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Reformulation of Bribery Provisions for Foreign Public Officials and International Organizations in Indonesia's Anti-Corruption Law

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Abstract: Corruption in Indonesia is a major issue, particularly in regards to bribery of foreign public officials and officials from international organizations. Corruption, being a worldwide problem, not only harms the economy but also weakens democracy and erodes public confidence. Even though Indonesia has ratified the United Nations Convention Against Corruption (UNCAC) through Law No. 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003, the laws addressing bribery of foreign public officials and officials of international organizations have not been implemented in Indonesia. This research uses a comparative approach by comparing regulations in Indonesia and France which have criminalised active and passive bribery against foreign public officials. Through the analysis of bribery cases in Indonesia, this research shows that there is a legal vacuum that results in law enforcement officers being unable to follow up on bribery perpetrators who are foreign citizens. Therefore, reforming the current laws to address bribery involving foreign public officials and international organization officials is essential in Corruption Eradication Law (UU Pemberantasan Tindak Pidana Korupsi). This study suggests the introduction of more robust regulations to enhance anti-corruption measures and uphold the integrity of the legal system in Indonesia.

Keyword: Bribery, Foreign Public Official, International Organizations.

INTRODUCTION

The term “corruption” originates from the Latin words *corruptive* or *corruptus*. Furthermore, the word corruption is derived from *corrumpere*, an ancient Latin term. This Latin root later influenced various European languages, such as *corruption* and *corrupt* in the United Kingdom, *corruption* in French, and *corruptie* in Dutch. The Dutch term eventually gave rise to the Indonesian word *korupsi*. According to the Indonesian encyclopedia, *korupsi* (derived from the Latin *corruption*—bribery; and *corrumpere*—to destroy) refers to the phenomenon where state officials abuse their power through bribery, forgery, and irregularities (Ramadhan, 2017). Literally, corruption refers to something rotten, evil, and inherently destructive to a country.

Discussing corruption inevitably leads to such realities, as it involves moral aspects, dishonesty, the abuse of positions within government institutions or agencies, the misuse of power for personal gain, economic and political factors, as well as nepotism in appointing family members or specific groups to official positions under one's authority (Hartanti, 2023).

Baharuddin Lopa expressed his opinion by citing David M. Chalmers' views on corruption in various fields, including bribery, economic manipulation, and matters related to public interests. His definition suggests that activities like financial manipulation and neglect that cause harm to the economy are frequently classified as corrupt behaviors. Furthermore, the term corrupt is commonly used to describe errors made by public officials in matters related to the economy (Hartanti, 2023).

As explained, one form of corruption is bribery. Giving something to someone for self-interest that is misused, can be said to be a bribe by certain individuals (Haryono, 2016). This act of bribery is an abuse of power and discriminatory practice and in return for this practice is given privilege or known as privilege and is a violation of trust which is a basic element of democracy. Bribery is an act of deviation for abuse of authority in this case carried out by state officials (Hutabarat et al., 2022). State officials seem to forget the oath of office and code of ethics inherent in their position as state administrators in order to obtain wealth for the authority they have, namely by accepting bribes (Haryono, 2016).

Corruption is a common issue that can hinder a country's economic progress and lead to poverty. Therefore, Andi Hamza's statement that "corruption today can overthrow a regime and even bring suffering to a nation," is highly accurate (Waluyo, 2022). In fact, corruption is a universal problem in many countries as well as a complex and difficult problem to solve because it is related to political issues, power struggles, and law enforcement in addition to economic issues (Chazawi, 2005). In addition to financial losses, corruption also leads to inefficiency, increased crime, undermines democracy, damages the country's reputation and investment climate, weakens the rule of law, and finally, is considered a violation of the people's right to a decent life because the state is considered to lack the funds needed to improve the welfare of its citizens (Mochtar & Hiariej, 2018). In line with the "Sand the Wheel Hypothesis (SWH)," which states that corruption harms the economy, several cross-country studies have also shown that corruption has detrimental economic effects, which are expected to become more widespread (Pradipto, 2016).

One of the contributing factors to the increase in corruption in Indonesia is the simplicity of launching a business, leading to a growing number of people engaging in such illegal activities. With so many foreign investors cooperating with companies in Indonesia resulting in cross-border transactions, business people are utilized to commit illegal acts such as bribery to achieve the desired thing. In carrying out various modes of corruption, civil servants and state officials (including foreign public officials and officials of public international organizations) are often used as targets in carrying out corruption crimes. This is because their roles and functions are very vital with regard to the running of the government, considering that officials or employees of government agencies have the authority in terms of running the country's economy.

