

**ASBĀB AL-NUZŪL: METHODS AND ITS APPLICATION
TO VERSES OF THE AL-QUR'AN**

Rozatul Muna



**ONLINE LOANS THROUGH SMART CREDIT APPLICATION;
A COMPARATIVE STUDY OF ISLAMIC LAW AND POSITIVE LAW**

Slamet Abidin



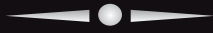
**SOCIAL-POLITICAL CONDITIONS AFTER THE BONGAYA TREATY OF 1667;
ISLAMIC POLITICAL PERSPECTIVE**

Muhammad Arif, Chaerul Mundzir, Is Hamdan Ramadhani



**DECENTRALISATIE VAN HET ONDERWIJS AS AN
EARLY STEP TO ACCULLURATION**

Syafa'at Anugrah Pradana, Rustam Magun Pikhulan



**POLITICAL CONFIGURATION AND LEGAL PRODUCTS IN INDONESIA IN
TERMS OF ISLAMIC CONSTITUTIONAL LAW**

Ummu Awaliah, Muh. Saleh Ridwan, Rahmiati, Kusnadi Umar



BRIBERY IN THE PRIVATE SECTOR AS A CORRUPTION OFFENSE POLICY

Imentari Siin Sembiring, Pujiyono



HIMPUNAN ILMUWAN DAN SARJANA SYARIAH INDONESIA

Al-Risalah

Jurnal Ilmu Syariah dan Hukum

DAFTAR ISI

ASBĀB AL-NUZŪL: METHODS AND ITS APPLICATION TO VERSES OF THE AL-QUR'AN <i>Rozatul Muna</i>	76-85
ONLINE LOANS THROUGH SMART CREDIT APPLICATION; A COMPARATIVE STUDY OF ISLAMIC LAW AND POSITIVE LAW <i>Slamet Abidin</i>	86-98
SOCIAL-POLITICAL CONDITIONS AFTER THE BONGAYA TREATY OF 1667; ISLAMIC POLITICAL PERSPECTIVE <i>Muhammad Arif, Chaerul Mundzir, Is Hamdan Ramadhani</i>	99-108
DECENTRALISATIE VAN HET ONDERWIJS AS AN EARLY STEP TO ACCULLURATION <i>Syafa'at Anugrah Pradana, Rustam Magun Pikhulan</i>	109-116
POLITICAL CONFIGURATION AND LEGAL PRODUCTS IN INDONESIA IN TERMS OF ISLAMIC CONSTITUTIONAL LAW <i>Ummu Awaliah, Muh. Saleh Ridwan, Rahmiati, Kusnadi Umar</i>	117-125
BRIBERY IN THE PRIVATE SECTOR AS A CORRUPTION OFFENSE POLICY <i>Imentari Siin Sembiring, Pujiyono</i>	126-138

BRIBERY IN THE PRIVATE SECTOR AS A CORRUPTION OFFENSE POLICY

Imentari Siin Sembiring¹, Pujiyono ²
email: ¹Imentarisiins@gmail.com, ²pujifhundip@yahoo.com
Fakultas Hukum, Universitas Diponegoro

Abstract

Bribery is an act of corruption. This article aims to analyze the formulation of bribery in the private sector as a criminal act of corruption. This type of research is normative research. The results of the study concluded that bribery in the private sector is an act of corruption as regulated in UNCAC, Indonesia categorizes it as a crime but not as corruption. Problems related to the regulation of bribery in the private sector in Indonesia create ambiguity in its application so it is necessary to accommodate bribery in the private sector as a category of corruption by looking at Singapore which has also ratified UNCAC and has categorized bribery in the private sector as a criminal act of corruption.

Keywords: *Bribery; Private Sector; Corruption*

INTRODUCTION

In Indonesia, corruption offenses are governed by the Corruption Eradication Law. It differs from other specialized criminal act laws, such as the Money Laundering Law and the Economic Crime Act, explicitly referencing the types of criminal acts regulated in the Law's text. The Corruption Eradication Act is named with the phrase "eradication" preceding the title of the criminal act. Regardless of the spelling, the phrase "eradication" in the Law on the Eradication of Criminal Acts of Corruption demonstrates the legislators' strong legal politics to eradicate corruption.

