, perhaps prematurely, that the new corruption laws would face a similar

³⁵ Smith (see n. 11) 21.

³⁶ Respectively, Art 30 and Art 29(4). Undang-Undang Republik Indonesia No 31 Tahun 1999 Tentang Pemberantasan Tindak Korupsi [Law No 31 of 1999 on the Eradication of Corruption] 1999.

³⁷ *ibid.*, 41(2).

³⁸ *ibid.*, 37.

³⁹ *ibid.*, 38(1).

⁴⁰ Undang-Undang Republik Indonesia No 20 Tahun 2001 Tentang Pemberantasan Tindak Korupsi [Law No 20 of 2001 on the Eradication of Corruption] 2001, 26A.

⁴¹ *ibid.*, 37A.

fate to those that had gone before them.⁴² The next section turns to the law enforcement institutions.

CORRUPTION LAW ENFORCEMENT

Three government agencies are responsible for the enforcement of corruption laws in Indonesia: the police, the Public Prosecution Service (AGO), and the independent Corruption Eradication Agency (KPK). The police possess the authority to investigate corruption crimes as part of their mandate to investigate all criminal acts.⁴³ The authority of the AGO to investigate corruption is based on the *Criminal Procedures Code* established in 1981, which defined different investigatory arrangements for special crimes such as corruption.⁴⁴ Prior to this, only police possessed the authority to investigate corruption. Finally KPK, which was established in 2002, has the authority to monitor, investigate, and prosecute corruption at all levels of government. It can also take over corruption cases under investigations by the police and the AGO.⁴⁵

The standard criminal justice system, which refers to the police and the AGO, have investigated and prosecuted the vast majority of corruption cases in the decade since the corruption laws were strengthened in 1999. Figure 15 indicates that each year the AGO has prosecuted 20–30 times more corruption cases than KPK.⁴⁶ However, despite handling fewer cases in total, KPK has arguably investigated and prosecuted larger, more complex, and more politically sensitive

⁴² Hamilton-Hart, for example, argued in 2001 that anti-corruption efforts had fallen short of expectations because of failures to improve organisational self-discipline. See: Natasha Hamilton-Hart, "Anti-corruption Strategies in Indonesia" (2001) 37(1) *Bulletin of Indonesian Economic Studies* 65 .

⁴³ Undang-Undang No 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia [Law No 2 of 2002 on State Police] 2002, 14(1) g.

⁴⁴ Undang Undang No 8 Tahun 1981 Tentang Kitab Undang Undang Hukum Acara Pidana [Law No 8 of 1981 on the Code of Criminal Law Procedure] 1981, 284(2); Peraturan Pemerintah No 27 Tahun 1983 Tentang Pelaksanaan Kitab Undang Undang Hukum Acara Pidana [Government Regulation No 27 of 1983 on Implementation of the Code of Criminal Law Procedure] 1983, 17.

⁴⁵ Undang-Undang No 30 Tahun 2000 Tentang Komisi Pemberantasan Tindak Pidana Korupsi [Law No 30 of 2002 on the Commission for the Eradication of Criminal Offences of Corruption] 2002, 8(2).

⁴⁶ The data sources are as follows: for KPK data see the Anti-Corruption Clearing House (available at acch.kpk.go.id); for AGO data see the Official Statistics of the Supreme Prosecutor (available at www.kejaksaan.go.id) for the period 2004–2013, and for 2003 ("270 Anggota Legislatif Korup [270 Corrupt Members of Parliament]" *Banjirmasin Pos* (Banjirmasin, June 10, 2004)), for 2002 (Efi Laila Kholis, *Putusan Mahkamah Konstitusi Nomor 28/PUU-V/2007 tentang Pengujian Undang-Undang RI no. 16 tahun 2004 Tentang Kejaksaan RI terhadap Undang-Undang Dasar 1945 (Kewenangan Penyidikan)* (Pena Multi Media 2008))

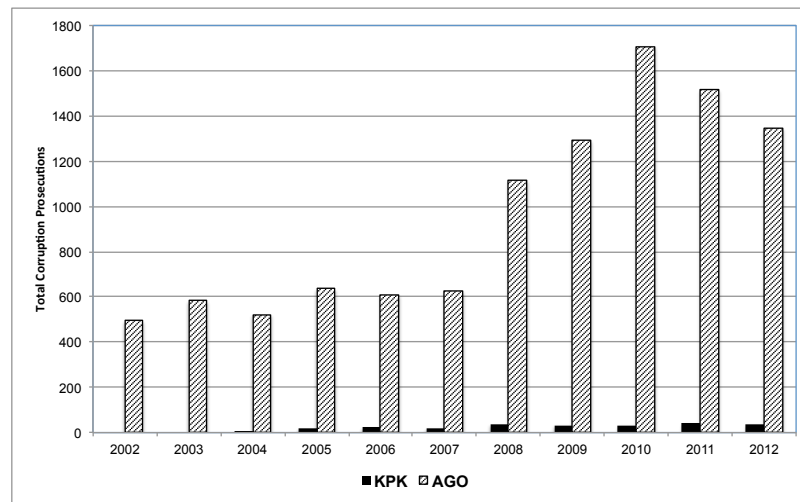


Figure 15: Corruption Prosecutions – KPK & AGO (2002-2012)

corruption cases. One measure of case complexity is the state losses involved in a case. State losses are, on average, 20–30 times larger for cases prosecuted by KPK than those prosecuted by the AGO. For example, in 2011, the average state losses per case were Rp. 132 million (\$13,250) at the AGO and Rp. 3.3 billion (\$335,000) at KPK.⁴⁷ KPK also tends to focus on national cases whereas the majority of police and AGO cases are at the subnational level. Given the subnational focus of this thesis, the remainder of this section focuses on the police and the AGO.⁴⁸

In terms of the models of law enforcement outlined in Chapter 3, institutional reforms to law enforcement agencies have moved from extreme private control and off-budget financing to a model that is ostensibly under public control and relatively more reliant on public financing. However, the continued influence of informal institutions of political patronage and off-budget resourcing partially shifts law enforcement back towards the private model. Figure 16 below illustrates these shifts. The solid lines indicate the formal institutional shift and position whereas the dotted lines indicate the informal shift and position. In this way, law enforcement in Indonesia can be understood as

⁴⁷ For KPK data see: Anti-Corruption Clearing House (available at acch.kpk.go.id); for AGO data, see: Attorney General's Office, *Laporan Tahunan 2011 Kejaksaan Republik Indonesia [2011 Annual Report of the Attorney General of the Republic of Indonesia]* 2012 45.

⁴⁸ On KPK see: Simon Butt, *Corruption and Law in Indonesia* (Routledge 2011); Gabriel Kuris, *Inviting a Tiger into Your Home: Indonesia Creates an Anti-Corruption Commission with Teeth: 2002-2007* (Innovations for Successful Societies, Princeton University 2012); Gabriel Kuris, *Holding the High Ground with Public Support: Indonesia's Anti-Corruption Commission Digs In, 2007-2011* (Innovations for Successful Societies, Princeton University 2012).

semi-private (or semi-public): law enforcement agencies are neither completely autonomous of public influence nor public funding—and hence public interests as mediated through these institutions—but neither are they immune from private influence and financing. This creates a situation where a broad range of public and private interests and resources jostle for influence over corruption law enforcement processes and outcomes.

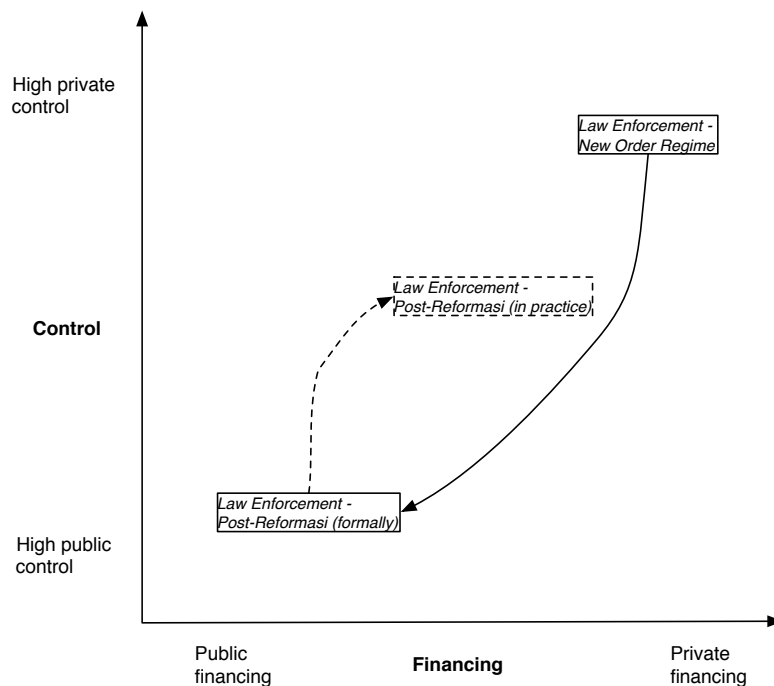


Figure 16: Post-Suharto Reforms and the Public and Private Law Enforcement Models

Control

During the New Order regime the law enforcement agencies were deeply politicised and subservient to the interests of the President and military. The independence of the judiciary was increasingly undermined as tensions between the political and judicial branches—which had been rocky since independence—intensified as the first President sought to centralise power and became increasingly authoritarian in the late 1950s.⁴⁹ Initially the legal profession supported the military coup and Suharto's rise to power from 1965 onwards. How-

⁴⁹ Daniel S Lev, "Judicial Authority and the Struggle for an Indonesian Rechtsstaat" (1978) 13 *Law & Society Review* 37 ; Sebastiaan Pompe, *The Indonesian Supreme Court: A Study of Institutional Collapse* (Cornell Southeast Asia Program Publications November 2005) 35-76.

ever, it quickly became apparent that Suharto's support for the rule of law was largely rhetorical and self-serving. Suharto restricted judicial review in 1970,⁵⁰ shifted judicial administration—including control over appointments, transfers, and promotions—from the courts (and legislature) to the executive,⁵¹ and began to appoint bureaucrats and then military loyalists to the Supreme Court from 1973.⁵² The police were integrated into the military and military personnel were appointed to head the Ministry of Justice, the AGO, and the Supreme Court. The Minister of Justice would often approve verdicts in sensitive cases.⁵³

These institutional arrangements ensured that law enforcement was controlled by an executive that was largely, although not entirely, oriented towards private interests. Indeed, the "integralist" ideology of Guided Democracy and New Order rejected the distinction between private and public interests; political leaders were assumed to embody the public interest. As the renowned Indonesian lawyer A.B. Nasution observed, the integralist ideology and its proponents did not envisage that "state power welded by the state's functionaries might also be used to serve the particularistic interests of the rulers, that it might be used against the interests of the people and that it might take the form of repression".⁵⁴ The tendency for this ideology and its concomitant institutional logic to establish oligarchic classes from bureaucratic institutions in post-colonial states did not escape Indonesia.⁵⁵ The extreme privatisation of state institutions became apparent as Suharto and his inner circle grew increasingly wealthy. It was estimated in the late 1990s that Suharto and his children had accumulated between \$15 billion and \$35 billion during his 32-year rule.⁵⁶

The *reformasi* era of institutional reform—which ran from Suharto's resignation in 1998 until around 2002—saw fundamental changes to the relationship between law enforcement and political institutions

50 Undang Undang No 14 Tahun 1970 Tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman [Law No 14 of 1970 on Basic Provisions of Judicial Power] 1970, 26.

51 Art11(1) on executive control and Art 31 on appointments: *ibid.*.

52 Pompe (see n. 49) 126.

53 Simon Butt, "Surat Sakti: The Decline of the Authority of Judicial Decisions in Indonesia" in Timothy Lindsey (ed.), *Indonesia: Law and Society* (Federation Press 2008).

54 Cited in Daniel Fitzpatrick, "Culture, Ideology and Human Rights: The Case of Indonesia's Code of Criminal Procedure" in Timothy Lindsey (ed.), *Indonesia: Law and Society* (Federation Press 2008) 510.

55 *ibid.*, 511.

56 John Colmey and David Liebhold, "The Family Firm" *Time Magazine* (May 29, 1999)

that have significantly empowered the police and the AGO.⁵⁷ The police were formally separated from the military in April 1999 and placed under the Office of the President. The President still nominates the National Police Chief but his choice must now also be endorsed by Parliament.⁵⁸ The President's choice is further limited by the requirement that the National Police Chief be a three-star officer.⁵⁹ This has empowered the police bureaucracy vis-a-vis the executive.⁶⁰ In contrast, the President is less restricted in his nomination for Attorney General.⁶¹ The President also appoints Deputy Attorney Generals on the recommendation of the Attorney General, and the Attorney General also has powers to appoint junior Attorney Generals from outside the bureaucracy.⁶²

Presidents and Attorney Generals have, over the past decade, been unwilling or unable to exert full control over the law enforcement bureaucracies. President Megawati Sukarnoputri and her Attorney General, M. A. Rachman, did not prioritise corruption law enforcement. The current President, Susilo Bambang Yudhoyono, however, campaigned on an anti-corruption platform. The President's first Attorney General, Abdul Rahman Saleh, was a well-regarded judge from the Supreme Court and former journalist and activist. He prioritised high-profile corruption investigations and, in order to maintain morale, he relied on senior prosecutors from within the bureaucracy rather than outsiders. In 2005 the President also established a Corruption Eradication Co-ordination Team that brought together senior officials from the AGO, the police, and the State Audit Agency. The team, which operated for two years, remained focused on national-level cases and helped to overcome institutional rivalries. Despite good intentions, Attorney General Saleh struggled to deliver, largely because of bureaucratic intransigence. In 2007 he was replaced by a well regarded insider, Hendarman Supandji, who had been head of the AGO's special crimes unit. Supandji oversaw a substantial in-

57 The *reformasi* period saw changes to a whole gamut of state institutions, including executive-legislative, judicial-political, citizen-politician, and centre-periphery relations. There is disagreement on when *reformasi* was complete. I believe the fourth and final constitutional amendment in 2002 is the best marker for its end, although important reforms such as the KPK law were passed after this point.

58 Undang-Undang No 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia [Law No 2 of 2002 on State Police] 2002, 11(1).

59 The law does not specify that the National Police Chief must be a three-star general but that he or she be a "senior officer" (*Perwira Tinggi*). However, current convention requires a three-star general. *ibid.*, 11(6).

60 Interview with Anonymous, political analyst, Jakarta, November 2011.

61 Undang-Undang No 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia [Law No 16 of 2004 on the Prosecutor of the Republic of Indonesia] 2004, 20.

62 *ibid.*, 24(3).

crease in corruption prosecution rates, attributable to the introduction of case quotas for subnational offices (discussed below). However, he came under increasing pressure when the independent KPK caught a prosecutor red-handed accepting a \$600,000 bribe in relation to the investigation of Bank Indonesia Liquidity Credits (BLBI).⁶³ The President's third Attorney General, Basrief Arief, was also an insider. Appointed in 2010, he largely sought to focus on institutional reforms, but these have "made no discernible impact on the agency's performance".⁶⁴

Overall it can be said that leadership has been weak. Javanese political norms that discourage leaders from public confrontation—which are seen as a sign of political weakness—combined with the current President Yudhoyono's personal traits have shielded the police and the AGO from political accountability and interference. Yudhoyono—the first President to be directly elected and thus protected from parliamentary retaliation—has been reluctant to use his powers of dismissal to, for example, remove under-performing appointments during his two terms in office.⁶⁵

Parliament's control over law enforcement has also been transformed in the post-Suharto era. During the New Order, the Parliament was a rubber stamp with little tangible influence. Post 1999, one of the most fundamental changes was the lifting of restrictions on the formation of political parties and the introduction of genuinely democratic and competitive elections. Formal requirements that both the National Chief of Police and the Attorney General report to—and have their budgets approved by—Parliament's Committee III for Legal Affairs has enabled politicians to exert influence over these agencies. These formal mechanisms of political accountability have, however, been undermined by the need for parliamentarians to raise campaign funds, as well as the continuing dominance of patronage norms throughout state institutions.⁶⁶ Dick and Mulholland conclude that "[n]owhere is the state-as-marketplace more apparent than in Indonesia's national parliament" where deals must be done with money.⁶⁷ Although not considered the most "wet"—a term that refers to the extent of corruption—these practices are widespread in Commission

63 "KPK Geledah Rumah Sjamsul Nursalim [KPK Search Home of Sjamsul Nursalim]" *Tempo Interaktif* (Jakarta, March 3, 2008).

64 Kevin O'Rourke, *Reformasi Weekly Review* 2012, 12.

65 Interview with Anonymous, political analyst, Jakarta, November 2011.

66 Mietzner, "Soliders, Parties and Bureaucrats: Illicit Fund-raising in Contemporary Indonesia" (see n. 23).

67 Dick and Mulholland (see n. 25) 79.

III on Legal Affairs. The regular appearance of the National Chief of Police and the Attorney General at committee hearings provides an opportunity for members to induce reciprocation and attach informal conditions to their votes. For example, committee members pass notes to these agency leaders with names of individuals from their local constituency or party who are currently under investigation.⁶⁸ In this way, formal public control is subverted by political or factional interests.

Finance

There have also been changes, albeit less substantial, to the financing of law enforcement since the fall of Suharto. The New Order regime reduced operational budgets and tied judges' salaries to those of ordinary civil servants, meaning that they were systemically under-resourced and under-paid.⁶⁹ These changes ensured that judicial independence was destroyed and that judges could only earn a decent income commensurate with their profession if they engaged in corruption themselves, accepting "gifts" from parties involved in cases. This practice of under-funding law enforcement carried over from the New Order period. The World Bank reported in 2003 that despite reforms "the state fails its chief law and order service provider by continuing to grossly underfund the police".⁷⁰ Its conclusions for the AGO were similar.⁷¹ In addition to under-funding law enforcement generally, existing budgets allocate the majority of resources to salaries and capital expenditure. For example, in 2001, 77 percent of the police's annual budget was allocated to salaries and only about 14 percent was allocated to operational expenditures.⁷²

There have been substantial increases in official budgets in recent years. Figure 17 shows increases in the AGO's annual budget from 2002 until 2013. In 2005, the annual budget was Rp. 858 billion (\$86 million), whereas in 2012 the annual budget was Rp. 3,789 billion (\$380 million). Of course only a small proportion of these figures are allocated to law enforcement generally and corruption law enforcement specifically. Although complete and accurate data are difficult to obtain, figures available suggest that approximately 3-4 percent

68 Interview with Anonymous, parliamentarian, Jakarta, September 2011.

69 Pompe (see n. 49) 124.

70 World Bank, *Combating Corruption in Indonesia* (Jakarta, 2003) 85.

71 *ibid.*, 87.

72 *ibid.*, 85.

is allocated to cover the operational costs of corruption investigations and prosecutions. In 2008, for example, Rp. 65 billion (\$6.5 million) of the Rp. 1,900 billion (\$190 million)—approximately 3.4 percent—was specifically allocated to corruption law enforcement.⁷³ In 2009, the year of national and local elections, the allocation was substantially larger at 5 percent and totalling Rp. 99 billion (\$10 million).

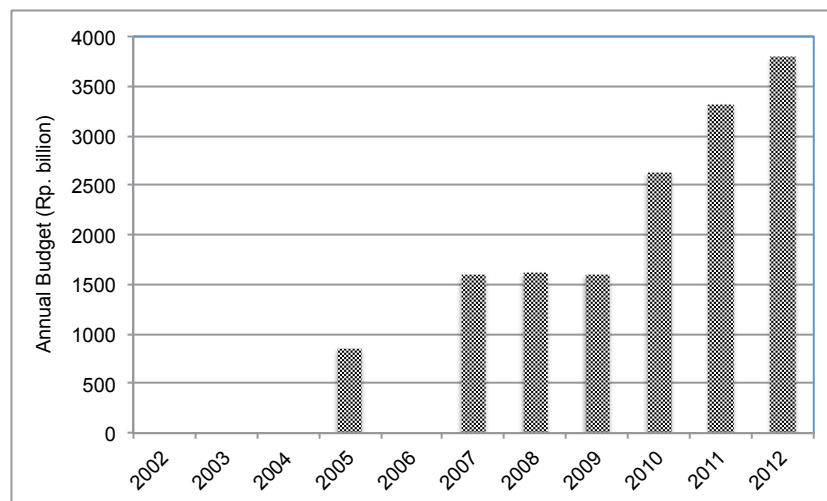


Figure 17: Annual Budget of the Attorney General's Office (2002–2013)

Although there have been steady increases in the official budgets of law enforcement, a substantial proportion of law enforcement financing remains off-budget and sourced privately. The police and AGO estimate that in 2012 still only 30 percent of the operational costs of corruption investigated are covered by formal budget allocations.⁷⁴ This percentage is little changed from a decade earlier and suggests that increases in budgets have only kept pace with the workload.⁷⁵ For the remainder, law enforcement officials must continue to rely on various strategies to raise additional revenues, including shifting funds from capital to operational expenditure via mark-ups and kick-backs, and, more importantly, raising additional revenues through user fees and extortion. These strategies, as they are practiced at the subnational level, are explored in more detail below.

The reliance on a decentralised system of financing has important implications for law enforcement as discussed in Chapter 3. These formal and informal institutions create incentives for law enforcement officials to use the criminal justice procedures to bargain with corrup-

⁷³ Yenny Sucipto, Catatan Anggaran Kejaksaan Tahun 2008, "Merdeka" (February 14, 2009).

⁷⁴ Interview with Anonymous, senior civil servant, Jakarta, December 2012.

⁷⁵ World Bank, *Combating Corruption in Indonesia* (see n. 70) 85.

tion suspects—essentially to sell outcomes as if in a market place. In Indonesia this is often referred to as the “judicial mafia” or the “legal mafia”.⁷⁶ The judicial mafia are essentially brokers. Anyone in regular contact with law enforcement personnel generates the social relations and social capital that allows them to act as a broker, including family members of law enforcement officials, civil society activists, and lawyers. Indeed, a lawyer’s most valuable commodity is generally thought to be his or her contacts in the police, prosecutors, and courts rather than her knowledge of law. Lawyers and law firms expend considerable funds on maintaining their networks within judicial institutions. Some high-profile lawyers will sponsor future law enforcement officials—they begin by covering their law school entrance and tuition fees, then they pay for their promotions until they reach positions of influence that the lawyer can then use to expedite cases (if the sponsored student is an administrator) or influence outcomes (if they are an investigator, prosecutor or judge).⁷⁷

This decentralised system of financing makes it very difficult, and perhaps impossible, to introduce recruitment and promotion systems based on case performance and normative considerations. In the past few years the police and the AGO, but particularly the latter, have sought to strengthen their internal accountability mechanisms. In 2007, the AGO established a Code of Conduct, that was revised in late 2012. In 2011, the AGO passed regulations to establish and implement new internal monitoring systems, including a mechanism to receive complaints from the public. However, the reliance on a decentralised system of financing means that hierarchical control over subordinates, who collect the extra-legal fees, is maintained through a system of patronage and tribute. This system, despite the reforms, continues to dominate these institutions.⁷⁸

This system of patronage operates in a similar way to the franchise system discussed earlier: one’s initial recruitment into the bureaucracy is obtained through payments and then, once inside the system, subordinates secure promotions through additional payments and agreements to channel “tribute” up the organisational hierarchy. For example, a police officer will pay as much as Rp. 300 million (\$30,000) to secure a position in a reasonably wealthy district with

76 Simon Butt and Tim Lindsey, “Judicial Mafia: The Courts and State Illegality in Indonesia” in Edward Aspinall and Gerry van Klinken (eds.), *The State and Illegality in Indonesia* (KITLV Press).

77 Interview with Anonymous, justice reform expert, Jakarta, December 2011.

78 “Cegah Jaksa Nakal, Perlu Contoh KPK [Prevent Rogue Prosecutors, Look to KPK]” *Suara Merdeka* (Semarang, February 17, 2013).

ample opportunities to extort legal and illegal businesses—and will pay even more in a place like East Kalimantan, where there are far more opportunities to extort from illegal logging, mining, and other big businesses. He will also agree to channel a certain amount up the hierarchy to his superiors each year. The more he bids to obtain the job, the more he needs to extort from his jurisdiction, and the less he has for himself and his next appointment.⁷⁹

To summarise, there are two main markets. The external market involves victims of crime paying to have law enforced and, conversely, criminals paying to have crimes ignored or charges and/or sentences reduced. This can lead to lucrative bidding wars when both parties are interested in the case outcome, for the prosecutor can demand greater payments from the suspect—this often occurs in corruption investigations involving local politicians.⁸⁰ The internal market involves law enforcement officials purchasing their jobs and promotions, and a portion of these funds being re-distributed to those in less lucrative positions so as to encourage (or “buy”) their acquiescence.⁸¹ In this way, formally public law enforcement agencies are informally privatised. These formal and informal arrangements—compromised control mechanisms and an informal system of off-budget resourcing—ensure that Indonesia’s law enforcement agencies—that is, the police and prosecutors—remain oriented to private rather than public interests. The next section discusses these institutional arrangements in more detail as they relate to subnational corruption law enforcement. It also focuses more specifically on which individuals and entities are empowered by this institutional context.

SUBNATIONAL CORRUPTION LAW ENFORCEMENT

The criminal justice system in Indonesia is one of the most centralised in the world. Figure 18 below summarises the national law enforcement structure, its relationship to the political structure, and the lines of authority within the police and prosecutors. The political structures, on the left, show how voters now directly elect the President, Governors, District Heads (Bupati and Wali Kota), and Village Heads.⁸²

⁷⁹ Interview with Anonymous, senior investigator, Jakarta, October 2011.

⁸⁰ Interview with Anonymous, advocate, Jakarta, March 2011.

⁸¹ Interview with Anonymous, prosecutor, Central Java, September 2011; Interview with Anonymous, senior prosecutor, Jakarta, October 2011.

⁸² Subdistrict Heads (*Camat*, who are civil servants, are appointed by District Heads. Note also that Neighbourhood Heads (*Lurah*)—the equivalent of Village Heads (*Kepala Desa*) in urban areas—are not elected but appointed by Wali Kota (Mayors).

In contrast to countries such as Australia, the Philippines, and the United States, leaders of subnational political units do not command subnational police forces or control subnational prosecution services.⁸³ Instead, the police and the AGO in Jakarta control appointments of provincial Regional Police Chiefs and High Prosecutors as well as District Police Chiefs and State Prosecutors.⁸⁴ The central appointment units also control appointments and promotions of subnational staff, although regional leaders are consulted.⁸⁵ The central government and the national parliament funds subnational police and prosecutors from the national budget, which are channelled through the respective central offices. The formal structures in Indonesia mean that corruption law enforcement is, at least formally, in the hands of the central government.

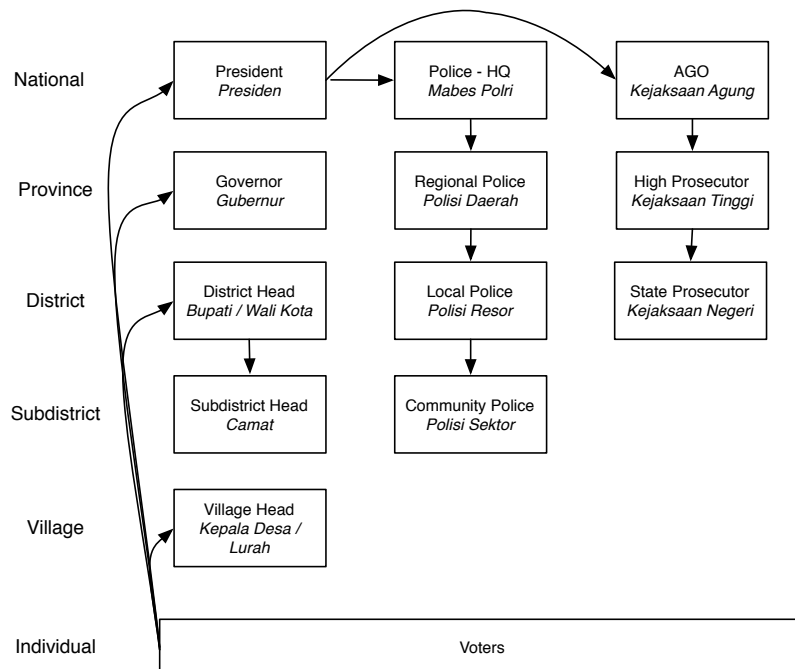


Figure 18: National Police and AGO Structure and their Political Relations

District Heads in rural and urban districts, Bupati and Wali Kota respectively, are both elected.

⁸³ New legislation on conflict management provides scope for subnational leaders (Bupati, Wali Kota, and Gubernur) to lead efforts to resolve conflict. See Undang-Undang No 7 Tahun 2012 Tentang Penanganan Konflik Sosial [Law No 7 of 2012 on Social Conflict Management] 2012 45.

⁸⁴ Undang-Undang No 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia [Law No 2 of 2002 on State Police] 2002, 11(8); Undang-Undang No 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia [Law No 16 of 2004 on the Prosecutor of the Republic of Indonesia] 2004, 28.

⁸⁵ Surat Edaran Jaksa Agung Tentang Sistem Pengambilan Keputusan Mutasi/Promosi Personil (Esolon II dan III) Kejaksaan [Attorney General Directive on the System of Decision-Making for Rotations / Promotions of Attorneys] 1988.

However, as I will explore in more detail in this section, various formal and informal institutional arrangements ensure that in practice subnational corruption law enforcement is partially decentralised. Drawing on the conceptual analysis presented in Chapter 3, this section considers how formal and informal arrangements relating to information gathering, financing, and accountability distribute influence over subnational corruption law enforcement to a range of both national and subnational actors. These actors include local politicians, bureaucrats, and businesspeople, as well as civil society organisations and the media.

Information

The difficulty of obtaining evidence for corruption cases is a challenge in Indonesia, as it is anywhere. In their analysis of institutional capacity to investigate and prosecute corruption in Indonesia, Wagner and Jacobs identify a number of weaknesses relating to the ability to secure evidence, including whistleblower protection laws, access to financial records and forensic accounting tools and capacity, and immunity and sentence reduction mechanisms, as well as sophisticated intelligence tools such as wire tapping.⁸⁶ Many of these legal, institutional, and technological mechanisms are available to KPK. However, very little, if any, of these advanced investigatory techniques and tools are available to local law enforcement agents. At the subnational level in Indonesia there are three main mechanisms that facilitate law enforcement's access to information and evidence: state auditors; bureaucrats; some connected NGOs or those involved in corruption such as contractors; and businesspeople.

The State Audit Agency, BPK, and its counterpart at the provincial-level, BPKP, play a critical role in corruption law enforcement. However, like all other accountability institutions in Indonesia—indeed all state institutions—these agencies are themselves often implicated in collusion and use their position to extract bribes from politicians and other government agencies.⁸⁷ Access to—and influence over—audit

86 Benjamin B Wagner and Leslie Gielow Jacobs, "Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations" (2008) 30 *University of Pennsylvania Journal of International Law* 183 .

87 Paul McCarthy, "Corruption in Indonesia's Foreign Aid Programs: Naivety, Complacency and Complicity within Donor Agencies" in Richard Holloway (ed.), *Stealing from the People: 16 Studies of Corruption in Indonesia* (Aksara Foundation 2002) vol. 2, 45.

teams can be critical to the outcome of a district government's annual audit.⁸⁸ The BPK is independent whereas BPKP often receives funding from the provincial government to augment its national budget. This provides provincial governors with opportunities to trigger corruption investigations at the district-level. Similarly, district-level inspectorates, which report to district heads and have less technical capacity, are dependent on Bupati and Wali Kota. Private funding is also a possibility if access to detailed financial accounts is possible. This approach has been used in the case of donor-funded programs, such as the World Bank-funded National Community Empowerment Program (PNPM), where access to financial records is assured. However, law enforcement officials and courts have tended to reject private audits not conducted by state audit agencies, arguing that only these state agencies have the legal authority to assess state losses from corruption. Furthermore, even if access to government financial accounts is secured, the propensity for off-budget funding and accounting means that comprehensive audits are difficult to conduct without cooperation from local government insiders.

Local civil society—including local and regional NGOs as well as local journalists—have played an increasingly important role in reporting corruption to local (and national) law enforcement agencies. Raysid, writing on local politics in the early post-Suharto era, observed that NGOs were at the forefront of detecting and alleging corruption, but were unable to secure hard evidence that would stand up to scrutiny in court.⁸⁹ Many of these organisations are themselves dependent on insiders to secure access to information, many of whom have their own motivations for leaking information to law enforcement agencies via civil society groups. New freedom of information legislation was passed in 2008,⁹⁰ but the provincial-level commissions have only recently been established and are yet to play an important role in corruption law enforcement.⁹¹ Furthermore, often local NGOs and some local journalists have their own political interests in bringing certain corruption cases to the attention of law enforcement agencies.

⁸⁸ See the case from Rembang in Chapter 7.

⁸⁹ MRyaas Rasyid, "Regional Autonomy and Local Politics in Indonesia" in Edward Aspinall and Greg Fealy (eds.), *Local Power and Politics in Indonesia: Decentralisation and Democratisation* (Institute of Southeast Asian Studies 2003) 66.

⁹⁰ Undang-Undang No 14 Tahun 2008 Tentang Keterbukaan Informasi Publik [Law No 14 of 2008 on Public Access to Information] 2008.

⁹¹ Interview with Anonymous, activist, Central Java, July 2011; Interview with Anonymous, commissioner, Central Java, September 2011.

Arguably the most important mechanism for accessing information is the consensual provision of documentation and witness testimony from insiders in local government. The qualitative field indicates that potential witnesses are often accomplices or indirect beneficiaries of the cases under investigation for corruption (see Chapters 6 and 7). Furthermore, even if a potential witness is not an accomplice or indirect beneficiary, they are often in a dependent relationship with the perpetrator or are subject to threats of retaliation were they to provide evidence of the corruption. The lack of reliable institutional mechanisms to protect witnesses and the systemic nature of corruption in Indonesia effectively forces local law enforcement agents to rely on local political support for their investigations. The field findings suggest that witnesses will volunteer information when they are either immune from retaliatory action and/or they are protected by local political actors. These three mechanisms ensure that law enforcement agencies remain dependent upon, and therefore partially controlled by, local politicians and, more importantly, local bureaucrats.

Enforcement Costs

Like many state institutions in Indonesia, police and state prosecutors are dependent on funding from informal sources. This approach to fundraising is a hang-over from the Suharto years. For example, Dick and Mulholland note that the New Order regime sought to reduce the budget allocation for civil servants by “keeping the basic monthly salary very low and allowing civil servants and the military (including police) to find extra revenues to meet administrative needs and private incomes”.⁹² This practice is thought to have continued in the *reformasi* era.⁹³ The research conducted for this thesis suggested that three main sources of extra revenues are available to subnational law enforcement agencies: local government, victims or users of law enforcement, and violators of state laws.

The field research indicates that the police augment their official budgets for day-to-day activities—and particularly for specific interventions—with funds from local governments. This practice is well documented for the military. Mietzner notes that “long-serving *bupati*

⁹² Dick and Mulholland (see n. 25) 72.

⁹³ Andrew MacIntyre, “Funny Money: Fiscal Policy, Rent-seeking and Economic Performance in Indonesia” in Mushtaq H Khan and Jomo KS (eds.), *Rents, Rent-Seeking and Economic Development: Theory and Evidence in Asia* (Cambridge University Press 2000) 271; Dick and Mulholland (see n. 25) 68-73.

[district heads] report that their administrations continue to receive bills for all major TNI [Indonesian National Army] operations, ranging from security interventions to disaster relief and development programs".⁹⁴ Similarly, informants interviewed for this thesis indicated that local governments regularly provided funds for new vehicles, buildings, and operational costs.⁹⁵ For example, in Ponorogo, East Java, it came to light that the local government had allocated Rp 1 billion (\$100,000) for construction of new offices for the district prosecutor at the same time as the local government was under investigation for corruption. Similarly, in Temanggung, Central Java, the local Bupati provided funds to the police, prosecutors, and courts to cover their costs associated with local elections (see Chapter 6).

Users of the criminal justice system are the second main source of additional revenues. Local law enforcement agents regularly request funds to cover the operational costs of providing their services. For example, all local and national election candidates are required to provide "operational funds" to local police to help cover the cost of security during elections; otherwise ballot boxes from the candidate's strongholds might "fall off a truck" when the police transport them to central voter verification centres.⁹⁶ Similar requests for operational funds—called *doa*, which means "prayers", and is also an acronym for *dana operasi* or "operational funds"—are made of those with an interest in seeing crimes investigated and prosecuted, including corruption investigators and prosecutors. For example, in a number of small community corruption cases, the victims of corruption relating to a large-scale World Bank-funded community development program were required to provide money to police officers to cover various operational costs, including the costs of forgery analysis, the travel costs of police, as well as smaller amounts for cigarettes and coffee.⁹⁷ In this case, a combination of the community financial management unit, program consultants, and local government officials fronted the money. And sometimes communities affected by the corruption subsidise the investigation by undertaking a significant proportion of the

94 Marcus Mietzner, "Business as Usual: The Indonesian Armed Forces and Local Politics in the Post-Soeharto Era" in Edward Aspinall and Greg Fealy (eds.), *Local Power and Politics in Indonesia: Decentralisation and Democratisation* (Institute of Southeast Asian Studies 2003) 255.

95 Interview with Anonymous, parliamentarian, Jakarta, September 2011; Interview with Anonymous, senior prosecutor, Jakarta, May 2011.

96 Interview with Anonymous, parliamentarian, Jakarta, September 2012.

97 World Bank, *PNPM Corruption and the Criminal Justice System: What's Working, What's Not, and What Can Be Done* PNPM Corruption and the Criminal Justice System: What's Working, What's Not, and What Can Be Done PNPM Corruption and the Criminal Justice System: What's Working, What's Not, and What Can Be Done (Field Assessment, 2012) .

leg-work, e.g., preparing financial documentation, undertaking audits, and organising witnesses and paying their transportation costs. In the case of political corruption, opposition politicians as well as civil servants and businesspeople with interests in the case cover operational costs.⁹⁸ It is difficult to know the extent to which these payments should be considered as bribes or extortion. Certainly these informal funds, which are off-budget, are easier to appropriate than official funds provided for these tasks.⁹⁹ These payments do cover legitimate law enforcement costs such as transportation and forensic analysis.

There is also evidence that the police and prosecutors operate informal “prosecution protection insurance” rackets and accept bribes from those who break the law. The protection rackets involve individuals and businesses that are illegal—or operate in legally grey areas—making regular payments to police and prosecutors to preclude law enforcement scrutiny of their activities. This has been documented in Indonesia in the context of illegal logging and fishing.¹⁰⁰ Informants interviewed for this research also indicated that it was common practice for contractors as well as government officials to allocate a percentage of each project to the police and prosecutors to preempt scrutiny of contracts and procurement so as to avoid corruption investigations.¹⁰¹ These are not necessarily bribes because often these payments are not tied to specific cases; instead they were couched as general support for local law enforcement activities. It is, however, assumed that the law enforcement officials will generally reciprocate should external attention fall on the transactions. In addition, explicit bribery of law enforcement officials is widely acknowledged and thought to be widespread.¹⁰² The threat of retaliation gen-

98 Some other key informants denied providing resources to police and in one interview a civil servant was hushed mid-sentence in a local dialect for acknowledging that his agency provided funds to the police for an investigation.

99 Endy M Bayuni, “Tactical Fund: No Receipts, No Questions Asked” *The Jakarta Post* (May 16, 2005).

100 John F McCarthy, “Changing to Gray: Decentralization and the Emergence of Volatile Socio-legal Configurations in Central Kalimantan, Indonesia” (2004) 32(7) *World Development* 1199; Irendra Radjawali, “Corruption-(Un)sustainability Nexus: The Live Reef Food Fish (LRFF) Trade in the Spermonde Archipelago, Indonesia” in (7th EuroSEAS Conference, July 2, 2013, Lisbon).

101 Interview with Anonymous, parliamentarian, Jakarta, July 2012.; Interview with Anonymous, prosecutor, Central Java, September 2012.

102 Butt and Lindsey (see n. 76).

erally prevents these demands and payments from coming to light, although sometimes incidents appear in local and national media.¹⁰³

These off-budget resourcing practices have important implications for the control and financing of law enforcement in Indonesia. First, the reliance on local governments of law enforcement shifts the locus of control downwards to local actors, including politicians, businesses, and bureaucrats. Second, the reliance on “users” of law enforcement services—where a user might be a victim or a violator of crime—shifts financing from the public sector to the private sector. In this way, the reliance on users effectively privatises law enforcement and subjects it to private interests. As noted in Chapter 4, this generates a complex collective action problem for victims of corruption because generally the negative impacts of corruption are more widely distributed than the benefits of corruption.

Accountability

There are five main accountability mechanisms relevant to subnational law enforcement agencies in Indonesia. These are: political vetoes and appointments; judicial review; internal appointments; professional commissions; and civil society and media scrutiny. Each of these mechanisms can be understood to provide external actors with a potential tool or resource to influence local law enforcement.

POLITICAL VETOES In addition to the formal powers of appointment, from 2004 until 2012 the President enjoyed the authority to effectively veto criminal investigations of regional heads. Legislation on regional autonomy requires law enforcement agencies to seek presidential permission before investigating and arresting governors or district heads.¹⁰⁴ The law also requires gubernatorial permission to investigate district councillors.¹⁰⁵ This requirement obfuscated law enforcement decisions about corruption investigations that implicated local politicians and bureaucrats. Requests for presidential permission were often delayed at the police, the AGO in Jakarta, or the Office of the President, and sometimes the response even went missing altogether. Little has changed: although the Constitutional Court

¹⁰³ Publicised examples: “Jaksa Minta Rp 25 Juta” *Radar Malang* (Malang, January 20, 2009) ; “Jaksa AM Peras Dr Refa” *Surya* (Surabaya, January 20, 2009) 3 ; “Oknum Jaksa Diduga Memeras” *Surya* (Surabaya, September 22, 2007) 17 .

¹⁰⁴ Undang-Undang Republik Indonesia Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah [Law No 32 of 2004 on Regional Government] 2004 36.

¹⁰⁵ *ibid.*, 53.

invalidated the requirement in 2012 to seek presidential permission, local law enforcement officials still refer to the lack of presidential permission as a reason to delay corruption investigations.¹⁰⁶

POLITICAL APPOINTMENTS Despite Indonesia's highly centralised law enforcement regime, there are informal mechanisms through which local political actors can exert influence over, and potentially demand accountability from, local law enforcement agencies. At the subnational level, law enforcement is informally coordinated through the Regional Leadership Forum (*Musyawarah Pimpinan Daerah—Muspida*). These forums, which exist at the district and provincial level, were originally established in 1967 with the purpose of ensuring local political stability. At the district level, the Bupati or Wali Kota chairs the Muspida, which includes the local military commander, the local police chief, and the local state prosecutor.¹⁰⁷ In the post-Suharto era the mechanism plays an important role in local law and order issues.

The Muspida provides an informal mechanism for both co-ordinating and decentralising law enforcement. The mechanism does not provide local regional leaders with formal powers over subnational instances of law enforcement agency heads, but it enables local political leaders to exert influence over these agencies in two key ways. First, the semi-regular meetings provide a way for local political leaders to develop personal relationships with the law enforcement agency heads and exert social pressure on their decisions. Second, and less benign, political leaders use the forum to develop collusive relationships with law enforcement agency heads via the distribution of generous honorariums and other forms of gratification.¹⁰⁸ Local political leaders also exert influence over the rotation and appointments of local law enforcement officials. As noted above, law enforcement remains a central government prerogative. However, in such a large country it is necessary for the central government to rely on subnational interlocutors. This role falls to the provincial governor who,

¹⁰⁶ Feri Amsari, Drs Teten Masduki, Zainal Arifin Mochtar Husein, and *Indonesia Corruption Watch* 73/PUU-IX/2011.

¹⁰⁷ The Head Judge of the provincial and districts courts would also participate in the past but in the *reformasi* era the Supreme Court issued internal regulations banning their participation. Keputusan Presiden No 10 Tahun 1986 Tentang Musyawarah Pimpinan Daerah [Presidential Decision No 10 of 1986 on Regional Leadership Councils] 1986, 4.

¹⁰⁸ Gunawan Mashar, "ICW Minta Honorarium untuk Muspida Dihapus" *Detik* (Jakarta, February 7, 2010).

despite the introduction of direct elections, is closely aligned with the Ministry of Home Affairs.¹⁰⁹

PRE-TRIAL HEARINGS The Indonesian criminal justice system provides an opportunity for courts to review criminal investigations and prosecutions.¹¹⁰ The pre-trial hearing (*praperadilan*) mechanism allows victims and “interested third parties” (*pihak ketiga yang berkepentingan*) to request a court to review the decision to discontinue investigations and prosecutions.¹¹¹ Three constraints complicate its use, however. First, it is unclear whether the mechanism can be used to review investigations that are indefinitely delayed. Investigators have argued, and courts affirmed, that investigations that are technically ongoing—despite the fact that they may have been open for years beyond the time constraints outlined in the Criminal Procedures Code—are not subject to judicial review.¹¹² Second, it is not clear who has legal standing to initiate these pre-trial hearings in relation to corruption cases because there is often no clear victim. Although some judges have accepted complaints from anti-corruption civil society groups as interested third parties and representatives of the public as a victim as a whole, this remains a minority view.¹¹³ More importantly, few civil society groups are aware of the mechanism and even fewer know how to prepare submissions.¹¹⁴ There is also a high chance that district courts will simply use the opportunity to extort prosecutors and suspects themselves.

PROFESSIONAL COMMISSIONS There are also professional commissions—The Police and Prosecutor’s Commissions—nominally external to the police and the AGO, that were first established in February 2005. Both commissions are weak and have had little impact on the criminal justice system generally and corruption cases specifically. The Prosecutor’s Commission can investigate complaints of wrong doing, but only after the Attorney General’s internal mechanisms have failed. The Police Commission can receive complaints

109 Mirza Nasutian, *Pertanggungjawaban Gubernur dalam Negara Kesatuan Indonesia [The Responsibilities of Governors in the Unitary Indonesian State]* (Sofmedia 2011).

110 Undang Undang No 8 Tahun 1981 Tentang Kitab Undang Undang Hukum Acara Pidana [Law No 8 of 1981 on the Code of Criminal Law Procedure] 1981 77.

111 *ibid.*, 80.