Ultimately, several international agreements, including the United Nations Convention Against Corruption (UNCAC), now use this as a core principle to create rules that prevent corruption, specifically the act of bribing foreign public officials or officials from public international organizations (Adiba et al., 2023). Such bribery is regulated in Article 16 of UNCAC (Hiariej, 2019). The bribery of foreign public authorities and international officials is regulated by the French Penal Code. Since the passing of Law No. 2000-595 on June 30, 2000, active bribery of foreign public officials has been illegal in France (Article 435-3 of the Penal Code). Subsequently, Law No. 2007-1598 on November 13, 2007, criminalized passive bribery by foreign officials (Article 435-1 of the Penal Code). Both active and passive bribery of foreign

international public officials are also prohibited under French law (Articles 435-1 and 435-3 of the Penal Code).

However, regrettably, Indonesia has not incorporated any rules in the Criminal Code or other regulations addressing corruption by these officials. Despite Indonesia's ratification of UNCAC under Law No. 7 of 2006, which approves the United Nations Convention Against Corruption, 2003. The ratification of UNCAC by the House of Representatives and its inclusion in national law should be clarified through Law No. 7 of 2006, because with the ratification of an international treaty by a country, the treaty has been contained in the national law of that country (Parthiana, 2002). The conclusion of the description is that UNCAC has been applicable in Indonesia, with ratification through Law No. 7 of 2006 concerning Ratification of UNCAC or the United Nations Convention Against Corruption, 2003.

Explicitly, Corruption regulations in Indonesia can be found in Law No. 20 of 2001, which focuses on amending Law No. 31 of 1999 regarding the Elimination of Corruption, categorizing corruption into 7 types (Tahir et al., 2021). This law specifically prohibits bribery of State Civil Servants and/or state officials; it does not mention bribery of Foreign Public Officials or Officials of Public International Organizations (Budiman, 2018). Meanwhile, there are no provisions that regulate bribery against these two officials. Meanwhile, the Criminal Code (KUHP) only regulates the criminalization of the crime of bribery in Article 209 of the Criminal Code concerning active bribery of civil servants and Article 419 of the Criminal Code which regulates passive bribery which threatens punishment against civil servants who accept gifts or promises, as well as Article 210 of the Criminal Code which regulates bribery of judges and advisors in court and the criminal penalty is regulated in Article 420 of the Criminal Code. These four articles were later declared as corruption offenses through Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption.

As a result, when Indonesian citizens commit bribery against foreign officials and international organizations, it is difficult to charge them under national law. According to Purba, corrupt practices committed by public officials, such as bribery, gratuities, and other forms of corruption are considered commonplace in the Indonesian public sphere (Kartika, 2020). However, the issue of corruption in Indonesia is certainly still one of the most complicated criminal offenses. Almost all lines of people's lives have been infected with the plague of corruption where the growth index has spread widely with the number certainly increasing from year to year and the modus operandi is increasingly diverse (Setiadi, 2017).

Indonesia has made significant political and economic changes since the end of the Soeharto era in 1998, transforming into the biggest democracy in the region. The country's judicial system is now more autonomous and there has been a nationwide effort to combat corruption, seen as a hindrance to foreign investments in Indonesia. Indonesia's performance in global governance assessments remains low, indicating a significant level of corruption. According to Transparency International's corruption barometer, 36% of Indonesians admitted to offering bribes for services, highlighting the widespread presence of corrupt practices in the country (Iskandar, 2022).

According to Braithwaite (2011), following the collapse of the Soeharto government in the wake of the Asian Financial Crisis, there was an increase in organized criminal activities, tensions between different ethnic groups, extremist movements based on religion, and corrupt practices within the political sphere. He thinks that the traditional regulations and customs in Indonesian culture have crumbled, resulting in more widespread corruption. Indonesia faces a unique challenge of corruption that has deeply affected its criminal justice system. Corruption is ingrained in the fabric of Indonesian society, originating in the time of Dutch colonization and stretching back into the pre-colonial past (Buttle et al., 2016).

The following are several bribery cases in Indonesia involving these officials. First, the UK-based aircraft engine supplier Rolls-Royce bribed former PT Garuda Indonesia director Emirsyah Satar with €1,200,000 (one million two hundred thousand euros) and US\$180,000

(one hundred eighty thousand US dollars). Additionally, Emirsyah Satar received bribes in the form of goods valued at US\$2,000,000 (two million US dollars). Furthermore, Soetikino Soedarjo, who acted as an intermediary between Rolls-Royce and Emirsyah Satar, was named the second suspect in this case (Prahassacitta, 2017). The Corruption Eradication Commission (KPK) continues to investigate this case, in which Emirsyah Satar was in a position of receiving bribes (passive bribery) (Belarminus & Gatra, 2018). Rolls-Royce, the company involved in the active bribery, cannot be prosecuted by the police, prosecutor's office, or KPK because there is no law governing this issue.