The legal politics of corruption eradication has not yet manifested. According to the findings of Indonesia Corruption Watch (ICW), in 2021, there were 1,218 cases involving 1,298 individuals charged with corruption crimes pending before the criminal justice system, including the Corruption Court, the High Court, and the Supreme Court. According to statistical data, the State Civil Apparatus (ASN) committed the most corruption crimes with 321 cases, followed by private parties with 286 defendants and village officials with 330 cases.¹ With a pervasive corruption climate, Indonesia's corruption perception index is 37 out of 100 countries surveyed by an international organization, Transparency International, in 2020.²

¹ Tatang Gurito, "Data ICW 2020: Kerugian Negara Rp 56,7 Triliun, Uang Pengganti Dari Koruptor Rp 8,9 Triliun," *Kompas.Com*, last modified 2021, accessed July 30, 2021, <https://nasional.kompas.com/read/2021/03/22/19301891/data-icw-2020-kerugian-negara-rp-567-triliun-uang-pengganti-dari-koruptor-rp>.

² Wawan Heru Suyatmiko, "Memaknai Turunnya Skor Indeks Persepsi Korupsi Indonesia Tahun 2020," *INTEGRITAS* 7, no. 1 (June 25, 2021): 161-178, <https://jurnal.kpk.go.id/index.php/integritas/article/view/717>.

Corruption is on the rise not only in the executive, legislative, and judicial branches of government, but also in the private sector³. The issue of bribery in the private sector first came to light in the 1980s, when a bribery incident in soccer drew widespread public attention. At the time, the debate over whether bribery in sports should be criminalized arose. According to then-current criminal law regulations, the act could not be classified as a criminal offense under either the Criminal Code or Law No. 3 of 1971 on the Eradication of Criminal Acts of Corruption⁴. In light of this, bribery can be defined as a crime that results in loss; therefore, legislation is required to define bribery in the private sector as a crime that can be prosecuted. As a result, Law No. 11 of 1980 on Bribery was enacted to address this issue.

While bribery in the private sector is criminalized under Law No. 11 of 1980, the law is seldom enforced in practice, and many are unaware of its existence. The existence of 1980 Law No. 11 is synonymous with its absence (*Manifestuhu ka'damihi*). Several previous studies, such as Ai Mulyadi Mamoer's "Bribery and the Business World," ICW's "Independent Report on Corruption Assessment and Compliance with the United Nations Convention Against Corruption (UNCAC) 2003 in Indonesian Law," Prianter Jaya Hairi's "Urgency Regulation of Corruption Handling in the Private Sector," and Abdul Manan's "Eradication of Corruption in Indonesia Post Ratification, written by a person with

Bribery is currently regulated by Law No. 20 of 2001, amending Law No. 31 of 1999 on the Eradication of Corruption Crimes (referred to as the PTPK Law). The PTPK Law categorizes corrupt acts into seven categories: (1) self-enrichment or corruption that results in financial losses to the state; (2) bribe bribery; (3) office embezzlement; (4) blackmail; (5) fraudulent acts; (6) conflict of interest in procurement; and (7) gratification (Rodliyah & Salim, 2017). Meanwhile, the PTPK Law does not address bribery in the private sector, where both legal subjects are private parties.

The problems and threats posed by criminal acts of corruption can undermine democratic values, ethics, and law enforcement and jeopardize sustainable development, prompting the international community to become more sensitive to the eradication of corruption. In December 2003, the world's countries met in Merida, Mexico, to draft the United Nations Convention Against Corruption (UNCAC). Indonesia then ratified the convention's outcome through Law No. 7 of 2006 on Ratification of the UNCAC 2003. A country's ratification of an international agreement constitutes a commitment to adhere to the agreement's contents or rights and obligations⁵. However, there has been no process to convert the agreement's provisions into legislation, particularly those relating to bribery in the private sector.

The author discusses several previous studies that are relevant to this research in this section. Fariz Cahya's research, "The Urgency of Bribery Regulations in the Private Sector as a Corruption Crime in Indonesia," focuses on the urgency of bribery

³ Bambang Waluyo, "Optimalisasi Pemberantasan Korupsi Di Indonesia," *Jurnal Yuridis* 1, no. 2 (2014).

⁴ K. Wantjik Saleh, *Tindak Pidana Korupsi Dan Suap*, revisi. (Jakarta: Ghahlia Indonesia, 1983).

⁵ Hikmahanto Juwana, "Kewajiban Negara Dalam Proses Ratifikasi Perjanjian Internasional: Memastikan Keselarasan Dengan Konstitusi Dan Mentransformasikan Ke Hukum Nasional," *Undang: Jurnal Hukum* 2, no. 1 (2019).

regulation in the private sector as a corruption crime in Indonesia (Cahyana, 2020). Russel Butarbutar's research is summarized in the article "Modus Operandi and Criminal Liability of Corporate Bribery." The study discusses why and how corporations commit bribes and the penalties that can be imposed on a corporation. The research concludes that corporations can only be punished through fines; this punishment is deemed to lack a sense of justice and cannot compensate for state losses.⁶ Additionally, Lois Sintung's research concluded in an article titled "Prosecution of Corporations as Bribers" that bribery committed by corporations is an act for or on behalf of the corporation promising or giving something to state officials with the intent of influencing their duties and powers.⁷

In contrast to previous research, the author of this paper attempts to describe the evil nature of bribery in the private sphere in such a way that it merits punishment. Additionally, the bribery act that will be analyzed in this paper is one committed in the private sector without the involvement of state officials. However, bribery has a negative impact on not only the company at the estuary, but also on the community and the state. Corruption behavior, such as bribery in business practices or the private sector, will persist unless bribery in the private sector is defined as a criminal act of corruption. As a result, it is necessary to reform the criminal law, particularly the PTPK Law, in order to facilitate and implement the legal politics of eradicating corruption in its entirety.