112 *H Boyamin Saiman dll v Kepolisian Resor Kota Surakarta (Praperadilan)* 14/Pid.Pra/2011/PN.Ska.

113 This interpretation received a boost from a recent Supreme Court decision: *Fadel Muhammad* 76/PUU-X/2012.

114 Interview with Anonymous, lawyer, Central Java, September 2011.

and deliver them to the President.¹¹⁵ Neither hold enforcement powers and can only recommend disciplinary action. Given their weak formal powers, their ability to draw attention to violations and ensure disciplinary action is dependent on the personal authority of the commissioners and their ability to attract media attention. However, most commissioners have largely been drawn from the ranks of retired police and prosecutors—most of whom are therefore implicated in the system of patronage they are ostensibly meant to challenge—and have been labelled “lacklustre”.¹¹⁶ The commissions have neither subnational representative offices nor the resources to monitor and respond to the hundreds of complaints they receive from across the country. In sum, these accountability mechanisms provide little meaningful oversight of law enforcement agencies and their relevance to local corruption investigations and prosecutions are minimal.

CIVIL SOCIETY AND THE MEDIA Civil society organisations and the media play an important accountability role in subnational law enforcement.¹¹⁷ There has been a massive expansion in the number of media outlets and the number of civil society organisations (CSOs) across Indonesia. Corruption investigations receive significant coverage in local media, and many CSOs are engaged in anti-corruption campaigns. The two support each other. For example, CSOs regularly hold demonstrations outside law enforcement offices and demand an audience with the Police Chief or Chief Prosecutor. These demonstrations attract media attention and create pressure for a response, which the journalists then report in newspapers and on television. CSOs often also gather respected lawyers and academics in workshops to scrutinise the legal and practical reasons for a given delay. They can also empower the District Police Chief or State Prosecutor when they come under pressure to withdraw or slow corruption investigations amongst peers in the Muspida forum—“if there’s public support he [the State Prosecutor] can say, ‘look, it’s the people’s demand’ and use this to deflect the peer pressure that the Muspida generates.”¹¹⁸

However, these strategies are unlikely to work when the payoffs disproportionately favour the corruptor/accused, but they can play

115 Peraturan Presiden No 17 Tahun 2005 Tentang Komisi Kepolisian Nasional [Presidential Regulation No 17 of 2005 on the National Police Commission] 2005, 4(c).

116 Kevin O'Rourke, *Reformasi Weekly Review* 2005, 10.

117 Rinaldi, Purnomo, and Damayanti (see n. 20); World Bank, *Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance* 2004.

118 Interview with Anonymous, senior prosecutor, Jakarta, May 2011.

an important role when the payoffs are more closely balanced. For example, fieldwork conducted in relation to small community corruption cases identified various instances where communities and community development staff successfully used these approaches to progress small community corruption cases, but generally only when suspects were unable to pay bribes or mobilise local political support for their case. Furthermore, some local NGOs and local journalists themselves use their position to extort payments from corruption suspects. CSOs are often also embedded in local patronage networks: in return for individual or organisation support they overlook certain cases or downplay their significance.¹¹⁹ There are even reports of unscrupulous local CSOs actively searching for small community-level incidents of corruption—some of which are arguably best resolved via community mechanisms—and threatening to report suspects to law enforcement officials unless they pay up.¹²⁰

INTERNAL ACCOUNTABILITY: QUOTAS, SUPERVISION, AND PROMOTIONS The police and the AGO also have internal accountability mechanisms. Three warrant a mention: case quotas, internal monitoring, and promotions. As mentioned above, Attorney General Hendarman Supandji introduced corruption case quotas in 2007. These required all provincial High Prosecutors to prosecute five cases per year, all district State Prosecutors to prosecute three cases per year, and all branch offices of district State Prosecutors to prosecute one case per year.¹²¹ In 2008, the AGO began to enforce the quotas and in May that year he sacked forty district Head Prosecutors (*Kejari*) for failing to fulfil the quotas. There were protests that State Prosecutors in remote districts had insufficient resources to meet the targets: one parliament member from Eastern Indonesia argued that “the targets are too high; even in Jakarta they are difficult to meet let alone in ‘regions’ where salaries of prosecutors are a few hundred thousand Rupiah and those who engage in corruption have billions of Rupiah”.¹²²

119 Interview with Anonymous, activist, Central Java, September 2011.; Interview with Anonymous, activist, Central Java, July 2011.

120 Personal Communication with Taufik Rinaldi, judicial reform expert, Jakarta, 7 January 2013.

121 “Pola 531, Bukan untuk Cari-Cari Perkara Korupsi [531 Framework, Not for the Fabrication Corruption Cases]” *Eramuslim* (Jakarta, June 19, 2007)

122 Inggried Dwi Wedhaswary, “Kejaksaan Bidik Kasus Korupsi Miliaran Rupiah [Prosecutors Close Billion Rupiah Corruption Case]” *Kompas* (Jakarta, January 28, 2009)

Indeed, various reports indicate that law enforcement officials target small cases to fulfil their quotas.¹²³

The current Attorney General, Basrief Arief, has sought to reform internal monitoring and disciplinary mechanisms.¹²⁴ As noted above, there is little indication that these will change behaviour of law enforcement agents at the subnational level. Malfeasance is reportedly so high amongst law enforcement agencies—the key institutions of the criminal legal system are consistently reported as the most corrupt in Indonesia—that detection probabilities and sanctions need to increase substantially to make a difference. It seems the procedural changes have not been accompanied with sufficient resources and political leadership. The AGO's internal monitoring division (*JAM Pengawasan*), which publishes aggregate yearly statistics, notes that in 2012 the internal monitoring unit disciplined just 197, or 0.01 percent, of its estimated 19,459 officials.

The internal system of promotions is also used to ensure accountability. This accountability mechanism is ultimately controlled centrally, however, it empowers district and provincial Head Prosecutors who must provide positive letters of recommendation for regional staff requesting promotions.¹²⁵ Superiors can also lobby headquarters to have subordinates transferred for insubordination. Indeed, there are indications that these internal accountability mechanisms are more commonly used to discipline upstanding officials that seek to apply and uphold criminal justice law and procedures than those who violate these rules. One of the most serious disciplinary actions law enforcement officials face is the threat of transfer to remote areas of the country. For example, one senior prosecutor—now at KPK—has documented his experience of being sent to the outer islands for challenging his superior's decision to overlook corruption involving senior politicians in Central Java.¹²⁶ Similarly, but for smaller acts of insubordination involving junior staff, district and provincial heads can maintain control of their local staff by withdrawing access to off-

123 Interview with Anonymous, activist, Central Java, September 2011.

124 Peraturan Kejaksaan Agung No PER-022/A/JA/03/2011 Tentang Penyelenggaraan Pengawasan Kejaksaan Agung Indonesia [Attorney General Regulation No PER-022/A/JA/03/2011 on Implementation of Supervision] 2011.

125 Surat Edaran Jaksas Agung Tentang Sistem Pengambilan Keputusan Mutasi/Promosi Personil (Eselon II dan III) Kejaksaan [Attorney General Directive on the System of Decision-Making for Rotations / Promotions of Attorneys] November 26, 1988 (see n. 85).

126 Yudi Kristiana, *Towards a Progressive Public Prosecutor's Office: A Study of Investigation, Prosecution and Adjudication of Criminal Acts of Corruption* (Masyarakat Transparansi Indonesia 2010) 273-5.

budget funds.¹²⁷ For poorly paid civil servants, losing access to these funds might prevent them from sending their children to university or paying off their modest homes or vehicles. In sum, internal accountability institutions incentivise subnational law enforcement officials to extort suspects in large cases in order to prosecute small cases and thus achieve quotas.

Table 3: Distribution of Influence over Subnational Corruption Law Enforcement

Dimension	Mechanisms	Entities Empowered
Information	State Audits	BPK & BPKP
	Budget Analysis	CSOs
	Inside Information	Local Incumbent Politicians, Bureaucrats, Contractors, & Other Businesspeople
Costs	Budget Reviews	National MPs
	Local Budget Support	Incumbent Governors, District Heads & Bureaucrats
	User Fees	Wealthy Individuals & Businesspeople
	Prosecution Protection Rackets	Wealthy Individuals & Businesspeople
Accountability	Political Vetoes	Central Government, Governors & District Heads
	Political Appointments	Central Government
	Regional Leadership Forum (Muspida)	Governors & District Heads
	Promotions & Rotations	Governors & District Heads
	Pre-Trial Hearings	Courts, Victims & CSOs
	Promotions & Transfers	Senior Law Enforcement Officials, Governors & District Heads
	Police and Prosecutor Commissions	Senior Law Enforcement Officials
	Public Questioning & Shaming	CSOs, Journalists & Media Owners

Table 3 summarises the analysis. It shows for each of the three factors the entities and individuals empowered both nationally and locally. The table does not imply that each mechanism and entity is equally influential and empowered; nor does it imply that every mechanism will be relevant in every case.

¹²⁷ Interview with Anonymous, prosecutor, Central Java, September 2011.

CONCLUSION

The analysis presented above suggests, that despite the substantive legal and institution reform in the post-Suharto era, Indonesia still struggles to overcome the collective action problems inherent in addressing corruption. Positively, the problem of corruption is widely recognised and a series of laws have been passed to address it. However, the institutional reforms to the political system underlying the operation of law—and the legal institutions charged with law enforcement—have not resolved the second order collective action problem involved in corruption law enforcement.

This not to say that progress has not been made. Democratic reforms to the political system have created incentives for politicians to support corruption law enforcement. Even if this support is sometimes lacking or selective, it seems more sustainable and more public-oriented than under the New Order regime. Less positive, weak accountability, reliance on private financing, and undeveloped information systems mean that Indonesia's ostensibly public law enforcement remain oriented to private rather than public interests. In this context, the central government retains the ability to intervene if its interests are at stake. However, its ability to intervene is not omnipotent and law enforcement agencies retain the autonomy to protect their own interest and engage in deals that may not comport with the interests of the central government. More importantly, the fragmentation of influence over law enforcement necessitates coalition building. The next two chapters seek to show the dynamics of these institutional arrangements in action. More specifically, they seek to show how groups operating in this context build coalitions so as to influence the enforcement of corruption laws in their favour.

POLITICAL CORRUPTION: TWO POSITIVE CASES FROM CENTRAL JAVA

This chapter demonstrates how legal mobilisation of corruption laws, as developed in Chapter 4, explains the trajectory and outcome of two investigations of political corruption in Central Java. This chapter focuses on two *positive* cases; that is, corruption investigations that resulted in corruption prosecutions and convictions. In Temanggung, the *Bupati* (District Head) was accused in 2004 of embezzling funds allocated for the local and national elections totalling Rp. 12.6 billion (\$1.3 million). In July 2005, less than twelve months after the initial report to the police and seven months after the initiation of the investigation, the trial began in the district State Court. And only three months later, the court convicted the Bupati of corruption and sentenced him to four years' imprisonment. Similarly, in Cilacap, the Bupati was accused in 2007 of embezzling local district government revenues totalling Rp. 20.7 billion (\$2.2 million). Initially the accusations did not invoke law enforcement action, but in 2009 the Supreme Prosecutor in Jakarta found indications of corruption and instructed the provincial High Prosecutor to conduct a full investigation (*penyidikan*). The investigation proceeded in record time and the trial began in October 2009. In February 2010 the district State Court convicted the Bupati and sentenced him to nine years' imprisonment.

The objective of this chapter is to illustrate how resource mobilisation and coalition formation account for corruption investigations that lead to prosecutions. The next chapter considers the negative cases; that is, corruption accusations that do not result in corruption prosecutions. Its research objective is to show that the variables are not spurious. Both chapters deploy the *analytic narrative* method in that they seek to apply the analytical models of Chapter 4 to the nar-

rative account of four corruption investigations.¹ This is a *within-case* approach to causal inference; it aims to trace the causal path of variables within cases rather than “attempt to establish the causal powers of a particular variable by comparing how it performs *across* cases”.² It is best understood as an *analytic* approach to process-tracing, in that it seeks to convert an “historical narrative into an *analytical* causal explanation couched in explicit theoretical forms”.³

In the case studies I use three main data sources: key informant interviews, newspaper articles, and case documentation. I used newspaper reports in the first instance in order to construct a chronological case trajectory and to identify key actors and events relating to each case. I then conducted almost one hundred key informant interviews in the case districts between May and November 2011—interviewees included legal officials, local politicians, community leaders, journalists, lawyers, and activists. These interviews focused on confirming newspaper accounts, filling gaps, identifying unreported actions, and understanding the motives of actors and strategies behind actions. The documentation analysis—which included the investigation case file, court proceedings, legal opinions concerning the cases, and court decisions—focused on understanding the investigatory process.

The remainder of the chapter presents the two cases in separate sections. The presentation of each case follows the same analytical structure. It begins with the background to the corruption case, focusing on the initial incumbent and opposition coalitions and their resources. The second section outlines the case trajectory: it identifies the origins of the case and delineates the main phases of the trajectory. This section includes a detailed case chronology of key dates and events. Phases in the case trajectory are delineated by significant shifts in coalition membership and resources. The subsequent sections analyse each phase using the process-tracing method to account for these dynamic changes in coalition resource mobilisation. After the presentation of the two cases, I consider the viability of alternative explanations and how they might account for the case trajectories and outcomes.

¹ Robert H Bates et al., *Analytic Narratives* (Princeton University Press 1998).

² Alexander L George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2005) 179.

³ *ibid.*, 211.

CASE 1 - TEMANGGUNG: "THE SPECTACULAR CASE"

Temanggung district is about two hours from Semarang in the centre of Central Java, in the highlands surrounded by volcanoes. The district is known for its high quality tobacco and is the centre for drying and selling tobacco to large Indonesian clove cigarette producers. It is also one of the few rural districts with a manufacturing zone, located on the edge of the district near the road that runs between Semarang and Yogyakarta. It has a population of 700,000 and is relatively prosperous compared to other districts of Central Java.

The Temanggung case is widely remembered in Central Java and was referred to by one journalist at the province's leading broadsheet as "the spectacular case".⁴ The case against the Bupati, Totok Ary Prabowo, had its origins in the distribution of Rp. 12.6 billion (\$1.3 million) in operational funds for the 2004 local and national elections in the district. The police and prosecutors alleged that Bupati Totok violated budgeting rules and procedures in the planning, distribution and accounting of these and other funds. In October 2005, the district state court convicted Totok of corruption resulting in state losses of Rp. 12.6 billion (\$1.3 million)—or about 5.4 percent of the district's 2004 general budget allocation of Rp. 233 billion (\$25.9 million)—and sentenced him to four years in prison.⁵ The decision was upheld in the provincial High Court and on appeal to the Supreme Court in March 2006.⁶

The case illustrates the logic of the legal mobilization theory as developed in the previous two chapters. Bupati Totok came to power in a highly contested local election. Initially he was able to consolidate control over the local council and the bureaucracy, giving him power over the key levers of patronage distribution in the district. However, his reformist agenda and arrogant personality quickly made him many enemies. He also gained a reputation for erratic and indecisive leadership in his attempts to negotiate local politics. Accusations of corruption in his administration were made within a year of his inauguration. Initially, his channelling of operational funds to the police prevented law enforcement action, but his attempts to use his

⁴ Interview with Anonymous, journalist, Central Java, May 2011.

⁵ *Drs Totok Ary Prabowo MSi MA vs Negara (Republik Indonesia)* 68/Pid.B/2005/PN.Tmg; "Korupsi Dana Pemilu: Bupati Totok AP Divonis 4 Tahun [Corruption of Campaign Funds: Totok Given 4 Years Imprisonment]" *Kompas* (Jakarta, October 28, 2005) 15.

⁶ *Drs Totok Ary Prabowo MSi MA vs Negara (Republik Indonesia)* 253/Pid/2005/PT.Smg; *Drs Totok Ary Prabowo MSi MA vs Negara (Republik Indonesia)* 347K/Pid/2006.

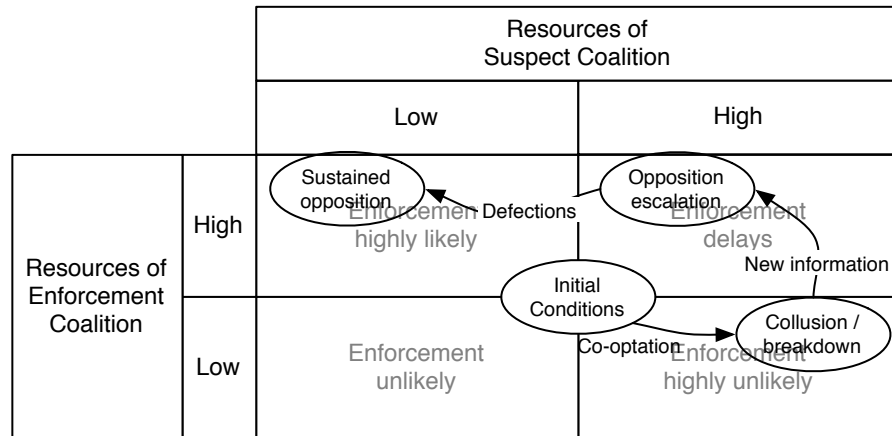


Figure 19: Temanggung: Coalition and Resource Changes Over Time

supra-local linkages to remove the local Police Chief backfired and led the police to retaliate. New information about the weakness of the Bupati’s supra-local linkages encouraged an embryonic enforcement coalition to deploy its mobilisational resources against the Bupati. This triggered quick defections from senior civil servants who agreed to testify against the Bupati in exchange for protection. The Bupati attempted to placate civil servants but his efforts were hampered by his reputation for untrustworthiness. Political factions in the local council defected as the potential costs of protecting the incumbent escalated in the face of mass demonstrations. Within months, the Bupati’s political coalition—that ensured access to material resources and supra-local support, as well as control over internal information—had crumbled. He lacked the resources necessary to defend himself against law enforcement action and the case proceeded to trial within six months. Figure 19 above summarises the case in the terms of the coalitional resource theory; it shows how changes in local coalitions affect the intervening variable—relative coalition resources—and the implications this has for law enforcement.

Background

The case has its origins in local political competition that manifested itself in the 2003 Bupati election. Totok’s appointment was controversial and divided the local political establishment. The election pre-dates the introduction of direct executive elections in 2005, and thus Totok was elected by the local representative council (DPRD). At the time of his nomination, the DPRD consisted of nine political parties.

The party of then President Megawati, PDIP, held the largest number of seats. PKB and PPP, two moderate Islamic parties, respectively held the second and third most number of seats. Golkar, the electoral vehicle of former president Suharto, was fourth. Two main candidates were nominated: PDIP and PKB, which between them controlled 23 of the council's 45 seats, nominated Bambang Soekarno, the head of the DPRD, and Elly Dradjati Moelyono, the daughter of a former Temanggung Bupati and wife of a Regional Secretary from a nearby district.⁷ Golkar and PPP, which together held only twelve seats, nominated Totok and Mukhamad Irfan, the local head of PPP's party leadership council. Compounding the political acrimony, the intra-party and intra-alliance nomination processes had themselves been controversial and had been resolved through bargaining over future positions in the government.⁸

Totok, together with his Vice-Bupati Irfan, were elected to the surprise and outrage of many. Table 4 summarises the results. Most controversially, Golkar and PPP managed to secure 23 seats compared to PDIP and PKB's 21 because one vote was deemed ineligible and one party member from the PDIP-PKB alliance voted against their candidate. Newspapers reported that after the vote was announced, politicians from the PDIP-PKB alliance shouted "traitor, traitor" at one another and PDIP *satgas* (security task force) stormed the chamber and ran amok.⁹ Many representatives from the losing parties refused to attend the inauguration of Totok on 28 July 2003.

Bupati Totok's first year in office was equally controversial. His administrative and policy reform agenda marginalised many civil servants and community leaders (*tokoh masyarakat*). Within two months of becoming Bupati, Totok began to rotate senior civil servants and embark on a series of policy reforms that challenged the interests of established civil servants and local community leaders. It is normal

7 "PKB Temanggung Tetap Calonkan Elly sebagai Cawabup [PKB Temanggung Uphold Elly's Cawabup Nomination]" *Suara Merdeka* (Semarang, June 23, 2003) .

8 The nomination of Totok was contested. He was chosen by a "team of 7" consisting of senior figures from Golkar and other small factions with seats in parliament. A number of groups protested against the decision, including the military and police faction, which at the time still controlled five seats in the local parliament ("FPP Wawancara 12 Cabup dan Cawabup [FPP Interviews 12 Cabup and Cawabup]" *Suara Merdeka* (Semarang, June 13, 2003)). The selection of Irfan, his running mate, was also contested within PPP (*ibid.*). The nomination of Elly Dradjati Moelyono, on the other side, was also controversial within PKB, with some *ulama* (religious leaders that form the grassroots base of this party) protesting against the appointment of a woman ("Elly Tetap Cawabup Temanggung [Elly Remains Temanggung Cawabup]" *Suara Merdeka* (Semarang, June 24, 2003)).

9 "Totok-Irfan Pimpin Temanggung [Totok-Irfan Lead Temanggung]" *Suara Merdeka* (Semarang, July 3, 2003) .

Table 4: Bupati Candidates, Party Alliances and Election Results - Temanggung (2003)

Candidates	Party Alliance	Alliance Seats	Election Result
Bambang-Elly	PDIP (14 seats) PKB (9 seats)	23 seats	21 votes
Totok-Irfan	PPP (7 seats) Golkar (5 seats) PAN (2 seats) PBB (1 seat) PK (1 seat) PNU (1 seat) TNI/Polri (5 seats)	22 seats	23 votes

practice for new regional heads to rotate senior staff, however, it is unusual for senior civil servants to be demoted without rank and for junior civil servants to be rotated.¹⁰ The new Bupati also reportedly broke informal deals he made as part of his election. For example, one senior civil servant, who was a candidate for nomination from the party PPP, was reportedly promised the position of Regional Secretary (*Sekda*).¹¹ When this deal was not fulfilled, he immediately quit the civil service to form a movement CSO that would morph into the Temanggung People's Alliance (AMT). One newspaper estimated that over 900 civil servants—around 15 percent—were rotated in less than a year.¹² The effect of these reforms was a polarised civil service: “already by early 2004 there had developed a pro- versus contra-division amongst civil servants. Some welcomed his reforms [while others] thought his changes were erratic and his leadership [style] authoritarian”.¹³

In addition to bureaucratic reforms, Totok introduced a number of measures that challenged the economic interests of certain community leaders and organisations.¹⁴ He introduced a tariff on the sale of tobacco from outside the district in an attempt to raise the price of

10 Interview with Anonymous, senior civil servant, Central Java, July 2011.

11 Interview with Anonymous, community leader, Central Java, September 2011.

12 “Kronologi Kasus Temanggung” *Wawasan* (Semarang, July 3, 2005) 1 .

13 Interview with Anonymous, senior civil servant, Central Java, July 2011.

14 Interview with Anonymous, lawyer, Central Java, July 2011.; Interview with Anonymous, journalist, Central Java, July 2011.

plummeting tobacco prices for local Temanggung farmers.¹⁵ He also sought to crack down on the control that *preman* (mafia-like thugs) had over local tendering processes, many of whom later became involved in efforts to remove him.¹⁶ Some of these reforms he quickly reversed for both political and intellectual reasons, which further contributed to the view that he was erratic in his decision-making and untrustworthy as a politician.

Bupati Totok, who had no political or economic base in the district, nor experience as a politician, lacked the political power and nous to achieve such reforms. At 34 he was the youngest Bupati in Indonesia. He was widely seen as a charismatic and visionary individual,¹⁷ even described by some as a “genius”.¹⁸ He held two degrees, including a graduate degree from an Australian university.¹⁹ However, his political position in the district was weak. He was from an old district family, but his parents had not lived in Temanggung since before he was born, and he himself was born elsewhere in Central Java. His nomination was attributed to his potential to be a visionary leader and his connections to the Ministry of Home Affairs in Jakarta, where he was previously a civil servant.²⁰ In contrast to both his Vice-Bupati partner and the candidate that challenged him, he held no positions in the local chapter of a political party nor in local associations or organisations. This meant he had few political debts—with the exception of those from the local council that elected him—but it also meant he had few political networks and no political base of his own. He was also not financially strong: in contrast to the usual candidates for Bupati in decentralised and democratic Indonesia, i.e. senior civil servants and businessmen, his youth meant that he had not accrued personal wealth that could be used to defend himself.²¹

15 “Kisruh Birokrasi Temanggung (4): Dua Wajah Sang Tumenggung [Temanggung Bureaucracy Debacle (4): The Two Faces of Tumenggung]” *Detik* (Jakarta, January 11, 2005).

16 Informants indicated that many of the key “community leaders” were involved in the control of local procurement, using coercive means to extort payments from contractors wishing to participate in local tenders (Interview with Anonymous, senior politician, Central Java, September 2011.) Many were also involved in the tobacco trade, acting as intermediaries between the large national clove cigarette manufacturers and local farmers, and were negatively affected by the tariffs (Interview with Anonymous, community leader, Central Java, July 2011.; Interview with Anonymous, community leader, Central Java, September 2011.

17 Interview with Anonymous, journalist, Central Java, July 2011; (see n. 15)

18 Interview with Anonymous, senior politician, Central Java, September 2011.

19 (see n. 15).

20 Interview with Anonymous, senior civil servant, Central Java, July 2011; Interview with Anonymous, senior politician, Central Java, September 2011.

21 See Vedi R Hadiz, *Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective* (Stanford University Press January 2010).

His family was also of moderate middle-class means. In hindsight, it is apparent that he lacked the political strength to challenge local interests and achieve reform; indeed, as the case trajectory will illustrate, he was vulnerable to opposition demands and defections from his own coalition.

Case Trajectory

The most important events occurred in a fourteen-month period between August 2004, when the case was first reported to law enforcement agents, and October 2005, when the district State Court found him guilty and sentenced him to four years in prison. The Temanggung case trajectory had four main phases: (i) resource consolidation and cooperation between the Bupati and the District Police Chief; (ii) opposition agitation and breakdown in the government-police relationship; (iii) opposition escalation and defections from the Bupati's coalition; and (iv) sustained opposition mobilisation. Table 5 below outlines in detail the key dates and events.

Table 5: Case Trajectory: Temanggung (2004 - 2006)

Phase I: Bupati Consolidation and Police Cooperation	
4 August 2004	KPUD Head reports corruption of election funds to police during investigation of attack on KPUD office.
August-December 2004	No progress on corruption investigation; Bupati and District Police Chief cooperate.
Phase II: Opposition Agitation and Bargaining Breakdown	
September 2004	Group of disgruntled civil servants decide to mobilise against Bupati.
October 2004	Small student demonstrations protest against local corruption generally.
October 2004	Bupati requests via the Governor and Home Affairs that the national police rotate the District Police Chief.
December 2004	Bupati Totok publicly accuses District Police Chief (<i>Kapolres - Kepala Polisi Resor</i>) of using him as an "automatic teller machine".
12 December 2004	Local monitoring body (<i>Banwasda</i>) notes that operational funds totalling Rp. 585 million (\$650,000) were allocated to sub-district police units.
14 December 2004	District Police Chief publicly denies that funds were provided for sub-district police units.
16 December 2004	The local Head of Criminal Investigations (<i>Kasat Reskrim</i>) instructs investigators to conduct an investigation (<i>penyidikan</i>) into corruption implicating district head and senior civil servants.

17 2004	December	Bupati indicates that he will request the State Audit Agency (BPK) to audit the funds provided to the police.
28 2004	December	Bupati Totok instructs Sub-Districts Heads to undertake study trip to Jakarta, allegedly to prevent their giving evidence to police.

Phase III: Opposition Escalation and Defections

5 January 2005		Key opposition leaders meet to consider escalation of civil disobedience.
6 January 2005		Key opposition leaders meet with officials from Home Affairs in Jakarta.
7 January 2005		17 high-level civil servants resign in protest at Bupati Totok's actions.
11 January 2005		Students from various universities in Central Java hold large demonstration in Temanggung and elsewhere; Regional Police Chief (<i>Kapolda</i>) signals support for District Police Chief and sends senior investigators to Temanggung to support investigation.
12 January 2005		A further 118 civil servants resign at a large demonstration organised by the Temanggung People's Alliance (<i>AMT—Alliansi Masyarakat Temanggung</i>).
12 January 2005		Five political factions in local parliament move to introduce vote of no confidence.
13 January 2005		The Regional Police Chief sends two battalions to Temanggung to ensure public order.
14 January 2005		District Police Chief rotated to new post, new chief instructed to investigate corruption allegations.
5-24 2005	February	Police secure presidential authorisation to investigate Bupati Totok.

Phase IV: Sustained Enforcement Coalition Mobilisation

April 2005		20 CSOs from Temanggung hold demonstrations at the Presidential Palace and National Police Headquarters in Jakarta.
2 May 2005		Last remaining party, PPP, withdraws support for Bupati Totok.
Early June 2005		Bupati Totok attempts to mobilise Sub-Districts Heads, Village Heads and civil society groups.
6 July 2005		AMT meets with state prosecutors to show their support for prosecution.
7 July 2005		Court proceedings begin; thousands attend; 545 security personnel mobilised to ensure public order.
27 October 2005		Temanggung State Court finds Bupati Totok guilty and sentences him to four years prison.

Postscript: Appeals Rejected

2 January 2006		Central Java High Court upholds conviction.
9 March 2006		Supreme Court rejects appeal.

Phase I: Bupati Consolidation and Police Cooperation

After coming to office in July 2003, Totok was able to use his executive authority over the bureaucracy and the government budget to placate the local DPRD. This was done through the provision of expense perks to councillors and the channelling of construction projects to council factions.²² This co-optation of local councillors was successful: the council did not lead the opposition against Totok and only supported the corruption investigation after others defected from his support coalition.

At this stage, the opposition was not organised into a coherent *group* as such, but was made up of separate segments of society that felt marginalised by the new Bupati's various reforms. Totok had appeased some of these groups, such as the tobacco farmers and smaller traders that protested against the introduction of new levies on tobacco trading and market stalls.²³ He was unable to accommodate demands that clashed with members of the Bupati's coalition. For example, dismantling *preman* control of the local government procurement process—which negatively affected community leaders that would later play a critical role in public mobilisation—benefited contractor-cum-politicians on whose support he relied in the local council.²⁴ He was also unable to accommodate civil servants overlooked in the new administration. At most the opposition at this stage consisted of disgruntled civil servants whose main resource was inside information obtained from contacts within the local bureaucracy. Table 6 summarises the Bupati and enforcement support coalitions and their resources.

The report of corruption to the police highlights the erratic leadership style of the Bupati. The initial report of corruption involving election funds was made to the district police during a police investigation of an attack on the local office of the district Electoral Commission (KPUD).²⁵ The performance of KPUD had been under intense scrutiny throughout the election year and its leadership had been challenged on numerous occasions.²⁶ Initially Totok backed the

22 "Uang Syukuran Totok Ternyata dari APBD [Totok's Celebration Funds from APBD]" *Suara Merdeka* (Semarang, September 15, 2009) .

23 (see n. 15).

24 Interview with Anonymous, senior politician, Central Java, September 2011.

25 "Diusut, Perusakan Kantor KPU Temanggung [Ransacking of KPU Temanggung Office to be Investigated]" *Suara Merdeka* (Semarang, August 6, 2004) .

26 "Bakar Ban Bekas di Halaman Kantor KPU [Tire-Burning Protest at KPU Office]" *Suara Merdeka* (Semarang, May 22, 2004) .

Table 6: Suspect and Enforcement Coalition Resources - Temanggung (Phase I)

Coalition	Resources	Key Actors
Suspect	Material	Expense perks and new senior civil servant appointments consolidate Bupati Totok's control over local patronage levers.
	Supra-Local Linkages	Pre-existing connections to the Ministry of Home Affairs, the Bupati's former employer.
	Information	Authority over local bureaucracy controls inside information about corruption.
Enforcement	Information	Senior civil servants marginalised in new administration retain connections in local bureaucracy.

nomination of Didiek H. Wiryadi as head of the local KPUD (*Ketua KPUD*). However, five other commissioners successfully challenged his leadership and lobbied Totok to replace him, which he agreed to do.²⁷ Ageng Sri Prabowo, one of the commissioners, became the head. In July 2004, after the national election results were controversially announced in the district, Ageng came under renewed pressure from local political groups as well as the sub-district election committees, and Totok switched his support from Ageng back to Didiek.²⁸ Informants familiar with the leadership tensions at KPUD suggested that Ageng—who made the police report before the second leadership change had taken effect—had accused the Bupati of corruption in an act of revenge.²⁹

The police were aware of the corruption before this, however, because they were themselves beneficiaries of the discretionary election security funds that came under investigation.³⁰ Furthermore, there is evidence to suggest that the police report was reconstructed and backdated only after the police determined to proceed with the investigation in December, five months after the alleged discovery.³¹ The case report, dated 4 August 2004, notes that the corruption took

27 "Ketua KPUD Temanggung Diganti [KPUD Temanggung Head Replaced]" *Suara Merdeka* (Semarang, June 29, 2004) .

28 "Anggota KPUD Dituntut Mundur [Calls for KPUD Officials Resignation]" *Suara Merdeka* (Semarang, July 27, 2004) ; "Ketua KPUD Mirip Ketua Kelas [KPUD Head Likened to Head of the Class]" *Suara Merdeka* (Semarang, August 9, 2004) ; "KPUD Dimosi Tak Percaya PPK [PPK Vote of No Confidence for KPUD]" *Suara Merdeka* (Semarang, July 30, 2004) .

29 Interview with Anonymous, senior politician, Central Java, September 2011.

30 "Polda Jateng Tetap Periksa Mantan Kapolres Temanggung [Jateng Polda to Interrogate Former Temanggung Kapolres]" *Media Indonesia* (Jakarta, July 2, 2005) .

31 Interview with Anonymous, journalist, Central Java, September 2011.

place between March 2004 and January 2005.³² Furthermore, the case file indicates that there was no progress on the investigation until the District Police Chief fell out with Totok.³³

Initially the Bupati and the police were able to sustain collusion to avoid initiation of a corruption investigation. The Bupati, who still had four more years in office, used his control over the district government to direct support to the police and other law enforcement agencies that constitute the District Leadership Council (*Muspida*).³⁴ Indeed, informants suggested that the police used the threat of a corruption investigation to extort further payments from the local government. Initially, Totok acquiesced to their demands.³⁵

Phase II: Opposition Agitation and Bargaining Breakdown

The relationship between the Bupati and the Police Chief began to break down after senior civil servants from the embryonic enforcement coalition took a decision in September 2004 to mobilise against Totok. Their initial actions were modest and tentative. First, they used their networks in the local government to obtain information about corruption, which they then leaked to the Governor and local NGOs. Second, they orchestrated a series of small demonstrations in September and October involving about fifty students from the local Islamic Technical College (STAINU).³⁶ These demonstrations made general statements about corruption in the local government.

Although modest, the police used these initial events to increase their demands on the Bupati. Most specifically, the police refused to return approximately Rp. 585 million (\$650,000) of election security funds that they had allegedly not disbursed to sub-district police units during the election.³⁷ The Bupati sought to use his supra-local

32 Laporan Polisi No. LP/47/VIII/2004/Reskrim, Resor Temanggung, Daerah Jawa Tengah, Kepolisian Negara Republik Indonesia.

33 Berkas Perkara, Tindak Pidada "Korupsi" Dana Yang Bersumber Dari APBD Kab. Temanggung TA 2004 Guna Mendukung Pelaksanaan Kegiatan Pemilu 2004, N. BP/39/IV/2005/Reskrim, Direktorat Reskrim, Daerah Jawa Tengah, Kepolisian Negara Republik Indonesia.

34 Interview with Anonymous, senior civil servant, Central Java, July 2011.

35 Interview with Anonymous, journalist, Central Java, September 2011; Interview with Anonymous, senior politician, Central Java, September 2011.

36 Interestingly STAINU is affiliated to the party PKB, which had lost the election head in 2003. However, I have not uncovered a political motivation for the student demonstrations, although I think it is difficult to rule out the possibility. Rather, it seems the civil servants relied on the moral motivations of the students.

37 These funds contributed to the conflict within KPUD that led to the attack on the KPUD office in August 2004. See: (see n. 28); "Kapolres Bantah Ada Dana Pemilu Polsek [Kapolred Denies Polsek Campaign Funds]" *Suara Merdeka* (Semarang, De-

linkages to Home Affairs and the Governor to rotate the District Police Chief out of Temanggung.³⁸ In late November or early December, Totok publicly accused the District Police Chief of using him as an “automatic teller machine” and demanded that he return the unused election security funds.³⁹ In response, the Police Chief angrily denied the accusations and promised to investigate; the provincial police closed ranks and backed their colleague.⁴⁰

The Bupati’s public accusation weakened his ability to cooperate (or collude) with the District Police Chief (and subsequent police chiefs) so as to ensure the investigation was postponed or directed away from himself. It is difficult to determine exactly why Totok adopted such a confrontational strategy: some have attributed it to his personality style while others have suggested that he miscalculated his political strength. One informant suggested that the case would never have been investigated if Totok had not publicly accused the Police Chief of corruption.⁴¹ Others suggested that he could have reversed (or partially reversed) some of his unpopular reforms so as to co-opt disgruntled groups and preempt mass mobilisation.⁴²

The Bupati also attempted to use his control over the bureaucracy to restrict access to information and thus to undermine the police investigation. He instructed civil servants not to attend police interrogations and sent a group of sub-district heads (who had also received election security funds) to Jakarta for a ten day study trip to avoid police interrogations.⁴³ He and his staff also attempted to modify the evidentiary record by requesting officials to sign back-dated letters that would justify the disbursement under investigation. In response, the police turned to coercive and other dubious practices. For example, there were numerous reports of police intimidation of witnesses

ember 14, 2004) ; “Kapolres Siap Klarifikasi Penggunaan Dana Pemilu [Kapolres to Clarify Usage of Campaign Funds]” *Suara Merdeka* (Semarang, December 17, 2004)

38 “Bupati Sambut Positif Pergantian Kapolres Temanggung [Bupati Welcomes New Temanggung Kapolres]” *Detik* (Jakarta, January 19, 2005) ; “Kapolres Temanggung akan Dimutasi [Temanggung Kapolres to be Rotated]” *Detik* (Jakarta, January 14, 2005) .

39 Interview with Anonymous, senior civil servant, Central Java, July 2011.

40 (see n. 37); (see n. 37); “Polisi Terciprat, Polisi Merapat [Underfire, Police Close Ranks]” *Detik* (Jakarta, January 11, 2005) .

41 Interview with Anonymous, senior politician, Central Java, September 2011.

42 Interview with Anonymous, lawyer, Central Java, July 2011; Interview with Anonymous, journalist, Central Java, July 2011; Interview the Anonymous, senior civil servant, Central Java, July 2011; (see n. 15).

43 “10 Hari si Camat Saba Kota [10 Days in the Life Saba Town Head]” *Detik* (Jakarta, January 11, 2005) .

and some informants claimed that the police fabricated evidence to support the investigation.⁴⁴

Phase III: Opposition Escalation and Defections

The immediate cause for the escalation of public demonstrations against the Bupati in early January 2005 was a substantial change in the opposition's cost-benefit calculus of legal mobilisation.⁴⁵ The enforcement coalition of disgruntled civil servants and community leaders had initially calculated that removing Totok through the deployment of its mobilisational resources would require a long, disruptive, and expensive campaign of mass demonstrations, the outcome of which was highly uncertain given the Bupati's co-optation of the local representative council and his connections to the Ministry of Home Affairs—two institutions critical to the impeachment process. They were also unaware of how corruption laws could be mobilised as a means to remove the incumbent Bupati.⁴⁶ Civil servants and community leaders, but particularly the latter, had previously only targeted small policy reforms that directly compromised their interests, such as the farm and market levies.

The embryonic enforcement coalition's assessment of the Bupati's resource strength and the probability of success—and hence the expected benefit of legal mobilisation—was radically altered at a meeting with Home Affairs. On 5 January 2005, opposition civil servants and community leaders—who had just come together to form what would become AMT—met high-ranking officials at the Ministry of Home Affairs in Jakarta. The intended purpose of the meeting was to lobby the central government to impeach or sanction the Bupati.⁴⁷ Participants in the meeting discovered that Totok's support in Home Affairs was in fact weak, and they were informed that they could

⁴⁴ Interview with Anonymous, journalist, Central Java, September 2011.

⁴⁵ The demonstrations peaked in January with large-scale actions involving “thousands” of demonstrators (“Totok Akan Hadiri Sidang DPRD: Ketua DPRD: Hak Interpelasi untuk Penuhi Prosedur [Totok to Attend Local Council Session: Parliament Chairman: Interpellation Procedures Fulfilled]” *Kompas* (Semarang, January 13, 2005) 1). Smaller demonstrations involving 200-300 demonstrators were held regularly between January and July 2005.

⁴⁶ Interview with Anonymous, senior civil servant, Central Java, July 2011; Interview with Anonymous, community leader, Central Java, September 2011. At this point there had been relatively few local corruption investigations and prosecutions involving local politicians. The first case began in West Sumatra in 2002 and, by 2006, 29 local government heads were involved in corruption prosecutions. See: Taufik Rinaldi, Marini Purnomo, and Dewi Damayanti, *Fighting Corruption in Decentralized Indonesia: Case Studies on Handling Local Government Corruption* (World Bank 2007) .

⁴⁷ Interview with Anonymous, senior civil servant, Central Java, July 2011.

effectively use the corruption accusations to convict and therefore remove him. It came with one catch, however: ministry officials indicated that they could only support this endeavour “if there were large demonstrations (*aksi*) in the regions—that what the central government fears the most is dirt from the regions”.⁴⁸ The opposition’s response was instantaneous: “after that we went straight back to Temanggung and started striking (*mogok*)”.⁴⁹

This period also saw substantial change in the organisation of the enforcement coalition. Prior to their meeting at Home Affairs the senior civil servants—who had agreed four months earlier to engage actively in undermining the Bupati—reached out to community leaders marginalised by Totok’s government.⁵⁰ They agreed to form AMT. The public face of the coalition was made up of well known local community leaders.⁵¹ The senior civil servants were careful not to be seen as orchestrating the demonstrations for fear that overt politicisation of civil servants would attract negative attention from Jakarta.⁵² The formation of a formal enforcement coalition gave the opposition a profile in the media. It also acted as a commitment device; it made it difficult (but not impossible) for individual community leaders to defect. Interestingly, one important source of organisational strength was Totok’s autocratic and, in the words of almost every informant, arrogant leadership style. Many of these community leaders shared with the civil servants a visceral dislike of the Bupati.⁵³ They attributed his character to his time spent in Jakarta, and claimed that he had forgotten the “Javanese way” of doing things (i.e. highly deferential and conflict-averse).⁵⁴ These personal animosities could not themselves sustain the coalition, but they did provide cohesion to a group with disparate interests and social backgrounds.

It was relatively easy for the leaders of AMT to mobilise the public. As noted above, an important contextual factor was the presence of an intermediary class of community leaders with strong networks to

48 Interview with Anonymous, community leader, Central Java, September 2011.

49 Interview with Anonymous, community leader, Central Java, September 2011.

50 Interview with Anonymous, senior civil servant, Central Java, July 2011; Interview with Anonymous, community leader, Central Java, September 2011.

51 Interview with Anonymous, community leader, Central Java, July 2011.

52 Interview with Anonymous, senior civil servant, Central Java, July 2011.

53 Interview with Anonymous, senior civil servant, Central Java, July 2011; Interview with Anonymous, senior civil servant, Central Java, July 2011; Interview with Anonymous, community leader, Central Java, July 2011; Interview with Anonymous, community leader, Central Java, September 2011.

54 Interview with Anonymous, senior civil servant, Central Java, July 2011; Interview with Anonymous, senior politician, Central Java, September 2011.

farmers, small traders, and martial arts groups.⁵⁵ These leaders used their networks to mobilise hundreds of ordinary villagers. The use of corruption laws to remove the Bupati also provided these organisers with a strong moral message. In one frank interview, one of the key AMT leaders stated that “if we need to go to the people, we need to focus on the corruption. People at the bottom are all stupid. We just need to tell them that their taxes are being stolen by Totok and they would straightaway join [our demonstrations]. They’re just stupid!”⁵⁶ Many farmers were also dependent on these community leaders for selling their crops, and were indebted to them during what was a poor tobacco-growing season.⁵⁷ In addition, disgruntled civil servants used their networks and authority to mobilise support amongst civil servants within the government.⁵⁸ Within days of the initial demonstrations, students from various universities in Central Java held large demonstrations in Temanggung (and across the province).⁵⁹ Table 7 summarises the dramatic shifts in the coalition and the implications of this for its resources; strikethrough text indicates lost coalition resources and underlined text indicates new or additional coalition resources.

The mass street demonstrations—which were held on a daily basis during January and involved hundreds and sometimes thousands of demonstrators—quickly triggered defections from the Bupati’s coalition. The first to defect were high-profile senior civil servants in the current administration, including the Regional Secretary, many of whom were implicated in the corruption currently under police investigation. The defections were facilitated by deals with the police and the enforcement coalition. In the words of one informant: “the police said to the PNS [civil servants]: we won’t open all incidents of corruption because [we know] that the PNS [civil servants] also ate the proceeds of the corruption”.⁶⁰ The organisers of the demonstrations also agreed not to draw attention to the involvement of senior civil

55 Many community leaders marginalised by the Bupati’s local tendering reforms were linked to local martial art groups and were leaders of party militias, particularly PDIP’s notorious *satgas*. This meant that they controlled the main sources of informal coercive power in the district. Interview with Anonymous, senior civil servant, Central Java, July 2011; Interview with Anonymous, community leader, Central Java, September 2011.

