



**REVIEW ARTICLE**

MISDEMEANOR OF CORRUPTION WITHIN THE  
SCOPE OF INTERNATIONAL LAW AND THE  
LEGAL CONSEQUENCES

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**ABSTRACT**

Corruption is a threat to stability, national and international security, institutions, democracy, justice and endangering sustainable development and law enforcement. In an international perspective, corruption is classified into white-collar crime as a crime that occurs in government institutions. The paper analyses the corruption in the international law perspective. The paper is intended to examine more deep concerning to corruption in the global perspective and international law, and how are consequences into domestic law. The method used for analytical study of this paper by analyze some related theories concerning to corruption in international law perspective. The paper highlighted and underlined that corruption in the global context can be prevented by international cooperation and collaboration in many forms, one of is regional or bilateral agreement on combating corruption.

**Keywords:** Corruption; International Law; Global Context; Legal Consequences

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## INTRODUCTION

International criminal law covers international aspects both in terms of authority, administrative mechanisms and international criminal in the meaning of the material. Universally, International Criminal Law is defined as a transnational crime. In this case, a crime that is actually a national crime that contains aspects of cross-border countries. Therefore, the occurrence of the crime itself is actually within the national boundaries. However, in some respects related to the interests of other countries are mixed so that there appear to be two or more countries that have mutual interests in this matter. In practice, of course, there are many factors that lead to the related interests of more than one country in a crime. For

example, criminal acts of corruption, where offenders and assets resulting from corruption are stored in other countries so that they do not only cover the borders of the country concerned but also enter the territory of other countries (Rumokoy, 2011).

In the era of globalization, corruption has become a phenomenon of a crime involving multilateral relations (Alkosar, 2009). Bassiouni in his book in 1994 revealed that international criminal law is any action that can be determined in multilateral conventions and followed by participating countries. In this case, there are various kinds of international agreements that serve to prevent and eradicate criminal acts. Some of these agreements include Memorandum of Understanding (MoU), MLA, Extradition, and Agreement on Transfer of Sentenced Persons, etc.

Then what needs to be questioned is why the law of corruption in various countries looks like it is not functioning. In fact, according to Barda Nawawi Arief, referring to criminal law policy, the main target of criminal law is not only bad deeds from citizens but also actions (in authority or power) involving the authorities or law enforcement officers (Arief, 2001).

Corruption in many cases is caused by an abuse of power, especially in countries that have low-security stability (Arifin, 2016). In this case, corruption is a universal problem faced by all countries in the world and is a complicated problem that is difficult to eradicate. This is because the problem of corruption is not only related to economic problems but also related to political issues, power and law enforcement (Marsono, 2007). It has been proven, corruption is related to the economic backwardness of a country because its effects create distortions in economic activity, reduce economic growth by inhibiting foreign investment in the form of foreign direct investment (FDI), leakage of the state budget, lower tax revenues, and rampant illegal levies.

Susanti (2014) told that corruption is seen as a paradigmatic phenomenon or it can be said as a social phenomenon that is ingrained because it is considered a national culture (Said, 2005). If equated, the culture of corruption has entered widely into the realm of community mentality and soul (Sugiharto, 2005). Corruption is a violation of social rights and economic rights of the community, therefore, all criminal acts of corruption can no longer be classified as ordinary crimes but rather as an extraordinary crime that must be prioritized compared to other criminal acts (Nurdjana, 2009). As extraordinary crimes, corruption requires extraordinary enforcement and extraordinary measures.

# CORRUPTION AND GLOBAL IMPACT

## I. THE CONCEPT OF CORRUPTION

The term corruption comes from Latin, namely "*coruptio*" or "*corruptus*", which means damage or depravity (Prodjohamidjojo, 2009). Literally, corruption is something rotten, evil and destructive (Suherry, 2017). Because corruption involves moral aspects, rotten character, and circumstances, positions in government agencies or apparatus, misuse of power in office because of giving, economic and political factors, and placement of families or groups into official positions under their authority and position (Hartanti, 2012)

Poerwodarminto in the Indonesian dictionary concluded that corruption was rotten, such as embezzlement of money, acceptance of bribes, and so on. Meanwhile, Baharuddin Lopa quoted the opinion of David M. Chalmers outlining the meaning of the term corruption in various fields, namely concerning the problem of bribery, which is related to manipulation in the economic field, and which concerns the field of public interest (Hartanti, 2005). While Subekti interpreted it as a self-enriching criminal act that directly endangers the country's finances and economy.