METHOD

The article employs normative research to examine the critical nature of defining bribery in the private sector as a criminal act of corruption. The statutory, conceptual, and comparative approaches were all used as axes of analysis in this research. This approach will examine the relationship between corruption and the private sector and whether bribery in the private sector is regulated by law. How should legislation address bribery in the private sector?

RESULT & DISCUSSION

1. *Corruption and Private Sector*

Corruption has permeated every aspect of life in Indonesia, affecting every sector at various levels. The reason is that for decades, acts of corruption have been permitted to occur without being taken seriously from a legal standpoint⁸.

Although the regulations for eradicating corruption are regulated in the PTPK Law, it is difficult to define what constitutes corruption because there is no legally defined definition of in-laws and regulations. Specifically, Article 1 paragraph (1) of the KPK Law states that a criminal act of corruption is defined in the law governing

⁶ Russel Butarbutar, "Modus Operandi Dan Pertanggungjawaban Pidana Suap Korporasi," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 1 (2017): 181-203.

⁷ Lois Sintung, "Penuntutan Terhadap Korporasi Sebagai Pelaku Tindak Pidana Suap," *Lex Crimen* 4, no. 1 (2015).

⁸ Odie Faiz Guslan, "TINJAUAN YURIDIS MENGENAI BATASAN ANTARA PERBUATAN MALADMINISTRASI DENGAN TINDAK PIDANA KORUPSI," *JCH (Jurnal Cendekia Hukum)* 4, no. 1 (2018): 9-25.

the eradication of corruption crimes. Thus, bribery in the private sector has not been defined as a criminal act of corruption, even though bribery is a form of corruption.

The phrase "Het Recht hinkt Achter de feiten aan" reflects the conditions for eradicating corruption in Indonesia, where the *modus operandi* of corruption crimes continues to evolve without being accompanied by criminal law reform. In an era of globalization, the private sector plays a critical and strategic role in life, particularly economic growth. However, this beneficial role is frequently accompanied by violations of criminal law, either as a means of committing criminal acts or accommodating the proceeds of criminal acts and obtaining profits from criminal acts with the management's collective decision⁹. According to Ramirez Torres, corruption is not a desire but a calculated act when the benefits of corruption are estimated to be greater than the sanctions obtained and the likelihood of being caught is relatively low¹⁰.

According to Transparency International's Global Corruption Report survey, there are numerous factors that contribute to the occurrence of a corruption crisis in the private sector. Within five years, the cost of corruption in the private sector had risen to \$300 billion US dollars¹¹. This nominal is one of the evidences that private sector corruption is extremely dangerous. Corruption in the private sector has long garnered global attention, as evidenced by corruption cases involving large companies such as Siemens AG, the British BAE, and the UN Oil for Food bribery scandal, all of which demonstrate that corruption in the private sector is pervasive and widespread. even budgeted strategically. In accordance with this, Budi Santoso stated that corruption in the private sector is proportional to the amount of money circulated in the sector¹².

However, bribery cases in the private sector are notoriously difficult for the media to uncover. Corruption is also facilitated by management that has a tendency to conceal corruption within the organization. In general, an organization's management is averse to corruption that occurs within the organization, even if they are not personally involved. This is because it is assumed that disclosing instances of corruption within an organization reflects poor management within the organization. Finally, the tendency to conceal corrupt practices will result in the concealment of other corrupt practices such as collusion and extortion. This is the reason for the difficulty in detecting corrupt practices through auditing activities as well as through investigation and investigation activities.

Victims of private sector crimes are frequently abstract, such as the government, other businesses, and numerous but difficult-to-identify consumers. Additionally, the impact is dangerous and threatening because it can erode the business community's

⁹ Budi Suhariyanto, "Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi (The Role Of Regulation Of The Supreme Court Number 13 Year 2016 In Overcoming Obstacles Of Corporate Criminal Infringement)," *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 9, no. 1 (2018): 101-120.

¹⁰ Bambang Waluyo, *Pemberantasan Tindak Pidana Korupsi (Strategi Dan Optimalisasi)* (Jakarta: Sinar Grafika, 2011).