56 Interview with Anonymous, community leader, Central Java, September 2011.

57 Interview with Anonymous, community leader, Central Java, July 2011. Many of these community leaders were a mix of creditors and credit brokers. See also: (see n. 15)

58 Interview with Anonymous, senior civil servant, Central Java, July 2011.

59 “KPK Minta Kasus Temanggung Ditangani Serius [KPK Requests Proper Handling of Temanggung Case]” *Detik* (Jakarta, January 17, 2005)

60 Interview with Anonymous, senior politician, Central Java, September 2011.

Table 7: Suspect and Enforcement Coalition Resources - Temanggung (Phase III)

Coalition	Resources	Key Actors
Suspect	<u>Patronage</u>	Defections of senior civil servants and political factions weaken control over local bureaucracy and local representative council.
	<u>Supra-Local Linkages</u>	New information indicates that Totok's influence at Ministry of Home Affairs is weak.
Enforcement	<u>Information</u>	Senior civil servants defect from local administration, agreeing to testify against Totok in exchange for protection.
	<u>Mobilisational</u>	Civil servants, community leaders and civil society mobilise mass demonstrations against the Bupati and in support of the corruption investigations.
	<u>Supra-Local Linkages</u>	Ministry of Home Affairs and Governor signal tacit support for the enforcement coalition's escalation of demonstrations.

servants in exchange for their cooperation in the investigation and trial: “they [the civil servants] were also involved ... but we made it clear that we didn't want to stir up all cases we just wanted to remove [*jatuhkan*] him [the Bupati].”⁶¹ Informants indicated that bribes were also distributed to the prosecutors and courts to ensure the protection of informants: “all judicial actors (*orang yudikatif*) received money to ensure the case stopped there [with the Bupati]”.⁶² After a week of AMT and student demonstrations involving thousands of demonstrators, five of seven political factions in the DPRD supported initiating proceedings to impeach the Bupati.⁶³ The two parties that withheld their support for the motion—Golkar and PPP—had initially backed Totok for office just eighteen months earlier. Eventually all parties in the council would endorse the corruption investigation, with PPP signalling its support after it became apparent that there was little chance of avoiding the investigation.⁶⁴

In response, Totok attempted to secure his support coalition.⁶⁵ Initially he tried to reach out to disgruntled civil servants, offering to

61 Interview with Anonymous, community leader, Central Java, September 2011.

62 Interview with Anonymous, senior politician, Central Java, September 2011.

63 “DPRD Temanggung Putuskan Turunkan Bupati [DPRD Decides to Depose Bupati]” *Tempo Interaktif* (Jakarta, January 12, 2005) See also the Kompas article.

64 “PPP Cabut Dukungan Politik [PPP Withdraws Political Support]” *Wawasan* (Semarang, May 2, 2005)

65 (see n. 43).

ignore their resignations and address their concerns.⁶⁶ But his reputation for untrustworthiness hindered his ability to credibly bargain with the civil servants in what was a fast-changing situation. The embattled Bupati also sought to secure the support of the Ministry of Home Affairs and the Governor.⁶⁷ But the mass demonstrations meant the Governor's primary concern was public order. Local leaders working under the banner of AMT forced the hand of the Governor.⁶⁸ In a meeting between the Governor and those behind the public demonstrations, the latter reportedly threatened that "Temanggung could become the second Ambon [a city that had seen high-levels of communal violence in the post-Suharto era] if the Governor didn't intervene".⁶⁹ The Governor made a statement cautiously supporting the investigation.⁷⁰

During this period the corruption investigation quickly progressed. Members from the enforcement coalition made deals with senior civil servants to secure evidence and the police continued to intimidate lower level officials, such as sub-district and village heads, who had also received a portion of the election security funds.⁷¹ The Provincial Police Chief signalled support for the investigation. He sent a top investigator from provincial headquarters to the district to assist the investigation and mobilised two additional battalions to the district in a show of strength. The Provincial Police Chief rotated the District Police Chief in the middle of the demonstrations.⁷² But a senior politician explained that the chief was moved "not as punishment, but to protect him".⁷³ Some months after his rotation and after events had calmed, the Provincial Police Chief indicated that the police would deal with the District Police Chief's involvement in the corruption internally and punish him "professionally". This simply meant that there would be no repercussions.⁷⁴

66 "Bupati Temanggung: Tak ada Krisis Kepemimpinan [Temanggung Bupati: There is No Leadership Crisis]" *Tempo Interaktif* (Jakarta, January 10, 2005) .

67 "Totok Temui Mendagri [Totok Met Mendagri]" *Wawasan* (Semarang, January 18, 2005) 1 ; "Soal SP3, Bupati Totok Lecahkan Gubernur [On SP3, Totok Harasses Governor]" *Pikatan* (Temanggung, June 2005) .

68 Interview with Anonymous, senior politician, Central Java, July 2011; Interview with Anonymous, community leader, Central Java, September 2011.

69 Interview with Anonymous, community leader, Central Java, September 2011.

70 "Totok Dipanggil SBY [SBY Summons Totok]" *Wawasan* (Semarang, January 13, 2005) 1 .

71 Interview with Anonymous, journalist, Central Java, July 2011; Interview with Anonymous, community leader, Central Java, September 2011.

72 (see n. 38).

73 Interview with Anonymous, senior politician, Central Java, September 2011.

74 His move from Temanggung to a wealthy city in Central Java could only be interpreted as a promotion. See: "Kasus Mantan Kapolres Temanggung Diteliti [Case

Phase IV: Sustained Enforcement Coalition Mobilisation

The number and intensity of public demonstration declined after the Bupati was named as a corruption suspect. The enforcement coalition retained its capacity to demonstrate quickly, and it did so at three critical junctures in the legal process. The first related to Totok's arrest, which, according to the law, required presidential permission.⁷⁵ This prompted AMT to organise demonstrations in Temanggung and at the Presidential Palace in Jakarta.⁷⁶ Around this time, Totok also attempted to counter-mobilise mass demonstrations: after the case was passed from the police to the prosecutors, a group called People's Action and Solidarity Movement for Temanggung organised small demonstrations outside the state prosecutor's office in support of Totok.⁷⁷ He also reportedly attempted to hire *preman* from outside the district to intimidate AMT protestors as those within the district were either involved in, or unwilling to challenge, AMT.⁷⁸ Finally, he also attempted to organise a demonstration of village heads loyal to Totok, but they were reportedly blocked by AMT demonstrators.⁷⁹

The AMT mobilised again after Totok attempted to marshal demonstrations, and prosecutors delayed bringing the case to trial. Some suggested that these delays were attempts by the district State Prosecutor to test whether the public still supported the case, and there were rumours that the prosecutors might terminate the case against the Bupati.⁸⁰ In response, AMT kept up the pressure by organising demonstrations and met with the local Chief State Prosecutor to, in their words, "offer their complete support for the case".⁸¹ Finally, AMT again organised massive demonstrations during the trial in the district State Court. This was designed to keep the pressure on not only the judges but also the witnesses, particularly those that had

Against Former Temanggung Kapolres Under Scrutiny]" *Media Indonesia* (Jakarta, March 5, 2005) .

75 Law 32/2004

76 "Jika Bupati Temanggung Tak Juga Ditahan: Warga Akan ke President [If Temanggung Bupati Walks: Citizens to Report to President]" *Kompas* (Jakarta, April 18, 2005) 6 ; In the end the prosecutors determined that they did not require permission to arrest the Bupati because the police had already received presidential permission to investigate him. See: "Totok Mengaku Sering Pusing [Totok Claims to Suffer Frequent Headaches]" *Suara Merdeka* (Semarang, July 2, 2005) .

77 (see n. 76).

78 Interview with Anonymous, senior civil servant, Central Java, July 2011.

79 Interview with Anonymous, community leader, Central Java, September 2011.

80 Interview with Anonymous, community leader, Central Java, September 2011.

81 Interview with Anonymous, community leader, Central Java, September 2011; see also "AMT Beri Dukungan ke Kejari [AMT Supports Kejari]" *Suara Merdeka* (Semarang, July 7, 2005)

worked with Totok and resigned only as public mobilisation escalated.⁸²

Postscript: Appeals Rejected

The collapse of the Bupati's coalition and the strength of the enforcement coalition meant that Totok lacked the resources to fight his conviction and removal from office. On 27 October 2005, the district State Court convicted Bupati Totok of corruption resulting in state losses of Rp. 12.6 billion (\$ 1.3 million) under Article 2 of corruption eradication law. He was sentenced to four years' imprisonment, fined Rp. 300 million (\$33,000), and ordered to repay Rp. 1.2 billion (\$130,000).⁸³ On 2 January 2006, the provincial High Court upheld his conviction but halved the fine and repayment to Rp. 150,000 (\$16,500) and Rp. 520 million (\$65,000) respectively.⁸⁴ Finally, on 9 March 2006, the Supreme Court rejected his appeal.⁸⁵

CASE 2 - CILACAP: NATIONAL INTERVENTION DESTABILISES LOCAL POLITICAL CARTEL

The second case from Cilacap district also resulted in prosecution and conviction. Cilacap is located in the southwest corner of Central Java where it shares a border with West Java province. It is the largest district in Central Java and has the second highest population at around two million. It is also one of the poorest. The economy is mixed: there are large plantations; a large fishing industry; and the district is also known for its manufacture of traditional medicinal products (*jamu*). A large port, mostly used by the state-owned oil company, generates additional revenue for the district government. There is an infamous prison just off the coast from the main city, also called Cilacap, which is reportedly the source of the city's disproportionately high number of *preman*.

The case against the Bupati, Probo Yulastaro, and the Head of Local Revenues, Fajar Subekti, related to the embezzlement of district government revenues during the Bupati's first term in office (2002-2007). The funds were partially used to finance Probo's successful 2007 election campaign. A local non-government organisation, Par-

82 Interview with Anonymous, senior politician, Central Java, July 2011.

83 *Drs Totok Ary Prabowo MSi MA vs Negara (Republik Indonesia)* (see n. 5).

84 *Drs Totok Ary Prabowo MSi MA vs Negara (Republik Indonesia)* (see n. 6).

85 *Drs Totok Ary Prabowo MSi MA vs Negara (Republik Indonesia)* (see n. 6).

liament Watch Cilacap (PWC), reported various incidents of corruption implicating the district government to law enforcement agencies in Jakarta. The Supreme Prosecutor in Jakarta conducted the pre-investigation (*penyelidikan*) in one incident involving embezzlement of revenues totalling Rp. 1.6 billion (\$170,000) from a state-owned port management company. The case was transferred to the provincial High Prosecutor, which expanded the investigation (*penyidikan*) to cover three incidents of embezzlement totalling Rp. 21.5 billion (\$2.4 million). The Bupati was sentenced to nine years' imprisonment in early 2010. The provincial High Court reduced Probo's sentence to seven years and the Supreme Court reduced it to four years.

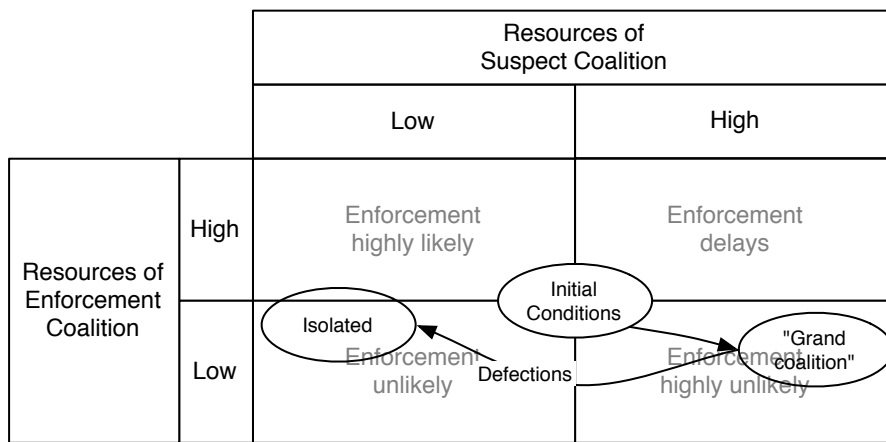


Figure 20: Cilacap: Coalition and Resource Changes Over Time

The case illustrates—as evident in Figure 20—a different pathway to conviction from the Temanggung case. The initial conditions are similar: Bupati Probo came to power in a highly contested local election. Despite a legal challenge to the result, there was relatively little open conflict amongst the local political elite. Indeed, there were strong connections between the incumbent and the challenger, and many of the local political elite were implicated in the corruption reported to legal authorities. Probo's position was further strengthened when his party, PDIP, won the gubernatorial election in June 2008. Thus initially Probo was able to form a "grand coalition" of local political interests to preclude local investigations into allegations of corruption. However, there were rivalries within the coalition. The Supreme Prosecutor's outside intervention in one corruption incident—which was driven by national political pressure to deliver high-profile corruption prosecutions prior to the 2009 national elections—shattered Probo's position in the coalition. Rivals in his own party and bureaucrats in his previous administration quietly

withdrew their support, restricting his access to critical resources, including his ability to distribute patronage, his mobilisational capacity, his control of inside information, and his supra-local linkages. Instead these resources were applied to pinning the corruption—the benefits of which had flowed to various actors in the local political cartel—on the Bupati and his current Head of Local Revenues. Like Bupati Totok in Temanggung, Bupati Probo's history of deserting colleagues and his heavy-handed approach to the local bureaucracy meant that he lacked the reputation to quickly renegotiate a new position or allocation of patronage amongst coalition members.

Background

As in Temanggung, Bupati Probo won re-election in a closely contested election in 2007. The election saw significant tensions, including the cancellation of one candidate pair and a legal challenge to the final result. It did not, however, generate the acrimony of the Temanggung election. Probo, who had come to power in 2002,⁸⁶ received support from PDIP, PKB, and a host of smaller parties.⁸⁷ In the end there was only one challenger pair—Siti Fatimah and Sayidi—as the local district Election Commission (KPUD) rejected the candidacy of a third pair.⁸⁸ Siti was a wealthy contractor from the district who had strong relationships with both Probo and PDIP, the dominant party in the district. In fact she had initially tried to secure PDIP's nomination.⁸⁹ Instead she secured the nomination of Golkar, which controlled eleven seats in the local parliament, and chose Probo's Re-

86 The local parliament selected Probo to the Bupati position in 2002. He was supported by PDIP, a secular nationalist party, which was the main party in the local parliament. His running mate was Thohirin Bahri, from the Muslim-oriented United Development Party. Probo and Thohirin collected 25 votes in the 45 seat local parliament. At the time the President and Vice-President were from PDIP and PPP respectively. The two other candidates nominated from the PKB and Golkar parties received sixteen and four votes respectively. In addition, Probo's candidacy received strong support from a broad range of social organisations and businesses, including the *jamu* manufacturers, local banks, and local contractors including Siti Fatimah.

87 Pelopor, PPD, Partiot Pancasila. See: "Fatimah Diminta Tak Membebani, Probo Klaim Dukungan [Fatimah Request Not to Overburden, Probo Claims Support]" *Suara Merdeka* (Semarang, September 3, 2007) .

88 This led to tensions and mass demonstrations prior to the election. See: "PPP Tak Rekomendasikan Budi Gagak-Subagyo [PPP Not Endorsing Budi Gagak-Subagyo]" *Suara Merdeka* (Semarang, July 13, 2007) ; "Dukungan Partai Politik Merata [Widespread Support from Political Parties]" *Suara Merdeka* (Semarang, August 20, 2007) ; (see n. 87); "Ratusan Massa Menuntut Pilkada Cilacap Dibatalkan [Hundreds Demand Cancellation of Cilacap Pilkada]" *Liputan6* (Jakarta, September 3, 2007) .

89 "Suhu Politik Memanas [The Political Climate Heats Up]" *Suara Merdeka* (Semarang, June 21, 2007) .

Table 8: Bupati Candidates, Party Alliances and Election Results - Cilacap (2007)

Candidates	Party Alliance	Alliance Seats	Election Result
Probo-Tatto	PDIP (16 seats)	22 seats	51.1% voters
	PKB (5 seats)		
	PKS (1 seat)		
	Peloppor (1 seat)		
Siti-Sayidi	Golkar (11 seats)	21 seats	48.9% voters
	PAN (5 seats)		
	PPP (4 seats)		
	PD (1 seat)		

gional Secretary from 2004 to 2006, Sayidi, as her running mate. The incumbent Probo and his new running mate Tatto, a religious leader close to local *kyai*,⁹⁰ won the election with a margin of just one percent on 9 September 2007.⁹¹ Table 8 summarises the strength of the party alliances and the election result.⁹²

The local district election divided the local political and economic elite. On one side, the Probo-Tatto alliance included the local PDIP party machine, a slim majority of local councillors, elements of the bureaucracy, local businesses, and various social and youth organisations.⁹³ On the other side, the Siti-Sayidi alliance included local councillors, contractors and businesses, and elements of the bureaucracy. Siti and Sayidi immediately challenged the result of the election in the provincial High Court, arguing that the local election commission unduly influenced the outcome.⁹⁴ The court hearings drew demonstrations in support of the incumbent Bupati Probo.⁹⁵ The High Court

90 A religious leader who will often operate local Islamic boarding schools (*pesantren*).

91 "Pasangan Probo-Tatto Sementara Unggul [Probo-Tatto Currently In the Lead]" *Suara Merdeka* (Semarang, September 10, 2007).

92 Two small parties, PNBK and PKPB, which controlled one seat each in the local council did not seem to publicly endorse one of the candidates. These two parties—along with an additional ten parties including PPP—had initially supported a third pair—Budi Gagak-Subagyo—whose nomination the local election commission rejected. See: (see n. 88).

93 Social associations included: Paguyuban Pemborong Pendukung Probo (P4), SBY Fans Club, Angkatan Muda Indonesia Bersatu (AMIB), Forum Komunikasi Paguyuban Bos Borong Cilacap (FKPBBC), Persatuan Pemulung Cilacap, Paguyuban Penderes, Karang Taruna, Front Pembela Islam (FPI), dan Gerakan Pemuda Bintang Berlian (GPBB). See: (see n. 87).

94 "Fatimah-Sayidi Menggugat, Pendukung KPUD Cilacap Demo [Fatimah-Sayidi Dispute, Supporters of KPUD Cilacap Hold Demonstration]" *Suara Merdeka* (Semarang, September 26, 2007).

95 *ibid.*.

ruled in favour of the incumbent and the case was dismissed.⁹⁶ There were, however, relationships across as well as rivalries within the two political alliances. Siti, for example, had a long-standing relationship with Probo and had even provided financing for some of his election campaign. There were also divisions within PDIP, particularly between Probo and Fran Lukman, the head of the local representative council and head of PDIP's local party chapter. These cross-alliance connections and tensions can be traced back to Probo's first term in office.

Probo's first term from 2002 and 2007 was not without controversy. In 2003, a civil society group linked to Probo initiated demonstrations against the then Regional Secretary, Adi Saroso.⁹⁷ This allowed the Bupati to consolidate control over the local bureaucracy. In the lead up to the 2007 election, he sought to ouster his Vice-Bupati from the moderate Islamic party PPP.⁹⁸ He had also sought to increase his personal wealth and consolidate power by engaging in corruption that bypassed the local representative council. In this way, Probo consolidated power but also strained his relationships with the bureaucracy and the representative council, including Fran Lukman.⁹⁹ He was also viewed as arrogant and demanding.¹⁰⁰ The implication of these controversies and his character meant that he had many enemies and few friends to call upon when the corruption cases blew up.¹⁰¹

Case Trajectory

The most important events relating directly to the corruption investigation occurred between late 2007—when various cases of corruption relating to Probo's first administration were reported to law enforcement agencies—and February 2010, when the district State Court convicted the Bupati for corruption. In 2007, the local NGO Parliament Watch Cilacap (PWC) compiled a list of incidents of suspected corrup-

96 "Gugatan Fatimah-Sayidi Dianggap Tanpa Bukti [Fatimah-Sayidi Case Considered Baseless Charge]" *Suara Merdeka* (Semarang, September 27, 2007) .

97 "Sekda Cilacap Mengundurkan Diri [Cilacap Sekda Resigns]" *Suara Merdeka* (Semarang, October 4, 2004) .

98 "Thohirin Bahri Diberhentikan [Thohirin Bahri Dismissed]" *Suara Merdeka* (Semarang, July 26, 2006) .

99 It is not entirely clear when tensions began. As early as 2002, PDIP cadres were disappointed with the nomination of Probo at the expense of Fran. Informants suggest that Probo was initially Fran's "boy" but that Fran's ability to control the Bupati diminished during his term.

100 Interview with Anonymus, businessman, Central Java, September 2011.

101 Didi Wahyu, "Masa Mudanya Jualan Plastik di Pasar Wage [Youth Spent Selling Plastic at Wage Market]" *Suara Merdeka* (Semarang, April 22, 2009) .

tion involving Probo and local councillors between 2004 and 2007.¹⁰² The PWC sought to maximise the chance that an investigation would proceed by reporting the cases to various institutions at the national level in Jakarta, including the Corruption Eradication Commission (KPK), the Supreme Prosecutor, and the National Police in Jakarta. Generally, KPK tends only to intervene in subnational cases where regional politics prevent a case from proceeding in the standard law enforcement institutions.¹⁰³ Although the local political alliances in Cilacap meant that it was unlikely the case would proceed, KPK quickly passed the case to the Supreme Prosecutor in Jakarta.¹⁰⁴ As Table 9 outlines, the Cilacap case trajectory involved three main phases: (i) a “grand coalition” that initially precluded local corruption law enforcement; (ii) national intervention as the 2009 national election approached; and (iii) defections from the Bupati’s local coalition and a significant expansion in the scope of the investigation. In the end the case was investigated and prosecuted in record time.

Table 9: Case Trajectory: Cilacap (2007 - 2010)

Phase I: “Grand Coalition” Precludes Local Investigation	
December 2007	Local NGO Parliament Watch Cilacap (PWC) identifies 20 incidents of corruption that took place between 2004 and 2007, reports directly to Jakarta.
February 2008	PWC attends hearing in the local parliament to present its accusations.
2008	NGO Community Forum—an alliance of local social and civil society organisations—holds small demonstrations in front of District Prosecutor’s Office.

¹⁰² The exact source of this information is uncertain. The head of PWC claimed that they mostly relied on official budget documents that they had obtained from the local parliament. It seems almost certain, however, that they also received information from bureaucrats within the government.

¹⁰³ Interview with Anonymous, senior civil servant, Jakarta, November 2011.

¹⁰⁴ Interview with Anonymous, activist, Central Java, July 2011.

Phase II: National Intervention Prior to National Elections	
Late 2008	PWC and former activists-cum-politicians lobby Jakarta to investigate local corruption.
Early 2009	Supreme Prosecutor's intelligence unit in Jakarta conducts pre-investigation (<i>penyelidikan</i>), and recommends full investigation (<i>penyidikan</i>).
13 March 2009	Supreme Prosecutor transfers embezzlement case involving Rp. 1.6 billion (\$170,000) of revenue from the Third Indonesian Port Company to the High Prosecutor's Office in Jakarta.
22 April 2009	High Prosecutor announces that Bupati Probo is a suspect and that the investigation has expanded to cover three incidents of embezzlement.
23 April 2009	Supreme Prosecutor, based on a request from the High Prosecutor's Office for Central Java, requests Presidential permission to investigate incumbent Bupati Probo.
27 April 2009	High Prosecutor's Office requests the Provincial Financial Oversight Agency to conduct investigatory audit.
22 May 2009	President authorises investigation of incumbent Bupati Probo.
Phase III: Bupati's Coalition Collapses	
26 May 2009	BPKP announces corruption totalling Rp. 21.8 billion (\$2.2 million) involving three incidents of corruption.
2 July 2009	High Prosecutor's Office arrests incumbent Bupati Probo.
18 August 2009	Probo transferred to Semarang jail to await trial.
19 October 2009	Trial begins in Cilacap State Court.
Postscript: Corruption Prosecutions in Record Time	
24 February 2010	Cilacap State Court finds Probo guilty and sentences him to nine years' imprisonment.
4 May 2010	Central Java High Court upholds conviction but reduces sentence to seven years' imprisonment.
24 August 2010	Supreme Court upholds conviction but further reduces sentence to four years' imprisonment.

Phase I: "Grand Coalition" Precludes Law Enforcement

Initially Probo was supported by a strong coalition capable of preventing local corruption investigations. His election alliance included a slim majority of parties in the local representative council, and he maintained strategic relationships with many politicians and civil servants who were ostensibly in opposition to the Bupati and had challenged him in the 2007 election. Probo's position was further strengthened with the win of PDIP's candidate in the 2008 gubernatorial election in Central Java. He also maintained influence over a broad coalition of social organisations and trade associations, many of which

he mobilised as part of his efforts to undermine a legal challenge to the 2007 election results in the provincial High Court. Surprisingly, given the election result, the civil society alliance that uncovered and reported the corruption incidents received little overt support from the local political “opposition”, including the politicians and civil servants that had challenged the Bupati just six months earlier in the local election.¹⁰⁵ As noted above, Probo had many rivals (and some enemies) in the local bureaucracy, the local representative council, and in his own party that would have liked to see him gone.

Many “opposition” groups or individuals were implicated in the corruption incidents under scrutiny and had in fact benefited from the Bupati’s first term in office. Furthermore, Vice-Bupati Tatto was new to local politics and lacked connections to established political and economic elites. This meant that many were initially reluctant to support the corruption investigations that might implicate them and put in power someone with whom they had relatively little influence. For example, Siti Fatimah publicly denied any involvement despite rumours that she initiated the corruption investigations in retaliation for her loss in the 2007 election.¹⁰⁶ Despite campaigning against him in 2007, Siti had a close relationship with the Bupati and had supported his government during his first term. She had also hedged her bets on her own election and partially financed Probo’s election campaign, thus retaining influence with the re-elected Bupati. She also had little influence with the Vice-Bupati who would replace him if he was convicted and removed from office. Others, including rivals in his own party and in the local council, as well as former bureaucrats who had intimate knowledge about the corruption, were in similar positions.¹⁰⁷ Table 10 summarises the Bupati and enforcement coalition. Probo’s “grand coalition” of local political and economic groups meant he controlled ample resources to prevent law enforcement action, including the ability to channel funds to the local law enforcement agents and the ability to discourage law enforcement action at the provincial level. Indeed, this was the main reason why PWC—having been frustrated in their previous efforts at

105 I am still not entirely convinced that there wasn’t behind the scenes support, but I have not uncovered this in what was the most difficult district to conduct research.

106 “Fatimah Bantah Terlibat Kasus Bupati Cilacap [Fatimah Denies Involvement in Regent Case]” *Suara Merdeka* (Semarang, June 28, 2009) .

107 Bupati’s lawyer publicly threatened to implicate others during the investigation. See: “Kasus Probo Bisa Seret Pejabat Lain [Probo Case Could Implicate Other Officials]” *Suara Merdeka* (Semarang, June 8, 2009) .

reporting corruption to local police and prosecutors in Cilacap—took their cases directly to Jakarta.¹⁰⁸

Table 10: Suspect and Enforcement Resources - Cilacap (Phase I)

Coalition	Resources	Key Actors
Suspect	Patronage	Bupati coalition controls local council and bureaucracy.
	Mobilisational	Bupati maintains strong connections to local social and economic associations; his party maintains strong district party machine and exerts influence over local journalists.
	Information	Bureaucrats and contractors aligned with the Bupati control internal government information relating to local government corruption.
Enforcement	Supra-Local Linkages	Bupati's party controls Governor's mansion.
	Information (limited)	Local NGOs access local budget and procurement information that enable them to question publicly certain transactions, but which would be insufficient for a court trial.
	Mobilisational (limited)	Local civil society alliance of small social and economic associations with limited mobilisational capacity.

At this stage the enforcement coalition consisted of local civil society CSOs with limited information and mobilisational capacity. In 2008, PWC held small demonstrations of twenty people in front of the local State Prosecutor's office and regularly lobbied KPK. In addition, the local CSO Communication Forum (*Forum Komunikasi Lintas LSM*)—a coalition of civil society groups including the local branch of the Legal Aid Foundation (LBH), fisherman's associations, pedicab drivers, and associations representing traditional medicine producers—organised demonstrations in front of the district State Prosecutor's office in Cilacap. These small demonstrations of around thirty individuals were poorly reported in local and regional newspapers because many of the local journalists were receiving payments from local politicians.¹⁰⁹ The local council did invite the coordinator of PWC to present its allegations to the DPRD.¹¹⁰ The council head,

¹⁰⁸ Interview with Anonymous, activist, Central Java, July 2011.

¹⁰⁹ Interview with Anonymous, activist, Central Java, July 2011; Interview with Anonymous, businessman, Central Java, September 2011.

¹¹⁰ "Cilacap Regent Linked to Graft" *The Jakarta Post* (Jakarta, February 13, 2008) ; "DPRD Respons Laporan PWC [DPRD Responds to PWC Report]" *Suara Merdeka* (Semarang, February 14, 2008) .

Fran Lukman, issued a public statement of general support for the legal process. However, informants claimed that the hearing primarily aimed to intimidate the civil society groups involved rather than endorse their efforts and the investigation.¹¹¹

Phase II: National Intervention Prior to National Elections

The national law enforcement agencies were under intense presidential pressure to investigate and prosecute corruption in the lead-up to the 2009 national elections. The President had campaigned on an anti-corruption platform and he was keen to burnish his reform credentials prior to the election. It was also strategic politics.¹¹² The President's party, the Democrat Party, was yet to establish itself in the regions: it controlled few local governments and held few seats in local councils. In Cilacap, for example, it held only one seat in the 2004–2009 period. This meant that there were few Democrat politicians likely to be implicated in local corruption investigations. Although there was no explicit directive to target opposition parties such as PDIP and Golkar, the law enforcement agents knew that cases implicating opposition leaders were more likely to receive the green light from the President's office, including presidential permission to investigate and arrest incumbent local government heads and councilors.¹¹³ Informants indicated that representatives from the State Secretariat were often present in internal meetings at the police and prosecutors, at which cases were discussed and decisions made on their progress. In these meetings law enforcement agents paid close attention for signs of support or opposition from participants from the State Secretariat.¹¹⁴ The Cilacap case, which implicated local politicians in a PDIP stronghold, was therefore ripe for national intervention.¹¹⁵

There was also support from local members of the President's party for intervention. In 2008, a number of former activists of the disbanded CSO alliance AWASI joined the President's party in order to run in the 2009 local council elections. These individuals participated in a number of national party meetings in 2008 at which they established new connections within the party, including with Democrat

¹¹¹ Interview with Anonymous, activist, Central Java, July 2011.

¹¹² It would later come back to bite him as the KPK targeted corruption within his own party from 2010.

¹¹³ Interview with Anonymous, senior prosecutor, Jakarta, October 2011.

¹¹⁴ Interview with Anonymous, investigator, Jakarta, October 2011.

¹¹⁵ Interview with Anonymous, senior prosecutor, Jakarta, October 2011.

Party lawmakers in the national parliament's Third Committee for Legal Affairs.¹¹⁶ These councillor candidates were relative outsiders. Not only were they previously involved in local anti-corruption campaigns against many of the local politicians implicated in the cases, but they were less embedded in local political alliances that prevented investigations at the local level. Indeed, they stood to gain the most from the corruption investigations as they could use the investigations to bolster their local election campaigns, which they did.¹¹⁷ In this way, these political newbies used their new supra-local connections to have the Cilacap cases raised at the Third Committee's meetings with the Supreme Prosecutor.¹¹⁸ Although this local intervention may have provided information about the political position of the Democrat Party's local chapter, the key factor behind the initial investigation was national political prerogatives relating to the 2009 national elections.¹¹⁹

Phase III: Bupati's Coalition Collapses

The Supreme Prosecutor's national intervention in one incident triggered a collapse in Probo's coalition. In March 2009, eighteen months after the initial report and just one month before the national legislative and local council elections, the Attorney General's Office transferred the investigation to the provincial High Prosecutor in Semarang, the provincial capital. The Supreme Prosecutor's pre-investigation (*penyelidikan*) concluded that there were strong signs of corruption and recommended a full investigation (*penyidikan*).¹²⁰ At this point the High Prosecutor still enjoyed significant discretion over the direction of the case. Although Probo had been linked to the case in the pre-investigation, which was widely reported in the national and regional media, the High Prosecutor *could* have directed the case away from the Bupati, protecting him from investigation. However, the Supreme Prosecutor's position was clear: they wanted cases prosecuted and this case had received political clearance at the top. Any attempt to delay or re-direct the case would have serious repercussion

116 Interview with Anonymous, politician, Central Java, July 2011.

117 Interview with Anonymous, civil society leader, Central Java, July 2011.

118 Interview with Anonymous, politician, Central Java, July 2011.

119 Interview with Anonymous, senior prosecutor, Jakarta, October 2011.

120 "Penyidikan Bupati Probo Diserahkan ke Kejati [Investigation of Bupati Probo Handed Over to Kejati]" *Suara Merdeka* (Semarang, March 14, 2009) .

for the High Prosecutor's future ambitions within the institution.¹²¹ In this context, there would have had to have been massive social and political pressure, and financial benefits, for him to ignore the case. Instead the High Prosecutor chose to broaden the investigation, pinning the Bupati for three corruption cases.

Table 11: Suspect and Enforcement Coalition Resources - Cilacap (Phase III)

Alliance	Resource	Key Actors
Suspect	<u>Patronage</u>	Bupati's party withdraws active support.
	<u>Mobilisational Information</u>	Local social and economic CSOs withdraw active support.
	<u>Supra-Local Linkages</u>	Senior civil servants, including the former Regional Secretary, Sayidi, defect with information about the cases under investigation.
Enforcement	<u>Supra-Local Linkages</u>	Bupati loses linkage with Governor after his party withdraws its support.
	<u>Patronage & Supra-Local Linkages</u>	Local representative council and party pin corruption on Bupati Probo.
	<u>Information</u>	Former civil servants become key witnesses in the investigation in exchange for protection.

The High Prosecutor's decision to upgrade and prioritise the investigation was facilitated by the collapse of the Bupati's local political coalition. Table 11 above summarises the changes in the coalitions. Two actors or groups were particularly critical, the first being the Bupati's former Regional Secretary, who had campaigned against Probo in 2007 but who had not, until the national government's intervention, defected. He negotiated an informal deal with the High Prosecutor's Office; his involvement in the corruption would be overlooked in exchange for inside information.¹²² He became a critical witness in the investigation and trial, and his quick defection following the central government's intervention was crucial in enabling the High Prosecutor to rapidly progress the investigation despite Probo's claim to have an "ace up his sleeve" that he could use to discredit this in-

¹²¹ Indeed, Darwin, the provincial High Prosecutor at the time, would later be promoted to a senior position at the Supreme Prosecutor's Office in Jakarta.

¹²² See: "Probo Tidak Punya Bukti Akurat [Probo Lacks Accurate Evidence]" *Suara Merdeka* (Semarang, June 6, 2009) ; "Mantan Sekda Sayidi Pilih Bungkam [Former Sekda Sayidi Chooses to Remain Silent]" *Suara Merdeka* (Semarang, June 15, 2009) .

formation.¹²³ Local CSOs, many of which had previously supported Probo, also came out in support for the investigations.¹²⁴

The second key actor to defect was the Bupati's own political party. The national government's intervention disrupted the fragile coalition within his party. Fran Lukman had controlled PDIP in Cilacap since the first post-Suharto elections in 1999.¹²⁵ Although initially a strong supporter of Probo, his relationship had begun to deteriorate as the Bupati's engagement in revenue embezzlement, a form of corruption that bypassed the local council, had strengthened Probo's position vis-a-vis the party and the council.¹²⁶ The two rivals had still found it amenable to continue their alliance in the 2007 elections. The national government's intervention changed Fran's position and provided an opportunity to remove a rival. The council head's control of the local party machine and the party's district chapter gave Fran more influence within the party at the provincial and national levels.¹²⁷ Rather than use this supra-local linkage at the national and provincial level to protect Probo, or at least delay the investigation, Fran backed away from offering support and publicly endorsed the legal process.¹²⁸ As one informant put it, "he was not disappointed to see him go".¹²⁹ The party's defection was critical in two ways. First, it meant Probo no longer had the support of a reliable faction in the local council, an institution critical to the extraction and channeling of patronage to local law enforcement agencies (and others). It also meant that he lost access to his party's supra-local linkage with the new provincial Governor. Without these coalition members and their resources, there was almost no way for Probo to fight the investigation.

Postscript: Corruption Prosecutions in Record Time

National intervention and the collapse of the Bupati's local political coalition meant the corruption investigation could proceed in record time; the responsiveness of the law enforcement agencies was extraor-

123 "Probo Mengaku Sudah Punya Kartu As [Probo Claims to Have an Ace Up His Sleeve]" *Suara Merdeka* (Semarang, June 18, 2009) .

124 "Kasus Probo Diusut Tuntas [Probo Case Investigated Thoroughly]" *Suara Merdeka* (Semarang, April 27, 2009) .

125 Interview with Anonymous, businessman, Central Java, September 2011.

126 Interview with Anonymous, civil society leader, Central Java, July 2011.

127 Fran had strong access to higher levels of the party in Jakarta because of the votes he delivered in Cilacap and the funds he channeled upwards to the party. Interview with Anonymous, businessman, Central Java, September 2011.

128 "Bupati Cilacap Patuhi Proses Hukum [Cilacap Regent Respects Legal Process]" *Suara Merdeka* (Semarang, April 23, 2009) .

129 Interview with Anonymous, civil society leader, Central Java, July 2011.

dinary. Shortly after receiving the report from the Supreme Prosecutor, the High Prosecutor upgraded the investigation and assigned senior investigators to the case. Shortly thereafter it announced that the case had expanded to three incidents of corruption, including the embezzlement at the Third Indonesian Port Company as well as the embezzlement of funds for controlling local revenues (*Dana Operasional Koordinasi Pengendalian Pendapatan Daerah*), and land and building tax revenues. In late April, the High Prosecutor requested presidential permission to arrest Probo and asked the BPKP to conduct an investigatory audit to officially determine the state losses in the cases. The BPKP promised to provide the results within twenty days. Within two weeks of receiving the request, which had passed through the Supreme Prosecutor's Office in Jakarta, the President approved Probo's arrest. On 27 May 2009, BPKP announced total state losses amounting to Rp. 21.8 billion (\$2.2 million) from the three cases—the equivalent of 3.3 percent of Cilacap's general budget allocation for 2006.¹³⁰

The trials proceeded quickly. The High Prosecutor arrested the Head of Finance in late May 2009 and the District Head in early June. They were held under arrest until their trial. Initially scheduled to begin in August, the trial was delayed until October. One informant indicated that this was related to their request to have a corrupt local judge rotated prior to the trial.¹³¹ The trial began in October 2009, and in February 2010 the District Court sentenced Probo to nine years' imprisonment. The indictment was confusing and attempted to pin various corruption cases on the Bupati.¹³² He was also fined Rp. 200 million (\$22,000) and ordered to compensate the state Rp. 20 billion (\$2.2 million).¹³³ On appeal at the High Court his sentence was reduced to seven years; and the Supreme Court in September 2010 reduced it further to four years.¹³⁴

130 "Kerugian Negara di Cilacap Rp 21,8 M: Kejati Jateng Hari Ini Memeriksa Bupati Cilacap [State Losses in Cilacap Reaches Rp. 21,8 M; Kejati Jateng Interrogate Cilacap Regent Today]" *Kompas* (Jakarta, May 27, 2009) 1.

131 Interview with Anonymous, activist, Central Java, July 2011.

132 Interview with Anonymous, judge, Central Java, September 2011.

133 *H Probo Yulastoro, Bin H Sumarmo v Negara (Republik Indonesia)* 350/Pid.B/2009/PN.Clp.

134 *H Probo Yulastoro, Bin H Sumarmo v Negara (Republik Indonesia)* (see n. 133); *H Probo Yulastoro, Bin H Sumarmo v Negara (Republik Indonesia)* 1414K/Pid.Sus/2010.

ALTERNATIVE EXPLANATIONS

This chapter has shown how the legal mobilisation theory's emphasis on the resources of local legal mobilisation coalitions is critical in accounting for both corruption law enforcement outcomes as well as trajectories. In both cases, the suspects were unable to maintain or consolidate a local coalition with sufficient resources to preclude law enforcement. The legal mobilisation perspective is not the only possible explanation of these cases, however. Here I focus on two alternative explanations considered in Chapter 2: institution-centred explanations and cultural-centred explanations.

The institution-centred explanations emphasise the values and beliefs of institutional actors—or, in Indonesia, whether someone is considered “reformist”—as well as the historical baggage of law enforcement agents in leadership positions. This theory receives some initial support from the Temanggung case. As noted above, the Provincial Police Chief rotated the District Police Chief at around the time that the investigation accelerated, the implication being that the new District Police Chief held different values and beliefs, or relationships, from the former Chief. However, closer examination of the timing indicates that the former District Police Chief accelerated the investigation at least a month prior to his rotation. It also seems unlikely that his values or beliefs about corruption suddenly changed. Similarly, it is tempting to conclude that the values and beliefs of the Chief High Prosecutor and District Prosecutor were responsible for the prosecution of Bupati Probo. Indeed, the primary investigator in this case professed strong moral support for anti-corruption efforts in response to questions about his role in the Probo case.¹³⁵ However, interestingly, at around the same time both the High Prosecutor and District Prosecutor were ignoring other similar corruption cases. More important, however, was the position of the central government. In both cases, but particularly in the case of Bupati Probo, there was support from the central government. Interestingly, however, it seems that both cases could not have proceeded without local legal mobilisation efforts.

Culture-centred explanations of law enforcement emphasise law's compatibility with local cultural values and beliefs; the law is enforced when it complies with local cultural norms and ignored when it conflicts with them. At one level the Temanggung case provides

¹³⁵ Interview with Anonymous, prosecutor, Central Java, July 2011.

some support for this argument; particularly given the centrality of anti-corruption rhetoric in public demonstrations. However, the interviews with opposition leaders that organised these demonstrations indicate how easily these leaders manipulate public sentiments about corruption. Recall the statement of one community leader: “They’re just stupid!”.¹³⁶ Furthermore, there is very little evidence that local cultural values and norms played a role in the Cilacap case. Cultural accounts are unable to explain the dynamics of the case, particularly the initial period of cooperation and the sudden shift in opposition mobilisation. These findings undermine the claim that cultural norms play a role in corruption investigations. At most social norms are a necessary background factor; but only by taking into account the role of intermediary groups and their interest in mobilising anti-corruption sentiments amongst the population can one understand why some corruption investigations proceed and others are ignored.

A more satisfactory analysis requires consideration of the local political dynamics around a case. Collusive law enforcement institutions require consideration of local opposition mobilisation. And in a patronage democracy, the placating of opposition groups through co-optation payments is the stuff of politics. Attention to the bargaining power, organisational strength, and the costs of law enforcement are critical to understanding when opposition groups can be co-opted and corruption investigations avoided.

CONCLUSION

This chapter has illustrated how local legal mobilisation plays a critical role in subnational corruption law enforcement outcomes. In both cases, the corruption suspects lost control of the local resources that could prevent the investigation from proceeding or, at the very least, prevent their involvement from coming under scrutiny. In the terms of the theory developed in Chapter 4, the suspects failed to maintain control of local patronage institutions, supra-local linkages, and mobilisational capacity. In Temanggung, the Bupati initially had the support of a strong coalition of local patronage institutions and supra-local linkages. This allowed him to channel funds to the local police and prevent corruption investigations. Local political entrepreneurs mobilised initially and, for reasons discussed above, bureaucrats and parliamentarians defected from his coalition as his supra-local link-

¹³⁶ Interview with Anonymous, community leader, Central Java, September 2011.

ages evaporated and community leaders organised massive street demonstrations. The collapse of the Bupati's support coalition meant he was unable to channel benefits to the police and the demonstrations generated significant police security costs; in this context the investigation progressed quickly to prosecution and trial. Similarly in Cilacap, the Bupati initially commanded a support coalition of local patronage institutions, supra-local linkages and mobilisational capacity. The Supreme Prosecutor's sudden intervention in the case in the lead up to the 2009 national elections triggered defections from his coalition; most critically, he lost support of his party in the local council and its supra-local linkage with the provincial Governor.

Why did the support coalitions change? In Temanggung, the enforcement coalition was reluctant to use its mobilisation resources because it initially thought that the probability of successfully removing the Bupati was low. New information about the Bupati's supra-local linkages increased the probability of success. Specifically, the local enforcement coalition learnt that the Bupati's supra-local linkages with the Governor and the Ministry of Home Affairs were weaker than previously thought. The breakdown in bargaining between the District Police Chief and the Bupati provided an opportunity and they mobilised mass demonstrations. In response, bureaucrats with inside information about the corruption accusations resigned and local councillors defected as the Bupati became increasingly isolated. The momentum this generated prevented the Bupati, who was disliked and distrusted, from co-opting members of the enforcement coalition and re-negotiating a coalition that could prevent (or at least delay) the investigation.

In Cilacap, the Bupati's support coalition was much stronger than the initial enforcement coalition, but there was significant *intra-coalition* dissent in regards to the distribution of spoils within his "grand coalition". The Attorney General's intervention in the case significantly increased the costs of protecting the suspect and provided an opportunity for coalition members to defect, leaving the Bupati isolated. In the terms of the coalition game developed in Chapter 4, in both cases there were significant shifts in the "external incentives" and the relative costs and benefits to supporting corruption law enforcement. That the shifts were sudden was also important. This prevented the suspects from re-negotiating the terms and distribution of patronage amongst coalition members or co-opting newly empowered enforcement coalition members. In addition to these external factors, two in-

ternal factors were significant. First, the suspects were widely thought to be arrogant and had reputations for reneging on deals. This reputation meant they were distrusted and unable to rapidly re-negotiate new deals with coalition members when the local political situation changed. Second, the Bupatis' personal control over local resources were tentative. In both cases, but particularly in the Temanggung case, they were heavily dependent on members of their coalition for the resources necessary to block corruption investigations.

POLITICAL CORRUPTION: TWO NEGATIVE CASES FROM CENTRAL JAVA

This chapter illustrates how the legal mobilisation perspective developed in Chapter 4 can account for corruption investigations that do *not* lead to prosecutions. It focuses on two *negative* cases involving local heads of government from Central Java. In Rembang, the Bupati was accused of corruption involving a District Government-Owned Business' (*Badan Usaha Milik Daerah—BUMD*) purchase of land and licences. The state losses from the transactions were initially estimated at Rp. 5.2 billion (\$550,000). The case was first reported to the national Corruption Eradication Commission (KPK) in Jakarta but it opted to transfer the case to the Provincial Police (*Polisi Daerah—Polda*). Almost three years after the initial discovery of corruption, the police announced that the Bupati was a suspect but little further progress was made. The case languishes with the Provincial Police to this day; it technically remains under investigation and has yet to be terminated. The other case, from Semarang, involves corruption relating to Rp. 10.7 billion (\$1.2 million) paid to the local city councillors during the first term (2000–2005) of the *Wali Kota* (Mayor). In late 2004, an audit discovered various irregularities and recommended an investigation. Initially the provincial police investigation centred on the role of councillors and businesses. Almost three years later it emerged that the *Wali Kota* himself was implicated. The *Wali Kota* was eventually named a suspect in 2008, just months before the gubernatorial elections in which he was a candidate. He lost. In September 2010 the *Wali Kota* completed his second and final term in office and one month later the provincial High Prosecutor's Office (*Kejaksaan Tinggi—Kejati*) formally terminated the investigation, claiming the accusations involved administrative errors, but not corruption.