The second case scenario involved the British company INNOSPEC, which bribed officials of PT Pertamina and the Ministry of Energy and Mineral Resources (ESDM). In this case, INNOSPEC bribed three suspects, namely Suroso Atmomartoyo as former Director of Processing of PT Pertamina, Mustiko Saleh as former Deputy President Director of PT Pertamina, and Rachmat Sudibyo as former Director General of ESDM. INNOSPEC bribed officials of PT Pertamina and ESDM to delay the sale of lead-based premium octane-enhancing additives that were supposed to take effect in 2000 (Indonesia Corruption Watch, 2010). In this case, bribes (passive bribes) were given to officials from PT Pertamina and the Ministry of Energy and Mineral Resources who had been found guilty through court decisions (Khabibi, 2015). Meanwhile, a court in the United Kingdom (Crown Court at Southwark United Kingdom) has convicted INNOSPEC officials (active bribe givers); however, the KPK cannot prosecute the bribe givers because, as in the first case, there is no legal basis.

Based on the above case, there appears to be a lack of laws that specifically address the issue of bribery committed by the two individuals. The legal consequence if the policy is not regulated is that Indonesian law enforcement officers cannot reach bribes who are foreign nationals outside the Republic of Indonesia. In addition, Indonesia cannot protect Indonesian citizens or corporations who bribe the two officials so that they can be tried in Indonesia (Rachman et al., 2020).

There are no particular regulations concerning the illegal act of bribery involving the two officials according to the Anti-Corruption Law in Indonesia, a legal effort is needed related to reform through the implementation of re-formulation of the provisions of bribery of the two officials in Indonesia through the Corruption Eradication Law by comparing corruption regulations in France.

METHOD

This study employs a comparative approach to analyze regulations that criminalize active and passive bribery of foreign public officials in Indonesia and France. This approach involves comparing the legal frameworks and regulatory enforcement in both countries, particularly in the context of bribery cases that have occurred in Indonesia. The primary objective is to identify legal gaps within Indonesia's judicial system that hinder law enforcement efforts against foreign nationals involved in bribery.

The research data is collected through case studies of various bribery incidents in Indonesia to understand the context and implications of the existing regulations. Additionally, a literature review is conducted by analyzing laws, regulations, and other relevant legal documents from both countries, including legislation related to corruption and bribery offenses. The collected data is then analyzed qualitatively to gain an in-depth understanding of the differences and similarities in regulations and legal enforcement between Indonesia and France.

RESULTS AND DISCUSSION

Provisions on Bribery of Foreign Public Officials and Officials of International Organizations

The concept of Bribery in a Legal Perspective

Offering a bribe is a type of unethical behavior that happens when someone offers a public official something valuable in exchange for influencing their choices or behaviors. In criminal law, bribery is often classified as an offense involving the abuse of authority.

Various legal instruments in international law have outlined the definition of bribery. The United Nations Convention Against Corruption (UNCAC) 2003 is a significant example, specifically in Article 16, where it addresses criminalizing the act of offering bribes to foreign public officials or officials of international organizations. This entails offering, recommending, or assuring an unjust advantage to these individuals in order to ensure or maintain lucrative opportunities in international transactions.

This definition emphasizes that bribery is not limited to monetary payments but also includes other forms of benefits, such as gifts, services, or special treatment. According to Black's Law Dictionary, bribery is the action of providing, giving, accepting, or requesting something of value in order to impact the responsibilities of a government official (Garner et al., 1999). The definition includes both the individual giving the bribe and the individual accepting it, leading to potential repercussions for both parties under the law.

Meanwhile, according to Wiyono (2009), Bribery involves offering money, gifts, or a favor to someone in a position of power or trust, like a government official, in order to convince them to abuse their authority for the briber's own gain. This payment is used to fulfill or address any other needs that may not have been met.

The Concept of Foreign Public Officials and International Organizations

Individuals in foreign countries who are in positions of power, whether through election or appointment, are considered foreign public officials. They have a significant role in governance and policymaking, making them vulnerable targets for transnational corrupt practices. According to Article 2 of the UNCAC, a foreign public official is described as an individual who holds a position in the legislative, executive, administrative, or judicial sectors of a foreign country, regardless of how they obtained the position. This description also includes people who carry out official duties on behalf of a different nation, such as individuals employed by either a government agency or corporation.

The meaning shows that foreign public officials are not only limited to individuals working in central government institutions, but also those at the regional level as well as in state-owned companies. For example, a director or manager in a foreign-owned oil company may be categorized as a foreign public official in the context of anti-corruption law. According to the Foreign Corrupt Practices Act (FCPA) of the United States, a foreign public official is defined as anyone working for a foreign government, department, agency, or state-owned corporation. This definition is broader than the UNCAC as it explicitly includes employees of state-owned companies, which often have authority in the regulation of business and global economic transactions.