¹¹ (Sutanti, 2016)

¹² Prianter Hairi Jaya, "Urgensi Pengaturan Penanganan Tindak Pidana Korupsi Di Sektor Swasta," *Info Singkat* 10, no. 24 (2018).

standards¹³. Corruption in the private sector has an impact on companies and has an impact on the state. For companies, corruption leads to additional costs for bribes or to build corrupt networks. Furthermore, these costs are passed on to consumers through higher prices and lower-quality products and services¹⁴. The community's estuary becomes a victim of private sector corruption. Corruption, for the state, almost always results in underinvestment, erodes competition, exacerbates inequality, impairs the quality of public services, erodes public trust, and ultimately jeopardizes economic and public stability. In essence, corruption is a destructive act, the result of actions that are always motivated by specific motives and can be disguised with the intent of destroying the existing order¹⁵.

According to Rimawan Pradiptyo, a lecturer at the UGM Faculty of Economics and Business, private companies are responsible for 59% of corruption cases in Indonesia¹⁶. Additionally, according to the Corruption Eradication Commission, the private sector's involvement in corruption cases is quite significant; from 2004 to 2020, the private sector accumulated 739 bribery cases out of a total of 1,122 corruption cases¹⁷. The losses incurred by bribery in the private sector are not purely monetary; they have spawned inefficiency, increased the volume of crime, slowed and deteriorated the country's image and investment climate.

The number of corruption cases involving the private sector and the widespread impact on businesses and the community, as well as on the state, demonstrate the close connection between corruption and the private sector. As a result, regulations for the Eradication of Criminal Acts of Corruption should include provisions for ensnaring bribery in the private sector.

The issue of bribery is not a new one in the evolving legal landscape; this is because the issue of bribery is as "old" as the culture of bribery¹⁸. Bribery is derived from the French *briberrie*, which translates as beggarly or vagrancy. Bribe is derived from the Latin word *bribe*, which means a piece of bread given to a beggar. In its development, bribe refers to extortion in relation to a gift received or given in order to corruptly influence, which in Indonesian refers to a gift or gift received or given with the intent to corruptly influence¹⁹. Corruption begins with bribery and embezzlement

¹³ Suhariyanto, "Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi (The Role Of Regulation Of The Supreme Court Number 13 Year 2016 In Overcoming Obstacles Of Corporate Criminal Infringement)."

¹⁴ Jaya, "Urgensi Pengaturan Penanganan Tindak Pidana Korupsi Di Sektor Swasta."

¹⁵ Hendrik Vallen Ayomi and PRT. Paramma, "Gereja Dan Korupsi: Analisis Isi Khotbah (Content Analysis) Terkait Praktek Korupsi Di Papua," *INTEGRITAS* 7, no. 1 (June 25, 2021): 197-216, <https://jurnal.kpk.go.id/index.php/integritas/article/view/734>.

¹⁶ Aji Maulana, "Indonesia Belum Serious Tangani Korupsi," *Universitas Gadjah Mada*, last modified April 7, 2021, accessed August 2, 2021, <https://www.ugm.ac.id/id/berita/20970-indonesia-belum-serious-tangani-korupsi>.

¹⁷ Antara, "KPK Sebut Sektor Swasta Dan DPR Dominasi Kasus Korupsi," *Tempo.Co*, last modified July 30, 2021, accessed August 2, 2021, <https://nasional.tempo.co/read/1488894/kpk-sebut-sektor-swasta-dan-dpr-dominasi-kasus-korupsi/full&view=ok>.

¹⁸ Indriyanto Seno Adji, *Korupsi Kebijakan Aparatur Sipil Negara & Hukum Pidana*, vol. 3 (Jakarta: Diadit Media, 2009).

¹⁹ Evi Hartati, *Tindak Pidana Korupsi*, 2nd ed., vol. 4 (Jakarta: Sinar Grafika, 2021).

of public funds. Bribery is a form of corruption that is difficult to prove because both parties involved, the giver and the recipient, are corrupt²⁰.

In the context of criminal law, the term bribery is defined as "a gift or promise." Bribery can take the active or passive form. Initially, the Criminal Code recognized only passive bribery (passive omkoping), but the PTPK Law expanded the definition of bribery to include active bribery (active omkoping)²¹.

The issue of bribery in the private sector has developed into a polemic and protracted debate because some criminal law experts in Indonesia agree that the PTPK Law does not address bribery in the private sector. While corruption is not limited to the public sector, it does exist in the private sector. According to Robert Klitgaard's theory, "corruption can be defined as the abuse of office for personal gain." The office can be public or private; it can also be a position of power in any sector, including the private sector, non-profit organizations, and even university professors". Bribery in the private sector is identical to bribery in the public sector, except that the party receiving the bribe is not a public official (passive bribery). The recipient of the bribe does or does not do something that violates his obligations²².