The objective of this chapter is to illustrate how a focus on local legal mobilisation can help to account for subnational law enforcement that does not result in prosecutions. In this way, it shows that the local legal mobilisation is not spurious. As in the previous chapter, I used the analytical narrative method to analyse the cases. The first section summarises the background to the corruption cases, focusing on the initial local political alliances. I next identify the origins of the case and delineate the main phases of the case trajectory. Subsequent sections consider each phase in detail, illustrating how patrons, entrepreneurs, and external incentives influence coalition formation and hence coalition resources. These sections also consider how changes in these coalition resources influence law enforcement processes. After analysing the two cases, the chapter turns to how alternative explanations of corruption law enforcement might account for the case trajectories and outcomes. It concludes that the legal mobilisation perspective more accurately captures the trajectory and outcomes of these cases.

CASE 3 - REMBANG: NEW BUPATI CONSOLIDATES COALITION AND BLOCKS INVESTIGATION

This third case comes from Rembang, a district on the northeast coast of Central Java. It has a population of approximately 600,000, which makes it relatively small for Central Java. The district is comparatively poor, and the main livelihoods are fishing, salt production on the coastal flat lands, and farming. It has generally been seen as an economic backwater, but its economic potential has been reassessed because of the recent discovery of minerals and the construction of a power plant by the national power company. The possibility of securing interests in lucrative local mining concessions has reportedly piqued the interest of national political elites.

The Rembang case illustrates how corruption suspects are able to co-opt enforcement coalition members so as to preclude local law enforcement action. The Bupati, Moch Salim, was accused of corruption involving a BUMD, the Independent and Prosperous Rembang Company (*PT. Rembang Bangkit Sejahtera Jaya—RBSJ Company*), and the purchase of land and a licence from a company owned by a member of his family. A local journalist uncovered the case in 2008 and brought it to the attention of politicians in the district representative council. Councillors formed a Special Committee (*Panetia Khusus—*

Pansus) to investigate the allegations, which recommended reporting the case to KPK in Jakarta. Some six months later KPK transferred the case to the provincial police, where the case languished. The provincial police have not formally terminated the investigation and, at the time of writing, there has been scant progress for over three years.

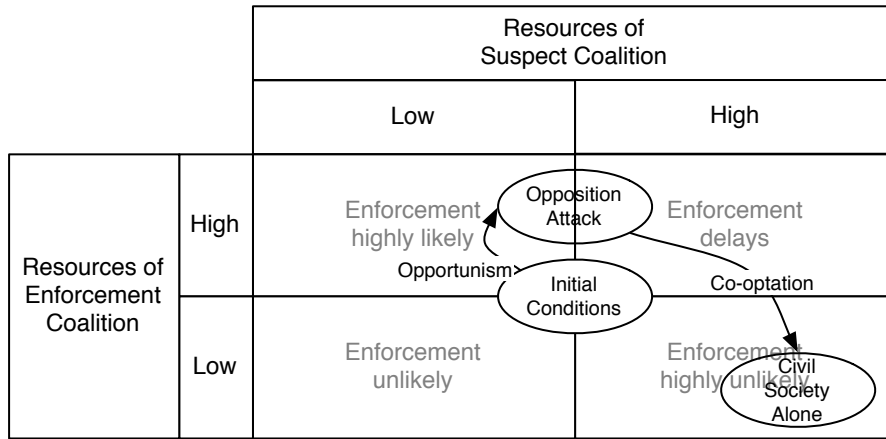


Figure 21: Rembang: Coalition and Resource Changes Over Time

The initial conditions in Rembang are similar to those in both Cilacap and Temanggung: Bupati Moch Salim came to power in a contested and controversial local election. The Bupati was, for most of his first term, heavily dependent on his Vice-Bupati's party for support in the local representative council (DPRD). This gave them significant influence. In the lead-up to national legislative and local council elections, key members from the Vice-Bupati's party, PKB, and others sought to use their position to leverage concessions from the local government. For example, owners of unregistered public buses attempted to secure licences from the local government for their operation. The enforcement coalition focused its efforts on national law enforcement agencies, in anticipation that the 2009 national election would—as in Cilacap—encourage these agencies to intervene. This strategy of “nationalising” the case was initially successful. KPK requested the Supreme Audit Agency (BPK) to conduct an investigatory audit, which was released just one month before the national election and estimated state losses at Rp. 5.2 billion (\$520,000). The election passed without KPK intervention.

After the election, the Bupati strengthened his coalition. In the district council elections, Moch Salim significantly strengthened his party's position at the expense of his Vice-Bupati's party. The Democrat Party increased its seats from two to eight; whereas PKB declined

from eight to six. This change in the Bupati's coalition allowed him to co-opt members of the initial enforcement coalition, particularly those who stood to gain less from the Bupati's fall. Most importantly, Moch Salim co-opted a party with supra-local linkages at the provincial level, PDIP, and an individual with links to the religious community, effectively dividing the base of the enforcement coalition.

Moch Salim comfortably won re-election in 2010, increasing his share of the public vote from 47 to 56 percent. Interestingly, a month after the election, a police investigator let slip that the Bupati himself was a suspect in the BUMD corruption case. Reports indicate that senior police did not sanction this leak, for the Provincial Police Chief denied that the Bupati was a suspect and the investigator was reprimanded. There has been no meaningful progress on the case since 2010. In short, the Bupati's wealth, control of local institutions, supra-local linkages with the President's party, and co-optation of local political groups that initially supported the enforcement coalition allows him to maintain influence over law enforcement processes. Two CSOs—one provincial and one local—regularly question the status of the case in the local media, but the police always find technicalities to justify the delays.

Background

Similar to the cases in the previous chapter, Moch Salim first won re-election in a competitive and controversial local election. Initially, five candidate pairs registered to contest the 2005 election, but, one month before the election, the moderate Islamic party PKB withdrew its candidate citing his lack of commitment and finances.¹ In response, Moch Salim dropped his partnership with the head of the local branch of the country's main teachers' union (*Persatuan Guru Republik Indonesia*—PGRI) and opted to form an alliance with Gus Tutut, an influential figure within PKB, and its affiliate, the traditional Islamic organisation Nahdlatul Ulama (NU). Because of internal dissension, PKB did not formally endorse the Salim-Gus Tutut pair, but the latter's influence meant that many PKB and NU members supported his candidacy. The incumbent, Hendarsono, a former military colonel, failed

¹ PKB, which controlled eight seats in the local council, registered its own candidate: Moch Zahli and Gus Tutut, both local religious figures in the district. See: "PKB Cabut Pencalonan Moch Zahli-Gus Tutut [PKB Pulls Moch Zahli-Gus Tutut Endorsement]" *Suara Merdeka* (Semarang, May 19, 2005) .

Table 12: Bupati Candidates, Party Alliances and Election Results - Rembang (2005)

Candidates	Party Alliance	Alliance Seats	Election Result
Salim-Gus Tutut	PKB* (8 seats)	15 seats	46.7% voters
	PAN (2 seats)		
	PD (2 seats)		
	PBB (1 seat)		
	PPD (1 seat)		
	Pelopor (1 seat)		
Hendarsono-Gus Ubab	PPP (10 seats)	10 seats	33.1% voters
Naisrul-Alwin	PDIP (8 seats)	8 seats	16.9% voters
Wiratmoko-Djoemali	Golkar (12 seats)	12 seats	3.4% voters

* Denotes that the party did not formally endorse the candidate.

to attract a broad political alliance.² As Table 12 below shows, Moch Salim and Gus Tutut won a comfortable plurality in the direct election but had little support in the local council, particularly if one discounts the informal support of PKB. After winning the election, Moch Salim sought to broaden his political alliance. In 2006 he approached PDIP, the strongest party in the district, hoping to become a member and gain control over the party. He was rejected and instead joined the President's Democrat Party (PD), securing the position as head of the district Branch Leadership Council (DPC) in 2007.³

In contrast to Bupati Probo in Temanggung, Moch Salim is an established businessman in the district and displayed a knack for local politics. Indeed, he is the wealthiest and most successful businessman in Rembang district. His interests are in fishing (a fleet estimated at sixty fishing boats), consumable trade, and the transportation of timber from Kalimantan to Java. Furthermore, many other local businessmen in the district are dependent on his businesses.⁴ He is also thought to be, with the exception of the local government, the largest em-

² Hendarsono himself became the subject of a corruption investigation after he left office. He was convicted and sentenced to three years' imprisonment in November 2010, five years after leaving office and after, informants indicated, the wealth that he accrued during his term had diminished. See: Interview with Anonymous, journalist, Central Java, June 2011; Interview with Anonymous, activist, Central Java, June 2011; "Bekas Bupati Rembang Dihukum Tiga Tahun Penjara [Former Rembang Bupati Sentenced to Three Years Imprisonment]" *Tempo Interaktif* (Semarang, October 25, 2010)

³ Interview with Anonymous, activist, Central Java, June 2011.

⁴ Interview with Anonymous, academic, Central Java, September 2011.

ployer in Rembang district, employing 10–20,000 people.⁵ Although he was not active in local social and religious organisations prior to his move into politics, he displayed an ability to build local elite alliances and mobilise votes. This was demonstrated in his electoral win in 2005 but also in 2008 when he campaigned for the gubernatorial candidate Sukawi Sutarip (see Case 4 below), delivering him one of his few district wins.⁶ This political success was largely dependent on his material resources and business network. His campaigns involved co-opting local elites and “money politics”, the widespread practice of channeling money to voters—both directly and via local intermediaries—in order to secure elections.⁷

Case Trajectory

Shortly after becoming Bupati, Moch Salim supported the establishment of the RBSJ Company, which was capitalised with Rp. 25 billion (\$280,000) from the district budget in 2006 and Rp. 10 billion (\$110,000) in 2007. Some of the first investments of the company involved the purchase of a petrol distribution license and land from another company connected to the new Bupati. A local journalist initially heard about the transactions involving the BUMD in 2007 and, rather than expose the case immediately, he quietly approached a number of politicians in the district council. The journalist chose to focus on the local councillors because there were few civil society groups that could mobilise and draw public attention to the case.⁸ Table 13 summarises subsequent developments in the case, which can be broken down into three main phases: i) political support for corruption investigations and attempts to nationalise the case; ii) the weakening of the enforcement coalition as national elections pass; and iii) the Bupati’s co-optation of enforcement coalition members and the formation of new local political alliances. After the collapse of local

5 Interview with Anonymous, senior politician, Central Java, September 2011.

6 “Bola Pemilu di Tangan Bupati [Bupati Has Final Word on Elections]” *Gatra* (Jakarta, July 17, 2008).

7 Interview with Anonymous, businessperson, Central Java, June 2011; see also: “Demo Minta Politik Uang Diusut [Demonstration Calls for Investigation of Money Politics]” *Suara Merdeka* (Semarang, July 5, 2005); “Diberi Rp 500 Juta, PDIP Usung Salim [Given Rp. 500 Million, PDIP Endorses Salim]” *Suara Merdeka* (Semarang, February 17, 2010); “Sahala Bantah Bagi-Bagi Duit [Sahala Denies Handing Out Funds]” *Suara Merdeka* (Semarang, April 25, 2010); “Tiga Pelaku Money Politik Dilaporkan ke Panwas [Three Accused of Money Politics Reported to Panwas]” *Suara Merdeka* (Semarang, April 25, 2010).

8 Interview with Anonymous, journalist, Central Java, June 2011; Interview with Anonymous, activist, Central Java, June 2011.

political support for the investigation, only provincial and local CSOs continued to publicise the case, but no progress was made.

Table 13: Case Trajectory: Rembang (2007 - 2012)

Phase I: Enforcement Coalition Attempts "Nationalisation"	
Late 2007	Local journalist uncovers indications of corruption; passes information to local councillors.
September 2008	Local parliamentarians form Special Committee (<i>Pansus</i>) to investigate allegations of corruption.
November 2008	Civil servants fail to attend local parliamentary hearings held to investigate the corruption allegations.
31 December 2008	The majority of parliamentarian support the move to report Moch Salim to KPK.
8 January 2009	Representatives of the Special Committee report case to KPK in Jakarta.
20 January 2009	Director of RBSJ Company reports Special Committee head to police alleging defamation.
27 March 2009	BPK completes investigative audit, estimates state losses at Rp. 5.2 billion (\$580,000).
Phase II: Enforcement Coalition Weakens	
5 April 2009	Elections alter political balance in local council.
October 2009	KPK transfers investigation to provincial police; police initiate pre-investigation (<i>penyelidikan</i>).
October 2009	Special Committee findings anonymously reported to the provincial police.
9 December 2009	Small student demonstrations held in Rembang in support of corruption investigation.
December 2009	Regional police request BPKP conduct audit to re-assess state losses.
Phase III: Bupati Co-opts Enforcement Coalition Members	
February 2010	Incumbent Bupati Moch Salim forms new political alliance with PDIP and PPP.
26 April 2010	Moch Salim wins re-election with support from PD, PDIP, PAN and former PPP politician.
23 June 2010	Regional Police confirm that Moch Salim is a corruption suspect in their investigation.
26 June 2010	Provincial Governor publicly suggests Moch Salim's inauguration should be delayed until investigation complete.
2 July 2010	Vice-Governor counters that Moch Salim's inauguration should continue as planned.
10 July 2010	The Head of the Investigation Unit at the Regional Police removed for announcing Moch Salim a suspect.
16 July 2010	Home Affairs Minister supports planned inauguration of Moch Salim.
20 July 2010	Incumbent Moch Salim inaugurated as Bupati for the 2010-2015 election period.

Postscript: NGOs Act Alone

2010 to 2012	A local and provincial NGO periodically raise case in provincial media; initially police blame lack of presidential permit for lack of progress.
26 September 2012	Constitutional Court invalidates law requiring law enforcement agencies to seek a presidential permit to investigate regional politicians.
1 November 2011	Provincial police interrogate Moch Salim over two days.
November 2012	Police blame BPK audit for lack of progress.

Phase I: Enforcement Coalition Attempts "Nationalisation"

In the initial phase, the Bupati and enforcement coalition were evenly matched. The case initially received strong support from the local council. In September 2008, a group of local parliamentarians formed a Special Committee to investigate the allegations of corruption in the *RBSJ Company*, which was owned by the district government. The Special Committee was supported by 40 out of 45 local councillors. Those who did not join were from the Bupati's party, two from PAN, and one from Pelopor—three of the main parties that supported his election in 2005. Moch Salim's reliance on his Vice-Bupati's party in the local council gave it and other parties significant leverage over him. The motivations of those supporting the work of the Special Committee were mixed. Some saw it as a chance to seek revenge on the new Bupati who had successfully challenged and divided the local elite.⁹ It was also seen as a way to garner positive publicity and electorate support in the lead-up to the 2009 local council elections.¹⁰ There were also local economic interests at play and many saw it as a way to extract benefits from the Bupati and the local government.¹¹ For example, one of the most outspoken members of the Special Committee required a permit from the local government to operate a commercial port that would compete with the only other port in the district reportedly controlled by Moch Salim.¹² The corruption case was a way to force the Bupati to provide this permit.

In contrast to the Temanggung case, the Bupati was able to maintain control over other important institutions in the district, notably

⁹ Interview with Anonymous, academic, Central Java, September 2011.

¹⁰ Interview with Anonymous, activist, Central Java, September 2011.

¹¹ Interview with Anonymous, senior politician, Central Java, September 2011.

¹² The parliamentarian had recently secured a contract from a central government agency to construct a pier for a large power plant recently built by the national Electricity Company (PLN). Interview with Anonymous, senior politician, Central Java, September 2011.

the local bureaucracy and the local chapter of the President's party, as well as those who worked at the RBSJ Company. In late 2008, the Special Committee repeatedly requested key bureaucrats to appear in order to give evidence in relation to the case. Each time, Moch Salim refused to allow bureaucrats to attend the scheduled hearings and little inside information was provided.¹³ There were also indications that the Bupati would punish bureaucrats and employers of the company who attempted to cooperate with the local inquiry; and that he used his authority to demote senior civil servants or expose corruption relating to the previous administration as a threat.¹⁴ Those who did attend the hearings were either former civil servants, members of the public, or other businesspeople who did not have intimate knowledge of the company and the transactions under scrutiny.

There was little mobilisation of local social and civil society organisations. In contrast to most of Central Java, there is less civil society infrastructure in Rembang. There are, for example, no organisations representing farmers, no universities and therefore no university students, few NGOs, and fewer media outlets. Those that exist are mostly religious organisations that, according to local informants, avoid direct participation in local politics and rely on the local government for funds.¹⁵ During this initial phase, one freelance journalist spent considerable time nurturing a student group from the local technical college.¹⁶ This group organised the only demonstration in relation to the case;¹⁷ however, it quickly dissolved in 2010 after the original participants moved away from the district. As shown in Table 14, the Bupati and enforcement coalition were evenly matched.

During this initial phase, some progress on the investigation of the allegations were made at the national level. The Special Committee decided to report the case to KPK at the end of 2008.¹⁸ They were sceptical that local law enforcement agencies would investigate the case and initially that the national agencies would prioritise the case because of political pressure to produce corruption prosecutions prior to the 2009 presidential elections.¹⁹ Members of the Special Commit-

13 See: "Pejabat Dilarang Penuhi Panggilan DPRD [Officials Prohibited from Answering DPRD Summons]" *Suara Merdeka* (Semarang, November 19, 2008) .

14 Interview with Anonymous, academic, Central Java, September 2011.

15 Interview with Anonymous, senior politician, Central Java, September 2011.

16 Interview with Anonymous, journalist, Central Java, June 2011.

17 "Demo RBSJ Kab. Rembang: Menuntut Pengusutan 35 Milyar Dana APBD untuk RBSJ [RBSJ Rembang Holds Demonstration: Demands Investigation of 35 Billion Rupiah APBD Funds for RBSJ]" *Berita Rembang* (Rembang, December 9, 2009) .

18 "DPRD Akan Laporkan Hasil Temuan ke KPK [DPRD to Report Findings to KPK]" *Suara Merdeka* (Semarang, January 2, 2009) .

19 Interview with Anonymous, businessperson, Central Java, June 2011.

Table 14: Suspect and Enforcement Coalition Resources: Rembang (Phase I)

Coalition	Resources	Key Actors
Suspect	Information	Bupati control over bureaucracy prevents access to detailed information relating to the transactions.
	Material	Bupati's business interests allow him to distribute patronage and enrich his political supporters.
	Supra-Local Linkages	Bupati becomes head of the Democrat Party's District Leadership Branch (DPC).
Enforcement	Information	Local politicians, journalists and NGOs secure some information about suspicious transactions.
	Supra-Local Linkages	Local businessman maintains national business and political links; local PDIP members, the Governor's party, supports Special Committee but does not play an active role.

tee used their connections in Jakarta to lobby KPK and then BPK. KPK responded by requesting BPK to audit the *RBSJ Company*. Members of the committee used their national party and business connections to ensure that diligent auditors were assigned to the BPK audit committee.²⁰ In March 2009, just one month prior to the national legislative and local council elections, BPK announced the results of its audits. The lobbying effort had seemed to pay off as the investigatory audit concluded that corruption was likely and estimated state losses at Rp. 5.2 billion (\$580,000).

Phase II: Enforcement Coalition Weakens

The second phase saw the fragmentation of the opposition coalition, which happened for two main reasons. It first became apparent that the central government institutions would not directly intervene in the case. As noted in the case from Cilacap in the previous chapter, national law enforcement agencies were under pressure to generate high-profile corruption prosecutions in the lead-up to the 2009 elections. Initially local politicians were hopeful that these political incentives would encourage national intervention in Rembang,²¹ and this prospect of national intervention helped to bind the opposition coal-

²⁰ Interview with Anonymous, detective, Central Java, September 2011.

²¹ Interview with Anonymous, academic, Central Java, September 2011.

tion. Local councillors, many of whom came from Islamic-oriented parties, saw political value in taking an anti-corruption stance prior to the election. National intervention was also a relatively cheap form of law enforcement as it meant that the opposition groups would not need to enter into a bidding war with the far wealthier incumbent Bupati.²²

It was, however, much less likely that the National Police or the Supreme Prosecutor would intervene in the Rembang case given Moch Salim's supra-local linkages with the President's Democrat Party. Moch Salim dominated the local chapter of the Party: he was its chair from 2006 and was its main financier at the district level. Moch Salim had also shown that he was capable of delivering votes to the party: he had campaigned for Sukawi Sutarip's gubernatorial campaign in 2008, garnering him 41.5 percent and one of his few district wins in the province.²³ As it became increasingly clear that the national government and the KPK was unlikely to intervene, support amongst some opposition members, particularly those whose interests were compatible with the Bupati, began to waver. The results of the local election provided the opportunity for many members to extricate themselves from the Special Committee.²⁴

The results of the local council elections in April 2009 also substantially weakened the position of key politicians behind the Special Committee inquiry. The local elections saw the parties affiliated to Moch Salim increase their numbers. Prior to the election, four parties with only five seats between them openly supported Moch Salim. Between them these parties gained ten seats in the election, including an additional six seats for the Bupati's Democrat Party. In addition, key councillors from the Special Committee failed to gain re-election. Most significantly, the overall chair and the outspoken chair of one of the working groups both failed to gain re-election for PKB.

The prospect of national intervention formally ended with the transfer of the case from KPK to the provincial police in October 2009. By this time, for the reasons noted above, there was much less support for the corruption investigation amongst local political groups. There were still, however, some individuals who wanted to use the corruption allegations to challenge the Bupati: just after the case was transferred, the findings of the previous council's Special Committee

22 Interview with Anonymous, activist, Central Java, June 2011.

23 On both the importance of district heads in machine politics in Indonesia generally and Bupati Moch Salim specifically, see: (see n. 6).

24 Interview with Anonymous, senior politician, Central Java, September 2011.

inquiry were anonymously reported to the provincial police. In response, the police called over ten senior civil servants from Rembang to the provincial capital for questioning.²⁵ Moch Salim, in contrast to his response to the Special Committee, authorised the senior civil servants to attend the interrogations. The prospect of a corruption investigation in the run up to the Bupati elections scheduled for April 2010 placed the police in a strong bargaining position vis-a-vis the Bupati; not only would an investigation generate negative publicity but it could also prevent his eligibility for re-election.²⁶ The police took advantage of their position, securing payments from various key suspects, which were reportedly paid by Moch Salim.²⁷

Phase III: Bupati Co-opts Enforcement Coalition Members

The third phase saw the incumbent Bupati fashion new local and supra-local linkages, ensuring he dominated the resources necessary to prevent progress on the corruption case. In 2005, Moch Salim relied on PKB to support his campaign for re-election and for support in the local council. This had given PKB a strong position to pressure the Bupati, which they used, making it no surprise that he cut his ties with them in 2010. He now controlled the local branch of the Democrat Party, which had increased its seats to eight. The incumbent Bupati further strengthened his position in relation to the corruption investigation by securing a local alliance with PDIP in the local Bupati elections. PDIP was in a strong bargaining position vis-a-vis the Bupati because of its supra-local linkage with the provincial Governor. As noted above, governors can exert influence over regional law enforcement agencies. In this way, local PDIP could use its supra-local linkage at the provincial level to challenge the Bupati. However, PDIP's relatively weak position in Rembang meant it could not capitalise on the threat and thus the local branch office thought it better to cut a deal at the local level.²⁸ Rumours circulated that Moch Salim agreed to pay Rp. 2 billion (\$220,000) for the PDIP endorsement. The chair of the party's local chapter denied these rumours but did acknowledge that the Bupati agree to give the party Rp. 500 million (\$55,000)

25 "Polda Panggil 14 Pejabat [Polda Summons 14 Officials]" *Suara Merdeka* (October 28, 2009).

26 This would require that his arrest occurred prior to the election.

27 Interview with Anonymous, lawyer, Central Java, June 2011; Interview with Anonymous, journalist, Central Java, September 2011.

28 Interview with Anonymous, academic, Central Java, September 2011.

to cover its campaign costs.²⁹ Table 15 summarises the consolidation of Moch Salim's coalition and the fragmentation of the enforcement coalition.

Table 15: Suspect and Enforcement Coalition Resources: Rembang (Phase III)

Coalition	Resources	Key Actors
Suspect	Information	Retains control over bureaucrats and those involved in transactions under scrutiny.
	Material	Bupati's control over bureaucracy, local council, and his business interests allow him to distribute patronage and enrich his political allies.
	<u>Supra-Local Linkages</u>	Bupati maintains local control of the Democrat Party's District Leadership Branch (DPC); forms new local alliance with PDIP, the Governor's party.
Enforcement	Material	Members lose control of the local council in the 2009 elections.
	<u>Supra-Local Linkages</u>	Key businessman with national business links fails to win re-election in 2009 and loses influence amongst enforcement coalition members; local PDIP defect to Moch Salim.

Moch Salim also sought to co-opt the local religious elite. In late 2009, he selected a local politician from the Islam-oriented PPP as his running mate for the upcoming Bupati election. Many politicians from both PPP and PKB are influential in local religious organisations. As noted in the background section above, these organisations enjoyed strong support from local government and had dominated the district politically in the period from the first post-Suharto elections until 2005.³⁰ The selection of Abdul Hafidz was politically astute. It effectively divided the local religious establishment in three: one group supported Gus Tutut, the Vice-Bupati in Moch Salim's first term; the second group supported PPP's main candidate, Ahmad Kholid Mukri, who was formally nominated by PPP and Golkar; and the third group were supporters of Hafidz. More importantly, however, Hafidz was someone the Bupati could keep in check because his business interests in transportation were dependent on the Bupati's

²⁹ (see n. 7).

³⁰ PKB had previously rejected Abdul Hafidz's nomination as head of the local parliament in 2004, partly because of his connections to the Bupati. See: "PPP Tuduh PKB 'Pelacur Politik' [PPP Accuses PKB of 'Political Whoring']" *Suara Merdeka* (Semarang, September 14, 2004).

Table 16: Bupati Candidates, Party Alliances and Election Results: Rembang (2010)

Candidates	Party Alliance	Alliance Seats	Election Result
Moch Salim-Hafidz	PD (8 seats)	17 seats	55.9% voters
	PDIP (5 seats)		
	PBB (2 seat)		
	PPD (1 seat)		
	Pelopor (1 seat)		
Gus Tutut-Arif	PKB (6 seats)	11 seats	18.2% voters
	PAN (4 seats)		
	PKNU (1 seat)		
Mulyono-Baihaqi	Independent	N/A	4.7% voters
Kholid-Djoemali	Golkar (8 seats)	14 seats	3.9% voters
	PPP (6 seats)		

business interests in seafood and timber supplies.³¹ This meant that the Vice-Bupati would not challenge the wealthier businessman and use the corruption case to remove him, meaning that Moch Salim could more easily control the local council. Table 16 summarises the party alliances and results of the 2010 Bupati elections, which Moch Salim and Hafidz comfortably won.

Despite Moch Salim's consolidation of local and supra-local linkages, the provincial police proceeded to formally name the Bupati as a suspect and upgraded the investigation of the case. In June 2010, two months after the election but prior to the inauguration, an investigator from the provincial police's Criminal Investigation Unit (*Badan Reserse Kriminal—Bareskrim*), publicly confirmed that Moch Salim and the company director were suspects (*tersangka*) in the case involving the *RBSJ Company*.³² It is not entirely clear why the police proceeded to name Moch Salim as a suspect *after* the election and given the enforcement coalition's weakness. One account holds that the police never intended to upgrade the case and that the announcement was either an honest mistake or the actions of a rogue investigator under pressure from provincial civil society groups.³³ This explanation is

³¹ Interview with Anonymous, academic, Central Java, September 2011.

³² "Bupati Rembang Tersangka Korupsi Rp 5,2 M [Rembang Regent Accused of Corrupting Rp. 5,2 billion]" *Suara Merdeka* (Semarang, June 23, 2010) ; "Bupati Rembang Jadi Tersangka Kasus Korupsi [Rembang Regent Suspect in Corruption Case]" *Tempo Interaktif* (Jakarta, June 23, 2010) .

³³ Provincial civil society groups had, since the case was transferred from KPK to regional police, drawn media publicity to the case.

supported by the investigator's subsequent demotion and the provincial Police Chief's public acknowledgment that he had not reviewed the case and approved the decision to name the Bupati as a suspect.³⁴ Subsequently there were also threats to transfer investigators to remote parts of Indonesia if they continued to pursue the case.³⁵ The second explanation holds that the police hoped to increase pressure on Moch Salim to extort payments prior to his inauguration in July 2010.³⁶ Regardless, despite Moch Salim being named as a suspect, there was little further progress on the case: he was able to draw on his material wealth and supra-local linkages to guarantee protection from senior police officers.³⁷

Postscript: NGOs Act Alone

There has been minimal progress since mid-2010 despite efforts of the local NGO Laspem and the provincial NGO KP2KKN to draw media attention to the case and lobby KPK. In late November 2010, the new provincial Police Chief included the case on a list of priority cases for his first one hundred days in office.³⁸ This promise to finalise the case went unfulfilled and it can be argued that it was simply a strategy for the new chief to extort a new payment in relation to the case. After the Wali Kota Sukawi Sutarip case from Semarang was formally terminated (see Case 4 below), Moch Salim's lawyer publicly called for an "SP3"—an Investigation Termination Warrant.³⁹ This elicited a response from the high-profile Jakarta-based NGO, ICW, which linked the case to its advocacy efforts relating to political bias on corruption prosecutions. In a public statement ICW alleged that "because M. Salim is from the ruling party we are afraid that his fate will be the same as Sukawi Sutarip who received an SP3".⁴⁰ This seems to have discouraged the police from issuing another SP3 for a politician from the President's party, and instead the case was indefinitely delayed on the basis of technical issues. From July 2010, when civil

34 "Kasat Opsnal Pidkor Dicotpot Kapolda Jateng [Jateng Kapolda Sacks Kasat Opsnal Pidkor]" *Pos Kota* (Semarang, July 10, 2010) .

35 Interview with Anonymous, detective, Central Java, September 2011.

36 Interview with Anonymous, businessperson, Central Java, June 2011.

37 Interview with Anonymous, academic, Central Java, September 2011.

38 "Tiga Kasus Prioritas [Three Prioritised Cases]" *Kompas* (Jakarta, November 27, 2010) 9 .

39 "Salim Minta Polda Terbitkan SP3 [Salim Asks Polda to Terminate Case]" *Suara Merdeka* (Semarang, May 18, 2011) .

40 "ICW Endus Polda SP3-kan Salim [ICW Sniffs Out Polda's Termination of Salim Case]" *Suara Merdeka* (June 5, 2011) .

society groups questioned the status of the investigation, the provincial police repeatedly argued that the case could not proceed until presidential permission was provided.⁴¹

The Constitutional Court's decision in September 2012 that presidential permission for corruption investigations was unconstitutional highlights how the enforcement authorities find new technical excuses to justify their preferred course of action (or inaction).⁴² In response to the decision, NGOs organised demonstrations in relation to various cases in the province allegedly delayed by this legal requirement.⁴³ In October 2012, the provincial police, for the first time, interrogated the Bupati over a two-day period, and there has been little action since. When prompted, the provincial police now claim that problems with the audit account for the delays.⁴⁴ Local activists—which is all that remains of the enforcement coalition—acknowledged that they lack the material and political resources to ensure the case is investigated and prosecuted, but they stressed that if they let the case completely slip from the public's attention it would never progress: "at the very least we'll get him when he leaves office in 2015", they argued.⁴⁵

CASE 4 - SEMARANG: LOCAL CASE TEMPORARILY "PROVINCIALISED"

The fourth case involves the *Wali Kota* (Mayor) of Semarang, the capital city of Central Java located on the north coast. The city itself has a population of 1.3 million, making it the eleventh largest city in Indonesia. It has a long history as an administrative and trading city dating back to the early Dutch colonial era. The main sources of employment are manufacturing and government. The Provincial Police and High Prosecutor's Offices are located here. The city has a strong NGO community, and many media outlets—including the provincial

41 "KPK Supervisi Kasus Dugaan Korupsi Bupati Rembang [KPK Supervising Rembang Regent Corruption Case]" *Media Indonesia* (Jakarta, January 11, 2011) ; "Polda Minta Audit BPK Lagi [Polda Requests Another BPK Audit]" *Suara Merdeka* (Semarang, August 27, 2010) ; "Polda Ajukan Izin ke Presiden [Polda Submits Request for Presidential Authorisation]" *Suara Merdeka* (Semarang, July 13, 2010) .

42 See discussion in Chapter 5 on political vetoes and corruption law enforcement.

43 "Polda Jateng Didesak Periksa Bupati Salim [Polda Jateng Under Pressure to Investigate Bupati Salim]" *Suara Merdeka* (Semarang, October 7, 2012) .

44 "Kasus Korupsi, Bupati Rembang Diperiksa [Rembang Bupati Investigated for Corruption]" *Kompas* (Jakarta, November 1, 2012) ; Parwito, "Tunggu hasil audit BPK, hambat penyidikan korupsi Bupati Rembang [Slow Results of BPK Audit Delays Corruption Investigation of Rembang Bupati]" *Merdeka* (Jakarta, November 3, 2012) .

45 Interview with Anonymous, activist, Central Java, September 2011.

broadsheet *Suara Merdeka*—are based in the city. Semarang has eleven universities, some of which are the most reputable in the province, as well as various other institutes of higher learning.

The Wali Kota of Semarang from 2000 until 2010, Sukawi Sutarip, was implicated in various corruption cases relating to the provision of expenses and salary perks to councillors in the local representative council (DPRD). In late 2004, the provincial Financial and Development Supervisory Agency (BPKP) found in its annual audit of Semarang’s local government irregularities totalling Rp. 11.8 billion (\$1.3 million) in relation to “unwitnessed funds” (*dana tak ter-sangka*), “fictive insurance”, and “communication funds”. The state losses were respectively estimated at Rp. 3.9 billion (\$430,000), Rp. 1.8 billion (\$200,000), and Rp. 5 billion (\$550,000). The agency concluded that the incidents implicated the councillors as well as the Wali Kota himself, and recommended an investigation. The then Area Police (*Polisi Wilayah*) initiated an investigation into the “fictive insurance”—a scheme that involved channeling funds to local councillors ostensibly to cover personal insurance premiums—and within months they passed the case file to the prosecutors. The High Prosecutor reviewed and returned the case file to the police, requesting additional information. This was repeated four times over the next eighteen months. The High Prosecutor made little progress on its investigation into the other two incidents. However, as the 2008 gubernatorial election approached, the police and prosecutors named the Wali Kota as a suspect in two cases—but little further progress was made on these investigations. Eventually, in September 2010, Wali Kota Sukawi left office, having reached his two term limit, and a month later the High Prosecutor formally terminated their investigation.

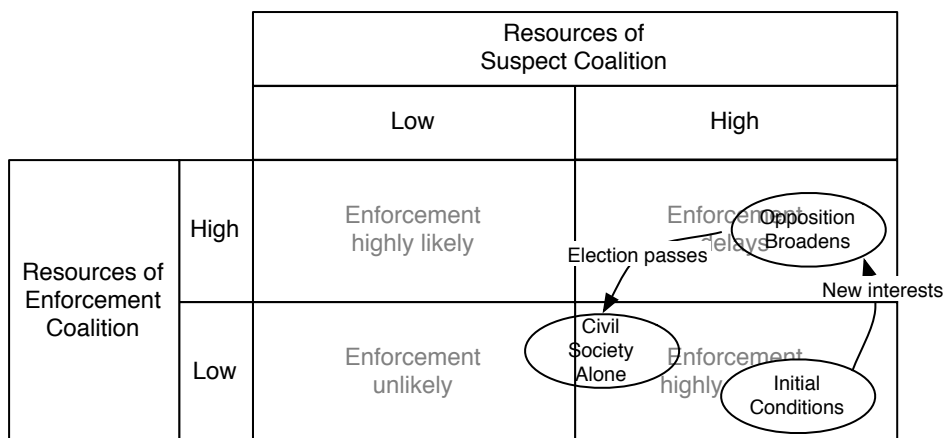


Figure 22: Semarang: Coalition and Resource Changes Over Time

The Semarang case illustrates how a broadening of the enforcement coalition changed its resources and the prospects for law enforcement action. Unlike the three other cases, the initial conditions in Semarang were distinct. The Wali Kota's personal popularity and wealth allowed him to form and control a "grand coalition" of local political and economic elites. This ensured he controlled the financial and institutional resources to prevent law enforcement agents investigating his role in the cases under consideration. This position was strengthened when Sukawi became head of the Democrat Party's Provincial Leadership Council (DPD).

Sukawi's decision to contest the 2008 gubernatorial election altered the benefits of opposition legal mobilisation and also "provincialised" the case. The investigations and the gubernatorial election attracted the interest of two main groups: civil society organisations (including provincial NGOs based in the province) and students, which were quick to mobilise against Sukawi; and political parties—which were co-opted at the local city level but had different interests at the provincial level—that quietly supported the investigations. These interests, particularly the latter, quickly diminished after the gubernatorial election passed, and Sukawi was thus able to re-assert influence over the law enforcement process. Figure 22 summarises these shifts in the comparative strength of the suspect and the enforcement coalitions.

Background

Wali Kota Sukawi first came to office in 2000 in controversial circumstances; however, he was able to quickly consolidate a strong coalition of local political groups. None of the major political parties formally endorsed Sukawi's nomination but, using his personal wealth, he was able to mobilise grassroots support for his nomination such that no councillors from either PDIP or PPP—the two parties with most seats in the local council—voted for their respective parties' formal candidates, but instead cast their vote for Sukawi.⁴⁶ Initially this caused significant tensions amongst the local political elite, but Sukawi managed to placate the council and parties largely by channeling various resources to both councillors and party cadres.⁴⁷ Indeed, he was

⁴⁶ "Cermin Buruk PDI Perjuangan [PDIP Poorly Reflected]" *SiarR Xpos* (London, March 27, 2000) .

⁴⁷ He was implicated in a corruption scandal relating to the provision of government school scholarships to PDIP cadre in 2003, but the investigation determined he was not involved and only bureaucrats were prosecuted and convicted. Interview with

known for “enriching his friends”.⁴⁸ Thus, when the local elections came around five years later, practically every party sought to secure his nomination. Indeed, even PDIP, which he had left in 2004, hoped he would “come home to roost” with his former party vehicle.⁴⁹ In the end he opted for a party coalition with small Islamic parties, but his popularity meant that he comfortably won the election. Table 17 summarises the election alliances and results in the 2005 Wali Kota election.

Table 17: Wali Kota Candidates, Party Alliances and Election Results - Semarang (2005)

Candidates	Party Alliance	Alliance Seats	Election Result
Sukawi-Mahfud	PAN (6 seats) PKS (5 seats) PKB (4 seats) PPP (2 seats)	17 seats	73.9% voters
Soediro-Akmad	PD (7 seats)	7 seats	15.1% voters
Bambang-Sutrisno	Golkar (6 seats) PDS (3 seats)	9 seats	7.5% voters
Soendoro-Yuwanto	PDIP (12 seats)	12 seats	7.5% voters

In comparison to the other three districts, Semarang is distinct for its strong civil society. This includes most of the leading anti-corruption, legal and governance NGOs in the province such as the Research Commission for Corruption, Collusion and Nepotism (*Komite Penyelidikan Pemberantasan Korupsi Kolusi Nepotisme—KP2KKN*), the Semarang Legal Aid Foundation (*Lembaga Bantuan Hukum—LBH Semarang*), and the Centre for Regional Information and Studies (*Pusat Telaah dan Informasi Regional—Pattiro*). Civil society in Semarang also has strong latent mobilisation capacity. As mentioned, there are many universities and student organisation that could provide a ready source of eager protestors. There are also two civil society alliances with strong mobilisation networks in the city: the People’s Alliance for the Environment (*Aliansi Masyarakat Pemerhati Lingkungan Hidup—AMPUH*) and the People’s Movement for a People’s Budget (*Gerakan Masyarakat Peduli Anggaran Rakyat—GEMPAR*). Mobilisation is costly,

Anonymous, journalist, Central Java, May 2011; Interview with Anonymous, academic, Central Java, September 2011.

⁴⁸ Interview with Anonymous, journalist, Central Java, June 2011.

⁴⁹ “Jika Hanya Satu Calon, Pilkada Gagal [Pilkada with Single Candidate is Failed Pilkada]” *Suara Merdeka* (Semarang, February 7, 2005).

however, and many NGOs, particularly those involved in service delivery, are often also dependent on local government funding. As one informant summarised: “In general local NGOs mobilise when they are asked to do so by someone with funds”.⁵⁰ Many civil society institutions have political affiliations and thus latent mobilisational capacity in Semarang was high, but its activation in certain cases was not guaranteed and was dependent on local political dynamics.

Case Trajectory

In late 2004, BPKP found indications of corruption in its audit of the 2003 and 2004 local government budgets (ABPD). The case trajectory from this point involved three main phases: (i) a “grand coalition” period; (ii) the “provincialisation” of the case; and (iii) the dissipation of the enforcement coalition. Initially the Wali Kota’s grand coalition allowed him to protect himself and use the investigation to attack his political adversaries. As the 2008 gubernatorial election approached, the case was “provincialised” and the enforcement coalition broadened and substantial progress was made. This was short-lived, and after the election the enforcement coalition dissipated and Sukawi re-asserted control over the law enforcement process. Not long after he left office, he engineered the formal termination of his investigation. In the end a few local NGOs were left to publicise the case and request a pre-trial review of the investigation, to little avail. Table 18 summarises the key developments of each phase.

Table 18: Case Trajectory: Semarang (2004–2010)

Phase I: “Grand Coalition” Precludes Enforcement	
Late 2004	BPKP regular audit finds indications of corruption in relation to “unwitnessed funds”, “fictive insurance”, and “communication funds”.
29 March 2005	Provincial police transfer “fictive insurance” corruption case to High Prosecutor.
26 June 2005	Sukawi elected for second term in Semarang’s first direct mayoral election.
February 2006	Sukawi becomes head of the Democrat Party’s Provincial Leadership Council (DPD) for Central Java.
15 August 2006	NGO KP2KKN reports police investigators to KPK for delays in handling fictive insurance case.

⁵⁰ Interview with Anonymous, journalist, Central Java, June 2011.

2 October 2006	Provincial police transfer (for the fourth time) corruption case of “fictive insurance” implicating six former councillors to the High Prosecutor.
6 February 2007	High Prosecutor announces Sukawi as a suspect in corruption case involving “unwitnessed funds” (<i>dana tak tersangka</i>) with state losses estimated at Rp. 3.9 billion (\$430,000).
28 February 2007	Provincial police again transfer “fictive insurance” case to the High Prosecutor.
April 2007	High Prosecutor waits on approval and input from Supreme Prosecutor in Jakarta.
June 2007	Supreme Prosecutor announces that it has yet to receive the “fictive insurance” case file.

Phase II: “Provincialisation” Prior to Gubernatorial Election

12 September 2007	Provincial NGO, FPK, publicly connects Sukawi to “fictive insurance” corruption case and reports case to KPK.
13 September 2007	Sukawi suggests the fictive insurance case is being politicised in relation to the 2008 gubernatorial election.
28 December 2007	Provincial police announce fictive insurance investigation will consider role of Sukawi.
Early 2008	Civil society alliance AMPUH organises regular demonstrations.
22 June 2008	Sukawi polls third in the gubernatorial election.

Phase III: Enforcement Coalition Dissipates

August 2008?	High Prosecutor announces Sukawi as a suspect in corruption case involving “communication funds” with state losses estimated at Rp. 5 billion (\$550,000).
August 2008	High Prosecutor announces that it has requested permission to investigate in relation to communication funds.
January–July 2009	Formasi Jateng, a coalition of 14 civil society organisations, holds demonstrations.
March 2010	KPK signals support for investigation.
September 2010	Sukawi leaves office after completing a maximum of two terms.
September 2010	NGOs demand High Prosecutor progresses case now that Sukawi has left office.
29 October 2010	Chief High Prosecutor formally terminates corruption investigation into former Sukawi’s involvement in “communication funds”.
30 October 2010	Chief High Prosecutor promoted to position in Jakarta.
November 2010	NGOs protest against decision to terminate investigation.

Postscript: NGOs Request Pre-Trial Hearing

July 2011	NGOs and academics hold workshop to discuss pre-trial hearing request (<i>praperadilan</i>).
16 April 2012	NGOs request judicial review of decision to terminate investigation.
11 May 2012	Court rejects pre-trial hearing request.

Phase I: "Grand Coalition" Precludes Law Enforcement

Wali Kota Sukawi consolidated a "grand coalition" during his first term in office that ensured he dominated the resources necessary to prevent law enforcement intervention. As mentioned above, he used his personal wealth and authority over the local government to consolidate control of the city council and local political elites. He also used his wealth and patronage to consolidate mobilisational capacity, particularly of PDIP party cadres and the party's notorious *satgas* (security task force).⁵¹ After leaving PDIP in 2004, he maintained influence at the cadre level, which contributed to his convincing win in the 2005 election despite PDIP formally endorsing another candidate.⁵² He strengthened his position further in 2006 when he successfully secured leadership of the Democratic Party's Regional Leadership Council (DPD) for Central Java.⁵³ This gave him strong supra-local linkages with the national governing party and the ability, therefore, to influence law enforcement agencies such as the police and state prosecutors at the national level. He also enjoyed a strong relationship with the local bureaucracy.⁵⁴

There were, of course, political rivals to the Wali Kota, but their resources were weak. Sukawi's decision to blame party functionaries in an earlier corruption case involving the channeling of student scholarships to party cadres left him with enemies in the party. Some PDIP functionaries also became increasingly dissatisfied with the "attention he gave the party"; that is, they were unhappy with the new distribution of patronage as the Wali Kota broadened his "grand coalition" of political clients.⁵⁵ Local civil society groups—including local NGOs and student organisations—also possessed information concerning corruption that implicated Sukawi and held grievances against him.⁵⁶ At this stage, however, these civil society groups were unwilling to mobilise large scale public demonstrations for fear of retaliation from groups linked to Sukawi.⁵⁷ Table 19 summarises the Wali Kota and enforcement coalition and their respective resources.

51 (see n. 46).