Meanwhile, in the context of international organizations, an international organization official is an individual who works or acts on behalf of an organization that has formal legal status in international relations, such as the United Nations (UN), World Health Organization (WHO), or World Trade Organization (WTO). According to the UNCAC, an official of an international organization is someone who is authorized by that organization to represent its interests. In this case, officials of international organizations cover a wide range of positions, from high-ranking officials such as the Secretary-General to staff responsible for policy and fund allocation.

According to the Convention on the Privileges and Immunities of the United Nations, officials of international organizations have certain immunities in carrying out their duties, but also obligated to adhere to the principles of openness and responsibility. Nicholas Lord (2016), an academic in criminology and corporate law, asserts that officials of international

organizations often wield great influence in global regulation and aid distribution, so bribery against them can have far-reaching impacts on international policy and economic justice.

In practice, bribery cases involving officials of international organizations often take the following forms:

- 1) Providing money to foreign government officials to secure projects or business contracts.
- 2) Offering luxurious facilities, such as extravagant travel accommodations, to influence the decisions of foreign officials.
- 3) Making payments to authorized officials in international institutions to sway decisions regarding projects or contracts involving specific countries or companies.
- 4) Bribery aimed at securing positions or gaining influence over the majority in decision-making processes within international organizations.

Definition of Bribery of Foreign Public Officials and International Organizations According to Experts

Some international and national legal experts provide more specific definitions of the concept of transnational bribery. According to Arief (2012), bribery of foreign public officials is the act of giving or promising to officials of other countries with the intention of influencing policies or decisions in international business transactions. Soemitro (2010) emphasized that cross-border bribery is a form of transnational corruption that can damage diplomatic relations and reduce a country's credibility in global economic cooperation. Pope (2000), in his book *Confronting Corruption*, emphasizes that bribery of foreign public officials is a major threat to fair business competition and compliance with international law.

Bribery Provisions Against Foreign Public Officials and Officials of International Organizations in France

A. Legal Framework

In France, the Penal Code addresses bribery among different types of officials through Article 435-1 (passive bribery, where a public official accepts a bribe) and Article 435-3 (active bribery, where an individual gives a bribe to a public official).

The Sapin II Law gives French prosecutors more power to go after cases of bribery that involve foreign government officials. According to Article 435-6-2 of the French Penal Code, French law can be used to prosecute these offenses if they involve a French citizen, someone who lives in France, or a company that operates within French borders, even if the bribery occurred outside of France.

Public officials and private individuals can engage in bribery by either seeking or accepting bribes in order to influence the actions of public officials. Bribing a government official entails offering or pledging a valuable item in order to sway their actions while executing their duties in office. Passive bribery is attributed to the recipient or solicitor of the bribe, while active bribery is attributed to the individual offering the bribe (Lasry et al., 2014).

B. The Concept of Bribery Against Foreign Public Officials and Officials of Public International Organizations

Bribery is the act of illegally giving something of value to a public official, whether it be through direct or indirect means, in order to influence or reward them for their actions in an official capacity. This situation may arise either in a different nation or within a global public institution. The intent is to persuade the person to either do or not do something related to their position or duties, or actions that are made possible by their role.

Receiving benefits from a foreign public official or official from an international organization is known as passive bribery, whereas actively offering a bribe to either official is considered as active bribery.

Different types of illegal activities that could involve foreign government representatives and officials from international agencies may consist of:

- 1) Providing monetary payments to foreign officials to secure business projects or contracts.
- 2) Offering luxury amenities, such as extravagant travel accommodations, to influence the decisions of foreign officials.
- 3) Making payments to officials within international organizations to sway decisions on projects or contracts involving specific countries or companies.
- 4) Engaging in bribery to gain positions or influence within the majority decision-making process of an international organization.

Every state must pass laws to make the following acts criminal offenses if they are done intentionally:

- 1) Giving or promising a public official an unfair advantage, directly or indirectly, to influence them to act or not act in their official capacity for themselves or someone else.
- 2) Accepting or soliciting an unfair advantage by a public official, directly or indirectly, to influence them to act or not act in their official capacity for themselves or someone else.

Definition of Foreign Public Officials and International Public Organization Officials

In French law, a foreign public official is described as an individual who:

- a. Exercises governmental power (e.g., government officials including lawmakers and public employees like law enforcement, educators, and revenue agents);
- b. Is dedicated to serving the public;
- c. Holds an elected public office;
- d. Performs their duties:
 - In a foreign country; or
 - Within an international public organization.

"If an employee working for a government-owned or government-controlled corporation is involved in a service that benefits the public, they could be considered a foreign government representative."

The legal system in France prohibits both giving and receiving bribes.

- a. Individuals who are in a position of authority within a foreign nation or an international judicial institution;
- b. Government employees employed within a foreign or international court;
- c. Specialists chosen by these courts or by the involved parties in legal matters;
- d. Individuals selected to serve as mediators or conciliators by these courts;
- e. Arbiters fulfilling their obligations in accordance with the arbitration regulations of a foreign state.