The bribery act, as regulated by Law No. 11 of 1980, does not include a requirement against bribery of public officials, such as the relationship between power and position as defined in the PTPK Law²³. Additionally, Law No. 11 of 1980 requires an element of public interest or public interest. The issue is related to the subject or perpetrator of a bribery case; if the criterion for determining the subject or perpetrator of a criminal act of corruption is the subject's or perpetrator's status as a Civil Servant or State Administrator, the briber who does not meet these criteria cannot be charged with bribery under the PTPK Law.

Although the regulation of bribery in the private sector was included in the Draft Criminal Code, the RKUHP Working Team (Panja RKUHP) did not include all provisions pertaining to criminal acts of corruption in the private sector in the RKUHP in 2018. Muladi stated that the agreement was reached because he believed that private sector corruption should be regulated under the PTPK Law. Muladi proposed, as a result, that the PTPK Law be comprehensively revised and adapted to the UNCAC²⁴.

Muladi's legal politics contradicts the existence of Law No. 11 of 1980, which regulates bribery in the private sector, which is not a crime of corruption. This automatically has implications for law enforcers who are authorized to handle bribery cases in the private sector; KPK will almost certainly not be authorized to handle bribery cases in the private sector because they do not fall under the definition of corruption under the PTPK Law. This chain of events eventually results in inconsistencies and ambiguity in the application of criminal act norms.

The regulation of bribery in the private sector outside the PTPK Law appears strange, as bribery in the private sector is conceptually-theoretically included in the

²⁰ Fransiska Novita Elcanora, "Pembuktian Unsur Sifat Melawan Hukum Dalam Tindak Pidana Korupsi," *Hukum dan Dinamika Masyarakat* 9, no. 2 (2012).

²¹ Elcanora, "Pembuktian Unsur Sifat Melawan Hukum Dalam Tindak Pidana Korupsi."

²² Andreas Nathaniel Marbun, "Suap Di Sektor Privat: Dapatkah Dijerat?," *MaPPI* 3, no. 1 (2017).

²³ Adji, *Korupsi Kebijakan Aparatur Sipil Negara & Hukum Pidana*, vol. 3, p. .

²⁴ Kristian Erdianto, "Pemerintah Hilangkan Pasal Terkait Korupsi Di Sektor Swasta Dalam RKUHP," *Kompas.Com*.

category of corruption, and thus becomes content material under UNCAC. Although bribery in general (involving public and private sector officials) falls under the category of corruption in theory, positive law defines corruption as any crime covered by the PTPK Law and other regulations that expressly state the provision as a criminal act. corruption.

Bribery in the private sector (bribery in the private sector), the substance of this rule has not been regulated in the PTPK Law, despite the fact that private companies frequently obtain facilities, loans, and other forms of funding from the government. Additionally, the problem of bribery in the private sector whose products are related to the public interest has the potential to endanger society and cause shocks to the national economic system. Corruption in the private sector imposes additional costs for bribes on businesses. These costs will be passed on to consumers in the form of increased prices or lower-quality goods.

Bribery in the private sector is defined as a criminal act of corruption in Article 12 and Article 21 of the UNCAC; the provision's primary objective is to criminalize criminal acts of corruption that occur exclusively in the private sector. Article 21 of the UNCAC is as follows:

“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

- (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*
- (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.”*

The provisions of UNCAC Article 21 letter (a) constitute active bribery (active omkoping), whereas UNCAC Article 21 letter (b) constitutes passive bribery (passieve omkoping). When compared to the bribery prohibited by the PTPK Law, the distinction is in the legal subject and authority attached to it. Bribery is defined in the PTPK Law as an act committed against a State Administrator or Civil Servant, and thus is related to the position associated with it. Meanwhile, as defined in Article 21 of the UNCAC, the legal subject is the private sector, which is also subject to its duties and obligations in its capacity. In conclusion, both provisions regulate bribery, which falls under the category of corruption in theory.

Legislators have recently recognized that corruption in the private sector has the same consequences as general corruption. As a result, Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Corporate Crime Cases serves as a guide for law enforcement officers handling criminal cases involving corporations and/or corporate management in the private sector. However, it is believed that the existence of this regulation makes it less likely to reach corruption in the private sector ²⁵

²⁵ Jaya, “Urgensi Pengaturan Penanganan Tindak Pidana Korupsi Di Sektor Swasta.”

because, up to this point, the legal subject of corruption as defined by the PTPK Law has required the involvement of state administrators.

Due to the difficulties associated with regulating bribery in the private sector, which creates ambiguity in its application, it is necessary to include bribery in the private sector as a category of corruption. As a result, the KPK will also be empowered to eradicate corruption in the private sector.