52 Interview with Anonymous, academic, Central Java, September 2011.

53 "KNPD Kawal Kepemimpinan Sukawi [KNPD Watches Over Sukawi Leadership]" *Suara Merdeka* (Semarang, February 24, 2006).

54 Interview with Anonymous, academic, Central Java, September 2011.

55 Interview with Anonymous, journalist, Central Java, June 2011.

56 Interview with Anonymous, journalist, Central Java, June 2011.

57 Interview with Anonymous, lawyer, Central Java, September 2011.

Table 19: Suspect and Enforcement Coalition Resources: Semarang (Phase I)

Coalition	Resources	Key Actors
Suspect	Material	Sukawi's support from bureaucracy and his business interests allow him to distribute patronage and enrich his political allies.
	Supra-Local Linkages	Sukawi becomes head of the Democrat Party's Provincial Leadership Council (DPD), ensuring access in Jakarta.
	Mobilisational	Grassroots support and influence among PDIP cadres and <i>satgas</i> ensure access to mobilisational and coercive resources.
Enforcement	Information	Political rivals possess information but little hard evidence relating to various incidents of corruption from Sukawi's first term in office (2000–2005).

Initially rival factions within Sukawi's former party wanted to use the corruption incidents to undermine the Wali Kota, but they lacked the resources to control the direction of the law enforcement process to their advantage. Sukawi's superior local coalition meant there were few prospects for success, and he instead directed the investigations towards those who had fallen from his favour.⁵⁸ The case involving fictive insurance implicated the entire city council, but initially the prosecutors only targeted those councillors who failed to secure re-election in 2004, and re-elected councillors who had not supported Sukawi's re-election. Those elected and loyal to Sukawi retained the resources to at least delay the investigation of their involvement in the various incidents. In short, the Wali Kota's dominance of local financial and institutional resources meant he could, at least initially, protect himself and his allies from law enforcement scrutiny.

Phase II: "Provincialisation" Prior to Gubernatorial Election

It is unlikely that there would have been any further progress if the case had remained local. However, as the gubernatorial election approached, political interest in the case broadened. After Sukawi gained control over the Democrat Party's DPD for Central Java, he made clear his intention to run in the gubernatorial election in 2008. At around this time, in the second half of 2007, the first trial of political defendants from the fictive insurance case was being heard in the

⁵⁸ Interview with Anonymous, lawyer, Central Java, September 2011.

Semarang District Court. This generated significant publicity. In this context the coordinator of a local civil society group, the Constitutional Enforcement Forum (*Forum Penegak Konstitusi—FPK*), accused the law enforcement agencies of wilfully ignoring the role of Sukawi in the corruption case and reported it to KPK in Jakarta.⁵⁹ Sukawi was quick to respond, arguing that the legal process was being politicised in relation to the gubernatorial campaign.⁶⁰

The initial publication of the Wali Kota's involvement in the case triggered regular, large-scale demonstrations from local NGOs and student organisations. These demonstrations, which were most regular and intensive in the first half of 2008, were coordinated by the civil society alliance AMPUH.⁶¹ There were many NGOs and civil society leaders that wanted to "bring Sukawi down".⁶² However, two factors had prevented them from mobilising: costs were high and the expected benefits were low. There had been some NGO advocacy in relation to the cases, but these efforts had little impact on the law enforcement process. Yet the upcoming election changed the calculations of the NGOs: they figured that the election, and specifically Sukawi's candidature, would make it easy to attract media attention and to mobilise public support. Thus the costs of mobilisation were substantially reduced. Furthermore, even if they did not ensure his prosecution, the negative publicity would weaken his gubernatorial campaign, thereby increasing the benefits of pursuing the case.

The involvement of key individuals with links to PDIP and the military signalled protection for civil society mobilisation activities.⁶³ As noted above, Sukawi's influence over PDIP *satgas* at the city level made NGOs reluctant to mobilise because of fears of retaliation.⁶⁴ However, his control over this coercive resource was significantly diminished given that PDIP at the provincial level was clearly campaigning against the Democrat Party candidate. PDIP's eventual nomination of a senior military leader also afforded further protection to opposition mobilisation even if the candidate did not actively endorse

59 "Asuransi Fiktif Diadukan ke KPK [Fictitious Insurance Reported to KPK]" *Suara Merdeka* (Semarang, September 12, 2007) .

60 "Sukawi: Jangan Dipolitisasi [Sukawi: Don't Politicise This]" *Suara Merdeka* (Semarang, September 13, 2007) .

61 The Coordinator of AMPUH was also the coordinator of FPK. The winning gubernatorial candidate, Bibit Waluyo, would later appoint him to head the province's Public Information Commission.

62 Interview with Anonymous, journalist, Central Java, June 2011.

63 Interview with Anonymous, activist, Central Java, September 2011.

64 Interview with Anonymous, lawyer, Central Java, September 2011.

these activities. Table 20 summarises how “provincialisation” of the case altered coalition resources prior to the gubernatorial election.

Table 20: Suspect and Enforcement Coalition Resources: Semarang (Phase II)

Coalition	Resources	Key Actors
Suspect	Material	Sukawi maintains influence over bureaucracy and local council as well as his business interests.
	Supra-Local Linkages	Sukawi maintains influence in the presidential party.
	Mobilisational	Influence with local PDIP cadres and <i>sat-gas</i> diminished because of provincial-level political alliances.
Enforcement	Information	Political rivals and NGOs possess information about the case and its legal implications.
	Mobilisational	NGOs and student organisations link Sukawi to corruption incidents and organise demonstrations; gubernatorial electoral politics provide protection for these efforts.
	Material	Political parties contesting the gubernatorial election support mobilisational activities (and possibly also law enforcement).
	Supra-local Linkages	Political parties contesting the gubernatorial election pressure law enforcement officials.

This phase saw the case against Sukawi progress further. The NGO alliance AMPUH held regular demonstrations outside the Provincial Police and High Prosecutor’s Offices. Local political actors quietly lobbied for law enforcement action at the provincial level.⁶⁵ The combination of public and political support for investigation of the Wali Kota fundamentally altered the costs of protecting him from investigation. Of course, Sukawi’s supra-local linkages with the President’s party meant the High Prosecutor was still reluctant to intervene without some indication of support from the Supreme Prosecutor’s Office in Jakarta. The High Prosecutor had reportedly sought the national office’s opinion on the case but this had been delayed for some months. Finally, in late April 2008, the Supreme Prosecutor, Hendarman Supanji, visited the High Prosecutor in Semarang. During this visit the case was reviewed and he effectively signalled national support for the High Prosecutor to name Sukawi as a suspect. The High Prose-

⁶⁵ Interview with Anonymous, lawyer, Central Java, September 2011; Interview with Anonymous, lawyer, Central Java, September 2011.

cutor's office announced that they were considering the Wali Kota as a suspect a few days after the visit and just one month before the election.⁶⁶ It seems plausible that Sukawi's patrons in the party at the national level had, at this stage, calculated that he was unlikely to win the election anyway.⁶⁷ In June 2008, Sukawi polled third in the election, securing just 15.6 percent of the vote.⁶⁸

Phase III: Enforcement Coalition Dissipates

Opposition support for the investigation of Sukawi dissipated after the gubernatorial election. Most critically, opposition political groups were no longer interested in supporting demonstrations and hence the size and regularity of demonstrations declined. Sukawi was able to co-opt some NGOs with promises of jobs and funds from the local budget.⁶⁹ These offers were now more attractive for some NGOs and civil society leaders given that the election had passed and the benefits of mobilisation had diminished. Despite this, some NGOs and student organisations continued to mobilise, and in 2008 into 2009, the student alliance KAMMI (*Kesatuan Aksi Mahasiswa Muslim Indonesia*) held demonstrations accusing law enforcement agencies of selectively enforcing corruption laws (*tebang pilih*).⁷⁰ The response of law enforcement agencies was to argue that they were waiting on presidential permission to investigate the Wali Kota.⁷¹

For almost two years the provincial High Prosecutor argued that the lack of presidential permission meant the case was unable to proceed. This requirement was introduced in the 2004 regional autonomy law. Article 36 requires law enforcement agencies to secure written presidential approval to conduct a pre-investigation (*penyelidikan*)

66 "Sukawi Sutarip Resmi Tersangka [Sukawi Sutarip Officially Named Suspect]" *Suara Merdeka* (Semarang, May 5, 2008) .

67 It also could have related to internal PD politics; Sukawi was aligned with Marzuki Alie, the weaker of the then three main faction players, i.e. Anas, Andi, and Marzuki.

68 PDIP's Bibit-Rustriningsih pair polled in first place with 43.4%, Golkar's Bambang-Adnan pair polled second with 22.8%, the PD and PKS pair Sukawi-Sudharto in third, PPP and PAN's Tamzil-Rozak in fourth with 11.4%, and PKB's Agus-Kholiq in fifth place with just 6.8%.

69 Interview with Anonymous, academic, Central Java, September 2011; Interview with Anonymous, activist, Central Java, September 2011.

70 "Mahasiswa Tuntut Pemeriksaan Sukawi [Students Demand Sukawi Interrogation]" *Kompas* (Jakarta, May 19, 2009) 3 ; "Korupsi Dana Komunikasi: Kejari Segera Ajukan Izin Pemeriksaan Sukawi [Corruption of Communications Funds: Kejari Shortly to Request Authorisation for Sukawi Interrogation]" *Kompas* (Jakarta, August 7, 2008) 1 .

71 See, for example: "Kasus Sukawi Mandek [Sukawi Case at Standstill]" *Suara Merdeka* (Semarang, May 19, 2009) ; (see n. 70).

and investigation (*penyidikan*) into incumbent regional government heads.⁷² The article also states that law enforcement agencies can proceed with the investigation after waiting sixty days from receipt of the request.⁷³ This article effectively creates a decision-making vacuum, in that it allows local law enforcement agents to claim they are awaiting presidential approval while allowing the President to claim that the request has yet to be received. Indeed, the opaque procedures surrounding these requests mean there are plenty of opportunities to prevent a request reaching the President's desk, including at the level of the Supreme Prosecutor (or National Police for police-led investigations), the State Secretary, and Home Affairs. It is not uncommon, for example, for requests from the High Prosecutor to never leave (or suffer long delays) at the Supreme Prosecutor in Jakarta.⁷⁴ Alternatively, these requests can also suffer delays or "become misplaced", as the euphemism goes, at the State Secretariat, which acts as a gate keeper to the President.⁷⁵ This effectively provides presidential cover for a decision that may have been taken at much lower levels in the process. Supra-local linkages and mobilisational capacity are critical to overcoming these obstacles.

Subsequent events cast further doubt on the veracity of law enforcement agency decision-making. It is worth recapping how the case against Sukawi progressed. In 2007, the police and prosecutor announced that they were considering the involvement of Sukawi in various corruption incidents under investigation. Then in 2008 the High Prosecutor formally announced that Wali Kota Sukawi was a suspect. According to criminal procedures, suspects can only be declared as part of a full investigation, implying that the law enforcement agents should have sought and obtained presidential permission. Finally, in 2010, after the Wali Kota finished his second term and left office, the High Prosecutor decided to terminate the investigation rather than proceed now that presidential permission was no longer required. One activist explained that he met the new High Prosecutor just days before the termination who told him "to await my surprise—I pumped my fist in the air, thinking that he meant that he was about to proceed with the case. At last we'd got him, I thought. But to my surprise, days later Pak Salman [the High Prose-

72 Undang-Undang Republik Indonesia Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah [Law No 32 of 2004 on Regional Government] 2004 36(1).

73 *ibid.*, 36(2).

74 Interview with Anonymous, senior prosecutor, Central Java, September 2011.

75 Interview with Anonymous, lawyer, Central Java, September 2011; Interview with Anonymous, detective, Jakarta, October 2011.

curator] issued an SP3 [Investigation Termination Warrant—*Surat Perintah Penghentian Penyidikan*].⁷⁶ Reportedly the termination warrant involved the payment of a large “six-figure sum” (a ten-figure sum in Rupiah).⁷⁷

Postscript: NGOs Request Pre-Trial Hearing

In a final effort to re-instate the investigation, a group of NGOs submitted a request for a judicial review of the High Prosecutor’s decision to terminate it.⁷⁸ The lack of material resources and relatively little experience with the process meant that the request was delayed for many months.⁷⁹ Eventually, on 16 April, four NGOs filed their request for a pre-trial hearing with the Semarang State Court.⁸⁰ The court quickly rejected the request, however, denying the NGOs legal standing to request a review of an investigation.⁸¹ This is unclear and contested legal terrain.⁸² Other courts have accepted the argument that legally constituted civil society organisations are “interested third parties [*pihak ketiga yang berkepentingan*]” as they represent society’s general interest in corruption law enforcement.⁸³ However, the judge ruled that only police units can, on behalf of the community injured by the decision, submit requests for a pre-trial hearing.⁸⁴

76 Interview with Anonymous, lawyer, Central Java, September 2011.

77 Interview with Anonymous, lawyer, Central Java, July 2011.

78 “Banyak LSM Kecam SP3 Sukawi [NGOs Criticise SP3 of Sukawi Case]” *Suara Merdeka* (Semarang, October 29, 2010) .

79 Interview with Anonymous, lawyer, Central Java, September 2011; Interview with Anonymous, lawyer, Central Java, July 2011; “Akademisi Rumuskan Gugatan Praperadilan SP3 Kasus Sukawi [Academics Debate SP3 Pre-Trial Review]” *Suara Merdeka* (Semarang, July 27, 2011) .

80 “Gugatan SP3 Sukawi Masuk Pengadilan [Sukawi’s SP3 Dispute Enters Courtroom]” *Suara Merdeka* (Semarang, April 27, 2012) .

81 Angling Adhitya Purbaya, “Permohonan Pencabutan SP3 Kasus Korupsi Eks Walikota Semarang Ditolak [Request to Revoke SP3 status of Corruption Case Against Former Walikota Semarang Denied]” *Detik* (Jakarta, May 11, 2012) .

82 See, for example, the commentaries of jurist M. Yahya Harahap: M Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali [Commentaries on Problems and Implementation of the Criminal Procedure Code: Court Hearings, Appeals, and Judicial Review]* (2nd ed., Sinar Grafika 2000) 9-10.

83 *H Boyamin Saiman dll v Kepolisian Resor Kota Surakarta (Praperadilan)* 14/Pid.Pra/2011/PN.Ska.

84 *Slamet Haryanto dll v Kejaksaan Tinggi Jawa Tengah (Praperadilan)* 05/Pid.Pra/2010/PN.Smg.

ALTERNATIVE EXPLANATIONS

This chapter has shown how an emphasis on local legal mobilisation efforts is critical in accounting for both corruption law enforcement outcomes as well as trajectories. In both cases, the suspects were able to maintain or consolidate a local coalition with sufficient resources to preclude law enforcement action. There are, however, alternative explanations that could account for these “negative” cases. Here I focus on three alternative explanations considered in Chapter 2: law-centred explanations, institution-centred explanations, and culture-centred explanations.

Law-centred explanations would argue that these cases were not prosecuted because investigators determined that violations of corruption laws had not occurred and that prosecution was not warranted. Indeed, the lawyers of Bupati Moch Salim and Wali Kota Sukawi made spirited arguments to this effect. The argument of the former’s lawyer rested on whether or not the district-owned *RBSJ-Company* had generated state losses *overall*. Moch Salim’s lawyer argued that the company had generated profits and had paid a dividend to the district government every year since its formation—therefore there were no state losses and no corruption.⁸⁵ This is a curious argument—the case against the Bupati does not rest on whether or not the company had been profitable overall but whether the *transactions* involving the purchase of land and licences from a company controlled by the Bupati at inflated prices resulted in state losses. It is also difficult to see how a law-centred explanation could account for the provincial police’s three-year-plus investigation; as noted above, the technical explanations for these delays are not credible.

The argument in the Sukawi case, by contrast, rests on whether the violations were administrative errors or corruption. Sukawi’s lawyer argued that the government funds were in fact used appropriately but simply not properly accounted for.⁸⁶ He also argued that the funds channeled to the local councillors were returned and therefore did not result in state losses. These arguments are similar to those made by the legal expert that provided the basis for the High Prosecutor to terminate the investigation into Sukawi’s involvement in the fictive insurance case.⁸⁷ There are multiple problems with these arguments, but the fundamental weakness is the fact that others involved in the

85 Interview with Anonymous, lawyer, Central Java, June 2011.

86 Interview with Anonymous, lawyer, Central Java, September 2011.

87 Interview with Anonymous, lawyer, Central Java, September 2011.

fictive insurance case have been prosecuted and convicted in court. If these transactions did not amount to corruption, then why were others prosecuted (and convicted) for corruption? In sum, these legal arguments—made by both the lawyers of the suspects and the law enforcement agencies—are best understood as attempts to put a legal gloss on decisions made for other reasons. Indeed, in these cases and others, the High Prosecutor has been understood to choose “legal experts” that provide them with the legal advice they want.⁸⁸

The institution-centred explanations emphasises the institutional structures that allow for political intervention in corruption cases. The implication of this thesis is that politics is central to law enforcement outcomes. As explained in Chapter 5, Indonesia’s law agencies remain the prerogative of the national government. The Supreme Prosecutor (Attorney General) and National Police Chief are members of the cabinet and accountable to the President. This affords the President, and his party, substantial influence over these agencies. The implication of this thesis is that national political prerogatives and affiliations are central to subnational law enforcement outcomes. Indeed, the four cases from this and the previous chapter lend support to this argument. In both the Rembang and Semarang cases, the Bupati and the Wali Kota were members of the President’s Democrat Party, whereas Bupati Totok was from Golkar and Bupati Probo from PDIP.⁸⁹ There is no doubt that such political alliances are critical to case outcomes.

In Rembang, Bupati Moch Salim was able to use his affiliation to the President’s party to credibly threaten subnational investigators.⁹⁰ And Wali Kota Sukawi could use his factional ties to frustrate law enforcement efforts.⁹¹ However, as these examples and the trajectories of the two cases in this chapter illustrate, national political protection from corruption investigations is not assured.⁹² This is arguably a

88 On the Wali Kota Sukawi case specifically: “Kasus Sukawi Sutarip: Permintaan Saksi Ahli Dikhawatirkan Rekayasa Hukum [Sukawi Sutarip Case: Request for Expert Witness Feared to be Legal Manipulation]” *Suara Merdeka* (Semarang, September 30, 2010) . More generally: Interview with Anonymous, senior prosecutor, Jakarta, October 2011; Interview with Anonymous, prosecutor, Central Java, September 2011; Interview with Anonymous, lawyer, Central Java, September 2011.

89 The Vice-President, however, was from Golkar and the party was a core member of the President’s governing alliance at the time of the Temanggung case.

90 Interview with Anonymous, detective, Central Java, September 2011.

91 Interview with Anonymous, lawyer, Central Java, September 2011.

92 Between October 2004 and September 2012, President SBY provided permission to investigate 176 politicians or senior officials, and 20 or 11.4 percent were from the President’s party, see: Muhammad Juanda, “Kader Korupsi - Hatta Rajasa Bela Seskab Dipo Alam [Hatta Rajasa Defends Party Cadre Seskab Dipo Alam in Corruption Case]” *Bisnis Indonesia* (Jakarta, October 1, 2012) .

general weakness of institutional theories: they help to explain general patterns of corruption law enforcement outcomes, but they are unable to account for outcomes and the trajectories in specific cases. These institutional structures are best understood as resources available to certain local actors and groups. In this way, the relationship between political institutions and law enforcement agencies empowers those suspects whose support coalition includes the means to tap this resource, but it does not guarantee protection. To understand this we need to explore the comparative strength and formation of local coalitions.

A third alternative explanation focuses on cultural factors that influence law enforcement agents and case outcomes. The underlying logic is that local norms relating to corruption influence whether incidents are identified as corruption and brought to the attention of law enforcement authorities, as well as whether there is broad popular support for law enforcement action in particular cases. The problem with this account is two-fold. First, there is little cultural difference between the districts in this chapter and the districts in the previous chapter that could account for the opposite outcomes. Furthermore, the process-tracing approach uncovered no indication that local cultural norms influenced the decision-making of law enforcement agents or the advocacy and publicity of civil society organisations and the media. Second, it is difficult to see how local cultural norms could account for the rapid shifts in the case trajectories. Similarly, the economic variant's emphasis on economic impacts is unable to account for case outcomes given that the state losses in the cases in this chapter were similar to those from the previous chapter.

These three alternatives provide incomplete explanations of the two cases presented in this chapter. This does not mean, however, that these explanations provide no insight into corruption law enforcement. There is no doubt, for example, that the institutional structures in Indonesia mean that political supra-local linkages play an important role in corruption case outcomes. Similarly, my argument does not imply that Indonesia's wholesale reforms to corruption laws in 1999 and again in 2001 are irrelevant to corruption law enforcement in Indonesia. My argument is more modest. These institutional arrangements provide the terrain on which local and national groups manoeuvre and bargain to gain advantage and protect their interests. These structures tell us what material and non-material resources can influence law enforcement processes but understanding trajectories

and outcomes in specific cases ultimately requires an account of local resource control and coalition formation.

CONCLUSION

This chapter has illustrated how the formation and resources of local coalitions account for corruption investigations that do not result in prosecutions. In both Rembang and Semarang, local government heads managed to retain or consolidate control over local material and non-material resources critical to the prevention of law enforcement action on local corruption cases. Specifically, both local government heads consolidated control of local patronage institutions, supra-local linkages, and mobilisational resources as well as information (evidence). In contrast, opposition resources fluctuated. In Rembang, a wealthy businessman from the district came to power in a controversial election. He won convincingly but was dependent on his Vice-Bupati's party to control the local council. This gave the party and the council leverage, and they sought to use the corruption accusations to secure concessions from the Bupati. Moch Salim's personal wealth allowed him to stall progress on the investigation, and in the 2009 elections he consolidated his own party's position in the local district council, precluding further investigation on the case.

Similarly in Semarang, Wali Kota Sukawi commanded a "grand coalition" that allowed him to prevent a local corruption investigation into his role in these various incidents. The enforcement coalition broadened prior to the 2008 gubernatorial election—civil society groups organised mass demonstrations and opposition parties quietly supported the investigations—and for a brief interlude law enforcement agencies made progress on the case, formally announcing that the Wali Kota was a suspect. The opposition fragmented after the election, however, and Sukawi managed to engineer the termination of the investigation one month after leaving office.

Why were the local government heads in Rembang and Semarang able to consolidate their control over local institutional resources? Initially members of the enforcement coalition in Rembang anticipated that the KPK or national law enforcement agencies would intervene in the case in the lead-up to the 2009 national elections. Political entrepreneurs—themselves with interests in the removal of the Bupati—coordinated this coalition. However, as the national elections approached, it became increasingly apparent to coalition members

that intervention was unlikely and their interest in the case dwindled. The alternative was pushing the case through the local law enforcement agencies, which was seen as less attractive because of its high costs, the lack of a wealthy patron, and Moch Salim's personal financial resources. Moch Salim had the means to co-opt enforcement coalition members, opposition members and his supra-local linkages to credibly collude with law enforcement officials.

The same factors were critical in Semarang. Initially there was little incentive for opposition parties to mobilise against Sukawi because his wealth and supra-local linkages meant any attempt would be costly and uncertain. Sukawi was skilled at maintaining cordial relations with the local business establishment and thus there was no wealthy patron prepared to support an enforcement coalition. However, as the gubernatorial election approached, the benefits of legal mobilisation for opposition political parties—which included the benefits of negative publicity for the Wali Kota's gubernatorial campaign—increased significantly. The costs of legal mobilisation were also reduced during this period because local media were interested in publicising reports on corruption cases implicating gubernatorial candidates, and opposition candidates signalled support for public demonstrations. After the gubernatorial election passed, the benefits of mobilisation lessened and political support for the enforcement coalition declined. This allowed Sukawi to regain control over the law enforcement process and engineer the formal termination of the investigation.

This and the previous chapter have sought to illustrate how a legal mobilisation perspective can account for corruption case trajectories and outcomes in the context of a hybrid private-public law enforcement regime. The next chapter shifts from a focus on individual case dynamics to overall patterns of corruption law enforcement. It uses quantitative data and regression analysis to test the generalizability of the resource-focused theory of legal mobilisation developed in Chapter 4 and illustrated here.

RESOURCE DISTRIBUTION AND COALITION CONSTRAINTS: A QUANTITATIVE TEST

Chapter 4 of this thesis developed a theory of corruption law enforcement that emphasised the role of resources and coalitions. This theoretical account was illustrated in Chapters 6 and 7 in reference to four case studies from Central Java. In these cases the mobilisation of resources and the formation of support coalitions were critical to both law enforcement trajectories and outcomes. The primary research objective in this chapter is to test the external validity or generalizability of the thesis's legal mobilisation theory of corruption law enforcement. This is done in two ways. The chapter first seeks to test hypotheses that derive from the legal mobilisation theory on a larger sample of Bupati and Wali Kota (District Heads and Mayors). Specifically, it uses measures that proxy for the distribution of resources and constraints on coalition formation and maintenance to test their influence on the likelihood that Bupati or Wali Kota from East Java—a province neighbouring Central Java and possessing similar social, cultural, and political characteristics—were reported, investigated, and prosecuted for corruption in the thirteen year period from 2000 to 2012. Following this, I seek to further probe the generalizability of the theory by testing the same set of hypotheses on a broader set of corruption cases from the period 2000 to 2009. In this way, I test whether the availability of resources and coalition constraints can account for the number of corruption cases investigated and prosecuted in East Java's 38 districts and cities.

The empirical evidence presented in this chapter provides broad support for the theory and its underlying logic. More specifically, regression results suggest that the spatial and temporal distribution of resources with which one can influence law enforcement processes

affects both the likelihood that Bupati and Wali Kota face corruption law enforcement action, and the number of corruption cases investigated and prosecuted each year in a district. The second set of regression results also finds support for the theory's emphasis on the centrality of coalitions. Proxy measures for constraints on coalition formation and maintenance are shown to be related to the probability that Bupati and Wali Kota are investigated and prosecuted as well as the number of corruption investigations in a district. The results on the number of prosecutions are encouraging but statistically insignificant, suggesting scope for additional data collection and analysis.

The methodology used in this chapter is quantitative regression analysis. It uses a custom dataset of local corruption law enforcement in East Java. This dataset—referred to as the Indonesia Corruption Law Enforcement Dataset (ICLED)—was developed specifically for this research project. It relies on almost 26,000 articles reported in local newspapers and is one of the largest datasets on corruption law enforcement in the developing world.¹ By initially focussing on newspapers, I was able to compile detailed data on corruption law enforcement—the main dependent variable under investigation in this thesis—in all 38 districts in East Java. In order to explain these trends, the chapter also relies on social and political data from a variety of sources including Indonesia's General Electoral Commission (*Komisi Pemilihan Umum—KPU*) and Central Statistic Agency (*Badan Pusat Statistik—BPS*).

The chapter begins with an introduction to the new and unique dataset of local corruption cases. This section also provides some descriptive data on trends in law enforcement in East Java. It then turns to the hypotheses that derive from the theory chapter and the measures used to proxy the independent variables. The two subsequent sections each outline the setup for testing the model on political and general corruption law enforcement. Each section also presents and discusses the results and offers various robustness checks. In the conclusion, I discuss some of the limitations of the analysis and suggest some avenues for further research.

¹ These newspapers were collected as part of a World Bank study on subnational violence in Indonesia and the establishment of a national violence monitoring system: the Violent Conflict in Indonesia Study (ViCIS) and National Violence Monitoring System (NVMS).

ICLED: A NEW DATASET OF CORRUPTION LAW ENFORCEMENT IN INDONESIA

Unfortunately, the availability of law enforcement data—particularly corruption data—is limited in Indonesia. The Supreme Court, the National Police, and the Attorney General’s Office (AGO) are understood to collect data regularly on subnational corruption law enforcement,² but the information is not only difficult to obtain, but also of questionable quality. Recently, the Supreme Court began systematically posting court decisions on its website, but the data for the district State Courts (*Pengadilan Negeri*) are incomplete and only available from around 2009 onwards. Furthermore, sensitive cases, such as those involving corruption, are often not uploaded by local courts.³ By its very nature, this data source only includes information on corruption cases that enter the court system, and it does not provide a picture of cases that stall at the investigation stage or earlier. The police and the AGO only provide basic aggregate statistics on the total number of corruption cases investigated and prosecuted. Both agencies claim to collect and compile these data systematically for the entire country, but despite various efforts to obtain this information, I was only able to access data for a two year period covering 2007 and 2008.⁴ Furthermore, those familiar with data collection techniques within these agencies cautioned that these statistics are often inaccurate and sometimes entirely fabricated.⁵

In an attempt to overcome these limitations, I used local newspapers to construct a new, wider dataset of local corruption case trajectories and outcomes. The dataset includes all incidents of local corruption reported between 2000 and 2009 in fourteen local newspapers from East Java (see Annex A for coverage details).⁶ This was augmented with reports from one of the most respected national newspapers of record, *Kompas*, for the period 1996 until 2012. I constructed the dataset by securing newspaper archives, developing a database and coding manual, recruiting and training data coders (five in to-

² Interview with Anonymous, civil society coordinator, Jakarta, November 2010.

³ Interview with Anonymous, advisor, Jakarta, December 2012.

⁴ The Institute for an Independent Judiciary (LeIP) provided data for the years 2007 and 2008, which they collated and published in collaboration with the AGO and The Netherlands-Indonesia National Legal Reform Program (NLRP).

⁵ Interview with Anonymous, academic, Jakarta, December 2010.

⁶ Data on corruption law enforcement were also compiled for a second province—North Sumatra—but data gaps as well as time constraints meant this province was excluded from the analysis presented in this chapter. The coverage of the local newspapers from both East Java and North Sumatra are detailed in Annex A.

tal), identifying newspaper articles that report on corruption law enforcement, coding case details, implementing a quality control mechanism, and final data cleaning. The data coding involved two phases. The first phase focused on the identification of articles that reported on corruption cases, creating a “case name” that identified the case, coding some basic details such as location, and collating all articles relating to each case in a single folder. In total, approximately 470,000 newspaper pages were searched and 29,996 articles reporting on local corruption cases identified.⁷ The data coders were assigned to specific local newspapers within East Java, where each local newspaper tended to cover two to three districts each. This allowed the data coders to familiarise themselves with the cases in each region and avoided duplication of cases over the time period. The newspapers were also reviewed chronologically from 2000 to 2009 and the articles filed chronologically, allowing the coders to identify and review cases as they developed. Substantial data cleaning was then necessary to remove the remaining duplicate entries in the database.

The second phase involved coding case details based on all the articles in each case folder. A series of data points were coded for each case, including information on the type of corruption, the estimated state losses, the characteristics of suspects and defendants, the chronology of the investigation and court proceedings, as well as external advocacy events linked to each case such as demonstrations and public statements of support for the investigation or for the defendants. Some cases were reported in only one newspaper article—for example, a report that did not lead to any investigation activity—whereas some large and complex cases involved as many as 500 articles over a period of four years. Sometimes it took coders over a week to review and code the characteristics and chronology of these large, complex cases. Some case details also evolved over time—for example, the amount of corruption would change as new information came to light—and in these circumstances the most recent information was used. Table 21 summarises the data coded for each case, only a small proportion of which is used in this chapter. The ICLED Coding Manual, which details the method, is provided in Annex B.⁸

⁷ Some articles reported on multiple cases and therefore some articles appear in multiple case folders. The database included a many-to-many relationships between the CASE and ARTICLE tables; that is, a single case could be linked to multiple articles and articles could be linked to multiple cases.

⁸ I intend to make the dataset publicly available to facilitate replication as well as further research after I have published a revised version of this chapter. On the

Table 21: ICLED: Summary of Dataset Categories and Variables

Phase	Category	Variables
Phase 1	Basic Case Data	Case name, location.
	Article Information	Newspaper, date, title, page number.
Phase 2	Case Description	Corruption type, modus operandi, sector, report source, losses.
	Chronology	Year corruption occurred, date first reported, pre-investigation (<i>penyelidikan</i>), investigation (<i>penyidikan</i>), prosecution, court decisions, final case status.
	Suspects & Defendants	Name, final legal status, position (at corruption, when reported, at prosecution), party affiliation, sentence.
	Advocacy Events	Date, location, type, advocate's position (support / reject enforcement), demonstration size (if applicable).

Newspapers are an established source for the generation of datasets in the social sciences.⁹ There are two main use types: studies of media focus and event count studies.¹⁰ The event count approach, of which the ICLED dataset is an example, has been used extensively in sociology, comparative politics and economics to construct datasets on strikes, violence, riots, coups, civil rights conflict, economic policy signals, and other forms of contentious and non-contentious politics.¹¹ This method has been used in Indonesia, particularly for the study of violence.¹²

importance of making datasets publicly available for the scientific endeavour, see: Gary King, "Replication, Replication" (1995) 28(3) *PS: Political Science and Politics* 444 .

- 9 Jennifer Earl et al., "The Use of Newspaper Data in the Study of Collective Action" (2004) 30 *Annual Review of Sociology* 65 ; Roberto Franzosi, "The Press as a Source of Socio-Historical Data: Issues in the Methodology of Data Collection from Newspapers" (1987) 20(1) *Historical Methods: A Journal of Quantitative and Interdisciplinary History* 5 .
- 10 John T Woolley, "Using Media-Based Data in Studies of Politics" (2000) 44(1) *American Journal of Political Science* 156 , 157.
- 11 See: Peter K Eisinger, "The Conditions of Protest Behavior in American Cities" (1973) 67(1) *The American Political Science Review* 11 ; Ted Gurr, "A Causal Model of Civil Strife: A Comparative Analysis Using New Indices" (1968) 62(4) *The American Political Science Review* 1104 ; Stanley Lieberman and Arnold R Silverman, "The Precipitants and Underlying Conditions of Race Riots" (1965) 30(6) *American Sociological Review* 887 ; R J Rummel, "Dimensions of Conflict Behavior within Nations, 1946-59" (1966) 10(1) *The Journal of Conflict Resolution* 65 ; Edward Shorter and Charles Tilly, *Strikes in France, 1830-1968* (Cambridge University Press 1974); Charles Tilly, *Popular Contention in Great Britain, 1758-1834* (Harvard University Press 1995).
- 12 See: United National Support Facility for Indonesian Recovery (UNSFIR) Social Violence Database; the World Bank Violent Conflict in Indonesia Study (ViCIS) Database; and the Government of Indonesia National Violence Monitoring System (NVMS).

However, when it comes to identifying incidents of corruption and establishing a quantitative dataset, the use of newspapers has some important limitations. It is widely acknowledged that newspaper articles often do not represent the “true” universe of events and “compared to this universe, every record is necessarily incomplete”.¹³ Three main forms of bias are thought to be responsible for this discrepancy between the “whole truth” and the newspaper record: regional bias, salience bias, and ideological bias. First, there is a problem of urban bias: in Indonesia, as elsewhere, national as well as provincial newspapers tend to focus their coverage on events in large cities; national newspaper disproportionately cover events in Jakarta and provincial newspaper disproportionately cover events in the provincial capital. The second relates to the tendency of newspapers to report on large, salient events. Studies that have analysed violence in Indonesia over the past decade, for example, have observed that national newspapers emphasise coverage of large-scale communal violence in conflict “hotspots” and provide less coverage of “everyday violence” in other parts of the country.¹⁴ The third source of bias relates to substantive or ideological bias: media outlets often have political affiliations that influence both which events are covered and the degree to which they are emphasised. For example, in Indonesia almost all the large newspapers and television stations—and many national newspapers—are affiliated with political parties or individuals with political affiliations.

I seek to mitigate the negative effects of these biases in three ways. First, I use a combination of national, provincial, and local newspapers to attenuate both the first and second forms of bias. Indeed, an analysis of the ICLED database for East Java indicates that only 1.4 percent of cases were covered in the national newspaper and 67.4 percent in the two provincial newspapers *Jawa Pos* and *Surya*. I also use multiple newspapers—fourteen sources in total—to mitigate the third form of bias. Regional and local newspapers in Indonesia often have idiosyncratic affiliations based on personal connections and business interests rather than party affiliations; by using a large number of diverse sources, I was able to collect data from cases that were reported in one newspaper but not others.¹⁵ In addition, I focus on the “basic

¹³ Woolley (see n. 10) 157.

¹⁴ Patrick Barron and Joanne Sharpe, *Counting Conflicts: Using Newspaper Reports to Understand Violence in Indonesia* (Indonesian Social Development Papers, 25, World Bank 2005).

¹⁵ The majority of the local newspapers in the dataset share the same parent company—the Jawa Pos Group—the main owner of which actively entered national politics in

facts” about a case rather than how a case is interpreted and reported. Although they offer the basic information about a case, many journalists in Indonesia, as elsewhere, exaggerate or give more prominence to some cases and not others because of local economic interests and personal connections.¹⁶ With these three issues in mind, the ICLED provides reliable information on local corruption law enforcement, particularly cases involving political actors (i.e. Bupati and Wali Kota as well as district Councillors) as well as senior bureaucratic actors (i.e. Regional Secretary, Agency Heads, Village Heads) in all 38 districts in East Java.

In sum, the main advantages of this approach, in the context of Indonesia and the research questions of this project, are three-fold. First, the availability of a largely complete archive of local newspapers for the period 1998 until 2009 meant the study could investigate changes in corruption law enforcement from the *reformasi* period until recently. As noted above, official sources—at least those that were available to me—only covered a two year period; in the few instances where other researchers have gained access to a wider official dataset, it has come with significant weaknesses.¹⁷ Second, the newspaper ap-

2011. These local newspapers have considerable editorial autonomy in relation to local events and informants indicated that the parent company did not generally intervene in editorial decisions.

¹⁶ Interview with Anonymous, journalist, Central Java, May 2011; Interview with Anonymous, journalist, Central Java, September 2011. Aprilia concludes that the Jawa Pos Group has shown “framing” bias in its reporting of the high-profile case involving the corruption investigation of the Democrat Party’s former treasurer Anas Urbaningrum. See: Fransiska Aprilia, “Pencitraan Partai Demokrat di Harian Kompas dan Jawa Pos dalam Pemberitaan Pemeriksaan Anas Urbaningrum oleh Komisi Pemberantasan Korupsi (KPK) [Democrat Party Image in Kompas and Jawa Pos Newspapers in Reports of KPK’s Examination of Anas Urbaningrum]” (2013) 1(3) Jurnal e-Komunikasi

¹⁷ Valsecchi, in one thesis chapter on local corruption law enforcement in Indonesia, notes that the data he obtained from the AGO includes “a description of virtually all corruption cases in Indonesia”. (Michele Valsecchi, “Local Elections and Corruption during Democratization: Evidence from Indonesia” (PhD thesis, University of Gothenburg 2012) 6) However, the descriptive statistics presented in Table 1 (specifically, the last two columns of Panel B) indicate there was not a single corruption case prosecuted in Indonesia prior to 2004. This interpretation is confirmed by the author’s claim that the “first prosecutions is contemporaneous to the constitution of the Anti-Corruption Commission in 2004” (*ibid.*, 9). It is simply incorrect that there were *no* local corruption prosecutions prior to 2004. I obtained aggregate records that indicate that there were approximately 500 corruption prosecutions in both 2002 and 2003, approximately 80 percent of which are likely to be at the district level. Furthermore, the number of cases for 2004 onwards seem far too low in comparison to the AGO’s own national aggregate data. For example, in 2007, the AGO reported 627 cases as resulting in prosecution, whereas Valsecchi reports a mean of only 0.07 prosecutions per district; this amounts to a total of about thirty cases if one assumes 400 districts (the number of districts covered in his dataset is not provided). Indeed, the ICLED data indicates that 55 cases were prosecuted in East Java’s 38 districts in 2007 alone. At worst this suggests that the AGO’s own dataset (however Valsecchi gained

proach allowed me to capture information on corruption reports and investigations that did not progress to prosecution or even to investigation. Finally, the use of local newspapers meant that the data were obtained from a source that was independent from the agencies responsible for law enforcement.

CORRUPTION LAW ENFORCEMENT IN EAST JAVA: TEMPORAL AND SPATIAL TRENDS

The ICLED dataset confirms the presence of substantial subnational spatial and temporal variation that motivated this study (see Chapter 1). Overall, newspaper mapping identified 3,011 cases of corruption in East Java between 2000 and 2009. Of these, 1,311 cases or 44 percent were investigated; 341 cases or 11 percent were prosecuted; and 232 cases or 8 percent resulted in convictions. Figure 23 suggests little temporal trend in the number of corruption incidents reported: they have remained more-or-less constant over the past ten years. This supports the view that changes in the number of corruption investigations and prosecutions is less a reflection of changes in the level of corruption than changes in the enforcement of corruption laws.¹⁸ It also aligns with the national corruption trend as presented in Chapter 5. Transparency International's Corruption Perception Index for Indonesia indicates only a modest improvement in perceptions of corruption.

The ICLED dataset indicates some interesting trends. Figure 24 suggests that the number of corruption investigations initiated began to increase in 2004, which is the year local council elections were held across the country (in April 2004).¹⁹ The data indicate that 2004 marks a significant juncture in corruption investigations: prior to 2004 the average number of investigations was around twenty per year; since

access to it, for it is not publicly available) is inaccurate and unreliable. At best, it suggests that the AGO dataset is reliable but that the researcher—presumably unwittingly given his claim that his dataset includes “virtually all corruption cases”—only acquired a small sample of the AGO's data.

¹⁸ It should also be noted, however, that this may reflect newspaper editorial policy. That is, newspapers may dedicate a relatively constant level of space to reports of corruption incidents. Having said that, the data on the number of articles reporting on corruption have fluctuated and show a substantial increase from 2004 onwards in line with the increase in corruption investigations.

¹⁹ Note that corruption investigations (*penyidikan*) occur after pre-investigation or examination (*penyelidikan*) has determined there are grounds for a full investigation. This suggests that corruption reports were either ignored (i.e. no pre-investigation was conducted) or delayed (i.e. a pre-investigation was conducted but were not upgraded to full investigations).

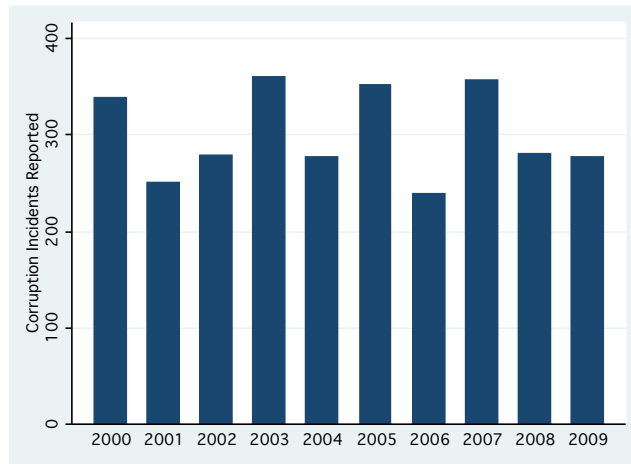


Figure 23: Corruption Incidents Reported in East Java (2000–2009)

then the average is around sixty per year. This suggests an important explanatory role for time-varying independent variables.

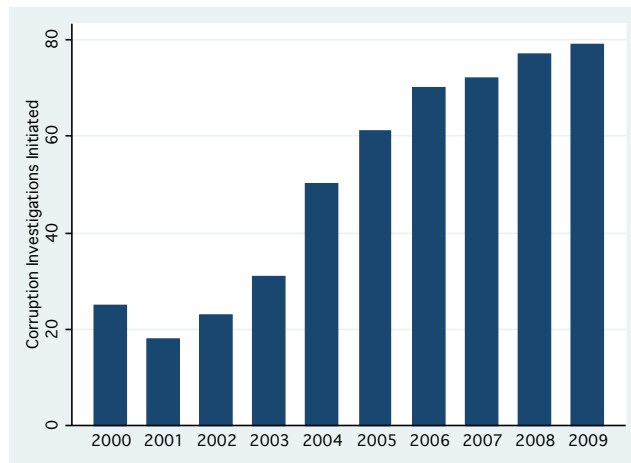


Figure 24: Corruption Investigations Initiated in East Java (2000–2009)

Similarly, Figure 25 below shows that the total number of corruption prosecutions for the decade 2000–2009 for East Java has increased over time. The overall trend is similar to the national prosecution trend as presented in Chapter 1 (see Figure 1). The exceptions are the years 2007 and 2008. The national figures indicate a large increase in 2008, following the appointment of Attorney General Hendarman Supandji and prior to the 2009 national and local elections. In contrast, the East Java data indicate a large increase in 2007 and 2009, but not in 2008.²⁰ More generally, the similarities between the national and the regional trend suggest the need to consider year fixed-effects. This is

²⁰ This may be attributable to East Java’s proximity to Jakarta; Head Prosecutors in East Java may have been initially more responsive to the new Attorney General’s corruption case quota system introduced in late 2007.

unsurprising given that law enforcement remains formally a national government prerogative. As discussed in Chapter 5, time variables that would affect the entire country include: changes in the national budget allocated to law enforcement (which has increased over the decade under consideration); changes in presidential support for corruption law enforcement (after the election of SBY in 2004); and incentives associated with national election cycles (to increase corruption enforcement prior to the 2009 elections). However, the differences also suggest that there are important time-varying differences within East Java.

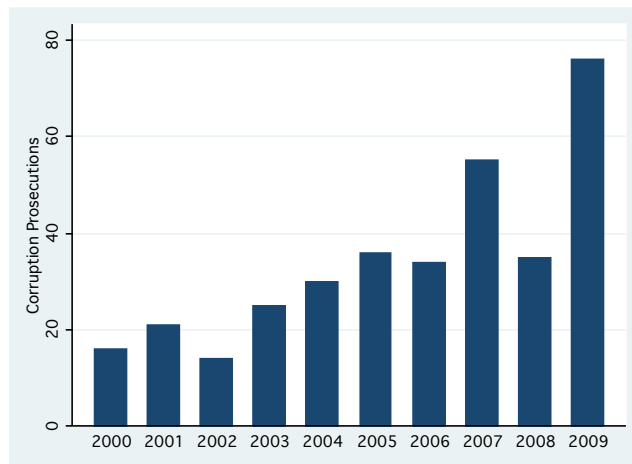


Figure 25: Corruption Prosecutions in East Java (2000–2009)

The ICLED picks up on substantial differences across districts in East Java. Figure 26 below summarises the total number of corruption cases reported, investigated, and prosecuted by the district for the period 2000–2009. The figures suggest large inter-district differences; ranging from only 24 reports in Mojokerto City to over 80 in Surabaya. This suggests that there are district-varying factors that influence corruption law enforcement.