Corruption can simply be understood as 'the misuse of public power for private gain' (Collier, 2002). In essence, corruption is a "social pathology" that damages the structure of government and becomes a major obstacle to the course of government and development (Abdurofiq, 2016). Further corruption is contrary to moral, legal and religious ethics. In the end, corruption is an agreement on the basis (Masdar, 2003). Because it is done by someone who is attached, opportunities and power are misused for real purposes (Ansori, 2015). "*Crime*" (Rumambi, 2014) based on the definition of corruption as a public mandate for personal gain (Daniel Kaufmann and Pedro C, 2002). As stated, Huntington also stated this (Winarno, 2002). On the other hand, Lord Acton argued that "power tends to be corrupt, absolute power is absolutely corrupt" (Rohim, 2005). This adage as a basis gives more opportunities to make a transition on the basis of this opportunity only from the basis of authority at the time (Suraji, 2008).

The problem of corruption is no longer seen as a problem of a nation but also a problem of the international community (Levi, 2004). United Nations Convention against Corruption (UNCAC), describes the problem of corruption as a serious threat to stability, security of national and international communities, weakening institutions, democratic values and justice and endangering sustainable development and law enforcement. Apart from that, being assessed through an international perspective

corruption is seen as a crime classified into White Collar Crime and has a consequence of complexity and becomes the attention of the international community. The 8<sup>th</sup> UN Congress on "Prevention of Crime and Treatment of Offenders" adopted the resolution "Corruption in Government (1990)" which formulated the consequences of corruption, in the form of:

1. Corrupt public official activities:
  - a. Can destroy the potential effectiveness of all types of governmental programs;
  - b. Hinder development; and
  - c. Victimize individuals and groups.
2. There is a close link between corruption and various forms of economic crime, organized crime and illicit money laundering

The assumptions above cite systemic, organized, transnational and multidimensional penalties for corruption in the sense that they correlate with systems, juridical, sociological, cultural, economic aspects between countries and so on. Judging from a juridical perspective, corruption is an extraordinary crime proposed by Romli Atmasasmita (2003):

*"By paying attention to the development of corruption, both in terms of strength and quality, and after studying it in depth, it is excessive that corruption in Indonesia is not an ordinary crime but an extraordinary crime"*

Alatar as a Professor of Sociology from Malaysia revealed that if analogous to being cancer, our corruption has reached the third stage. At this stage, a corruptor has become a victim of other corruptors. In the case of cancer, on the third stage, the only way the patient has to be amputated, if not, will pass to Rahmatullah. This explanation indirectly is in accordance with the theory of differential associations. According to the Differential Association Theory, it is explained that "a crime committed by a person is the result of imitation of a crime committed in society and this continues" (Mu'allifin, 2015). In this case, it can be seen that corruption is like a social pathology that will continue so that it must be resolved immediately with the applicable law in the current society.

According to Piers Beirne and James Messerschmidt in his book *Criminology* (1995), in the crime study there were 9 types of corruption there are:

1. Political bribery. Political bribery includes power in the legislature as the legislative body. Politically the agency is controlled by interest because the funds spent during the general election period are often related to certain company activities.

2. Political kickbacks. Political kickbacks are activities related to the contract system of contract work between executing officials and employers which gives an opportunity to bring in a lot of money for the parties concerned.
3. Election fraud. Election fraud is corruption that is directly related to election fraud.
4. Corrupt campaign practice. Corrupt campaign practice is the practice of campaigns using state facilities.
5. Discretionary corruption. Discretionary corruption is corruption done because there is freedom in determining policy.
6. Illegal corruption. Illegal corruption is corruption done by confusing legal language or legal interpretation.
7. Ideological corruption. Ideological corruption is a combination of discretionary corruption and illegal corruption that is done for group purposes.
8. Political corruption. Political corruption is a diversion of power or authority entrusted to him to gain personal or group benefits related to power.
9. Mercenary corruption. Mercenary corruption is misusing power solely for personal gain.

Corruption is no longer seen as a national problem, but a transnational problem (Melani, 2005). In this case, corruption is one part of a special criminal law. If described, corruption has certain specifications that are different from general criminal law, such as procedural law deviations and regulated material intended to suppress leakage and irregularities to the country's finances and economy to a minimum. Because this crime both directly and indirectly affects the quality of society's welfare.

Laws and regulations in Indonesia that regulate corruption are now better than before with the issuance of Law Number 28 of 1999 concerning the Implementation of a Clean and Free State from KKN (Korupsi, Kolusi dan Nepotisme), Law Number 31 of 1999 jo. Law Number. 20 of 2001 concerning Eradication of Corruption Crime, Law Number 30 of 2002 concerning the Corruption Eradication Commission, and finally the ratification of the United Nations Convention Against Corruption, 2003 (United Nations Anti-Corruption Convention, 2003) with Law Number 7 of 2006.

## II. THE DANGER OF CORRUPTION AND ITS LOSSES

One of the crucial issues that must get the attention of the current government is corruption (Kristian, 2013). Corruption in society if it is likened to a disease, this will be difficult to cure. Rais once revealed that if it is true that prostitution is the "oldest profession" then corruption and collusion can also be said to be "as old as the organization of power". Corruption usually grows in a system that is rigid and full of obstacles and comes from monopoly power in government (Pope, 2008). In line with this statement, Klitgaard in 1998 revealed that corruption occurs because of the practice of monopolistic power where there is an opportunity to carry out large discretionary actions, but there is no adequate supervision through a performance of accountability or a system of corruption. It means  $\text{Corruption} = (\text{Monopoly} + \text{Discretion}) - \text{Accountability}$ .