2. A Comparison Of Bribery Arrangements In The Private Sector Of Indonesia And Singapore

Each country takes a unique approach to criminalizing bribery in the private sector. The distinction in approach model is determined by the nature of the interests to be protected. Three models exist for regulating bribery in the private sector. To begin, the approach to property and business asset violations. Second, the approach to trust and loyalty violations in labor relations. Thirdly, under the free market approach, bribery in the private sector is viewed as a factor distorting fair competition and market functioning ²⁶.

Singapore is one of the countries that has made bribery in the private sector a criminal offense under the Prevention of Corruption Act. Singapore's success in eradicating corruption is demonstrated by Transparency International's Corruption Perceptions Index. Singapore is ranked first in Southeast Asia and fourth in the world by international institutions as the country with the lowest level of corruption, according to the results of a survey conducted by international institutions ²⁷. Indonesia can now look to Singapore for guidance in its efforts to eradicate corruption, particularly in the formulation of regulations governing bribery in the private sector.

Bribery in the private sector is a form of corruption that has developed in response to economic growth. Bribery in the private sector has had similar consequences to bribery in the public sector because, in addition to eroding public confidence in business, it erodes fair business competition and market functions, thereby eroding a country's economy ²⁸. Michel A Rako stated that with the rapid growth of corruption in the private sector in Indonesia, a simultaneous and continuous breakthrough in terms of eradicating corruption was required. Not just in government, but also in the private sector ²⁹.

Singapore is a country that has ratified the UNCAC and criminalized bribery in the private sector. Singapore scored 85 on a scale of 0-100 and was ranked third out of 180 countries surveyed in Transparency International's 2020 Corruption Perceptions Index, while Indonesia was ranked 102 with a score of 37. (Transparency International, 2020). Singapore has a lower Corruption Perception Index than Indonesia, so there is nothing wrong with considering Singapore when it comes to eradicating corruption, particularly regulations governing bribery in the private sector.

²⁶ Vidya Prahassacitta, "Tinjauan Atas Kebijakan Hukum Pidana Terhadap Penyuapan Di Sektor Privat Dalam Hukum Nasional Indonesia: Perbandingan Dengan Singapura, Malaysia, Dan Korea Selatan," *Hukum dan Pembangunan* 47, no. 4 (2017).

²⁷ Transparency International, *Corruption Perceptions Index 2020*, 2020.

²⁸ Prahassacitta, "Tinjauan Atas Kebijakan Hukum Pidana Terhadap Penyuapan Di Sektor Privat Dalam Hukum Nasional Indonesia: Perbandingan Dengan Singapura, Malaysia, Dan Korea Selatan."

²⁹ Jaya, "Urgensi Pengaturan Penanganan Tindak Pidana Korupsi Di Sektor Swasta."

In Singapore, eliminating corruption in the public sector is not a significant issue, but corrupt behavior in the private sector, including bribery between private sector participants, is (Prahassacitta, 2017). Corruption in the Private Sector accounts for 85 percent of corruption cases in Singapore (UNAFEI, 2017). Similar to Indonesia, businesspeople and experts agree that running a business or conducting business in Indonesia carries a high risk of corruption³⁰.

Corruption in the private sector is detrimental to Singapore's investment climate and erodes public confidence in the private sector, particularly those that provide public services³¹.

Table. 1 A Comparison of Indonesia's and Singapore's Efforts to Eliminate Corruption

Country	UNCAC ratification	Implementation	Corruption Perception Index
Indonesia	by virtue of Law No. 7 of 2006 on the Ratification of the United Nations Convention Against Corruption 2003	yet	120
Singapore	by way of Depository Notification No. 824 for the year 2009	Article 5 of the 1993 Anti-Corruption Act	3

Bribery was criminalized in Singapore for the first time in 1957 MLJ 199, in a case involving Lim Kheng Kooi and Anor V Regina. The judge determined that giving a sum of money was an act against the law because it was an act of corruption committed with evil intentions in order to precipitate further wrongdoing³².

Additionally, Singapore legislation specifically criminalizes bribery in the private sector under Article 5 of the Prevention of Corruption Act of 1993 :

“5. Any person who shall by himself or by or in conjunction with any other person –
(a) corruptly solicit or receive, or agree to receive for himself, or for any other person; or
(b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise on account of –

³⁰ Suyatmiko, “Memaknai Turunnya Skor Indeks Persepsi Korupsi Indonesia Tahun 2020.”

³¹ UNAFEI, *Best Practice in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia*, 2017.

³² Ibid.

(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or

(ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both."

The Prevention of Corruption Act makes no distinction between bribery and gratification; bribery is referred to as gratification.