Figures 27 and 28 show the percentage of corruption cases reported that were investigated and the percentage of corruption cases prosecuted in relation to the total investigated. The range of ratios in these figures suggests that, regardless of whether corruption reports reflects corruption levels or newspaper coverage, there is substantial district-level variation in law enforcement that warrants further explanation. This is particularly the case for the ratio of corruption prosecutions to corruption investigations; the figure indicates that the ratio ranges from 25 percent to as high as 100 percent. In contrast, the ratio of corruption investigations to reports ranges from around 10 percent

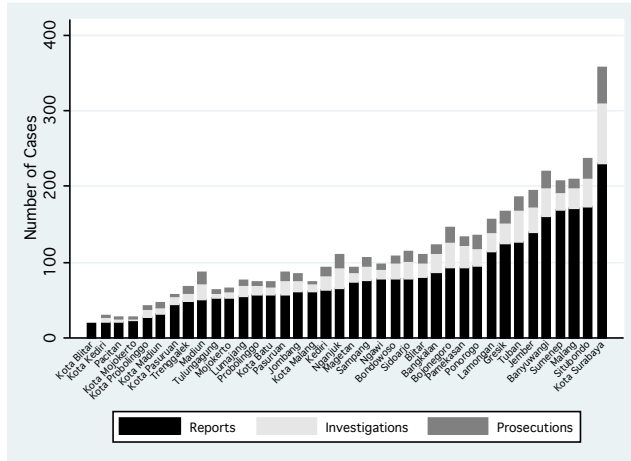


Figure 26: Corruption Reports, Investigations and Prosecutions by District (2000–2009)

to 40 percent. More generally, the data indicates clear spatial variation in the number of cases reported, investigated, and prosecuted across districts within East Java. A satisfactory account of subnational corruption law enforcement must be able to account for this temporal and spatial variation: the identification of such factors would offer a more complete account of corruption law enforcement given that standard explanations focus on national variables—such as laws, institutions and culture—that tend not to vary within a country (or jurisdiction) and tend to evolve only slowly over time. I now turn to the factors that might account for these temporal and spatial trends.

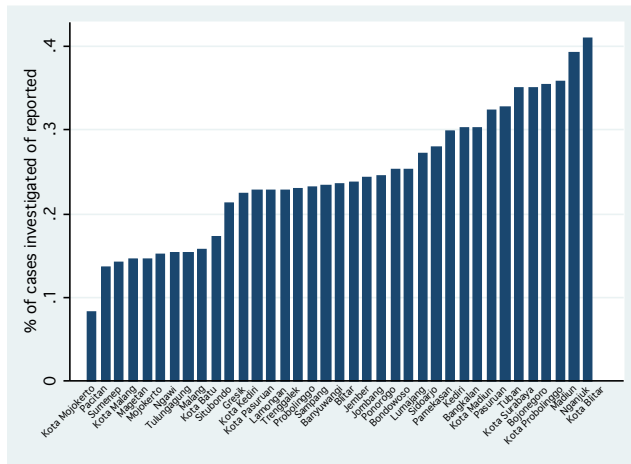


Figure 27: Ratio of Corruption Investigations to Corruption Reports (2000–2009)

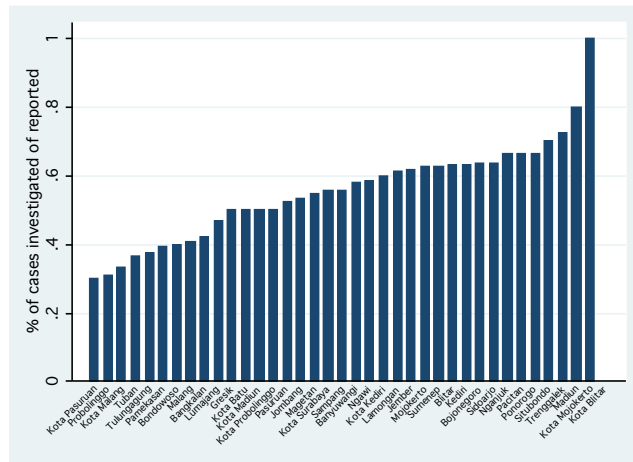


Figure 28: Ratio of Corruption Prosecutions to Corruption Investigations (2000–2009)

CORRUPTION LAW MOBILISATION: HYPOTHESES AND PROXY MEASURES

In Chapter 4, I argued that the enforcement of corruption laws depends on the formation of interest group coalitions that use their resources either to undermine or to facilitate law enforcement. The theory suggests that control over, or access to, resources with which one can influence law enforcement processes are central to case trajectories and outcomes. To test the legal mobilisation theory, I derive testable hypotheses and specify measures that can proxy as independent explanatory variables for these two sets of factors: resources and coalitions.

Resource Distribution

As discussed in Chapter 4, there are three types of resources that can influence corruption law enforcement: information resources relating to the ability to reduce the costs of law enforcement; material resources relating to the ability to subsidise the costs of law enforcement and to generate “outside options” for officials; and accountability resources relating to the ability to trigger, or credibly threaten to trigger, accountability mechanisms and sanctions. All three resources give anyone interested in an incident of corruption the opportunity to influence the payoffs and hence the strategic decisions of law enforcement officials. An important implication of this argument is that the distribution of these resources should affect the likelihood that cor-

ruption laws are enforced or not. However, because some resources can be used to both undermine or support corruption law enforcement processes, such as financial resources, it is necessary to identify resources that favour one particular side. I focus on the following measures to proxy the distribution of resources within each district and across time:

PERSONAL WEALTH An individual's personal wealth ensures direct access to material resources that they can use either to avoid or to support corruption investigations and prosecutions. For example, as observed in the Rembang case (Chapter 7), businessmen can use their resources to incentivise law enforcement officials to initiate corruption investigations but withdraw their support and resources if they switch sides. For this reason, I focus on the personal wealth of Bupati and Wali Kota, which they will unequivocally deploy to avoid corruption investigations and prosecutions. Specifically, the variable WEALTH captures the personal wealth of Bupati and Wali Kota as reported by the KPU prior to local executive elections.

Hypothesis 1: Wealthier Bupati and Wali Kota are less likely to be investigated and prosecuted for corruption.

MOBILISATION CAPACITY The theory and case studies also emphasise the ability to trigger accountability mechanisms through negative publicity and street power. This public pressure can alter the payoffs for strategic and risk-averse law enforcement officials. Mobilisation capacity can of course be used to undermine law enforcement, however, it tends to be used by those in favour of law enforcement action. This is not to suggest that it is *always* deployed to support law enforcement. As emphasised in the theory and case studies, corruption suspects will often co-opt into their coalition those with mobilisation capacity, including civil society organisations. However, because mobilisation capacity tends not to be deployed to avoid corruption enforcement, I hypothesise that higher mobilisation capacity is associated with higher levels of corruption enforcement.²¹ I proxy for

²¹ There have been some instances, particularly in those parts of Indonesia that have experienced extended periods of violence in the past decade—such as Maluku and West Kalimantan—where the threat of violence is used to discourage supra-local political actors from supporting local corruption law enforcement. On Maluku and West Kalimantan, see respectively: Patrick Barron, Muhammad Najib Azca, and Tri Susdinarjanti, *Seusai Perang Komunal: Memahami Kekerasan Pasca-Konflik di Indonesia Timur dan Upaya Penanganannya* [After Communal War: Understanding Post-Conflict Violence in Eastern Indonesia and its Management] (CSPS Books 2012); Jamie Davidson,

mobilisation capacity with two variables: the number of civil society organisations CSO and the number of universities UNI.

Hypothesis 2: Higher levels of latent mobilisation capacity, as proxied by the number of civil society organisations and universities, will be associated with higher probabilities that Bupati and Wali Kota face corruption investigations and prosecutions as well as higher levels of corruption law enforcement in general.

SUPRA-LOCAL POLITICAL LINKAGES The theory and background chapters (Chapters 4 and 5), as well as the case study chapters (Chapters 6 and 7), emphasise the centrality of political linkages to those who control political mechanisms of accountability over law enforcement authorities. In Indonesia, governors and presidents are particularly important and political linkages with these actors provide corruption suspects with the opportunity to influence whether local law enforcement officials are rewarded or reprimanded for their actions. These resources tend to favour incumbent Bupati and Wali Kota. I proxy for this resource with two dummy variables D_GL and D_PL, both of which equal 1 when the Bupati is politically aligned with the Governor and President respectively.

Hypothesis 3: Bupati and Wali Kota politically aligned with the Governor and President are less likely to be investigated and prosecuted for corruption.

Table 22 summarises the independent variables, their definitions, and their sources for the proxy measures relating to resource distribution.

Coalition Formation and Maintenance Constraints

The legal mobilisation theory argues that more resources do not necessarily mean more law enforcement because, as noted above, some resources can be used to both undermine and support corruption law enforcement processes. Furthermore, some actors can use their resources, and hence their potential to influence law enforcement outcomes, by extorting corruption suspects. It is therefore necessary to consider factors that will facilitate the formation and maintenance of “suspect coalitions” as well as “enforcement coalitions”. Quantitative data on patrons and political entrepreneurs, and information on

“Politics-as-usual on Trial: Regional Anti-corruption Campaigns in Indonesia” (2007) 20(1) *The Pacific Review* 75 .

Table 22: Resource Distribution: Variables, Definitions, and Sources

Variable Name	Definition	Source
WEALTH	The personal wealth of Bupati and Wali Kota as reported prior to their election, in million Rupiah	KPUD
CSO	Number of civil society organisations; the regression models use the natural log to correct skewness in the distribution	BPS
UNI	Number of universities	PDPT
D_GL	Dummy variable = 1 if District Head and Governor from same party	KPU
D_PL	Dummy variable = 1 if District Head and President from same party	KPU

Note: KPUD - District Election Commission; BPS - Central Statistics Agency; PDPT - Higher Education Database; KPU - General Election Commission.

asymmetries and trustworthiness are unavailable, and measures for such variables are difficult to construct. Thus this chapter necessarily focuses on more general proxies of constraints on coalition formation and maintenance.

TENURE The ability to sustain collusion with law enforcement officials and cooperation with coalition partners depends on how much longer a leader will remain in power. Therefore Bupati and Wali Kota are less able to sustain collusion with law enforcement officials and maintain their support coalition as their time in office approaches its end.²² I capture this as a dummy variable D_TENURE that equals 1 for Bupati and Wali Kota who are in their second and final term.²³

Hypothesis 4: Bupati and Wali Kota in their second and final term are more likely to be investigated and prosecuted for corruption.

POLITICAL FRACTIONALISATION The ability to form and sustain a coalition depends on the number of potential coalition members and the number of coalition members required to form a winning coalition. For incumbent Bupati and Wali Kota, the larger the number of potential coalition members, the more options exist for forming a coalition and for replacing existing coalition members. In con-

²² This phenomenon has seen the rise of “family dynasties” in local elections, which can be understood as a strategy to decrease the discount factor by relying on familial ties and common interests. See, for example: Michael Buehler, “Married with Children” (2013) 112 *Inside Indonesia* .

²³ Indonesian law only allows Bupati and Wali Kota to hold office for two five-year terms.

trast, higher levels of fractionalisation will facilitate corruption law enforcement generally because there will be more opportunities to secure information and other resources. I proxy the number of potential coalition members with a simple Herfindahl measure of political party fractionalisation in the district council. A district's fractionalisation score $PF = 1 - \sum (p_{ij})^2$, where p_{ij} is the proportion of political party i in district j . The measure is a value between 0 and 1, where values closer to 0 indicate low fractionalisation and values closer to 1 indicate high levels of fractionalisation. The PF data is reported yearly, however, it is the same for the periods 1999–2003, 2004–2008 and 2009–2013 because of the timing of local elections.

Hypothesis 5: Higher levels of political fractionalisation will be associated with lower probabilities that Bupati and Wali Kota face corruption investigations and prosecutions. Hypothesis 6: Higher levels of political fractionalisation will be associated with higher levels of corruption law enforcement in general.

MARGIN OF VICTORY The ability to sustain a coalition depends on its strength; the larger a coalition relative to the opposition coalition, the easier it is to maintain. This is because the incentives for coalition members to defect is low. I capture the initial strength of a Bupati or Wali Kota's coalition with the margin of victory, *BUP_MOV*, between the winning and the second ranked candidate in local Bupati and Wali Kota elections. A large margin of victory means that a Bupati or Wali Kota is well positioned to maintain a dominant coalition; whereas a small margin of victory means that a winning Bupati or Wali Kota is vulnerable to defections and the collapse of his or her coalition.

Hypothesis 7: Bupati or Wali Kota that come to power with high margins of victory are less likely to be investigated and prosecuted for corruption.

Table 23 summarises the independent variables, their definitions, and their sources for coalition constraints.

RESULTS I: BUPATI AND WALI KOTA INVESTIGATION AND PROSECUTION PROBABILITIES

This section considers the extent to which resource distribution and coalition constraints can account for the likelihood that Bupati and Wali Kota face scrutiny for corruption. Specifically, it considers whether

Table 23: Coalition Constraints: Variables, Definitions, and Sources

Variable Name	Definition	Source
D_TENURE	Dummy variable = 1 if District Head is in a second, final term in office	-
PF	Herfindahl index of political fractionalisation, value is between 0.00 and 1.00 where higher numbers indicate higher levels of fractionalisation	KPUD & PGSP
BUP_MOV	Margin between winning candidate and second ranked candidate in District Head elections, selected by DPRD members until 2004 and elected by public from 2005	KPUD

the independent variables that proxy for resources that can be used to avoid or support corruption law enforcement are related to the probability that a Bupati or Wali Kota is reported, investigated, and prosecuted while in office. One would expect, as noted above, that higher mobilisational capacity, as proxied by the number of civil society organisations and universities in a Bupati or Wali Kota’s district or city, would be associated with higher probabilities that a Bupati or Wali Kota was reported, investigated, and prosecuted. Similarly, it considers whether factors that make it easier (or harder) for Bupati and Wali Kota to sustain coalitions are associated with lower (or higher) probabilities that a Bupati or Wali Kota was investigated if reported and prosecuted if investigated. For example, one would expect that lame duck Bupati and Wali Kota would be less able to sustain a support coalition and avoid corruption investigations and prosecutions.

These propositions are tested on ICLED data from East Java. In chapters 6 and 7, I considered just four corruption cases involving Bupati and Wali Kota. In all four cases the district heads were investigated, however, only two were prosecuted. The analysis in these chapters confirmed the predictions and underlying logic of the theory for these four units. The quantitative methods in this chapter allow me to test the theory on a much larger sample of Bupati and Wali Kota. In total there are 122 observations. The data from East Java indicates that fifty or approximately 41 percent of the 122 Bupati and Wali Kota that held office over the thirteen year period between 2000 and 2012 were reported for corruption during their time in office. Of those reported, 19 or 38 percent (18 percent of the total) were formally investigated by law enforcement agencies during their time in office.²⁴ Even fewer were prosecuted, of those investigated 9 or 32 percent (6 percent of the

²⁴ Many more were prosecuted after leaving office.

total) were prosecuted while in office. These figures are summarised in Table 24, where the mean values for REP, INV and PRO indicate the percentage of Bupati and Wali Kota reported, investigated, and prosecuted while in office.

Table 24: Bupati and Wali Kota: Descriptive Statistics

Variable Name	Mean	Standard Deviation	Minimum	Maximum
Dependent Variables				
REP	0.409	0.494	0	1
INV	0.180	0.386	0	1
PRO	0.066	0.249	0	1
INV (if REP = 1)	0.380	0.490	0	1
PRO (if INV = 1)	0.318	0.477	0	1
Independent Variables				
WEALTH	10,253	18,902	456	121,000
CSO	372	294	17	1,502
UNI	3	5	0	26
D_GL	0.368	0.484	0	1
D_PL	0.279	0.450	0	1
D_TENURE	0.229	0.422	0	1
PF	0.769	0.094	0.200	0.906
BUP_MOV	0.237	0.194	0.001	0.875

The research objective in this section is to explain whether Bupati and Wali Kota are reported, investigated, and prosecuted by reference to the independent variables noted in the previous section. Table 24 also lists descriptive statistics for these independent or explanatory variables. It indicates, for example, that approximately 37 and 28 percent of Bupati and Wali Kota had, while in office, supra-local linkages with the then Governor and President. It also indicates that, on average, there were 372 registered civil society organisations in a given district and three universities. The average margin of victory for a Bupati and Wali Kota when selected or elected was about 0.237, indicating a winning margin of about ten seats when local councils selected Bupati and Wali Kota, or about 50,000 votes in a medium-size electorate of 250,000 voters. The minimum and maximum results indicate substantial variation. The closest winning margin, which occurred in Pasuruan in 2008, was just 0.001 percent or less than one thousand votes in a larger electorate of around 700,000.²⁵

²⁵ The three candidate pairs respectively received 239, 361, 238, 578, and 227,029 votes, with a margin of victory of just 783 votes between the first and second ranked pairs.

These explanatory variables can be tested using a logistic regression function. Logistic regression is used for predicting the probability of binary dependent variables and is therefore well suited to analysing corruption law enforcement in relation to district leaders. The logistic regression model is based on the logistic function, which returns a value between 0 and 1 (i.e. probability of an outcome occurring). The Logit estimators used in this analysis are given in equations (1)–(3).

$$\Pr(\text{REP}_i = 1 | z_i^{\text{REP}}) = \frac{e^{z_i^{\text{REP}} + u_i}}{e^{z_i^{\text{REP}} + u_i} + 1} = \frac{1}{1 + e^{-z_i^{\text{REP}} + u_i}} \quad (1)$$

$$\Pr(\text{INV}_i = 1 | z_i^{\text{INV}}, \text{REP}_i = 1) = \frac{e^{z_i^{\text{INV}} + v_i}}{e^{z_i^{\text{INV}} + v_i} + 1} = \frac{1}{1 + e^{-z_i^{\text{INV}} + v_i}} \quad (2)$$

$$\Pr(\text{PRO}_i = 1 | z_i^{\text{PRO}}, \text{INV}_i = 1) = \frac{e^{z_i^{\text{PRO}} + w_i}}{e^{z_i^{\text{PRO}} + w_i} + 1} = \frac{1}{1 + e^{-z_i^{\text{PRO}} + w_i}} \quad (3)$$

In these models, REP, INV and PRO are binary variables coded as 1 if a Bupati or Wali Kota is respectively reported, investigated, and prosecuted for corruption while in office. Equation (1) relates to the probability a Bupati or Wali Kota is reported for corruption, Equation (2) relates to the probability they are investigated given they are reported, and Equation (3) relates to the probability a Bupati or Wali Kota is prosecuted given he or she is investigated. The variables u_i , v_i , and w_i are errors terms for individuals i . The variable of interest is z —or, more specifically z^{REP} , z^{INV} and z^{PRO} —which is the systematic component of the model that captures the total contribution of all the independent variables used to explain the dependent variable. The variable z is defined as follows:

$$z = \beta_0 + \beta_1 x_1 + \beta_2 x_2 + \dots + \beta_k x_k \quad (4)$$

where β_0 is the intercept and β_1 , β_2 to β_k , etc. are the regression coefficients of the independent variables x_1 , x_2 to x_k , and k is the number of independent variables included in each model. I estimate five logistic models. Models 1, 2 and 4 focus on the independent variables related to resources. The variables of interest here are CSO, UNI, D_GL, and D_PL. The fifth resource variable, WEALTH, is not

included because of missing data.²⁶ Models 3 and 5 focus on the independent variables related to coalition formation. The variables of interest here are D_TENURE, PF, and BUP_MOV.

Table 25: Results I: Reports, Investigations and Prosecutions of Bupati and Wali Kota in East Java

Variable	REP	INV (if REP = 1)		PRO (if INV = 1)	
	Model 1	Model 2	Model 3	Model 4	Model 5
CSO	0.398*** (0.108)	0.612*** (0.213)		-0.873* (0.488)	
UNI	0.080*** (0.023)	0.519** (0.026)		-0.041 (0.044)	
D_GL	0.240 (0.283)	-0.750 (0.464)		-18.548*** (0.641)	
D_PL	-0.324 (0.311)	0.549 (0.502)		(omitted)	
D_TENURE			1.961*** (0.402)		-1.376* (0.722)
PF			-5.472** (2.758)		-9.431* (5.339)
BUP_MOV			-5.380*** (1.205)		-15.091*** (3.808)
Pseudo R ²	0.047	0.050	0.186	0.237	0.410
Observations	122	50	50	22	22

Note: Cells contain parameter estimates and standard errors. * = statistically significant at $\alpha < 0.1$, ** = $\alpha < 0.05$, and *** = $\alpha < 0.01$. The dataset in this section is collapsed and therefore frequency weights have been used to control for the years each Bupati and Wali Kota is observed in office. The natural log of CSO is used to correct for skewness.

The cross-sectional results presented in Table 25 are generally consistent with the proposition that resource distribution and constraints on coalition formation influence corruption law enforcement outcomes. The variables CSO and UNI are positive and statistically significant at either 1 percent and 5 percent for Models 1 and 2. This indicates that, as the number of civil society organisations or universities in a district or city increase, the probability that a Bupati or Wali Kota is reported and investigated for corruption increase. The regressions indicate that a standard deviation increase in CSOs increases the prob-

²⁶ I have only been able to ascertain the personal wealth of 53 of 122 Bupati and Wali Kota; 56.56 percent is therefore missing. Including WEALTH in the models would significantly reduce my sample size.

ability of a corruption report by almost 45 percent and a corruption investigation by 63 percent.

To illustrate this difference, consider the districts Bondowoso and Blitar. The former had an estimated 251 CSOs during Bupati Mashoed's first term (2000–2005), which is close to the mean number of CSOs of 261. In the latter, during the term of Bupati Muhadi (2001–2005), there were an estimated 653 CSOs, which is approximately one standard deviation greater than Bondowoso. In other respects the two Bupatis faced similar conditions: both had supra-local linkages with governors and presidents, and there was one university in each district. In this context, Model 1 predicts that Bupati Mashoed had a 39 percent probability of being reported for corruption and Bupati Muhadi a 48 percent probability. Model 2 predicts each respectively had a 28 percent and 41 percent probability of being investigated.

The supra-local political linkage dummies are inconclusive and not statistically significant in Models 1 and 2, and the dummy *D_PL* does not converge in Model 4. These irregular results are probably a reflection of a poorly specified measure. Bupati and Wali Kota election cycles are different from provincial gubernatorial and presidential election cycles. Therefore often Bupati or Wali Kota will only hold presidential linkages for a portion of their time in office. A collapsed dummy variable does not capture these dynamics and it suggests the need for a panel setup where the individual year is the unit of analysis.

The variables related to coalition formation are more conclusive and provide evidence for the propositions outlined above. In the results for Models 3 and 4, the coefficients for politicisation fractionalisation, *PF*, are negative and statistically significant at the 5 percent and 10 percent level respectively. These coefficients correspond to a 29 and 40 percent decrease in the probability that a Bupati or Wali Kota is investigated and prosecuted for one standard deviation increase in fractionalisation, or 0.094. The variable, *D_TENURE*, indicates that a lame duck Bupati or Wali Kota is more likely to be investigated but less likely to be prosecuted. Specifically, these coefficients respectively correspond to a 611 percent increase and 75 percent decrease in the probability that a Bupati or Wali Kota is investigated and prosecuted for corruption while in office. These estimates are statistically significant at the 1 and 5 percent levels. The different coefficient direction for *D_TENURE* possibly reflects the preference for prosecutors

to wait for lame duck district leaders to leave office to prosecute in order to avoid seeking presidential permission.

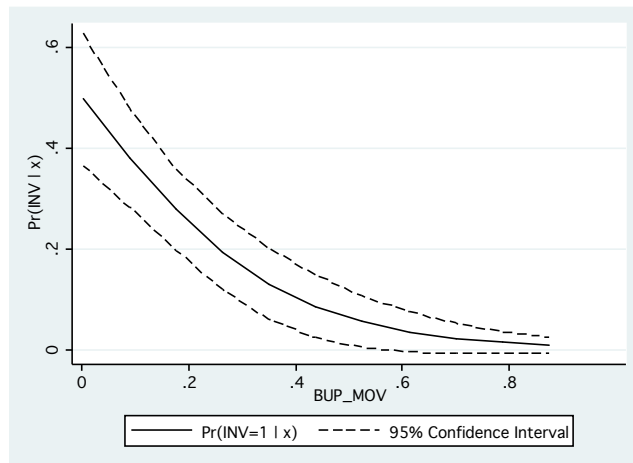


Figure 29: Margin of Victory and Corruption Investigation Probability

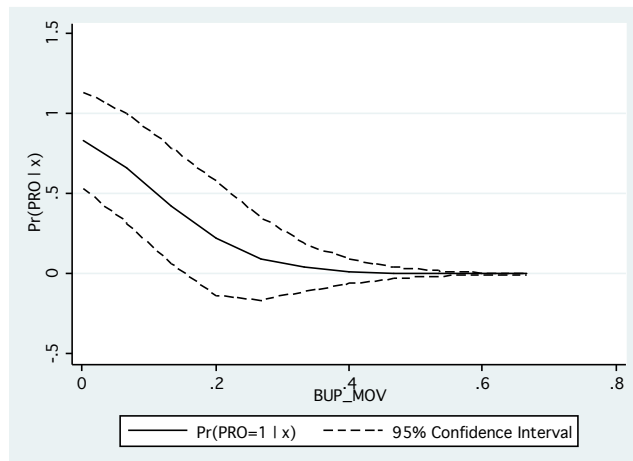


Figure 30: Margin of Victory and Corruption Prosecution Probability

The evidence strongly supports the proposition that the margin of victory of Bupati and Wali Kota when elected affects their prospects for maintaining support coalitions and avoiding corruption law enforcement actions. The coefficient variable BUP_MOV, which captures a Bupati or Wali Kota's margin of victory when selected or elected, is negative and statically significant at the 1 percent level. This indicates that the probability of being investigated and prosecuted for corruption declines as a leader's margin of victory increases. Figures 29 and 30 respectively show predicted probabilities for corruption investigations and corruption prosecutions. The small sample size for the latter means the confidence intervals are large, and even

negative and above one for some values of BUP_MOV. This suggests the need for a broader analysis beyond a single province.

Several robustness tests performed on the data increase confidence in the empirical findings presented above. I first considered Probit and Linear probability models, both of which generate results almost identical to the results of the Logit model presented in Table 25 above. I then examined the “Cook’s D” statistic for the Linear model. The Cook’s distance estimates the influence of each observation when performing ordinary least squares linear regression analysis. The general rule-of-thumb is that an observation where the Cook’s D statistic is greater than $4/n$, where n is the number of observations in the dataset, requires further consideration.²⁷ For the models relating to resource distribution (Models 1, 2 & 4), the Cook’s D statistic was above the critical value for most of the Wali Kota from Surabaya and Batu City. This is unsurprising given that both of these cities are unique in comparison to the rest of East Java. Surabaya is the second largest city in Indonesia whereas Batu City was only established in 2002. Re-estimating the Linear and Logit models excluding observations from these two locations does not alter the results. The Cook’s D statistic was above the critical value for two observations in the Linear estimate of Model 3 and one observation for the Linear estimate of Model 5. In the former, Bupati Mashoed from Bondowoso (2003–2008) and Bupati Diaaman from Situbondo (2000–2005) exert substantial influence over the model. In the latter, Bupati Sjahrazad Masdar of Lumajang (2009–2010) was prosecuted for an incident of corruption originating from when he was a local councillor in neighbouring Jember district.²⁸ When the Linear and Logit models are re-estimated excluding these observations, the substantive conclusions do not change. Indeed, removing these observations strengthens the results, with the coefficients D_TENURE, PF, and BUP_MOV moving further away from zero. Furthermore, the statistical significance of PF increases from the 5 and 10 percent level in Models 3 and 5 respectively to the 1 percent level in both models.

The current data on the wealth of Bupati and Wali Kota is limited and hence the variable WEALTH was not included in the models above. In total, wealth data is missing for 69 of 122 Bupati and Wali Kota in East Java in the period under investigation in this sec-

²⁷ The critical value for the dataset used in this section is 0.032.

²⁸ David Priyasidharta, “Bupati Lumajang Curhat Tentang Dirinya yang Sedang Dililit Kasus Korupsi [Bupati Lumajang Confides His Role in Corruption Case]” *Tempo Interaktif* (Jakarta, June 17, 2010) .

tion.²⁹ The data originates from the wealth reports that candidates are meant to lodge with the Regional General Election Commission (KPUD) prior to local elections. However, some KPUD did not report the results and I have been unable to obtain data for some candidates, particularly for earlier elections. Table 24 above provides descriptive statistics for the data that are available. The mean wealth is Rp. 10.2 billion (\$ 1.25 million) and the minimum and maximum are Rp. 456 million (\$46,000) and Rp. 121 billion (\$12.1 million) respectively. The mode is Rp. 4.03 billion (\$403,000).

Table 26 gives the mean wealth for Bupati and Wali Kota that were and were not reported, investigated, and prosecuted for corruption. It indicates that the average wealth is higher for those reported but lower for those investigated and prosecuted for corruption. This aligns with the propositions outlined above. However, a simple *t*-test indicates that none of these differences are statistically significant. This remains the case for *t*-tests conducted on the natural log of WEALTH, which reduces skewness in the data.³⁰ I therefore cannot conclude that personal wealth reduces law enforcement vis-a-vis Bupati and Wali Kota. Having said that, the trend is encouraging and suggests that a greater sample size could provide statistically significant evidence for the proposition.

Table 26: Corruption Law Enforcement and Wealth: Bupati and Wali Kota

Outcome	REP	INV	PRO
0	Rp. 8,385 (\$838,000)	Rp. 13,614 (\$1,361,400)	Rp. 12,756 (\$1,275,600)
1	Rp. 12,192 (\$1,219,200)	Rp. 9,506 (\$950,600)	Rp. 6,628 (\$662,800)
Observations	53	26	11

Source: ICLED & KPUD. All Rupiah values in millions.

RESULTS II: DISTRICT CORRUPTION LAW ENFORCEMENT COUNTS

This section broadens the analysis and tests the extent to which the explanatory variables relating to resource distribution and coalitions can account for subnational corruption law enforcement more gen-

²⁹ The total number of district heads reflects that there were two or three heads per district in a province with a total of 38 districts and cities, depending on whether districts heads were in office for one or two terms.

³⁰ A Wilcoxon rank-sum non-parametric test also indicated that the differences were not statistically significant.

erally. That is, in contrast to the previous section’s focus on Bupati and Wali Kota, this section focuses on the total number of corruption reports, investigations, and prosecutions at the district level. It therefore sheds light on the extent to which legal mobilisation can account for subnational corruption law enforcement. The entire population of corruption law enforcement actions in the ICLED dataset for East Java is used to estimate multilevel Poisson models that account for the number of corruption reports, investigations, and prosecutions. The unit of analysis is now the district-year. The panel setup includes count data for all district-years in the dataset between 2000 and 2009. Table 27 lists descriptive statistics for these dependent variables. It indicates that, on average, there are approximately eight corruption reports per district per year. It also indicates that there are, on average, 1.344 investigations and 0.913 prosecutions. Descriptive statistics for the panel analysis are also provided; there are some small differences because of the different time period under consideration and because of the way the data was collapsed in the previous section. Perhaps most significantly, the mean for the dummy variable D_PL has declined from 0.279 to 0.173; this reflects, as noted above, the fact that Bupati and Wali Kota are often only aligned with the President for a small proportion of their time in office.

Table 27: District Corruption Law Enforcement: Descriptive Statistics

Variable Name	Mean	Standard Deviation	Minimum	Maximum
Dependent Variables				
TR	8.160	6.714	0	40
TI	1.344	1.770	0	13
TP	0.913	1.335	0	8
Independent Variables				
CSO	321.355	225.534	15	1,156
UNI	2.626	4.608	0	26
D_GL	0.334	0.472	0	1
D_PL	0.173	0.379	0	1
D_TENURE	0.243	0.429	0	1
PF	0.742	0.095	0.200	0.906
BUP_MOV	0.244	0.193	0.001	0.875

The explanatory variables outlined earlier in this chapter are both time- and space-variant. In this way, they can explain both inter- and intra-district variation. Take, for example, the dummy variables for supra-local political linkages in Pacitan and Ponorogo, two neigh-

bouring districts in the southwest corner of East Java. The independent variables D_GL and D_PL capture the Bupati's linkage with the Governor and the President respectively. Over the ten year period in Pacitan, three Bupati were aligned with three different governors for a total number of seven years. Only in 2000, 2001, and 2005 were Bupati in Pacitan not aligned with the President. In contrast, in Ponorogo, neither of the district's two Bupati were ever aligned with the Governor or President in the period under consideration. In general, if one only considered this one explanatory variable, we would expect to see less corruption enforcement within Pacitan in comparison to Ponorogo. However, *within* Pacitan, we would expect to see more corruption law enforcement in 2000, 2001, and 2005 than in the other seven years. I can test the relationship between the independent variables and the count outcomes variables with a Poisson model. Equations (5)-(7) show the setup for the outcome variables TR, TI, and TP:

$$E(TR_{ij}|z_{ij}^{TR}) = e^{z_{ij}^{TR} + u_{ij}} \quad (5)$$

$$E(TI_{ij}|z_{ij}^{TI}) = e^{z_{ij}^{TI} + v_{ij}} \quad (6)$$

$$E(TP_{ij}|z_{ij}^{TP}) = e^{z_{ij}^{TP} + w_{ij}} \quad (7)$$

In these models, TR, TI and TP are count outcomes for the number of corruption incidents reported, corruption investigations initiated, and corruption cases prosecuted in year i for district j . Equation (5) relates to the number of corruption incidents reported, Equation (6) to the number of investigations initiated, and Equation (7) to the number of corruption prosecutions. The variables u_{ij} , v_{ij} , and w_{ij} are error terms for year i in district j . Again, the variable of interest is z —or, more specifically z^{TR} , z^{TI} and z^{TP} —which captures the total contribution of all the independent variables used to explain the dependent variable. As above, the variable z is defined:

$$z = \beta_0 + \beta_1 x_1 + \beta_2 x_2 + \dots + \beta_k x_k \quad (8)$$

where β_0 is the intercept and β_1 , β_2 to β_k etc. are the regression coefficients of the independent variables x_1 , x_2 to x_k , and k is the number of independent variables included in each model. I estimate six Poisson models. Models 1, 3, and 5 focus on the independent variables related to resources. The variables of interest here are CSO,

UNI, D_GL, and D_PL. The fifth resource variable, WEALTH, is again not included because of missing data. Models 2, 4, and 6 focus on the independent variables related to coalition formation. The variables of interest here are D_TENURE, PF, and BUP_MOV. I use a one-year lag for TR and TI in the models for TI and TP respectively. This allows me to control for the fact that investigations only occur after reports, and prosecution only happens after investigations.³¹

Overall, the empirical evidence provides broad support for the proposition that the distribution of resources and prospects for coalition formation or stability are important to subnational corruption law enforcement generally. The results require careful consideration as there are important differences from those presented in the previous section. Table 28 presents the results for the panel analysis, with all coefficients reported as Incidence Rate Ratios (IRR) for ease of interpretation. An IRR greater than one indicates that a unit increase in an independent variable x is associated with an increase in the expected number of events whereas an IRR less than one indicates that a unit increase is associated with a decrease in the expected number of events. The further from one (i.e. the higher the ratio) the stronger the associated effect. Most importantly, Models 1, 3, and 5 provide evidence for the propositions that relate resource distribution to subnational corruption law enforcement. However, Models 2, 4, and 6 suggest that the specific measures of coalition formation used in these models do not account for subnational corruption enforcement in general. This is unsurprising given that these measures are poor proxies for the prospect of coalition formation vis-a-vis corruption cases in a general sense.

The results for supra-local linkages are ambiguous whereas mobilisational capacity tends to increase corruption law enforcement. The statistically significant IRRs for TI and TP are less than one for D_PL, which indicates that the number of corruption investigations and prosecutions are lower when the district, or the Bupati or Wali Kota in a given district, is aligned with the President. The results for both D_GL and D_PL in Model 1 and 5 are inconclusive: they suggest that these supra-linkages do not affect the number of corruption reports and prosecutions. Indeed, for all three models, D_GL is not statistically significant, suggesting that links are important for law enforcement vis-a-vis political corruption—as the previous sec-

³¹ The average time between when a case is reported and an investigation is initiated and between when an investigation is initiated and prosecuted is about one year each.

Table 28: Results II: District Corruption Law Enforcement in East Java

Variable	TR		TI		TP	
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
CSO	1.132*		1.433***		1.671***	
	(0.079)		(0.141)		(0.194)	
UNI	1.047***		1.049***		1.042***	
	(0.017)		(0.018)		(0.015)	
D_GL	1.054		0.962		0.882	
	(0.049)		(0.115)		(0.123)	
D_PL	1.019		0.642***		0.791	
	(0.055)		(0.101)		(0.145)	
D_TENURE		1.064		1.449***		1.002
		(0.057)		(0.183)		(0.159)
PF		0.519**		52.400***		102.565***
		(0.140)		(37.811)		(91.784)
BUP_MOV		0.972		0.636		0.876
		(0.150)		(0.213)		(0.355)
L1.TR			1.016**	1.023***		
			(0.008)	(0.008)		
L1.TI					1.106***	1.098***
					(0.029)	(0.028)
Wald χ^2	13.98***	5.94	47.35***	62.12***	66.64***	54.44***
Observations	377	377	340	338	340	338
Groups	38	38	38	38	38	38

Note: Cells contain parameter estimates and standard errors. * = statistically significant at $\alpha < 0.1$, ** = statistically significant at $\alpha < 0.05$, and *** = statistically significant at $\alpha < 0.01$. Models 3 & 4 and Models 5 & 6 respectively include one-year lags for TR and TI to control for the fact that investigations only incur after reports as well as prosecutions after investigations.

tion indicated—but not corruption law enforcement in general. A possible further test of this could involve restricting the analysis to corruption law enforcement involving local politicians generally (i.e. district councillors). It is also not apparent that this resource will, in contrast to the previous section, unequivocally be used to avoid corruption investigations or prosecutions. Bupati and Wali Kota could use this resource to remove bureaucrats and undermine opposition parties. A further extension of this research could include generating dummy variables for local political linkages between local politicians and Bupati and Wali Kota.

The results for variables capturing the importance of mobilisational capacity provide evidence that these resources are critical to corruption law enforcement in general. For all three models the variables CSO and UNI are greater than one and statistically significant. According to Model 1, each standard deviation increase in the number of CSOs corresponds to a 13 percent increase in the incidence rate of corruption reports, a 43 percent increase in the incidence rate of investigations, and a 67 percent increase in the incidence rate of prosecutions. Similarly, the models estimate that each additional university is associated with a 5 percent increase in the incidence rate of corruption reports, a 6 percent increase in the incidence rate of corruption investigations, and a 6 percent increase in the incidence rate of corruption prosecutions.

The models for the variables relating to coalition formation indicate that only the measure of political fractionalisation, PF, is statistically significant. The IRRs for BUP_MOV are all less than one and indicate that corruption law enforcement decreases as a Bupati or Wali Kota's margin of victory increases. These estimates are not, however, statistically significant. Similarly, the variable D_TENURE is only statistically significant for Model 4—the estimate for the number of corruption investigations in a given year. These results are unsurprising given that these variables primarily relate to the ability of the Bupati and Wali Kota to form support coalitions. These are poor proxies for the ability of, say, village heads to form support coalitions and avoid corruption investigations. The models indicate that higher levels of political fractionalisation, PF, are clearly associated with higher levels of corruption law enforcement. This is intuitive. A fragmented local political elite is likely to increase prospects for forming coalitions to support corruption law enforcement when it comes to everyday corruption.

Several robustness tests suggest that these results are somewhat fragile and required further analysis. To test the robustness of the results, I first considered alternative model specifications. Three alternative models were considered: fixed and random effects Linear models, a Tobit model, and a Logit-Poisson hurdle model. All three models generated similar results; the direction of the coefficients and levels of statistical significant were the same or better. The Wald χ^2 results for the Tobit model were higher for Models 1 and 2, the same for Models 3 and 4, and slightly lower for Models 5 and 6. The results were largely inconclusive, however, when I incorporated variables that control for district size in the regressions. The inclusion of a district-level control variable for budget size in the model resulted in statistically insignificant estimates for all six models. The use of a dependent variable scaled to district size also generated inconclusive results. This makes final interpretation of the results in this section difficult. In contrast to the previous section, one would expect to observe more corruption cases in larger districts. One would also expect to see more universities and civil society organisations in larger districts, and it is feasible that larger districts are more politically fractionalised. It is therefore possible that the results in Table 28 are spurious. On the other hand, limitations in the dataset as discussed above—particularly the tendency for the newspaper methodology to capture locally salient cases involving local politicians and senior bureaucrats but not smaller corruption cases—caution against the inclusion of control variables relating to size, particularly given that resources and coalition constraints are likely to be more salient for these types of cases.³² The lack of multicollinearity amongst the independent variables also mitigate the possibility of spuriousness. In sum, the results in this second section are less conclusive than the previous section and suggest further research is required.

CONCLUSION

This chapter has presented quantitative evidence that supports the argument that resources and coalitions are critical to corruption law enforcement. The first section found that increases in mobilisation capacity—as proxied by civil society and universities—increased the probability that Bupati and Wali Kota were reported, investigated,

³² There is less variation in the number of local politicians and senior bureaucrats across districts than district size; almost all districts have 45 councillors and almost all cities have 25 councillors.

and prosecuted for corruption while in office. The results for supra-local linkages were more ambiguous. As hypothesised, the models suggested supra-local linkages with governors tended to decrease the probability that Bupati or Wali Kota would be investigated and prosecuted for corruption. However, the results for linkages with presidents were not statistically significant. These ambiguous results could stem from the use of collapsed dummy variables to proxy supra-local linkages. A casual examination of the dataset suggests that Bupati and Wali Kota are often investigated and/or prosecuted only after the Governor and President change and supra-local linkages are lost. The collapsed dummy variables are unable to capture this dynamic.

The section also found strong evidence that coalition formation is critical to Bupati and Wali Kota survival. Bupati and Wali Kota in the second and final term are more likely to be investigated although they are less likely to be prosecuted while in office. Both political fractionalisation and a Bupati or Wali Kota's margin of victory—two proxy measures for factors that influence prospects for coalition maintenance and stability—clearly decrease the probability that a Bupati or Wali Kota is investigated and prosecuted for corruption.

The second section provided additional evidence that the underlying logic of the legal mobilisation theory developed in this thesis could account for subnational law enforcement more generally. These results were less robust, however. Unsurprisingly, given the challenges of identifying quantitative measures for constraints on coalition formation and maintenance vis-a-vis corruption cases generally, the analysis above indicated a strong relationship between political fractionalisation and corruption law enforcement. One avenue for further analysis might involve the examination of a subset of the dataset on the number of corruption cases involving local councillors and senior bureaucrats. More conclusively, the section identified evidence that higher levels of mobilisational capacity are associated with higher levels of corruption law enforcement, although the inclusion of control variables relating to district size undermined these results.

In addition to providing empirical support for the thesis's theoretical perspective, this chapter has identified possibilities for future research. Indeed, there is ample scope for strengthening the quantitative findings through additional analysis of the rich data points already available in the ICLED dataset, as well as significant scope to expand the approach to subnational corruption law enforcement data collection pioneered here to include additional provinces and possi-

bly also additional countries. Not only could this further confirm the generalizability of the legal mobilisation theory of corruption law enforcement, but an increase in the number of observations would also allow for more sophisticated modelling techniques that could potentially address issues of spuriousness and endogeneity.

CONCLUSIONS

This thesis has sought to account for the trajectories, outcomes, and patterns of subnational corruption law enforcement in a new democracy. Its argument consisted of three main components, the first of which relates to the nature of corruption. I suggested that corruption generates a collective action problem: the benefits of corruption are concentrated on a small number of participants, and the impacts are distributed amongst society as a whole. The control of corruption therefore involves coordination and the provision of a rationale for the public enforcement of corruption laws. However, the ability to overcome the collective action problem inherent to corruption requires the existence of public law enforcement agencies that have the capability and resources to investigate corruption, and the incentives to prosecute rather than collude with corruption suspects. These conditions are rarely met in any context and certainly not in developing countries such as Indonesia.

The second component related to the type of law enforcement authorities that prevail in, but are by no means unique to, contemporary developing countries. In Chapter 3, I contrasted the different approaches to information, financing, and accountability in the private and public models of law enforcement. Chapter 5 then used these models to analyse the institutional context in Indonesia. I argued that, despite efforts to exert both greater public control over law enforcement institutions and increased public financing of law enforcement, weak accountability institutions and a continuing reliance on off-budget financing mechanisms means that public law enforcement agencies remain partially privatised in practice. In this sense, the criminal justice system in Indonesia is best understood as a privatised public law enforcement regime. This hybrid institutional

form struggles to enforce corruption laws because it lacks information about violations, resources, and incentives to enforce the law.

The third component sought to understand how privatised public enforcement regimes might still generate corruption law enforcement. Chapter 4 developed a legal mobilisation theory of subnational corruption law enforcement. I argued that, in the context of privatised public law enforcement regimes, local police and prosecutors rely on local individuals and groups to secure information, augment resources, and generate demand for the accountability of enforcement authorities. The successful mobilisation of corruption laws therefore requires a combination of material and nonmaterial resources, including information, financing, supra-local linkages, as well as mobilisational capacity. Chapter 8 provided quantitative evidence to suggest that the distribution of resources influenced legal mobilisation efforts and partially accounted for variation in the level of corruption enforcement across districts. But the presence of resources alone are insufficient to account for legal mobilisation. I argued that the dynamics of coalition formation and maintenance accounts for corruption case trajectories.

The argument accounted for the three empirical puzzles that emerge from the three research questions relating to trajectories, outcomes, and patterns. The first relates to the temporal trend in corruption enforcement. I attributed this secular increase in corruption law enforcement not only to national factors—particularly an increase in resources and the introduction of a case quota system—but also to an expansion of local political competition and civil society activity. Similarly, I ascribed the spatial trend to the uneven distribution of resources that facilitate the successful mobilisation of corruption laws (mobilisational capacity and supra-local linkages) as well as the uneven distribution of factors that facilitate coalition formation and maintenance (patrons and political entrepreneurs). Along similar lines, I attributed the trajectories of corruption investigations and prosecutions to coalition dynamics; particularly the incentive for co-optation and defection but also the inherent instability of strategic decision-making in environments plagued by information asymmetries and incentives to misrepresent one's material and nonmaterial resources.