Consequences of Bribery Involving Foreign Public Officials and Officials of International Public Organizations

- 1) For Individuals Involved in Active or Passive Bribery (Articles 435-1, 435-3, and 435-14 of the French Penal Code):
 - a. Imprisonment for a maximum of 10 years;
 - b. A fine of up to EUR 1 million (or double the amount of the illegal profits);
 - c. Disqualification (up to five years) from exercising civil, civic, and family privileges;;
 - d. Disqualification (up to five years) from holding public office or participating in professional or social activities associated with the crime;
 - e. Disclosure of the court ruling;
 - f. Confiscation of assets used in or intended for use in the commission of the crime, or profits obtained from the crime;
 - g. For foreign individuals, a ban (up to 10 years or permanently) from residing in France.

- 2) For Companies/Legal Entities Involved in Active Bribery (Article 435-15 of the French Penal Code):
 - a. A fine of up to EUR 5 million (or double the amount of the illegal gains);
 - b. Disqualification (up to five years) on engaging in any professional or social activities related to the crime, either directly or indirectly;
 - c. Supervision by the judiciary (up to five years);
 - d. Closing of business premises used for committing the offense (up to five years);
 - e. Disqualification (up to five years) from obtaining public procurement contracts;
 - f. Ineligibility (up to five years) to participate in public tenders or launching an IPO;
 - g. Restriction (up to five years) on issuing checks or using payment cards;
 - h. Confiscation of assets used or intended for use in committing the crime, as well as any proceeds obtained from it;
 - i. Disclosure of the court ruling;
 - j. Enforcement of a compliance program.

Proposed Provisions on Bribery of Foreign Public Officials and Officials of International Organizations in Indonesia

Seeing that the crime of bribery against the two officials is recognized in UNCAC 2003 and several countries have also criminalized this offense in their positive laws, it has triggered various discourses so that the Indonesian Government also criminalizes the act of bribery against the two officials in the Anti-Corruption Law in force in Indonesia. Thus, the proposed formulation of the Act includes (Adji, 2006):

Article 2

- 1) “Setiap orang secara langsung atau melalui perantara untuk mendapatkan, mempertahankan, atau menguasai perdagangan atau memperoleh keuntungan lain secara melawan hukum, dalam perdagangan internasional, menawarkan, menjanjikan, atau memberi sesuatu atau keuntungan lain yang tidak patut kepada pejabat asing lain untuk melakukan perbuatan yang bertentangan dengan kewajibannya, dipidana karena pemberian suap pejabat publik asing, dengan pidana penjara paling singkat 1 (satu) tahun dan paling lama 5 (lima) tahun dan/atau denda paling sedikit Rp. 2.000.000.000,- (Dua milyar rupiah) dan paling banyak Rp. 10.000.000.000,- (Sepuluh milyar rupiah)”;
- a) “Percobaan, permufakatan jahat atau pembantuan penyuaipan kepada pejabat publik asing dipidana dengan pidana yang sama sebagaimana yang dimaksud dalam ayat (1)”.

The proposed formulation of articles on bribery against both officials and the Draft Anti-Corruption Law was also carried out by civil society, accompanied by the following proposed formulation (Fahmi, 2009):

Article 6

“Dipidana dengan pidana penjara paling singkat 2 (dua) tahun dan paling lama 8 (delapan) tahun dan/atau pidana denda paling sedikit Rp. 50.000.000,- (Lima puluh juta rupiah) dan paling banyak (Rp. 250.000.000,- (Dua ratus lima puluh juta rupiah) setiap orang yang”:

- 1) “Memberi atau menjanjikan sesuatu kepada Pejabat Publik Asing dengan maksud agar pejabat itu bertindak atau tidak bertindak dalam melaksanakan tugas-tugas resminya yang bertentangan dengan kewajibannya;
- 2) Memberi atau menjanjikan sesuatu kepada orang dalam jabatan apapun dalam organisasi internasional publik dengan maksud agar pejabat itu bertindak atau tidak bertindak dalam melaksanakan tugas-tugas resminya yang berlawanan dengan kewajibannya;
- 3) Memberi atau menjanjikan sesuatu kepada seseorang yang bekerja pada badan disektor swasta dengan maksud dengan untuk membujuk supaya orang itu berbuat sesuatu dalam tugasnya, yang bertentangan dengan kewajiban atau kewajibannya yang menyangkut kepentingan umum atau merugikan orang lain.”

The proposed formulation of the bribery offense against Foreign Public Officials was also developed by the Corruption Eradication Commission (KPK) through the book “Initiating Amendments to the Anti-Corruption Law” with the following provisions (Sirait, 2023):

- 1) Giving bribes to foreign officials or officials of international organizations, whether through direct or indirect means, in an attempt to sway their actions or decisions for personal gain is considered a crime. Penalties include imprisonment for 2 to 10 years and fines ranging from Rp. 2,000,000,000 to Rp. 10,000,000,000.
- 2) A Foreign Public Official or a Public International Organization Official found guilty of seeking or receiving an unfair advantage, whether through direct or indirect means, in exchange for carrying out or omitting any official task, will face a prison sentence ranging from 4 to 20 years, as well as a fine of at least Rp. 3,000,000,000 and up to Rp. 15,000,000,000.