Meanwhile, in Indonesia, the PTPK Law regulates bribery as a criminal act of corruption in Article 5, Article 6, Article 11, Article 12 letters a, b, c, and d, and Article 13. According to Oemar Seno Adji, civil servants are the only persons who can be the subject of criminal acts of corruption under the PTPK Law, while non-civil servants can only be the subject of criminal acts of bribery (Prahassacitta, 2017). If the description above is accurate, there are inconsistencies in the provisions of Article 6 paragraph (1) letter b, Article 6 paragraph (2) letter b, and Article 12 letter d, which governs bribery of an Advocate. According to the provisions of Article 3 paragraph (1) letter c of Law No. 18 of 2003 on Advocates, one of those who may be appointed as an advocate is a person who is not a civil servant or a State Official.

Additionally, the provisions of Article 20 paragraph (3) of Law No. 18 of 2003 concerning Advocates state that an Advocate may not perform the duties of his Advocate profession while serving as a State Official. If an Advocate commits bribery in this case, he is not subject to Article 12 letter d of the PTPK Law in his capacity as an Advocate but may be subject to other bribery provisions as a State Official.

Additionally, an Advocate cannot be classified as a State Administrator who has expanded in scope, as an Advocate's honorarium is not funded by state funds. This demonstrates that the PTPK Law provides a framework for regulating bribery acts committed by individuals who are not Civil Servants or State Administrators, as well as a mechanism for acknowledging bribery acts committed by individuals who are not Civil Servants or State Administrators.

Bribery in the private sector must be regulated as a criminal act of corruption immediately. In light of Indonesia's 2006 ratification of the UNCAC and Singapore's 2009 ratification of the UNCAC, The Singapore state's commitment to eradicating corruption is demonstrated by its ranking on the Corruption Perception Index, which is significantly higher than the Perception Index. Indonesia is still ranked 89th in a world-wide ranking of 180 countries. As a result, Indonesia should emulate Singapore's success in eradicating corruption by classifying acts of bribery in the private sector as criminal acts of corruption.

3. Corruption In The Private Sector Will Be Defined As A Criminal Offense In The Future

The evolution of corruption's modus operandi and perpetrators must be followed by legal reform, which is essentially an effort to create criminal legislation that is appropriate for the times and circumstances of the present and future. As a result, the state, as a sovereign legal entity, plays a critical role in eradicating

corruption through penal policies. As Barda Nawawi Arief stated, punishment policy cannot be divorced from the objective of achieving community protection in order to achieve prosperity. Thus, a serious commitment to eradicating corruption is required, as is comprehensive improvement of criminal law policies toward eradicating corruption through the incorporation of bribery in the private sector into the Corruption Eradication Law, as mandated by UNCAC. Thus enabling the PTPK Law to become effective legislation in the fight against corruption.

Due to the difficulties associated with regulating bribery in the private sector, which creates ambiguity in its application, it is necessary to include bribery in the private sector as a category of corruption. As a result, the KPK will also be empowered to eradicate corruption in the private sector.

The following is a draft of articles on bribery in the private sector that could be included in the PTPK Law's revision:

Private-Sector Bribery Articles

(1) Sentenced to a minimum term of imprisonment of... and the maximum term of imprisonment of... and a maximum fine of Rp.... and at least Rp.... any person who intentionally gives or promises something, directly or indirectly, in the course of economic, financial, or procurement activities to a person who leads or has the capacity in the private sector to do or not do something contrary to his duties.

(2) Any person who leads or has authority in the private sector who requests or receives something as referred to in paragraph (1) shall face the same penalty as the person who requests or receives something as referred to in paragraph (1).

CONCLUSION

Bribery in the private sector must be reclassified as a criminal act of corruption in Indonesia immediately, taking the following factors into account: To begin, while it criminalizes bribery in the private sector, its application is ambiguous because, conceptually and theoretically, bribery in the private sector is a form of corruption, making it a content material under UNCAC. Second, the data and impact of corruption in the private sector demonstrate the intimate connection between corruption and the private sector. Third, in the spirit of Singapore, which has a much lower Corruption Perception Index than Indonesia, it is critical to institutionalize bribery in the private sector.

BIBLIOGRAPHY

- Adji, Indriyanto Seno. *Korupsi Kebijakan Aparatur Sipil Negara & Hukum Pidana*. Vol. 3. Jakarta: Diadit Media, 2009.
- Antara. "KPK Sebut Sektor Swasta Dan DPR Dominasi Kasus Korupsi." *Tempo.Co*. Last modified July 30, 2021. Accessed August 2, 2021. <https://nasional.tempo.co/read/1488894/kpk-sebut-sektor-swasta-dan-dpr-dominasi-kasus-korupsi/full&view=ok>.