THEORETICAL AND METHODOLOGICAL CONTRIBUTIONS

The thesis's argument and methodological approach have implications for four literatures that span the field of law and politics: the political economy of prosecution, theories of legal mobilisation, socio-legal studies, and studies of politics and power in contemporary Indonesia.

The Political Economy of Prosecution

The literature on political economy has long recognised the need to understand prosecution, and law enforcement more generally, in its political contexts. The central insight of the "courtroom communities" approach, for example, was that prosecutors are embedded in a larger criminal justice and political system that over time leads to the stable routines and informal norms for resolving and prosecuting cases.¹ More recently, scholars have sought to apply a principal-agent framework and focus on information asymmetries between the public (or politicians) and law enforcement agents, and their conflicting self-interest.² In this way, some models incorporate internal monitoring and sanctions of corruption law enforcement officials.³ The basic logic is that increasing detection of, and/or penalties for, bribery between criminals and law enforcement agents deter such transactions. Similarly, principals can increase their monitoring of agents and reward outcomes that align with their interests. In contexts such as the United States, this approach has been shown to result in political bias in the prosecution of political crimes such as corruption.⁴

1 James Eisenstein, Roy B Flemming, and Peter F Nardulli, *The Contours of Justice: Communities and their Courts* (University Press of America May 1999); James Eisenstein and Herbert Jacob, *Felony Justice: An Organizational Analysis of Criminal Courts* (Little, Brown 1977); Roy B Flemming, Peter F Nardulli, and James Eisenstein, *The Craft of Justice: Politics and Work in Criminal Court Communities* (University of Pennsylvania Press 1993); Martha A Myers and Susette M Talarico, *The Social Contexts of Criminal Sentencing* (Springer June 1987).

2 Sanford C Gordon and Gregory A Huber, "The Political Economy of Prosecution" (2009) 5 *Annual Review of Law and Social Science* 135 ; Michael E Levine and Jennifer L Forrence, "Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis" (1990) 6 *Journal of Law, Economics, & Organization* 167 .

3 Timothy Besley, *Principled Agents? The Political Economy of Good Government* (Oxford University Press 2007); Roger Bowles and Nuno Garoupa, "Casual Police Corruption and the Economics of Crime" (1997) 17(1) *International Review of Law and Economics* 75 .

4 Sanford C Gordon, "Assessing Partisan Bias in Federal Public Corruption Prosecutions" (2009) 103(04) *American Political Science Review* 534 .

The account offered in this thesis draws on this theoretical approach. I emphasised, for example, the ability of internal and political principals to intervene and influence the strategic decisions of enforcement officials. However, the thesis also returned to classic economic theories of law enforcement as well as the historical literature on private prosecution to challenge the assumptions that law enforcement agents are welfare-maximising and that prosecutorial institutions induce law enforcement in the public interest. The classic economic model of law enforcement focuses on the individual benefits that law enforcement agents gain from prosecution.⁵ The standard model assumes that agents receive no individual benefit from enforcing the law, and hence they *always* prefer a bribe, which can also lead to framing and extortion.⁶ One way to change this is through performance-based promotion systems, as mentioned above. Another, more radical proposal in its normative implications, is to privatise law enforcement.⁷ The basic logic is that rewards or bounties for law enforcement create an “outside option” for the law enforcement agent; that is, the official has an alternative to accepting a bribe. This private element of the hybrid model of law enforcement has important implications for the political economy of prosecution and law enforcement more generally.

The need to augment the resources of enforcement agencies shifts the political economy of prosecution from the formal institutions of accountability and elections to the dynamics of coalition formation. As the modelling in Chapter 3 demonstrated, the ability of both the suspect and the public to influence the outside option will often simply increase the bribe that law enforcement officials demand from corruption suspects. Therefore, unless the outside option is higher than the amount the suspect is willing to pay, the outside option simply affects the distribution of benefits between the corruption suspect and the enforcer rather than ensuring that the law is enforced. As this logic suggests, it also means that outcomes depend on the political and economic dynamics of local and supra-local coalition formation; the more resources a “enforcement coalition” can mobilise, the larger its outside option relative to the suspect’s coalition. These dynamics, as documented in Chapters 6 and 7, largely occur *outside*

5 Gary S Becker and George J Stigler, “Law Enforcement, Malfeasance, and Compensation of Enforcers” (1974) 3(1) *The Journal of Legal Studies* 1–13.

6 A Mitchell Polinsky and Steven Shavell, “Corruption and Optimal Law Enforcement” (2001) 81(1) *Journal of Public Economics* 1–10.

7 Nuno Garoupa and Daniel M Klerman, “Corruption and Private Law Enforcement: Theory and History” (2010) 6(1) *Review of Law & Economics* 1–15.

formal institutional channels. It therefore suggests a need for the political economy literature to go beyond the formal institutions that govern the relationship between politics and law enforcement and to pay greater attention to both informal social and political networks as well as broader political and economic structures of subnational polities.⁸

Theories of Legal Mobilisation

This thesis opens potential new avenues for research on theories of legal mobilisation. Its account of corruption law mobilisation draws upon and extends resource-centred theories in four main ways. First, it extends legal mobilisation studies to a new thematic area: corruption. Studies of legal mobilisation have primarily focused on public advocacy organisations and public law. As noted in Chapter 4, this includes civil rights, consumer rights, disability rights, the environment, labour and employment rights, and marriage equality. There are few studies related to crime and specifically economic crime.⁹ Second, it broadens the conceptualisation of the resources that are critical to legal mobilisation. The institutional context—which I characterise as a privatised public enforcement regimes—necessitates a different set of

8 This is how most political scientists research Indonesian institutions. See, for example: Vedi R Hadiz, *Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective* (Stanford University Press January 2010); Vedi R Hadiz and Richard Robison, "The Political Economy of Oligarchy and the Reorganization of Power in Indonesia" (2013) 96(1) *Indonesia* 35 ; Andrew MacIntyre, "Funny Money: Fiscal Policy, Rent-seeking and Economic Performance in Indonesia" in Mushtaq H Khan and Jomo KS (eds.), *Rents, Rent-Seeking and Economic Development: Theory and Evidence in Asia* (Cambridge University Press 2000); Ross H McLeod, "Inadequate Budgets and Salaries as Instruments for Institutionalizing Public Sector Corruption in Indonesia" (2008) 16(2) *South East Asia Research* 199 ; Marcus Mietzner, "Soldiers, Parties and Bureaucrats: Illicit Fund-raising in Contemporary Indonesia" (2008) 16(2) *South East Asia Research* 225 ; However, studies of legal institutions and law enforcement have tended to remain focused on formal institutions or only indirectly explored question of political economy. See, for example: Sebastiaan Pompe, *The Indonesian Supreme Court: A Study of Institutional Collapse* (Cornell Southeast Asia Program Publications November 2005); Simon Butt, *Corruption and Law in Indonesia* (Routledge 2011); Some partial exceptions include: Simon Butt and Tim Lindsey, "Judicial Mafia: The Courts and State Illegality in Indonesia" in Edward Aspinall and Gerry van Klinken (eds.), *The State and Illegality in Indonesia* (KITLV Press); Yudi Kristiana, *Towards a Progressive Public Prosecutor's Office: A Study of Investigation, Prosecution and Adjudication of Criminal Acts of Corruption* (Masyarakat Transparansi Indonesia 2010).

9 McCann notes that legal mobilisation studies of corporate legal practice are likely to become important. Michael McCann, "Litigation and Legal Mobilization" in Keith E Whittington, RDaniel Kelemen, and Gregory A Caldeira (eds.), *The Oxford Handbook of Law and Politics* (Oxford University Press 2008) 535.

resources; this highlights the possibility of expanding studies of legal mobilisation to different institutional and economic contexts.

The two additional contributions of the thesis are more conceptual and methodological. The third contribution relates to my conceptualisation of those involved in the mobilisation of corruption laws. Most accounts of legal mobilisation emphasise the perspective of public advocates and generally assume that these groups are primarily motivated by the social objectives they aim to realise.¹⁰ In contrast, I do not assume that those engaged in the mobilisation of corruption laws are primarily motivated by the anti-corruption rhetoric they espouse as part of their legal mobilisation efforts. By opening up the idea of broader motivations, there is a potential to expand legal mobilisation scholarship to include a broader set of actors and issues. Finally, and building on the analytical approach to socio-legal studies I advocate, the thesis attempted to analyse explicitly the strategic dynamics of legal mobilisation. That is, it used game theoretic methods to highlight the strategic interactions and payoffs for groups and coalitions engaged in the mobilisation of law. The game theoretic method—or “tool to think with”—is likely to be particularly useful in legal mobilisation studies of class action or other forms of “complex” litigation where the political and economic stakes are high.¹¹ The addition of basic game theoretic methods to the legal mobilisation methodological “toolkit” may also lead to a fruitful exchange with legal scholars and political scientists that have sought to analyse litigation strategies and decisions as strategic games.¹²

Socio-Legal Studies

This thesis has sought to make a methodological contribution to socio-legal studies. The diverse topics studied by socio-legal scholars means that it is largely our commitment to empirical research and its methodology that unites us. We are also more loosely united by a commitment to socio-legal theory. I have sought to illustrate how game theoretic methods and formal analysis could enrich socio-legal meth-

¹⁰ This is most clearly seen in the closely-related literature on “cause lawyering”. See, for example: Austin Sarat and Stuart Scheingold (eds.), *Cause Lawyering: Political Commitments and Professional responsibilities* (Oxford University Press 1998); Austin Sarat and Stuart A Scheingold (eds.), *Cause Lawyering and the State in a Global Era* (Oxford socio-legal studies, Oxford University Press 2001).

¹¹ McCann (see n. 9) 535.

¹² Douglas G Baird, RobertH Gertner, and RandalC Picker, *Game Theory and the Law* (Harvard University Press 1994).

ods and theoretical debates. Methodologically my thesis builds on a strong body of socio-legal research conducted in Indonesia and elsewhere that looks beyond law and emphasises formal and informal institutions, local interests and adaptations, political economy, and the importance of understanding both macro-level structures and trends as well as micro-level actions and mechanisms.¹³ The thesis presented here extends this approach in two main ways.

First, the thesis's use of game theoretic methods and formal analysis to explicitly model the incentives and strategic interactions involved in law enforcement and legal mobilisation illustrates how the analytical approach could be further strengthened.¹⁴ This is particularly apparent in the thesis's three conceptual and theoretical chapters (Chapters 2, 3 and 4). For example, Chapter 2 sought to boil down the thesis's conceptualisation of corruption to a core set of characteristics that were of particular relevance to law enforcement and Chapter 3 sought to analyse the dynamic nature of law enforcement using game theoretic methods. Similarly, Chapter 4 sought to identify a number of factors that were critical to legal mobilisation and explicitly model the collective action dilemma using a coalition game. I contend that these models, and the process of developing them, helped to better specify my theoretical claims *and* analyse my empirical data. I do not claim that formal game theoretic methods are necessary for analytical socio-legal research. They should, however, be considered when conducting socio-legal research on topics that involve strategic interactions amongst actors with clear interests in certain legal and regulatory outcomes.

Second, my thesis has sought to illustrate the utility of mixed- or multi-method research methodologies for socio-legal research. There is historical precedent for mixed methods research in socio-legal stud-

¹³ Some recent research conducted in Indonesia includes: Adriaan Bedner and Stijn Cornelis van Huis, "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism" (2010) 6(3) *Utrecht Law Review* 175 ; Stijn Cornelis van Huis and Theresia Dyah Wirastru, "Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws" (2012) 13(1) *Australian Journal of Asian Law* 1 ; John F McCarthy, "Changing to Gray: Decentralization and the Emergence of Volatile Socio-legal Configurations in Central Kalimantan, Indonesia" (2004) 32(7) *World Development* 1199 ; Rikardo Simarmata, "Indonesian Law and Reality in the Delta: A Socio-Legal Inquiry into Laws, Local Bureaucrats and Natural Resources Management in the Mahakam Delta, East Kalimantan" (PhD Thesis, Leiden University 2012).

¹⁴ My thesis drew theoretical and methodological inspiration from analytical sociology as well as the analytical narrative approach to comparative case analysis. See: Peter Hedström and Peter Bearman, "What is Analytical Sociology All About? An Introductory Essay" in *The Oxford Handbook of Analytical Sociology* (Oxford University Press 2009); Robert H Bates et al., *Analytic Narratives* (Princeton University Press 1998).

ies.¹⁵ Some classic as well as more recent socio-legal scholarship uses multiple research methods, including Galanter's article on why legal processes favour the "haves", Genn's work on paths to justice, and Rosenberg's work on civil rights.¹⁶ It seems, however, that the methodological debates of the 1990s have divided empirical legal research along methodological lines. Socio-legal scholars today seem primarily engaged in qualitative research and there is now a separate "empirical legal studies" movement that almost exclusively uses quantitative data to analyse legal problems and theories. My research has drawn on qualitative comparative case studies, game theoretic modelling methods, and quantitative statistical analysis. These methods have facilitated initial exploration, theory building and logical analysis. They have also allowed me to test some of the theoretical implications that flow from the theory. This mixed-method research strategy facilitated the development of a parsimonious, generalizable, and empirically falsifiable theory of corruption law enforcement.

The Indonesian State

The analysis presented in this thesis also contributes to current debates about how to characterise politics and the state in post-Suharto Indonesia.¹⁷ The analyses, a selection of which were recently captured in a special section in the journal *Indonesia*, largely hinge on the degree to which material and non-material resources account for political and policy outcomes.¹⁸ One set of scholars, working in a neo-Marxist tradition, emphasise the interests of oligarchs and their material resources in political processes and outcomes.¹⁹ Although there are important differences, these scholars share the view that In-

15 Laura Beth Nielsen, "The Need for Multi-Method Approaches to Empirical Legal Research" in Peter Cane and Herbert M Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 952.

16 Marc Galanter, "Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change" (1974) 9(1) *Law & Society Review* 95 ; Hazel G Genn and Sarah Beinat, *Paths to Justice: What People Do and Think About Going to Law* (Hart Publishing 1999); Gerald N Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (University Of Chicago Press 1993).

17 These debates continue the previous long-running scholarship on the nature and characterisation of Suharto's New Order regime. See, for example: Dwight King, "Indonesia's New Order Regime as a Bureaucratic Polity, a Neopatrimonial Regime or Bureaucratic Authoritarian Regime: What Difference does it Make?" In Benedict Anderson and Audrey Kahin (eds.), *Interpreting Indonesian Politics: Thirteen Contributions to the Debate* (Cornell Modern Indonesia Project 1982).

18 Michele Ford and Thomas B Pepinsky, "Beyond Oligarchy? Critical Exchanges on Political Power and Material Inequality in Indonesia" (2013) 96(1) *Indonesia* 1 .

19 Hadiz and Robison (see n. 8); Jeffrey A Winters, "Oligarchy and Democracy in Indonesia" (2013) 96(1) *Indonesia* 11 .

Indonesia's democratisation and decentralisation have not led to a fundamental change to the power and influence of national and local oligarchs. Another set of scholars acknowledge the economic and power inequality in contemporary Indonesia—suggesting that democratisation and decentralisation have altered power relations—but also argue that other forms of non-material resources play a crucial role in political battles and policy outcomes.²⁰

The theoretical and empirical analysis of subnational corruption law enforcement presented in this thesis contributes to this debate in two ways. At a more macro-level, it lends support to a framework that emphasises both material and non-material power resources as well as the important alliances between those who control these different resource types. This theoretical orientation is on clear display in the thesis's core theory chapter, Chapter 4. The legal mobilisation perspective that this chapter developed focuses on both material and non-material resources, such as mobilisational capacity, supra-local political linkages, and information. To a certain degree, material resources are fungible in that they can be converted to non-material resources. However, my research suggests that this is both a political process of coalition-building, and a material process of economic co-optation. Local oligarchs or patrons can deploy their material resources to co-opt members of the "suspect coalition", and they can certainly use their material resources to delay law enforcement action. But coalition dynamics are also influenced by factors such as trust and reputation—and competition amongst local patrons is just as important as cooperation.

The thesis also provides evidence that law is an increasingly important non-material resource in democratic and decentralised Indonesia. Current scholarship that acknowledges the importance of non-material resources in Indonesia emphasises mobilisational, symbolic, and coercive forms.²¹ There is very little, if any, mention of law as a non-material resource.²² My findings, in contrast, suggest that law

20 Edward Aspinall, "Popular Agency and Interests in Indonesia's Democratic Transition and Consolidation" (2013) 96(1) *Indonesia* 101 ; R William Liddle, "Improving the Quality of Democracy in Indonesia: Toward a Theory of Action" (2013) 96(1) *Indonesia* 59 ; Thomas B Pepinsky, "Pluralism and Political Conflict in Indonesia" (2013) 96(1) *Indonesia* 81 .

21 Aspinall, "Popular Agency and Interests in Indonesia's Democratic Transition and Consolidation" (see n. 20); Ryan Tans, *Mobilizing Resources, Building Coalitions: Local Power in Indonesia* (Policy Studies, 64, East-West Center 2012) ; Pepinsky, "Pluralism and Political Conflict in Indonesia" (see n. 20).

22 Winters develops a typology of oligarchy that includes a type of oligarchy that is constrained by law—"civil oligarchs"—but using the United States not Indonesia as his archetype. See: Jeffrey A Winters, *Oligarchy* (Cambridge University Press 2011).

is an increasingly important resource, and that legal institutions are increasingly important sites for social and political conflict. This was particularly evident in Chapter 5 as well as the empirical case studies chapters (Chapters 6 and 7). Chapter 5 showed how law and legal institutions were—despite the rule of law rhetoric—almost entirely irrelevant to the exercise of power during Suharto’s New Order. In contrast, specific laws and regulation are increasingly discussed in the mainstream media, and legal institutions are no longer completely irrelevant to national policy-making processes.²³ Indeed, the power and influence of courts and law enforcement authorities is one of the primary reasons why these institutions are able to capture significant rents from local politicians, as discussed in Chapter 5. I do not mean to overstate the power of law in contemporary Indonesia, but simply to note that law and legal institutions are an increasingly significant non-material resource that scholars should begin to consider in their analysis of both national and local politics and policy-making. It is also necessary to consider how access to these growing legal resources might be better distributed and used to achieve more equitable and progressive social and political objectives.

POLICY IMPLICATIONS

This thesis has shed light on why so many progressive laws and constitutions in developing countries go unenforced. I have argued that legal reforms to corruption laws, leadership commitments to tackle corruption, and organisational reforms are insufficient to account for subnational corruption law enforcement—it is also necessary to consider when and why local individuals and groups seek to mobilise corruption laws. The broad policy implications are clear: that strong laws and supportive national leadership are perhaps necessary but ultimately insufficient to ensure corruption law enforcement. Indeed, the lack of any change—despite legal reforms and leadership commitments during the Suharto era—highlights the limitations of reforms that emphasise laws and leaders. As the theoretical discussion above highlighted, laws and leadership have not affected corruption law enforcement nearly as significantly as democratisation and decentralisation reforms, and the establishment of a relatively free and independent press and civil society. These societal changes are the primary

²³ See, generally: Philippa Venning, “Determination of Economic, Social and Cultural Rights by the Indonesian Constitutional Court - Tags: SOCIAL rights CULTURAL rights” (2008) 10(1) *Australian Journal of Asian Law* 100 .

impetus that propels local demand to create and enforce corruption laws.

This is not to suggest that legal mobilisation can completely overcome the limitation of privatised public law enforcement regimes. Indeed, the thesis suggests that case trajectories and outcomes are dependent on the interaction of both enforcement “supply” and “demand”, where supply refers to the state institutions and organisations with responsibility to enforce the law and deliver legal services, and demand refers to the individuals and groups that use the law and legal services to achieve their social and political objectives. The thesis therefore suggests policy implications for increasing the *supply of*, and the *demand for*, corruption law enforcement. These policy implications flow from the three conceptual and theoretical chapters: Chapter 2, 3 and 4.

The model developed in Chapter 3 provided a conceptual framework for analysing some of the key policy reforms relating to the supply of law enforcement. It identified three core variables that can be thought of as policy levers for altering the supply of corruption law enforcement: information, resources, and accountability. I analysed the policy implication of these levers in two ways: their implications for enforcement (i.e. which cases are enforced) and their implication for power (i.e. which groups are empowered by these reforms). The first variable relates to how law enforcement authorities access information about violations and secure evidence for their investigations. There are two main approaches: methods that rely on technology and methods that rely on informants. The former empowers law enforcement agents whereas the latter empowers local actors with intimate knowledge about violations. The model developed in this thesis makes clear, however, that greater access to information will not in itself induce an increase in law enforcement unless there is a commensurate increase in resources to act on this information.

The lack of resources is a common refrain of law enforcement authorities generally, but specifically in relation to economic crimes including corruption and corporate fraud.²⁴ In Indonesia, this argument has helped to justify a dramatic increase in law enforcement budgets. However, the model makes clear that resources alone will also not ensure law enforcement. The fungible nature of financial resources means that they are often simply allocated to activities that suit the interests of law enforcement officials, which could include

²⁴ Michael Levi, *Regulating Fraud: White-Collar Crime and the Criminal Process* (Tavistock Publications 1987) 137.

augmenting their personal income or achieving other law enforcement outcomes demanded by formal and informal superiors. An increase in law enforcement therefore requires a comparable strengthening of incentive structures; that is, a mechanism that ensures that this information and these resources are actually used for corruption law enforcement purposes.

Conversely, an increase in accountability demands without commensurate increase in resources (and information) will create incentives for law enforcement officials to rely on off-budget funds and cross-subsidisation in order to avoid these sanctions, thus distorting their internal incentives and decision making. The model developed in Chapter 3 also makes it clear that the effects of improvements to these key elements of supply are relative to the complexity or interests of the corruption case. That is, relatively minor improvements will create incentives to enforce the law in relation to petty but not grand corruption. The introduction of the case quota system in 2007 in Indonesia is an instructive example. The system required that each district produce at least three corruption cases per year, but this had the effect of incentivising law enforcement officials to meet these quotas in the easiest way possible. Supply side reforms tend to lead to a significant increase in the total number of corruption cases prosecuted but very little, if any, increase in the number of significant corruption cases. There need to be more fundamental changes to incentive structures and accountability systems—together with an equivalent increase in access to information and resources—in order to ensure that investigators and prosecutors have the capacity and the career incentives to tackle large, complex, and politically sensitive corruption cases.

The second set of policy recommendations relates to increasing demand for corruption law enforcement. The demand side works through two mechanisms. It can implicitly subsidise the costs associated with law enforcement or it can implicitly bolster the accountability or incentives of law enforcement officials. The legal mobilisation theory developed in Chapter 4 suggests there are two general avenues for increasing law enforcement demand. One avenue involves increasing the availability of resources that are critical to corruption law enforcement. This could include: increasing local actors' access to information about corruption through support for the recently established freedom of information laws and Public Information Commissions; providing financial resources for legal mobilisation via legal

aid organisations and other actors such as political parties;²⁵ and increasing access to accountability mechanisms. In Indonesia, for example, the law enforcement commissions could expand their presence at the subnational level. There is also scope for improving access to key political, professional, and internal accountability mechanisms, that currently have little, if any, presence at the local level. Furthermore, considering that there are few individuals or organisations that have the technical capacity to use the mechanisms that are available at the local level, targeted educational resources would be beneficial to, for example, increase the capacity of subnational CSOs to use the pre-trial review mechanism (*praperadilan*). As demonstrated in the empirical chapters, more resources generally result in more legal mobilisation and corruption law enforcement. However, the theory and empirical case studies indicate that resources alone do not ensure the enforcement of corruption; rather they can be used to bolster the “enforcement coalition”.

The third set of policy measures relates to facilitating the formation and maintenance of “enforcement coalitions”. Chapter 4 emphasised patrons—and the financial resources they provide—as well as political entrepreneurs. The importance of local patrons highlights the importance of pluralist and competitive local politics and economies. Coalitions that support corruption law enforcement are less likely to form where political and business interests are highly concentrated in the hands of a small local elite. In those locations, it is necessary for local actors to “provincialise” or even “nationalise” the case and the coalition. One could facilitate this through support for institutions that generate supra-local linkages as well as internal policy measures that move corruption case handling from district to provincial or regional units. Alternative sources of financing for corruption law enforcement could also be explored such as national budget support for local legal aid organisations involved in anti-corruption efforts. This would also help to reduce the enforcement coalitions dependence on the interests of local patrons.

Finally, there is a need to coordinate mechanisms and commitment devices. At a general level, this involves the strengthening of local

²⁵ This does not necessarily mean that specific resources should be provided to political parties, for example, but rather that general financial resources that are independent of local interests might facilitate legal mobilisation that is for the public good. On the funding of political parties in Indonesia and the implications for corruption, see: Marcus Mietzner, “Party Financing in Post-Soeharto Indonesia: Between State Subsidies and Political Corruption” (2007) 29(2) *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 238 (<p>Volume 29, Number 2, August 2007</p>).

civil society, political parties, and local media outlets to be independent from local political and economic interests. As long as these institutions are dependent on local governments or business people for the majority of their financing it will remain difficult for civil society to form and maintain enforcement coalitions. This is particularly important in cases involving local politicians and senior bureaucrats. Indeed, the general implication is that individuals or institutions that are independent from local interests implicated in a case under scrutiny are best able to coordinate and maintain local enforcement coalitions.

It is important to emphasise that support for the demand-side should not displace support for supply-side reforms. The model developed in Chapter 3 clearly indicates that the level of resources required to pursue corruption cases successfully is *relative* to the interests and resources of those engaged in corruption. The model also indicates that the scales are disproportionately tipped in favour of those who engage in corruption because of the way the costs and benefits of corruption are distributed. The general implication is that support for legal mobilisation efforts are well suited to overcoming “petty corruption” involving service delivery at the local level, but less suited to tackling “grand corruption” cases involving powerful interests and individuals. The scale of mobilisation required to pursue large cases was demonstrated in the two positive cases analysed in Chapter 6, which in Temanggung included demonstrations and strikes that shut down the local government, and in Cilacap required the involvement of high-level national interests. It is arguably inefficient and unrealistic to expect this level of mobilisation for every case.

Overcoming and deterring “grand corruption” will necessarily require both a “bottom up” and “top down” approach; *only* working on *either* the demand or supply side will ensure enforcement of “petty corruption” cases at the margins but it will also increase the bargaining power and therefore rent seeking capabilities of law enforcement institutions in larger cases. The ability of law enforcement authorities to tackle “grand corruption” will require improvement and institutionalisation of demand as well as a commiserate improvement in the supply of law enforcement. The institutionalisation of supply could involve the extension of the professional, independent, and well-resourced KPK to the subnational level. The institutionalisation of demand will ultimately require an overhaul of party politics in Indonesia.

FUTURE RESEARCH

Despite four years of full-time work it feels that I have only begun to scratch the surface of this fascinating and important area of research. There are at least four ways in which the research could be refined and extended. The first relates to the game theoretic models developed in Chapters 3 and 4. The use of this analytical method as a way of thinking was critical to the theory development and the empirical analysis in this thesis: it forced parsimony on the researcher. However, during the research it became apparent that the number of actors and interactions makes for a level of complexity that is difficult to resolve using the mathematically driven game theoretic approach. Efforts to fully solve the model were abandoned for this reason. One way to overcome this complexity and associated methodological limitations would be to use Computer-Based Modelling (CBM) techniques. This could also lead to more sophisticated analysis of the quantitative data, including better specification of the fungibility of supply- and demand-side inputs to corruption law enforcement.

The second direction for further refinement and extension relates to the unique dataset and the newspaper methodology. The analysis presented in Chapter 8 only scratches the surface in its use of the Indonesia Corruption Law Enforcement Dataset (ICLED) developed as part of this project. There are many data points that remain unanalysed, including data from one whole province, and more sophisticated statistical techniques that could be used. There is also considerable scope to expand the coverage of the dataset. During the course of my field research, I learnt that one of the leading anti-corruption NGOs in Indonesia uses newspapers to monitor corruption and I am currently in discussions with them and an international donor on how to improve this system along the lines of ICLED. Not only would this serve as an important data source for advocacy purposes, but it would also allow me and others interested in corruption research in Indonesia to overcome some of the statistical power issues identified in the current analysis as well as the more general limitations of relying on only qualitative research methods.

There is also considerable scope to expand the comparative case study work. During the course of this project, I conducted a consultancy on community-level corruption cases related to a large government-supported, community-driven development program. The theoretical framework was directly applicable. The same set of resources were

critical to legal mobilisation and case outcomes: patrons and community entrepreneurs as well as trust and information asymmetries were important to community-level collective action efforts. This suggests the possibility for expanding the generalizability of the thesis's legal mobilisation theory. Finally, there is also scope to expand the analysis to other countries with similar scope conditions, that is, where law enforcement authorities are best characterised as privatised public enforcement regimes. This would allow for a true out-of-sample test and could increase confidence in the generalizability of the legal mobilisation perspective on corruption law enforcement developed in this thesis.

A

ICLED NEWSPAPER COVERAGE

Table 29: ICLED Newspaper Coverage – East Java and North Sumatra (2000–2012)

Newspaper	Coverage												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
National													
Kompas*	C	C	C	C	C	C	C	C	C	C	C	C	C
East Java													
Jawa Pos	C	C	C	C	C	C	C	C	C	C	C	C	C
Surya	C	C	C	C	C	C	C	C	C	C	C	C	C
Malang Pos	M	C	C	C	C	C	C	C	C	C	-	-	-
Radar Banyuwangi	C	C	C	C	C	C	C	C	C	C	C	C	C
Radar Bromo	C	M	C	C	C	C	C	C	C	C	-	-	-
Radar Jember	C	C	C	C	C	C	C	C	C	C	-	-	-
Radar Malang	C	C	C	C	C	C	C	C	C	C	-	-	-
Memorandum	C	C	M	M	M	P	C	C	C	C	-	-	-
Radar Bojonegoro	C	C	C	C	C	C	C	C	C	C	-	-	-
Radar Madura	P	C	C	C	C	C	C	C	C	C	-	-	-
Surabaya Pos	C	C	C	C	C	C	C	C	C	C	-	-	-
Radar Kediri	C	C	AC	C	C	C	C	C	C	C	-	-	-
Radar Madiun	C	M	C	C	C	P	C	P	C	C	-	-	-
Radar Tulungagung	M	M	AC	C	C	C	C	C	C	C	-	-	-
North Sumatra													
Analisa	M	M	P	C	C	C	C	C	C	C	-	-	-
Sinar Indonesia Baru	M	M	C	C	C	C	C	C	C	C	-	-	-
Waspada	C	C	C	C	C	C	C	C	C	M	-	-	-
Sunut Pos	M	M	C	C	M	M	C	C	C	C	-	-	-
Posmetro/Radar Medan	P	P	P	C	C	C	C	C	C	C	-	-	-
Metro Siantar	M	M	M	M	C	C	C	C	C	C	-	-	-
Metro Asahan	M	M	M	M	M	M	M	M	C	C	-	-	-
Metro Tapanuli	M	M	M	M	M	C	C	C	C	C	-	-	-
Metro Tabagsel	M	M	M	M	M	M	M	M	M	C	-	-	-

Note: Key as follows: C = Complete; P = Partial; M = Missing; - = not applicable as not included in dataset.

Indonesia Corruption Law Enforcement Dataset
(ICLED)

Dataset Coding Manual

Coding Phases I and II –
Article Identification and Case Coding

Draft, April 2011

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1 Introduction

The purpose of this manual is provide specific instructions on:

- Key definitions and concepts that will help you understand the corruption cases
- Instructions on how to navigate the computer, open newspaper files, and file articles by case

- Instructions on how to input basic case data (phase I) and detailed case data (phase II).
- How your work will be subject to quality control
- The way in which you will record problems in a Daily Log.

2 Summary of Coding Phases

The data coding will involve two main phases:

1. Article Identification and Filing
2. Article Review and Case Coding

The first phase will involve identifying articles that report on corruption incidents or corruption investigations and prosecution in provincial and regional newspapers; entering basic information on each case into the database; and saving the file (mostly JPG image files, but also some PDF files) into a separate folder for each case.

The second phase involves reviewing the articles for each case and entering detailed data on each case into the database.

This two-phase approach will enable me to undertake some preliminary analysis of corruption cases before you complete the more complex and time consuming task of reviewing each article and entering detailed data on each case (see Section X on analysis below).

More details on the steps for each phase and the specific data collected at each phase follow below.

3 Defining Corruption

This study conceptualizes corruption as consisting of four key components:¹

1. a public official (PO), who, acting for personal gain,
2. violates the rules or norms of public office and
3. harms the interests of the public (P)
4. to benefit a third party (TP) who rewards PO for access to goods or services which TP would not otherwise obtain.

¹ Mark Philips, "Political Corruption, Democratization and Reform" in Stephen Kotkin and Andras Sajó (eds.), *Political Corruption in Transition: A Sceptic's Handbook* (Central European University Press 2002).

Actions that involve all four components are considered corrupt. However, there are some actions that only involve three of the four components but which this study will still refer to as corruption. Specifically:

- Extortion – sometimes a TP party has a right to good or benefit that PO controls but TP is required to pay a bribe to PO to make PO follow the rules and provide TP with the benefit. For example, TP requires a passport to travel overseas. TP has a right to a passport and the process should normally take 3 weeks. However, PO makes it so difficult to obtain a passport that it will take many months to obtain if TP does not pay a bribe. In this situation we relax component 2 – PO does not violate but follows the rules – and component 4 – TP does not receive goods or services that they not otherwise obtain.
- Fraud or embezzlement– generally political fraud and kleptocracy do not involve a third party (TP – component 4 above). For example, parliamentarians that redirect state budget to themselves via fictitious foundations do not generally benefit a third party. However, it is common (both in Indonesia and elsewhere) to refer to these acts as corrupt and to therefore define them as corruption.

Two additional points are required:

- The motives of public officials (PO) – it is necessary to consider the motives of POs when determining whether or not an action can be considered corrupt. This relates to the second part of component 1 above, i.e. “... who, acting for personal gain...” PO needs to provide a benefit to TP because of the bribe, not because he is incompetent and unable to assess the worthiness of each bidder. In the former PO is corruption but in the latter PO is incompetent but necessarily corrupt. For example, PO is XX but he has poor understanding of the procurement guidelines and provides a contract to XX for. This defence is often heard in Indonesia from both defendants and public officials who claim they are unable to execute their budgets because the rules are too complicated and they are afraid that they will be accused of corruption.
- The rules and norms of public office - central to this conceptualization of corruption are the rules and norms of public office. The rules and norms of public office are critical because it is primarily these rules and norms that determine whether an act is considered corruption in one country (or context) is considered corruption in another (XX).

Generally, this will not bother us because this study is of one country. It will therefore assume that the rules and (albeit to a lesser extent) the norms are consistent across the country. However, it is likely that the public (and therefore the

public prosecutors) will be more concerned about certain types of corruption than others. For example, fraud and corruption. This doesn't necessary change whether an act is corruption analytically, nor whether it is considered corruption according to local standards, but it will certainly influence whether it is a incident that it is worth expending limited resources and XX.

Indonesian It is important to note that you will not use this conceptualization of corruption to decide whether or not to include a reported case of corruption in our database. For example, if a newspaper reports on the investigation and prosecution of corruption that results in XX we will still record this as a "corruption case" and include it in the database. However, the conceptualization of corruption in this section will help you to complete the following information:

4 Phase I – Article Identification and Filing

The objective of Phase I is to identify newspaper articles that report on corruption cases and group these articles into a single folder for each case.

This section outlines the steps for navigating the computer, saving the files, etc. For more information on inserting information about each case in the database see Section 5 below.

This phase involves six main steps:

- Step 1 – Open a batch of newspaper image files
- Step 2 – Skim each page and identify relevant articles
- Step 3 – Find existing case record / Start new case record
- Step 4 – Enter basic case information (if applicable)
- Step 5 – Enter article information
- Step 6 – Save image file in case folder

4.1 Step 1 – Open a batch of newspaper files

The newspaper pages are stored in two files types. JPG files and PDF files. Most files are in JPG format.

Each week you will be assigned a batch of newspaper pages to scan. These will be saved in a folder as follows: //UBUNTU SERVER/Weekly Data/Week-0404/Week-0404-Samuel. Where your name will replace "Samuel" and where "0404" stands for the date at the beginning of each week, i.e. April 4th.

At the beginning of the week you must copy your own folder to your computer and save it in the folder //My Documents/KKN-My Weekly Data/.

In the folder are five folders labeled 1 to 5. In these are the newspaper image folders that need to be scanned for each day of the week.

The image folders are categorized by newspaper / year / month.

On Monday you should open the folder labeled “1” and work through the folders chronologically.

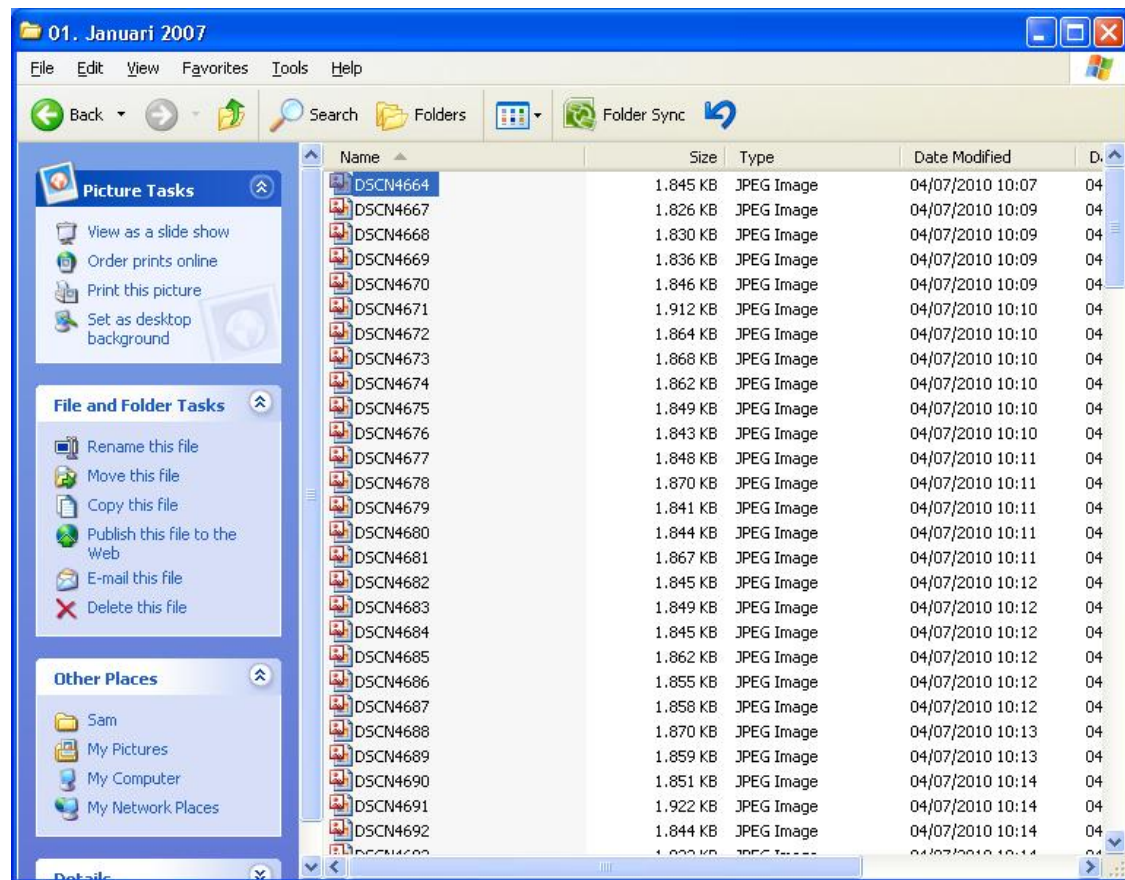
For example, you would work through the following folders from top to bottom:

.../Week-0404-Samuel/1/Jawa Pos/2006/December/
 .../Week-0404-Samuel/1/Jawa Pos/2007/January/
 .../Week-0404-Samuel/1/Jawa Pos/2007/February/
 .../Week-0404-Samuel/1/Jawa Pos/2007/March/

Most files have the name DSCNXXXX.JPG where the “XXXX” are four numbers. The numbers increase one at a time beginning with a random number. You should make sure that the folder is sorted in ascending order by file name. For example, you should have a list of files shown in the left column below, NOT the right column.

Correct (ascending by file name)	Incorrect (e.g., descending by file name)
DSCN5142.JPG	DSCN5245.JPG
DSCN5143.JPG	DSCN5244.JPG
DSCN5144.JPG	DSCN5243.JPG
...	...
DSCN5245.JPG	DSCN5142.JPG

The diagram below shows an example of a folder.



After ensuring that the folder is sorted correctly, you should open the first file by double-clicking on it. Your screen should be like the one shown in the diagram below.



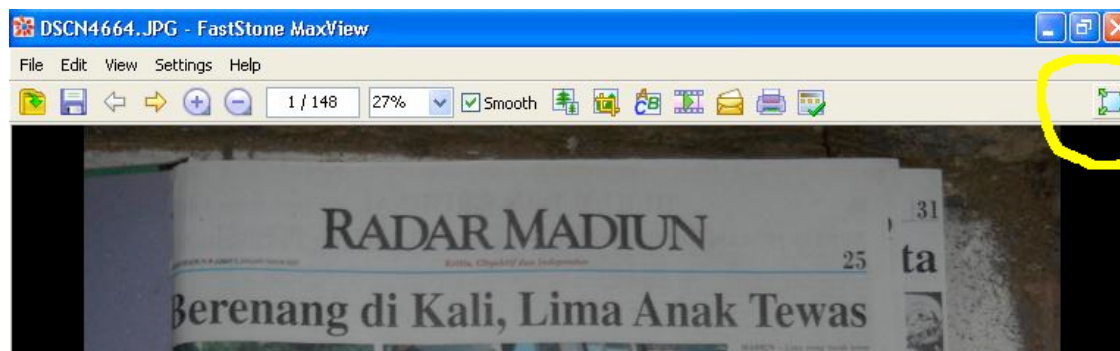
After reviewing the page for relevant articles (see Step 2 below). You need to move the mouse to the top of the screen until the menu bar appears and then click the right yellow arrow to move to the next image file (see Diagram XX below). This should take you through the newspaper chronologically, i.e. starting with the front page and ending with the back page for each day.



4.2 Step 2 – Identify relevant articles

You should scan each page for articles that report on corruption cases (for more information on the different types of articles see Section 5 below).

You should start with the full page displayed on the screen. If it is not already, click on the full-screen icon on the right-side of the top-menu bar as circled in the diagram below.



The first thing you should check is whether the page is one of the following:

- A front page
- An opinion / editorial page
- A “law and criminality” page
- A “politics” page; or
- A “regional” page.

You need to check this first because articles on corruption are more far more likely to be reported on these pages. If the page is one of these pages you should use the “careful” method to scan the page for corruption articles. If it is not one of these pages, you should use the “quick” method to scan the page for corruption articles.

Careful Scan

You should always scan through the page systematically. Usually a newspaper divides the page into three rough columns. You should therefore imagine the three rough columns and systematic scan the titles and text of each column beginning with the article in the top left-hand column. You should then move down until you reach the bottom of the column. You should then move to the middle column and scan the articles to the bottom. Finally you move to the right-hand column and scan the articles until the bottom. See the diagram below.



With the careful scan you should zoom in so that see the top left-hand corner of the page. You should be able to read both the article titles AND the article text at this zoom level. You should scan the title and the first paragraph for following key words:

- "korupsi"
- "KKN"
- "penyimpangan"
- "penggelapan"

- or the keywords that identify a case that you have already included in the database.

When you find an article reporting on a corruption case you should first confirm that the article is reporting on a case in the current province you working on. For example, if the article is on a case in Jakarta then you do not need to include it in the database. If the article is in the province you are coding then you should move to step 3 for this article.

Quick Scan

This method should be used for pages that are unlikely to report corruption cases, e.g., sports pages, celebrities pages, travel pages.

For these pages you should still imagine the screen divided into three columns, but you do not need to zoom in and you should only scan the titles of the articles.

4.3 Step 3 - Find existing case record / Start new case record

The first thing you need to do is determine whether there is an existing record for this case in the database. Start by a) determine the district where the case took place; and b) identify the defining characteristics of the case (i.e. the goods, institution or the modus of the corruption). For more details see Section 5 below.

You can then use [ALT-TAB] or the task bar to move to the Access database on your computer and open the "Article Entry" form if it is not already opened.

The article entry form displays all the case records in the table at the top of the page. This table is sorted by Province, District and then "case name".

The screenshot displays a software application window with a menu bar and a main content area. The menu bar includes 'Main Menu' and 'CaseArticles Entry'. The main content area is divided into two sections.

The top section is a table listing cases. The columns are 'Province', 'District', '"Case Name"', and 'CorruptType'. The table contains 30 rows of data, all with 'Province' set to 'Jawa Timur'. The 'District' column lists various districts such as Bangkalan, Banyuwangi, Batu, Bondowoso, Gresik, Jember, Kediri, Lamongan, Lumajang, Madiun, Magetan, Malang, Pasuruan, Ponorogo, Probolinggo, Sidoarjo, Surabaya, and others. The 'CorruptType' column contains letters A, B, and C.

The bottom section is titled 'Initial Case Article Entry'. It contains several input fields:

- 'Province' dropdown menu set to 'Jawa Timur'.
- 'District' dropdown menu (empty).
- 'CorruptType' dropdown menu set to 'A'.
- 'Amount' text input field containing '5,000,000,000'.
- 'Case Name' text input field containing 'Pemberian pinjaman PT BBI dan PT IKU'.