The entire formulation of the Anti-Corruption Draft Law, including efforts to improve regulations in the future, adopts a value-based approach along with criminal law policies. In accordance with the filtering stages in the theory of criminalization, it seeks to balance the criminalization process while determining whether an act is morally wrong due to violating societal norms (Schonsheck, 1994). This aligns with “The Harm Principle,” which states that an action can be declared illegal when it harms the perpetrator, others, or has widespread consequences (Nurlaily & Windari, 2022).

Three general elements of the formulation of criminal offenses, namely the subject formulation, the formulation of prohibited acts, and the formulation of criminal sanctions, can be considered in drafting a model of anti-corruption regulation for bribery in the future. This study proposes an anti-corruption regulatory model in Indonesia by considering all national and international provisions along with comparative discussions mentioned in the previous paragraphs, including:

1. Expansion of the bribery clause in the Anti-Corruption Draft Law to cover foreign public officials and/or public international organizations, along with the expansion of article formulations.

Prohibited acts are a fundamental concept in criminal law that determines the limits of behavior that can be subject to criminal sanctions. In criminal law, an act can be categorized as a criminal offense if it meets the elements set forth in the law. According to Pompe (1993), a criminal law expert, *strafbaar feit* (criminal offense) is essentially based on positive law, namely an act that can be subject to criminal sanctions if it has been regulated in the legislation. In other words, no one can be punished for an act that is not listed as a prohibition in the applicable law.

This perspective aligns with Moeljatno (2008), who defines a criminal offense as an act that fulfills the formulation in the law and carries criminal sanctions. This indicates that prohibited acts are not merely actions deemed to violate social norms but must have a clear legal basis to warrant criminal sanctions.

This principle is closely related to the legality principle “*nullum delictum nulla poena sine praevia lege poenali*,” which asserts that no act can be penalized without prior legal provisions (Hamzah, 1994). This principle was first introduced by Anselm von Feuerbach in the context of modern criminal law and serves as the foundation for a legal system oriented toward legal certainty. The concept of legality in Indonesia is defined by Article 1(1) of the Criminal Code (KUHP), which emphasizes that punishment can only be imposed if it is in accordance with established criminal law regulations.

The current Indonesian Anti-Corruption Law is still limited to monetary payments to public officials for performing or refraining from performing actions related to their positions. Meanwhile, France has expanded the definition of bribery in the French Penal Code and *Loi Sapin II* (French Criminal Code) to include all forms of undue benefits, such as money, gifts, other economic advantages, promises of business facilities, contract opportunities, investment

incentives, services, sponsorships, and other incentives with economic value. This broader definition ensures that non-cash bribes are also legally prosecutable.

Indicators that should be added to the Indonesian Anti-Corruption Law draft include expanding the definition of bribery to encompass various forms, including sponsorships, free trips, or job positions for foreign officials' family members as illicit gratuities and clarifying that bribery includes not only cash but also other economic benefits that may influence foreign public officials' policies.

Based on the formulation of bribery offenses against both officials in the French Criminal Code discussed earlier, the author proposes a model formulation derived from an elaboration of the French Criminal Code as follows:

1) Any Person and/or Corporation who gives, offers, or promises, directly or indirectly, gifts, promises, donations, or any benefits to influence a Foreign Public Official and/or a Public International Organization to perform or refrain from performing any act in their duties shall be subject to:

A) For Individuals:

- a. Imprisonment for ----- years;
- b. A fine of Rp. ----- or twice the amount of the criminal proceeds;
- c. Confiscation of objects used in or resulting from the crime;
- d. Publication of the verdict;
- e. For foreign nationals, a prohibition (up to 10 years or permanent) on residing in Indonesia.

B) For Corporations:

- a. A fine of Rp. ----- or twice the amount of the criminal proceeds;
- b. A prohibition (up to five years) from conducting certain business activities;
- c. Judicial supervision (up to five years);
- d. Closure of business premises (up to five years);
- e. Prohibition on public tenders;
- f. Confiscation of criminal assets;
- g. Publication of the verdict.