- Butarbutar, Russel. "Modus Operandi Dan Pertanggungjawaban Pidana Suap Korporasi." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 1 (2017): 181-203.
- Elcanora, Fransiska Novita. "Pembuktian Unsur Sifat Melawan Hukum Dalam Tindak Pidana Korupsi." *Hukum dan Dinamika Masyarakat* 9, no. 2 (2012).
- Erdianto, Kristian. "Pemerintah Hilangkan Pasal Terkait Korupsi Di Sektor Swasta Dalam RKUHP." *Kompas.Com*.
- Failin, Failin. "SISTEM PIDANA DAN PEMIDANAAN DI DALAM PEMBAHARUAN HUKUM PIDANA INDONESIA □." *JURNAL CENDIKIA HUKUM* 3, no. 1 (2017): 14-31.
- Gurito, Tatang. "Data ICW 2020: Kerugian Negara Rp 56,7 Triliun, Uang Pengganti Dari Koruptor Rp 8,9 Triliun." *Kompas.Com*. Last modified 2021. Accessed July 30, 2021. <https://nasional.kompas.com/read/2021/03/22/19301891/data-icw-2020-kerugian-negara-rp-567-triliun-uang-pengganti-dari-koruptor-rp>.
- Guslan, Odie Faiz. "TINJAUAN YURIDIS MENGENAI BATASAN ANTARA PERBUATAN MALADMINISTRASI DENGAN TINDAK PIDANA KORUPSI." *JCH (Jurnal Cendekia Hukum)* 4, no. 1 (2018): 9-25.
- Hartati, Evi. *Tindak Pidana Korupsi*. 2nd ed. Vol. 4. Jakarta: Sinar Grafika, 2021.
- Jaya, Prianter Hairi. "Urgensi Pengaturan Penanganan Tindak Pidana Korupsi Di Sektor Swasta." *Info Singkat* 10, no. 24 (2018).
- Juwana, Hikmahanto. "Kewajiban Negara Dalam Proses Ratifikasi Perjanjian Internasional: Memastikan Keselarasan Dengan Konstitusi Dan Mentransformasikan Ke Hukum Nasional." *Undang: Jurnal Hukum* 2, no. 1 (2019).
- Marbun, Andreas Nathaniel. "Suap Di Sektor Privat: Dapatkah Dijerat?" *MaPPI* 3, no. 1 (2017).
- Maulana, Aji. "Indonesia Belum Serius Tangani Korupsi." *Universitas Gadjah Mada*. Last modified April 7, 2021. Accessed August 2, 2021. <https://www.ugm.ac.id/id/berita/20970-indonesia-belum-serius-tangani-korupsi>.
- Prahassacitta, Vidya. "Tinjauan Atas Kebijakan Hukum Pidana Terhadap Penyuaan Di Sektor Privat Dalam Hukum Nasional Indonesia: Perbandingan Dengan Singapura, Malaysia, Dan Korea Selatan." *Hukum dan Pembangunan* 47, no. 4 (2017).
- RAHMI DWI SUTANTI, S.H, M.H. "Kebijakan Formulasi Tindak Pidana Korupsi Di Sektor Swasta" (2016).
- Saleh, K. Wantjik. *Tindak Pidana Korupsi Dan Suap*. Revisi. Jakarta: Ghahlia Indonesia, 1983.
- Situng, Lois. "Penuntutan Terhadap Korporasi Sebagai Pelaku Tindak Pidana

Suap." *Lex Crimen* 4, no. 1 (2015).

Suhariyanto, Budi. "Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi (The Role Of Regulation Of The Supreme Court Number 13 Year 2016 In Overcoming Obstacles Of Corporate Criminal Infringement)." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 9, no. 1 (2018): 101-120.

Suyatmiko, Wawan Heru. "Memaknai Turunnya Skor Indeks Persepsi Korupsi Indonesia Tahun 2020." *INTEGRITAS* 7, no. 1 (June 25, 2021): 161-178.
<https://jurnal.kpk.go.id/index.php/integritas/article/view/717>.

Transparency International. *Corruption Perceptions Index 2020*, 2020.

UNAFEI. *Best Practice in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia*, 2017.

Vallen Ayomi, Hendrik, and PRT. Paramma. "Gereja Dan Korupsi: Analisis Isi Khotbah (Content Analysis) Terkait Praktek Korupsi Di Papua." *INTEGRITAS* 7, no. 1 (June 25, 2021): 197-216.
<https://jurnal.kpk.go.id/index.php/integritas/article/view/734>.

Waluyo, Bambang. "Optimalisasi Pemberantasan Korupsi Di Indonesia." *Jurnal Yuridis* 1, no. 2 (2014).

— — —. *Pemberantasan Tindak Pidana Korupsi (Strategi Dan Optimalisasi)*. Jakarta: Sinar Grafika, 2011.