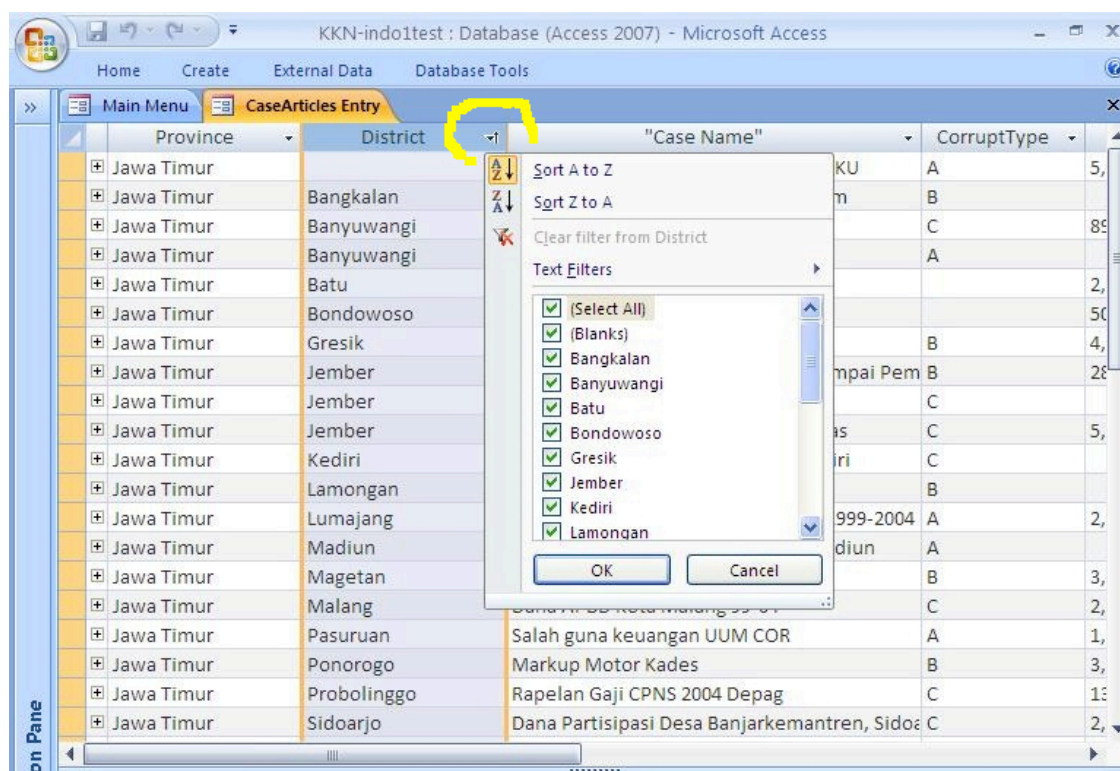
 Below these fields is a section titled 'Articles reporting on this case:' which contains a table with columns: 'Article ID', 'Newspaper', 'Date', 'Title', 'Type', 'Page (m)', and 'Page'. The table has one row of data:

Article ID	Newspaper	Date	Title	Type	Page (m)	Page
7	Jawa Pos	1/3/2007	Kejati Sebut Calon Tersangka	Case Deta	28	

 Below the table is a record navigation bar showing 'Record: 1 of 1' and a search field.

The Windows taskbar at the bottom shows the 'start' button, a search bar, and system tray icons including 'Num Lock' and 'Powered by Microsoft Office Access'. The system clock shows '10:40 AM'.

You should find the case's district by scrolling through the list. Alternatively, you can click on the little arrow next to the district heading, deselect (Select All), and select the name of the district, and then click OK. This will only show the cases from that district. See the diagram below.



You then need to look through the case names to see if there is a case name that matches the case reported in the article you are reviewing. If there is already a case then you should follow the Existing Case Record instructions; if not then follow the New Case Record instructions below.

Existing Case Record

If there is an existing record, select it by clicking on the box at the far-left of the case's row.

This will bring-up the case's details in the bottom-half of the form.

Having identified the case record you can move to Step 4.

New Case Record

If there is NOT an existing record for the case reported in the article, you need to create a new record by clicking on the little star icon at the very bottom of the form. See the diagram below.

Province	District	Amount	CorruptType	"Case Name"
Jawa Timur	Probolinggo		A	
Jawa Timur	Sidoarjo	5,000,000,000		Pemberian pinjaman PT BBI dan PT IKU

Article ID	Newspaper	Date	Title	Type	Page (m)	Page
7	Jawa Pos	1/3/2007	Kejati Sebut Calon Tersangka	Case Deta	28	
*						

Record: 1 of 30

This will create a new record. Having created a new case record you can move to Step 4

4.4 Step 4 – Enter basic case information

If you are using an Existing Case Record, then all or some of the fields should already be complete. If a field is blank and you have the information in your article then you can this information to the Case Record. If the information is different to the data already entered in the form, then you should note this in your Daily Log and discuss it with me at the end of the day.

If you created a New Case Record, then all the fields are blank. You should complete each field as best you can based on the information in the article.

See Section 5 below on completing the fields.

Before moving on to Step 5, you should highlight and Copy (CTRL+C) the Case Name.

4.5 Step 5 – Enter article information

After entering / reviewing the basic case data, you need to enter the article information.

Begin by clicking on the star in the sub-form. See diagram below.

Jawa Timur	Ponorogo	Warkop motor Nagas	B
Jawa Timur	Probolinggo	Rapelan Gaji CPNS 2004 Depag	C
Jawa Timur	Sidoarjo	Dana Partisipasi Desa Banjarkemantren, Sidoarjo	C
Jawa Timur	Surabaya	Penyimpangan dana SMAN 7	C
Jawa Timur	Surabaya	Akta Penduduk Bermasalah	B
Jawa Timur	Surabaya	Penyimpangan BBM Solar selama 10 tahun	C
Jawa Timur	Surabaya	Korupsi Proyek E-Square	A
Jawa Timur	Surabaya	Kasus Mikrokon Diknas Surabaya	B

Initial Case Article Entry

Province: Jawa Timur CorruptType: A

District: Amount: 5,000,000,000

"Case Name": Pemberian pinjaman PT BBI dan PT IKU

Articles reporting on this case:

Article ID	Newspaper	Date	Title	Type	Page (m)	Page
7	Jawa Pos	1/3/2007	Kejati Sebut Calon Tersangka	Case Deta	28	
*						

Record: 1 of 1 No Filter Search

This will create a new record for your article. For information on completing the fields in this sub-form see Section 5 below.

More than one case in an article

Sometimes will report more than one case in a single article. In this situation you should follow the steps above of the first article but remember the Article ID that the database assigns after you enter it for the first case. However, for the second article,

you need click the star icon and select the Article ID from the first field rather than re-enter the same data again. This will automatically populate the other fields with the same information that you input for the first article.

4.6 Step 6 – Save page/file in case folder

In the final step you need to save the newspaper image file in a separate folder for each case. There are different procedures for Existing Case Records and New Case Records.

But first, navigate back to the newspaper image using [ALT-TAB] or the Task Bar. Then click on the save icon highlighted in the diagram below.



This will bring up a Save As dialog box. You need to navigate to the following folder if it is not already open:

//KKN-SERVER/CASE FOLDERS/JAWA TIMUR/

In this location there is a folder for every district in Jawa Timur. Open the folder where the case occurred and which was recorded in Step 4 above.

Existing Case Records

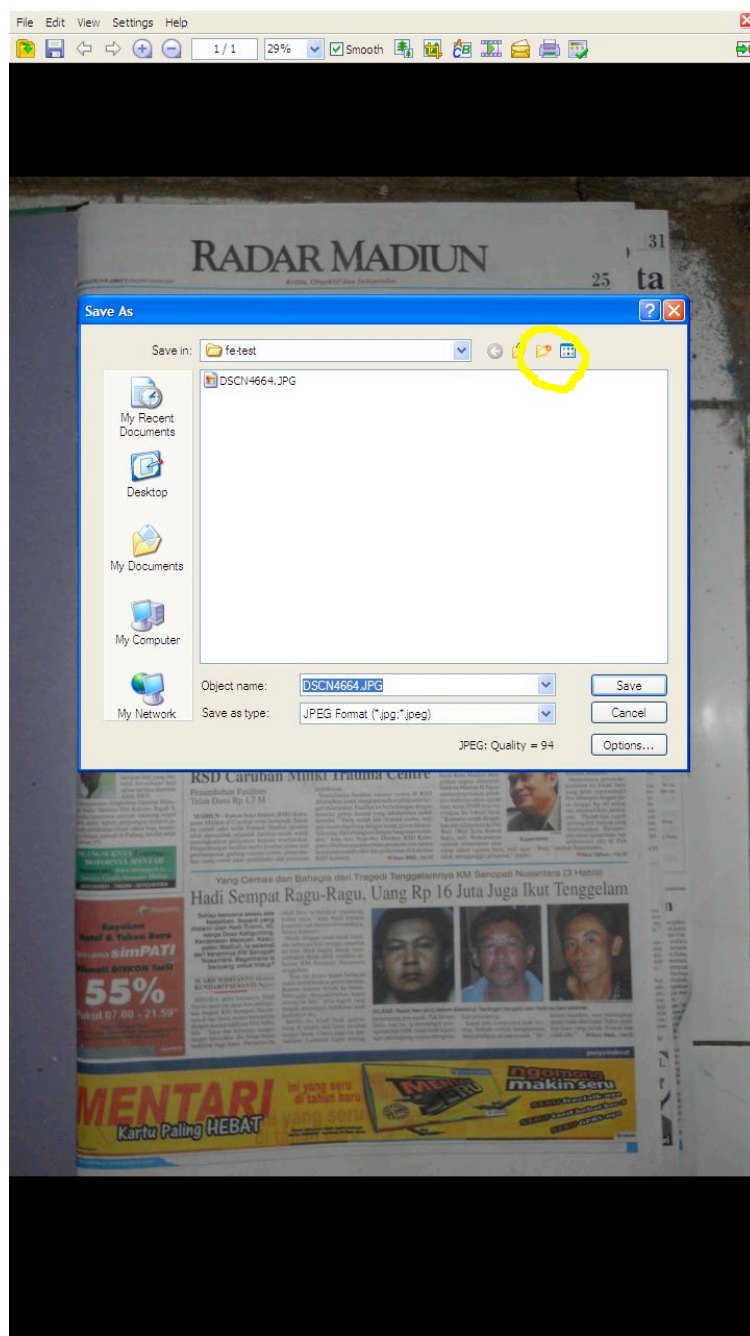
If the article reports on an Existing Case, then you need to identify the folder with the same exact name as the “Case Name” in the database. For example, if the Case Name was “Pengadaan Mobil PMK” from Tanjung Perak district, then in the Tanjung Perak folder you need to find the folder named “Pengadaan Mobil PMK” and open it.

You then need to enter the file name, see below.

New Case Records

If the article reports on a New Case and you created a new case record in the database in Step 3 above, you need to create a folder with the exact same name as the Case Name in the database.

First, click on “New Folder” as shown in the diagram below.



Second, paste the case name that you copied from the database earlier. If you didn't copy the case name then return to the database, highlight the relevant case name and use CTRL+C or the right-click menu to copy the case name.

Third, press [Enter] on the keyboard.

Fourth, ensure the new folder is open.

File Name

Enter the filename in the following format:

AA-BBBB-CC-DD_EE.JPG

Where:

- AA is the newspaper acronym (see list below)
- BBBB is the year, i.e. 2006, NOT 06
- CC is the month, i.e. 04, NOT 4
- DD is the day, i.e. 01, not 1; and
- EE is the newspaper page number, i.e. 04, not 4

And where the newspaper codes are as follows:

Code	Newspaper
JP	Jawa Pos
SY	Surya
ME	Memorandum
MP	Malang Pos
SP	Surabaya Pos
RB	Radar Banyuwangi
RO	Radar Bojonogoro
RR	Radar Bromo
RJ	Radar Jember
RK	Radar Kediri
RM	Radar Madiun
RU	Radar Madura
RS	Radar Surabaya
RT	Radar Tulungagung

Complete!

You can now move onto the next newspaper page, or including the next article in the database if the newspaper page has more than one article on corruption.

5 Phase I – Data Fields and Codes

5.1 Summary – Template

During the first phase you are required to enter a) basic case data; and b) article information.

You do not need to complete a field if the article does not provide the necessary information. For example, not all articles will mention the state losses and sometimes it is difficult to determine the corruption type or modus.

The graphic below shows the form you will use to enter the data.

Insert graphic of Access form.

5.2 Basic case data

5.2.1 Case name

The case name is something that you determine (for new cases). The purpose of the case name is to help the team find the case record for cases that have already been included in the database. Here are some examples:

- 365 Pangkat PNS Direkayasa
- Dana APBD Kota Malang 99-04
- Pengadaan Eskalator Pasar Turi
- Pengadaan Mikroskop Diknas Surabaya
- Penyimpangan dana SMAN 7

Do not use codes and case names that are difficult to understand and remember.

Do not change the case name. If you think a case name is misleading or confusing then make a note of it in your Daily Log. Only I will change the case name and will inform the coding team of any changes.

As noted above, you must save all the articles relating to a specific case in a folder labeled with the case name. This will allow you easily find that folder again and allow me to find all the articles relating to a specific case.

5.2.2 Location (Province / District)

Next enter the province and district where the corruption is reported to have occurred.

Do not enter the location of the police or prosecutors investigating and/or prosecuting the case. For example, if the corruption took place in Banyuwangi but the Kejati in Surabaya is investigating the case then you should enter Banyuwangi as the district NOT Surabaya.

Generally the location should match with the location of the implicated officials or individuals. For example, if a Diknas official from Malang was implicated in corruption (relating to her office) but the actual bribe was made during a trip to Jember then you should still enter Malang as the district NOT Jember.

5.2.3 Corruption type

As discussed in definitions section earlier, you need to distinguish the type of corruption. There are four main types and one “other” category. The table below summarizes the codes used in the database.

Code	Definition
A	Kerugian Negara
B	Suap-Menyuap
C	Pemerasan
D	Penggelapan
X1	Lain (curang, benturan kepentingan, gratifikasi)
X9	Tak Dilapor

Kerugian negara. This is one of the most common types of corruption in Indonesia. It involves a public official (F) breaking laws or abusing their authority to actually or intending to enrich oneself or others such that there are *or could be* financial losses to the state (or the Trust in the terms used above).

This is one of the most common types of corruption in Indonesia. However, this is because it easier to prove from a legal perspective as the inclusion “dapat” in the legal formulation means that the prosecutor is not actually required to prove that state losses occurred but that they *could* have occurred. It also does not require proving that bribes or extorted payments were made.

Suap-menyuap. This is also a common form of corruption. It involves a public official (F) receiving a bribe from a client (C) so that C receives something from F that he would not normally receive. Alternatively, the prosecutors or police will

investigate or prosecute the client (C) for giving a bribe to the public official. Sometimes both will be prosecuted. Newspaper reports are often XX and use says such as “the official was showered in money” for his troubles. Furthermore, newspapers and investigators/prosecutors do not mention bribery at all and instead focus on the “state losses”. I believe this is because bribery is difficult to prove in a positive sense. See the corruption type tree below.

Pemerasan. Extortion is corruption when a government official (or employee) demands an illicit payment from an individual or firm (such as a contractor or supplier) to follow the rules. In this situation the client (C) does not receive something that they would not have otherwise. Instead, they receive what is due them but only after being forced to make an additional payment to the fiduciary (F), usually a public official. For example, extortion often occurs when firms seek payments for work completed under government contracts.

Penggelapan. Embezzlement occurs when an individual, usually a politician or civil servant, ignores or manipulates rules such that they essentially steal from the state (or an employer). According to some theoretical formulations, embezzlement is not corruption as it does not involve a third-party or client (C). However, it is commonly referred to as corruption in both Indonesia and elsewhere.

For example, if a group of parliamentarians collude to channel funds to themselves via fictitious foundations then they are engaging in embezzlement that is considered corruption. Similarly, when a civil servant or a government official “diverts” (*penyimpangan*) government funds for personal use she is engaging in embezzlement that can be considered corruption.

But not all forms of embezzlement are corruption (although this may change). Current corruption laws focus on embezzlement in the public sector, i.e. undertaken by public servants or those assigned to public service activities. For example, if an employee diverts his employer’s profits to his personal bank account – which is a common form of embezzlement in the private sector – it is not considered corruption for the purposes of this study.

Corruption Type Tree

Does the article directly or indirectly report that the suspect or defendant either received a bribe from a third party (C), or paid a bribe to a public official (F)?

yes → Type B

No ↓

Does the article directly or indirectly report that the suspect or defendant extorted a payment from a third-party?

Yes → Type C

No ↓

Does the article directly or indirectly report that the suspect or defendant embezzled funds (i.e. *penggelapan*)? Yes → Type D

No ↓

Does the article focus on illegal behavior that resulted in state losses? Yes → Type A

No ↓

Does the article focus on another type of corruption (e.g., *gratifikasi*)? Yes → Type X1 (Lain)

No ↓

Type X2 (Tak Dilapor)

Don't change the corruption type if you disagree with the type that was entered by the coder who first created the case file. Note your disagreement in your Daily Log and talk to me at the end of the day.

5.2.4 Corruption modus (alleged)

You next need to determine the corruption modus – short for modus operadi – which refers to the method of corruption.

Code	Type	Example
	Direct cash	
	Kick-back	
	Consulting fee	
	Ownership share	
	Middleman / Calo	
	Fund Misuse / Penyelewengan atau Penyimpangan	
	Skimming / Penyunatan	
	Fraud / Manipulasi	<ul style="list-style-type: none"> • Fictitious receipts / documents • Manipulating receipts / documents • Manipulating financial records
	Duplication / Doble Anggaran	
	Mark-up	
	Dana Tak Tersangka	

5.2.5 Corruption object (alleged)

You next need to determine the object of corruption.

Code	Object	Sub-Object
A	Revenues (PAD)	Tax revenues
		Fee revenues
		BUMD revenues / dividends
		Other revenues
	District budget	DAU
		DAK
		UUDP
		Unused funds
		Member salaries / benefits
		Operational costs, inc. travel costs
		District Accountability Report
	Investment	Infrastructure procurement
		Land procurement
		Goods procurement
		Services procurement
		BUMD investments
		Other investments
	Structural Overheads	PNS Recruitment
		PNS Promotion
		PNS Salaries
		Administration costs
		Payments / disbursement
		Functional budgets (e.g., schools)
		Other structural overhea
	Government Services / Benefits	Access to credit
		Access to services (e.g., health, schools)
		Identity services (e.g., KTPs, birth certificates)
		Education & Training Certificates
		Raskin
		Kompensasi BBM
		Social Assistance Funds / Dana Bantuan Sosial
		Community Development Funds
		PNPM funds
		Other government service / benefit
	Judicial Services	Criminal justice system
		Labour laws
		Land laws
		Forestry and Mining laws
		Other judicial service

5.2.6 Sector

You next need to determine the sector. The list of options is as follows:

Code	Sector	Sub-sector
A	Primary sector	Agriculture / Agribusiness
		Fishing
		Forestry
		Mining
	Secondary sector	Heavy Manufacturing
		Light Manufacturing
		Energy
	Service sector	Health
		Education
		Transport
		Waste
		Banking / Credit
		Insurance
		Legal
		Hospitality
		Tourism
		Retail
		Property / Real Estate
	Public sector	Executive
		Legislative
		Judicial
		Security

5.2.7 States Losses

Record in this field the total state losses reported in the article. Be careful to distinguish between the contract cost, the size of the bribe and the actual state losses.

For example, the government procured new cars for civil servants at a total price of Rp. 1 billion but it is reported that the amount should have been Rp. 750 million and that a bribe of Rp. 100 million was paid to the civil servant in charge of the procurement. Here the state losses are Rp. 250 million = Rp. 1 billion - Rp. 750 million.

Usually an article will report the losses – *kerugian negara* – but sometimes the article does not report the losses. If not just leave the field blank.

5.3 Article information

Once you have entered the basic case data OR identified the case that the article discusses, you can move onto entering information about the article itself.

5.3.1 Newspaper

Enter the name of the newspaper. All the newspapers you work with have been pre-entered in the database and once you start typing the name it guess the newspaper name. Once the right name is highlighted press <TAB> to move to the next field.

5.3.2 Date

Enter the date the article was published in the following format:

- 01/05/2007
- 13/11/1999

Remember to enter 0 before days and months less than 10. For example: 01/05/2007 NOT 1/5/2007.

5.3.3 Title

Enter the main title as written in the newspaper.

5.3.4 Page (main / continuing page)

There are two fields to report the page number – (m) and (c).

Enter the page number of the main article in (m).

If the article continues on to another page, enter the page number where the article continues in (c).

6 Phase II – Article Review and Case Coding

The objective of Phase II is to review the articles on each case and to complete one standard template on the case based on all the articles.

This section outlines the steps for navigating the computer, saving the files, etc. For more information on inserting information about each case in the database see Section 7 below.

This phase involves four main steps. However, these steps will be done simultaneously. That is, you will complete the three sections as you review the articles and locate the required information.

- Step 1 – Review case articles
- Step 2 – Complete descriptive data
- Step 3 – Complete actor data
- Step 4 – Complete signals

6.1 Step 1 – Rapid review case articles

The first step requires you to review the first paragraph of each article. This rapid review has two aims:

- a) To ensure the articles have been categorized correctly and report on the one case; and
- b) To complete as much as possible of the template

You should move through the files in reverse chronological order, beginning with the latest article and working your way backwards to the first article. This is because the later articles are likely to summarize the cases and be more accurate.

If there are only a few articles for a case, then it is recommended that you review the entire article and complete the entire template at once (i.e. skip steps 3 and 4). You should also review the entire article if it is clear to you from a quick that the other paragraphs contains information you need for the template.

In contrast, if there are many articles for each case you should complete as much as possible of the template based on reviewing the first paragraph only. If there are still gaps in the template you should complete steps 3 and 4.

What to do if the articles are not about the same case

If after reviewing the articles you realize that they are not all about the same case, you should:

- a) Note the Art ID of mistakenly categorized article;
- b) Identify the correct Case Name in the database and note the Case ID; and
- c) Discuss with me concerns with the categorization.

I will then work with you to re-categorize the article files on both the server as well as the record in the database.

6.2 Step 2 – Complete template

You should enter the complete the fields in the case template as you identify the necessary information based on the rapid review of each article's first paragraph.

See section 7 below for more information on the data field categories.

6.3 Step 3 – Careful gap review

If after completing steps 1 and 2 you find that some of the fields in the template are not complete, you will need to undertake a careful review of the articles to find the information.

You should be strategic about where to search for the missing information rather than reviewing every article. This is particularly important for cases with many articles. For example, if the "Reported By" field is blank then you should concentrate your review on the first articles. In contrast, if the information missing relates to the court's decision then you should focus on cases towards the end (or those case around the court decision).

6.4 Step 4 – Finalize template

You should finalize the template based on the careful review of relevant articles.

See section 7 below for more information on the data field categories.

7 Phase II – Data Fields and Codes

7.1 Summary – Template

During the second phase you are required to review all the articles in a specific case folder and either confirm existing basic case data (i.e. information entered during phase I) and enter additional case information on the following topics:

- Description
- Timeline
- Actors
- Defendants
- Advocacy events

You do not need to complete a field if the articles do not provide the necessary information. For example, if there is no mention of the state losses then simply leave the losses field empty.

There will be a lot of articles for big cases, particularly for those that involve high profile actors and defendants. In contrast, for small cases sometimes the first and only article will be published when the PN rules on the case. Often these articles will also summarize the investigation so you will still be able to complete many of the fields.

Discrepancies between articles

Often details of the case will change as it is investigated. Generally you should therefore enter the latest information available. For example, if early articles on a specific case estimate the state losses at Rp. 1 billion but later articles report that in fact the losses are Rp. 3 billion, then you should enter the more up-to-date information.

If you think there may be an error in a later report, then make a note in your Daily Log and discuss it with me at the end of the day.

The graphic below shows the form you will use to enter the data.

Insert graphic of Access form.

7.2 Basic Case Data

7.2.1 Case name

There should already be a case name that was entered during Phase I.

Do not change the case name. If you think the case name is completely wrong, misleading or particularly difficult to recall then note it in your Daily Log and discuss it with me.

7.2.2 Location

There should already be data on the province and district that was entered during Phase I.

During Phase II you should enter the sub-district and village if it is reported.

Note that you should only report the sub-district or village if the corruption incident involves a government official or agency at the sub-district or village level. If the case involves district agencies or officials – such as the Diknas or the Bupati – then you do not need to enter the sub-district or village where the department’s office is located. It is sufficient to simply report the district and I will assume that the incident took place in the district capital.

7.3 Description

7.3.1 Corruption type (alleged)

As discussed in definitions section earlier, you need to distinguish the type of corruption. There are four main types and one “other” category. The table below summarizes the codes used in the database.

Code	Definition
A	Kerugian Negara
B	Suap-Menyuap
C	Pemerasan
D	Penggelapan
X1	Lain (curang, benturan kepentingan, gratifikasi)
X9	Tak Dilapor

Kerugian negara. This is one of the most common types of corruption in Indonesia. It involves a public official (F) breaking laws or abusing their authority to actually or intending to enrich oneself or others such that there are *or could be* financial losses to the state (or the Trust in the terms used above).

This is one of the most common types of corruption in Indonesia. However, this is because it easier to prove from a legal perspective as the inclusion “dapat” in the legal formulation means that the prosecutor is not actually required to prove that state losses occurred but that they *could* have occurred. It also does not require proving that bribes or extorted payments were made.

Suap-menyuap. This is also a common form of corruption. It involves a public official (F) receiving a bribe from a client (C) so that C receives something from F that he would not normally receive. Alternatively, the prosecutors or police will investigate or prosecute the client (C) for giving a bribe to the public official. Sometimes both will be prosecuted. Newspaper reports are often XX and use says such as “the official was showered in money” for his troubles. Furthermore, newspapers and investigators/prosecutors do not mention bribery at all and

instead focus on the “state losses”. I believe this is because bribery is difficult to prove in a positive sense. See the corruption type tree below.

Pemerasan. Extortion is corruption when a government official (or employee) demands an illicit payment from an individual or firm (such as a contractor or supplier) to follow the rules. In this situation the client (C) does not receive something that they would not have otherwise. Instead, they receive what is due them but only after being forced to make an additional payment to the fiduciary (F), usually a public official. For example, extortion often occurs when firms seek payments for work completed under government contracts.

Penggelapan. Embezzlement occurs when an individual, usually a politician or civil servant, ignores or manipulates rules such that they essentially steal from the state (or an employer). According to some theoretical formulations, embezzlement is not corruption as it does not involve a third-party or client (C). However, it is commonly referred to as corruption in both Indonesia and elsewhere.

For example, if a group of parliamentarians collude to channel funds to themselves via fictitious foundations then they are engaging in embezzlement that is considered corruption. Similarly, when a civil servant or a government official “diverts” (*penyimpangan*) government funds for personal use she is engaging in embezzlement that can be considered corruption.

But not all forms of embezzlement are corruption (although this may change). Current corruption laws focus on embezzlement in the public sector, i.e. undertaken by public servants or those assigned to public service activities. For example, if an employee diverts his employer’s profits to his personal bank account – which is a common form of embezzlement in the private sector – it is not considered corruption for the purposes of this study.

Corruption Type Tree

Does the article directly or indirectly report that the suspect or defendant either received a bribe from a third party (C), or paid a bribe to a public official (F)? yes → Type B

No ↓

Does the article directly or indirectly report that the suspect or defendant extorted a payment from a third-party? Yes → Type C

No ↓

Does the article directly or indirectly report Yes → Type D

that the suspect or defendant embezzled funds (i.e. *penggelapan*)?

No ↓

Does the article focus on illegal behavior that resulted in state losses? Yes → Type A

No ↓

Does the article focus on another type of corruption (e.g., *gratifikasi*) Yes → Type X1 (Lain)

No ↓

Type X2 (Tak Dilapor)

Don't change the corruption type if you disagree with the type that was entered by the coder who first created the case file. Note your disagreement in your Daily Log and talk to me at the end of the day.

7.3.2 Corruption modus (alleged)

You next need to determine the corruption modus – short for modus operadi – which refers to the method of corruption.

Code	Type	Example
	Direct cash	
	Kick-back	
	Consulting fee	
	Ownership share	
	Middleman / Calo	
	Fund Misuse / Penyelewengan atau Penyimpangan	
	Skimming / Penyunatan	
	Fraud / Manipulasi	<ul style="list-style-type: none"> • Fictitious receipts / documents • Manipulating receipts / documents • Manipulating financial records
	Duplication / Doble Anggaran	
	Mark-up	
	Dana Tak Tersangka	

7.3.3 Corruption object (alleged)

You next need to determine the object of corruption.

Code	Object	Sub-Object
A	Revenues (PAD)	Tax revenues
		Fee revenues
		BUMD revenues / dividends
		Other revenues
	District budget	DAU
		DAK
		UUDP
		Unused funds
		Member salaries / benefits
		Operational costs, inc. travel costs
		District Accountability Report
	Investment	Infrastructure procurement
		Land procurement
		Goods procurement
		Services procurement
		BUMD investments
		Other investments
	Structural Overheads	PNS Recruitment
		PNS Promotion
		PNS Salaries
		Administration costs
		Payments / disbursement
		Functional budgets (e.g., schools)
		Other structural overhea
	Government Services / Benefits	Access to credit
		Access to services (e.g., health, schools)
		Identity services (e.g., KTPs, birth certificates)
		Education & Training Certificates
		Raskin
		Kompensasi BBM
		Social Assistance Funds / Dana Bantuan Sosial
		Community Development Funds
		PNPM funds
		Other government service / benefit
	Judicial Services	Criminal justice system
		Labour laws
		Land laws
		Forestry and Mining laws
		Other judicial service

7.3.4 Sector

You next need to determine the sector. The list of options is as follows:

Code	Sector	Sub-sector
A	Primary sector	Agriculture / Agribusiness
		Fishing
		Forestry
		Mining
	Secondary sector	Heavy Manufacturing
		Light Manufacturing
		Energy
	Service sector	Health
		Education
		Transport
		Waste
		Banking / Credit
		Insurance
		Legal
		Hospitality
		Tourism
		Retail
		Property / Real Estate
	Public sector	Executive
		Legislative
		Judicial
		Security

7.3.5 States Losses

The state losses should have been completed during Phase I. However, you should confirm that the amount entered is the most recent amount reported in the case articles.

You CAN change the state losses field during Phase II if, after reviewing the articles in the case folder, you believe that the amount entered in Phase I is incorrect.

As noted above, be careful to distinguish between the contract cost, the size of the bribe and the actual state losses. For example, if the government procured new cars for civil servants at a total price of Rp. 1 billion but it is reported that the amount should have been Rp. 750 million and that a bribe of Rp. 100 million was paid to the civil servant in charge of the procurement. Here the state losses are Rp. 250 million = Rp. 1 billion - Rp. 750 million.

7.4 Case Handling Chronology

This section records the case handling chronology of the case. Often articles that report on the court's decision will also provide a timeline which will help you complete this section.

If not, you will need to construct a timeline based on the articles and the information in the articles. For example, an early article might read as follows “yesterday the police announced that they began an investigation of the ...” or “two weeks ago the prosecutors starting prosecuting the X corruption case in the local district court”. From such information you can estimate the date by referring to the date the article was published.

See the section below on approximate dates on what to do when the articles do not provide a specific date.

Enter all dates in the following format:

- 01/05/2007
- 13/11/1999

Remember to enter 0 before days and months less than 10. For example: 01/05/2007 NOT 1/5/2007.

7.4.1 Date occurred

Enter the year the corruption occurred. This is often reported by referring to the district budget, for example APBD 2005. Note that you only need to record the year the corruption incident occurred.

Enter X9 if the date is not reported.

7.4.2 Date first reported

Enter the exact or approximate date that the case was first reported to either the police/prosecutors or in the media or another public forum, which ever comes first.

For example, if a case of alleged corruption was first reported by a group of villagers to a newspaper on 3 March 2003 but that it was not reported to the police until 20 April 2003 then you should enter the first date – 03/03/2003 – in this field NOT 20/04/2003.

Note that the report should align with the “Reported By” field. In the example above, the Reported By field should be “C” – Community group or leader.

7.4.3 Pre-investigation (*penyelidikan*) start date

Enter the exact or approximate date that the police or prosecutors began their pre-investigation of the case.

7.4.4 Pre-investigation organization

Select whether the police or prosecutor's office handled the pre-investigation.

Code	Organization
A1	Polres
A2	Kejari
B1	Polda or Polwil
B2	Kejati
C1	Polri
C2	Kejagung
C3	KPK
X1	Other

7.4.5 Investigation (*penyidikan*) start date

Enter the exact or approximate date that the police or prosecutors began their investigation of the case.

7.4.6 Investigation organization

Select whether the police or prosecutor's office handled the investigation.

Code	Organization
A1	Polres
A2	Kejari
B1	Polda or Polwil
B2	Kejati
C1	Polri
C2	Kejagung
C3	KPK
X1	Other

7.4.7 Prosecution (*penutupan*) start date

Enter the exact or approximate date that the police or prosecutors began their prosecution of the case in the court of first instance (i.e. the PN for the Kejari or the PT for the Kejati)

If suspects were prosecuted separately, enter the date for the first hearing.

7.4.8 Prosecution organization

Identify and enter the organization that handled the prosecution.

Code	Organization
A	Kejari
B	Kejati
C1	Kejagung
C2	KPK
X1	Other

7.4.9 Court decision (*divonis*) date - PN

Enter the exact or approximate date that the court of first instance (i.e. PN) handed down their verdict.

If suspects were prosecuted separately, enter the date for the first decision.

7.4.10 Court decision (*divonis*) date - PT

Enter the exact or approximate date that the court of appeal (i.e. PT) handed down their verdict.

If suspects appealed separately, enter the date for the first decision.

7.4.11 Court decision (*ditolak atau divonis*) date - MA

Enter the exact or approximate date that the court of *kasasi* (i.e. MA) handed down their verdict.

If suspects appealed separately, enter the date for the first decision.

7.4.12 Approximate dates

If a full date is not provided or if the article refers only a general period – e.g., “the case was first reported in March last year” – then enter the first day of the month mentioned and tick the approximate box.

Similarly, if the article says “early last year the prosecutor began investigation...” then enter the 15 March and tick the approximate box.

If the article says “in the middle of last year ...” then enter 1 July and tick the approximate box.

If you still don't know then make a note in your Daily Log and discuss it with me at the end of the day.

7.4.13 Final or current case status

You enter the final status of the case as indicated in the last article or the last article. The pre-defined options are as follows:

Code	Definition	Example
A	Report only	Cases which are reported but which do not result in either police or prosecutor action
B	Community negotiated resolution	Cases that are reported to be resolved via community agreement.
C	State Negotiated resolution	Cases that are reported to be resolved via agreement but involving state representatives.
D	Investigation halted	Investigation that has stagnated.
E	Investigation closed	Investigation formally discontinued, i.e. SP3.
F	PN Decision	Case decided at PN, i.e. no appeal.
G	PT Decision	Case decided at PT, i.e. on appeal
H	Delay/Lost at PT	Case delayed or lost at PT
I	Decision at MA	Cases decided at MA, i.e. kasasi
J	Delay/Lost at MA	Cases delayed or lost at MA
X1	Other	

7.5 Suspects and Defendants

Enter the names of those that are reported to be either suspects (*tersangka*) or defendants (*terdakwa*).

You do not need to include the details of witnesses.

7.5.1 Name

Enter the name of suspect or defendant as most commonly reported. Do not include titles – such as H. or Dr. – nor initials of first names – such as M.

For example, for H. Mohammad Budiarto, enter “Mohammad Budiarto” only.

Similarly, for M. Vitanata Arfijanto, enter “Vitanata Arfijanto” only.

Still enter two or more names if the individual is most commonly referred to with just one name. For example, Mohammad Budiarto is most commonly referred to as just “Budiarto”, you should still enter the first and second name.

7.5.2 Final Legal Status

Enter the final status of the individual vis-à-vis the case.

Code	Definition
A	Suspect
B	Defendant
C	Acquitted
D	Convicted

You should enter the final status of an individual.

For example, if R. Mohammad Budiarto is reported as witness in early articles and then as a suspect and finally as a defendant during the prosecutions but that the case is still pending then you should enter his status as a defendant not as a suspect. If the case had been decided and Budiarto was convicted then his status is D – Convicted.

If, however, M. Vitanata Arfijanto is reported as suspect but the charges are dropped and is not prosecuted (for whatever reason) then you should enter A – Suspect.

7.5.3 Position

You need to enter the position of individual at three points of time:

- When the corruption occurred (or when is it alleged to have occurred)
- When the case is reported and investigated
- When the case is prosecuted in court

The options are as follows:

Code	Definition
P1	Governor (<i>Gubernur</i>)
P2	Deputy Governor (<i>Wakil Gubernur</i>)
P3	Head or Deputy Head of Provincial Parliament (<i>Ketua / Wakil Ketua DPRD</i>)
P4	Parliamentarian (<i>Anggota DPRD</i>)
K1	District / City Head (<i>Bupati / Wali Kota</i>)
K2	Deputy District / City Head (<i>Wakil Bupati / Wakil Wali Kota</i>)
K3	Head or Deputy Head of District

	Parliament (<i>Ketua / Wakil Ketua DPRD</i>)
K4	Parliamentarian (<i>Anggota DPRD</i>)
B1	Sekretaris Daerah
B2	Kepala Dinas atau Wakil Kepala Dinas
B3	Kepala Bagian atau Wakil Kepala Bagian
B4	PNS Kabupaten
B5	PNS Kecamatan dan ke bawah
S1	Party Official
S2	Executive - Private
S3	Executive - BUMD/BUMN
S4	Director atau pekerja LSM
S5	No formal position
X1	Other
X9	Not report

7.5.4 Party

Enter the party that the individual is a member or reportedly affiliated.

The pre-defined options are as follows:

Code	Party
A	Partai Demokrat (PD)
B	Golkar
C	PDIP
D	PKS/PK
E	PKB
F	PAN
G	PPP
X1	Other
X9	Not reported

7.5.5 Prosecutor's sentence (punishment, fine and compensation) – first instance

Enter for each defendant the punishment (in months), the fine (in million Rupiah) and the compensation (in million Rupiah) that the prosecutor's demanded of the court for each defendant.

For example, if the prosecutor demanded 3 years in prison and a Rp. 200 million fine, then enter "36" (12 months x 3 years) in the time field and "200" in the fine field.

Leave these fields blank if the individual was only ever suspect not a defendant.

Check the box if the information is not reported in any of the articles (but a decision was formally made).

7.5.6 Court's sentence (punishment, fine and compensation) – first instance

Enter for each defendant that is convicted, the time (in months), the fine (in million Rupiah), and the compensation (in million Rupiah) as decided by the court of first instance.

For example, if the court's sentence was 2 ½ years in prison and a Rp. 100 million fine, then enter "30" (12 months x 2.5 years) in the time field and "100" in the fine field.

Leave these fields blank if the individual was only ever suspect not a defendant.

Check the box if the information is not reported in any of the articles (but a decision was formally made).

7.5.7 Court's sentence (punishment, fine and compensation) – second instance (if applicable)

Enter for each defendant that is convicted, the time (in months), the fine (in million Rupiah), and the compensation (in million Rupiah) as decided by the court of first instance.

For example, if the court's sentence was 2 ½ years in prison and a Rp. 100 million fine, then enter "30" (12 months x 2.5 years) in the time field and "100" in the fine field.

Leave these fields blank if the individual was only ever suspect not a defendant.

Check the box if the information is not reported in any of the articles (but a decision was formally made).

7.5.8 Court's sentence (punishment, fine and compensation) – third instance (if applicable)

Enter for each defendant that is convicted, the time (in months), the fine (in million Rupiah), and the compensation (in million Rupiah) as decided by the court of first instance.

For example, if the court's sentence was 2 ½ years in prison and a Rp. 100 million fine, then enter "30" (12 months x 2.5 years) in the time field and "100" in the fine field.

Leave these fields blank if the individual was only ever suspect not a defendant.

Check the box if the information is not reported in any of the articles (but a decision was formally made).

7.6 Advocacy actions

In this section you will record any "advocacy events" relating to the case under consideration.

To include the advocacy event in the database it is critical that there is a clear link between the advocacy event and a specific corruption case.

The initial identification of relevant advocacy events and their inclusion in a specific case folder was done during Phase I (see above). However, if upon reviewing all the articles in a case folder, you decide that an advocacy event is not in fact related to the case under consideration then you should note the case and article in your Daily Log and discuss it with me at the end of the day.

7.6.1 Type

Enter the type of advocacy event described in the article using the pre-defined list below:

Code	Definition	Example
A	Statement	A politician makes a statement denouncing an investigation at a public event
B	Op-Ed	Politician writes an opinion article in local newspaper endorsing corruption prosecutions.
C	Report / Expert Statement	An academic law expert releases a statement that provides legal support for prosecutions
D	<i>Praperadilan</i> (threat)	NGO announces plan to submit a praperadilan review of case
E	Ceremonial gathering	The defendants hold a ceremonial meal (<i>selamatan</i>) with community leaders who defend the defendants / denounce the investigations
F	Survey / poll	A newspaper or NGO conducts a poll about

		public support for the case and releases the results
G	Demonstration / rally	A group of NGOs organize a demonstration outside the courts calling for a conviction
H	Strike	Civil servants strike in protest over the lack of progress on a corruption case
I	Physical threat	A mysterious note sent to the Judge on a corruption case threatens his family
J	Violence	The prosecutor is attacked in the street by an angry mob due to the latter's lack of progress on a specific case
X1	Other	

Remember you should consider an advocacy event on two consecutive days – such as a demonstration on consecutive days -- as two separate advocacy events, even if only reported in one news article.

Similarly, demonstrations in different parts of the city – even if organized by the same group / coalition – are considered as two separate signals, even if reported in the same news article.

Again, if one article reports two events relating to one case – such as a ceremonial meal and a demonstration – you record this in the database as two separate advocacy events.

7.6.2 Date

Enter the advocacy event took place in the following format:

- 01/05/2007
- 13/11/1999

For advocacy type D – survey or poll – you should record the date that the results were released, not the date or dates that the survey took place.

7.6.3 Position

Enter the position taken at the advocacy event. That is, indicate whether the event supports the defendants (i.e. those accused of corruption) or the plaintiffs (i.e. the state prosecutors or the police investigators).

The pre-defined options are as follows:

Code	Definition
------	------------

A	Defendant
B	Prosecutors
77	Unclear

7.6.4 Location

Enter the province and the district where the advocacy event took place.

Note that this could be outside the district where the corruption case is currently taking place. For example, a demonstration might be held outside the High Court in Surabaya in support of a corruption case currently on appeal from the District Court in Ponorogo.

7.6.5 Signaler type

The signaler is an individual or group involved in the advocacy event. Enter all the signalers based on the following pre-defined options:

Code	Definition	Example
N1	President	A Bupati makes a public statement at a press conference endorsing corruption prosecutions against a PNS.
N2	President's Spokesperson	
N3	AGO / Deputy AGO	
N4	KPK	
N5	Minister / Deputy Minister	
N6	Head of DPR	The head of national parliament protests the prosecutor's investigation of parliament members for corruption.
N7	National Parliamentarian	Members of parliament hold a ceremonial meal in support of parliamentary members accused of corruption.
N8	Other national govt official	
P1	Governor / Vice Governor	As above but at the provincial level.
P2	Head of DPRD	
P3	Provincial Parliamentarian	
P4	Other Government Official (provincial)	
K1	Bupati / Wali Kota or Deputy Bupati / Wali Kota	
K2	DPRD Head	
K3	District Parliamentarian	
K4	Other Government Official	Civil servants from the Dept of Social

	(district)	Welfare go on strike protesting a case of corruption involving civil servant salaries
LSM1	NGO / Ormas (national)	The NGO ICW organizes a rally to pressure outside Jakarta to generate pressure on the case.
LSM2	NGO / Ormas (provincial)	
LSM3	NGO / Ormas (district)	
PRO1	Academic (national)	
PRO2	Academic (provincial)	
PRO3	Academic (district)	
LAW1	Lawyer (national)	
LAW2	Lawyer (provincial)	
LAW2	Lawyer (district)	
TM1	National Figure (national)	A prominent national figure makes a speech at a demonstration that encourages the prosecutor's to investigate a specific corruption case.
TM2	Regional Figure (provincial)	
TM3	Community Figure (district)	
X1	Other	
X3	Unidentified Person	An identified person slashes the tires of the local prosecutor and the incident is reported to be linked to his prosecution of a specific corruption case.

7.6.6 Size of Demonstrations and Strikes

For demonstration and strike (advocacy event type G and H) enter the size of the demonstration or strike as reported in the newspapers. Using the following ranges.

A	1000+
B	500+
C	100+
D	50+
E	20+
F	<20
X9	Not reported

7.6.7 Impacts of Violence

For violence, note the number of deaths, injuries and objects damaged.

8 Daily Log

The Daily Log is a window or, if you prefer, a note book where you can make note of any problems you experience when coding an article or a case.

Rather than stop coding every time you are unsure about how to interpret an article, you can make a note in your Daily Log and continue coding until the end of the morning or the end of the day. It is therefore very important that you note sufficient information that will allow you remember the problem you were experiencing.

If, however, the problem is fundamental and is likely to have implications for you – for example, if you’ve forgotten how to complete a form or you have technical problems – then you can come to me immediately.

Information to record in a log

You should record the following information:

- Date and time
- Case ID and/or relevant Article ID.
- The specific field with which you were having issues.
- The problem and/or question you want to ask me

Remember to record your question in sufficient detail that will help you to remember the problem exactly.

For example, if you just write “I don’t understand” you probably will not be able what exactly it was that was confusing you. However, if you write “I’m unsure whether this is an example of corruption type A – bribery or corruption type B – extortion. It seems that Article 134 and Article 344 are contradictory.” It will be easier for you to remember and for us to resolve the problem.

9 Quality Control

When interpreting and coding newspaper articles in a team it is critical that we all share the same understanding of each field in the database and each pre-defined option. For example, it is critical that we have a common understanding of the different types of corruption or what is meant by an advocacy event.

The training will help to ensure you have a common understanding. Discussing certain cases and coding challenges amongst yourselves will also help. Indeed, if you think that might understand a certain definition differently to another team member please bring it to my attention and we’ll sit together to work it out together.

Quality control is also about identifying small errors and making sure you don't lose concentration or rush your work so you can leave early.

I will use three different quality control regimes

- 100% Regime. During the first week of phase I and II I will review 100% of articles that you identify and file (phase I) and 100% of cases that you review and code.
- 10% Regime. After the first week (or after I feel we have a shared understanding of the coding format), I will do quality control on about 10% of all articles to ensure consistency and
- Probationary Regime. If I find that you're producing a lot of errors based on the 10% sample then I might put you on a probationary regime for a few days where I will review 50-100% of your articles.

Note that this may change as we make progress on the database.

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