2) Any Person and/or Corporation who solicits or accepts directly or indirectly, any gift, promise, or advantage of any kind to a person who is a Foreign Public Official and/or Public International Organization to do or not do (or for having done or not done) any act in his/her employment, office or facilitated by his/her employment, or office, shall be subject to sanctions in the form of:

A) For Individuals:

- a. Imprisonment for ----- years;
- b. A fine of Rp. ----- or twice the amount of the criminal proceeds;
- c. Confiscation of objects used in or resulting from the crime;
- d. Publication of the verdict;
- e. For foreign nationals, a prohibition (up to 10 years or permanent) on residing in Indonesia

B) For Corporations:

- a. A fine of Rp. ----- or twice the amount of the criminal proceeds;
- b. A prohibition (up to five years) from conducting certain business activities;
- c. Judicial supervision (up to five years);
- d. Closure of business premises (up to five years);
- e. Prohibition on public tenders;
- f. Confiscation of criminal assets;
- g. Publication of the verdict.

2. Legal Subjects

The purpose of defining legal subjects is to identify the perpetrators of criminal acts and hold them accountable for their actions. Individuals or legal entities can be held legally accountable for their crimes, depending on the applicable laws and regulations.

Currently, Indonesia's criminal laws only apply to domestic public officials, while foreign public officials and officials of international organizations are not included as legal subjects. In contrast, French regulations explicitly state that legal subjects in bribery offenses include foreign public officials and officials of international organizations. French companies that bribe foreign officials can be prosecuted even if the offense is committed abroad.

According to the author's perspective, an important indicator that should be added to the Draft Anti-Corruption Law in Indonesia is the explicit inclusion of foreign public officials and officials of international organizations as legal subjects who can receive bribes. Furthermore, it should be emphasized that corporations can also be prosecuted if found guilty of bribing foreign officials.

3. Criminal Penalties

Criminal law encompasses criminal penalties and prohibited norms. It is specific in nature because each illegal act committed can result in punishment or criminal threats. Imprisonment and fines are the primary sanctions or criminal threats applied under the Anti-Corruption Law, along with additional penalties permitted under Articles 2, 3, 5, and 14.

Based on the regulations in France, the criminal penalty for individuals who bribe foreign officials is imprisonment of up to 10 years and a fine of approximately EUR 1 million (around Rp. 16 billion). Meanwhile, corporations found guilty of international bribery can be fined up to EUR 5 million or 10% of their annual revenue, banned from participating in public project tenders, and subject to asset freezes or even dissolution in certain cases.

An important indicator that should be added to the Draft Anti-Corruption Law in Indonesia is the increase in criminal penalties for individuals proven to have bribed foreign officials. Additionally, fines based on a percentage of corporate revenue should be imposed on companies involved in international bribery, similar to the approach adopted in France.

CONCLUSION

In conclusion, referring to the regulation of the crime of bribery against foreign public officials and/or public international officials in France as well as the limitations of the formulation in the Corruption Eradication Bill, the reforms related to corruption crimes in the bribery sector against these two officials in Indonesia include: expansion of bribery norms along with the elements of corruption crimes in the bribery sector against these two officials both active and passive, the imposition of criminal sanctions, as well as equality in the provision of criminal penalties for active bribery and passive bribery

REFERENCE

- Adiba, R. S., Widowati, B. A., Rajabbi, K. V., & Husnyyatie, N. A. (2023). Penegakan Kejahatan Suap Pejabat Asing dengan Perspektif Perjanjian Ekstradisi Indonesia. *Jurnal Anti Korupsi*, 12(2), 46–59.
- Adji, I. S. (2006). *Korupsi, Kebijakan Aparatur Negara dan Hukum Pidana*. Diadit Media.
- Arief, B. N. (2012). *Kebijakan Kriminal dalam Penanggulangan Korupsi*. Gramedia.
- Belarminus, R., & Gatra, S. (2018). Kasus Emirisyah Satar, KPK Panggil Dua Pejabat Garuda Indonesia. *Kompas.com*.
- Braithwaite, J. (2011). Anomie and Violence in Indonesia and Timor-Leste, 1997-2009. *Asian Journal of Criminology*, 6(1). <https://doi.org/10.1007/s11417-010-9087-2>
- Budiman, P. M. (2018). Urgensi pengaturan tindak pidana suap yang dilakukan terhadap pejabat publik asing dan pejabat organisasi internasional publik dikaitkan dengan ratifikasi United Nations Convention Against Corruption 2003 oleh Indonesia.

- Buttle, J. W., Graham Davies, S., & Meliala, A. E. (2016). A cultural constraints theory of police corruption: Understanding the persistence of police corruption in contemporary Indonesia. *Australian & New Zealand Journal of Criminology*, 49(3), 437–454.
- Chazawi, A. (2005). *Hukum pidana materiil dan formil korupsi di Indonesia*. Bayumedia.
- Fahmi, A. C. (2009). *Naskah akademik rancangan undang-undang tentang pemberantasan tindak pidana korupsi: usul inisiatif masyarakat*. Indonesia Corruption Watch.
- Garner, B. A., Black, H. C., McDaniel, B. R., Schultz, D. W., & Company, W. P. (1999). *Black's law dictionary* (Vol. 196). West Group St. Paul, MN.
- Hamzah, A. (1994). *Asas-asas hukum pidana*. Rineka Cipta.
- Hartanti, E. (2023). *Tindak Pidana Korupsi*. Sinar Grafika.
- Haryono, H. (2016). Risywah (Suap-Menyuap) Dan Perbedaannya Dengan Hadiah Dalam Pandangan Hukum Islam (Kajian Tematik Ayat Dan Hadis Tentang Risywah). *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial*, 4(07).
- Hiariej, E. O. S. (2019). United Nations Convention Against Corruption Dalam Sistem Hukum Indonesia. *OLD WEBSITE OF JURNAL MIMBAR HUKUM*, 31(1), 112–125.
- Hutabarat, D. T. H., Delardi, E., Irwansyah, A., Bascara, D., Ansori, B., & Tanjung, F. (2022). The Eradication Of Corruption And The Enforcement Of The Law In Indonesia As Seen Through The Lens Of Legal Philosophy. *Policy, Law, Notary and Regulatory Issues (POLRI)*, 1(2), 1–8.
- Indonesia Corruption Watch. (2010). Suap Innospec, KPK Cekal Enam Orang. *Antikorupsi.Org*. <https://antikorupsi.org/id/article/suap-innospec-kpk-cekal-enam-orang>
- Iskandar, F. (2022). Praktik Tindak Pidana Korupsi dalam Peradilan Indonesia dan Upaya Pencegahan Korupsi oleh Penegak Hukum di Indonesia. *Khazanah Multidisiplin*, 3(1), 64–81.
- Kartika, A. (2020). Urgensi Peraturan Ketentuan Pidana Dalam UU Koperasi di Indonesia. *Jurnal Institusi Dan Kritik Budapest*, 3(2).
- Khabibi, I. (2015). Suap Innospec, Eks Direktur Pertamina Dituntut 7 Tahun Penjara. *detikNews*.
- Lasry, E., Koski, S., & Guyot-Rechard, C. (2014). *Anti-Corruption in France*. Global Compliance News.
- Lord, N. (2016). *Regulating corporate bribery in international business: Anti-corruption in the UK and Germany*. Routledge.
- Mochtar, Z. A., & Hiariej, E. O. . (2018). *Menjerat Korupsi Partai Politik*. Genta Publishing.
- Moeljatno. (2002). *Asas-Asas Hukum Pidana*. Rineka Cipta.
- Nurlaily, H., & Windari, R. (2022). Re-Formulasi Ketentuan Korupsi Sektor Swasta Komparatif Indonesia Dengan New Zealand. *Jurnal Ius Constituendum*, 7(1), 131–142.
- Parthiana, I. W. (2002). *Hukum perjanjian internasional*. Mandar Maju.
- Pompe. (1993). *Pengantar Hukum Pidana Indonesia diterjemahkan oleh R. Soesilo*. Djambatan.
- Pope, J. (2000). *Confronting corruption: The elements of a national integrity system*. Transparency International.
- Pradipto, R. (2016). *Dampak Sosial Korupsi*. Komisi Pemberantasan Korupsi, Direktorat Pendidikan dan Pelayanan Masyarakat.
- Prahassacitta, V. (2017). *Kasus Suap Royce Rolls dan Ketentuan UNCAC di Indonesia*. Binus University.
- Rachman, T., Didik, Maradona, & Leksono, K. (2020). Private Bribery and Integrity in Doing Business. *Proceedings of the 1st International Conference on Anti-Corruption and Integrity (ICOACI 2019)*, 205–213.
- Ramadhan, D. (2017). Efektifitas Peradilan Tindak Pidana Korupsi Dalam Pemberantasan Korupsi Di Pengadilan Negeri Pekanbaru. *Al-Hurriyah: Jurnal Hukum Islam*, 2(2), 137–148.

- Schonscheck, J. (1994). *On criminalization: An essay in the philosophy of criminal law* (Vol. 19). Springer Science & Business Media.
- Setiadi, H. E. (2017). *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum di Indonesia*. Prenada Media.
- Sirait, R. (2023). *Kriminalisasi Penyuapan Terhadap Pejabat Publik Asing dan Pejabat Organisasi Internasional Publik Sebagai Tindak Pidana Korupsi*. Fakultas Hukum Universitas Airlangga Surabaya.
- Soemitro, R. (2010). *Hukum Pajak dan Korupsi*. Gramedia.
- Tahir, A., Ali, M., & Setiawan, M. A. (2021). Bribery and Gratuity: Regulatory Analysis and Judicial Response. *Jurnal Ius Constituendum*, 6(2), 369.
- Waluyo, B. (2022). *Pemberantasan tindak pidana korupsi: Strategi dan optimalisasi*. Sinar Grafika.
- Wiyono, R. (2009). *Pembahasan undang undang pemberantasan tindak pidana korupsi*. Sinar Grafika.