Corruption is a threat to the principles of democracy, which upholds transparency, accountability, and integrity, as well as the security and stability of the Indonesian people (Ancok, 2011). The internal factor of a person committing a criminal act of corruption is that it covers two things, there is corruption by needs and corruption by greed. Where people take action corrupt not because of the pressure of necessity but because of the desire to live a luxurious life. External factors include an environment that supports, for example, the community's permissive attitude towards acts of corruption. Besides that, there is also an opportunity to commit corruption because of inadequate supervision.

According to Fishman and Gatti (2002), there are 4 ways to measure the level of corruption that occurs in a country (Nugroho, 2012):

1. International Country Risk Guide (ICRG)

The International Country Risk Guide (ICRG) version of the Corruption Index of the Index between 0 (no corruption) to 1 (very corrupt). High scores or indices indicate that individual government officials request special and illegal payments for activities such as export-import licenses, exchange controls, charging taxes, protection policies and loans.

2. German Exporter Version Corruption Index or German Corruption Exporter (GCI)

This index was developed by Neumann (1994) by calculating the proportion of payment of export levies on total costs.

3. Corruption index version of the World Competitiveness Report Corruption Index (WCRCI).

This index measures improper practices in the provision of public goods.

#### 4. Corruption Perception Index (CPI).

This index is issued by the International Transparency organization. The index is between 0 (very corrupt and 10 (very clean). This index results from a survey of business operators in several countries.

Indonesia Corruption Watch divides the scope and scope of corruption into two major parts: Grand corruption and Pretty corruption. The division is seen from the differences of actors or actors, the emergence of State losses and the motives or objectives of corruption itself. In simple terms, Grand corruption or high-level corruption refers to corrupt practices by people who have access to power over the country's economic resources. The motives are not because they want to improve their standard of living, but are much higher, namely how to maintain power and make a policy siding with and benefiting themselves or their groups. It is different from Pretty corruption or small-scale corruption, which is the practice of corruption perpetrated by low-level employees who have access and a role in determining whether or not the public service is smooth. The motive for this type of corruption is very simple, namely how to improve the economic level of themselves and their families.

In the case of corruption, which includes transnationalities, it does find many difficulties. Among them are differences in the legal system adopted, bank secrecy, language, expected clarity of assistance and time, the lack of capacity of the ability of law enforcement officers, incomplete data sent to the requested state, the return of corrupted people and assets (Simandjuntak, 2013). In this case, support from national and transnational governments is needed, regarding the return of assets originating from criminal acts of corruption (Koesoemo, 2017).

According to Robinson, corruption can have an impact on the weakening of political institutions because it can damage the legitimacy and accountability of the government. The crime of corruption involving power is very difficult to prove, besides that the desire to eradicate this act is clearly in conflict with the interests of power that are very likely to involve the bureaucracy, as a result it can be predicted that this corruption seems to be "beyond the law" and as a form of action that is "untouchable by the law".

The pattern and / or relation to the occurrence of criminal acts of corruption that occur in the body of government can be divided into three categories, among others (Prasetyo, 2010):

1. There is a form of abuse of power

Which is carried out by officials who have a certain authority to act on the basis of legal legality that cooperates with other parties by bribery, reducing specification standards or volume and marking up funds. This type of abuse of authority is usually of a non-political nature and is carried out by the level of officials who are not too high-ranking.

2. Discretionary abuse of power

In this type of abuse of authority possessed by the Regional Head because it has special authority, namely the legality to issue certain policies such as Decrees of Governors, Regents / Mayors or in the form of Regional Regulations and/or Regional Head Regulations which usually make them cooperate with friends / groups and with their families.

3. Ideological abuse of power

This is done by officials to pursue certain goals and interests of the group or party. There can also be group support for certain parties to occupy strategic positions in the bureaucracy / executive institutions, where in the future they will receive compensation.

Corruption perpetrators are divided into two types, namely corruption committed by corruptors who occupy high office positions or known as the white collar. Corruptors who occupy low levels or positions are known as blue-collar terms. Corruption is usually carried out jointly between one public employee and another employee. This is because they collaborate in an attempt to manipulate the system and/or to hide the behavior and results of their corruption. The weakness of a system and the lack of transparency give rise to wide opportunities for corruption (KPK, 2016).

The impact of corruption is so great and is a serious problem for the welfare of society, must be a shared responsibility of all elements of the nation without exception. Therefore, this is also the responsibility of the people to join together in fighting corruption (Arifin, 2014). According to Benveniste, corruption can only be eliminated if the supervisors truly carry out all their duties and are unwilling to accept bribes. Such a situation can only be realized if there are very adequate ideological and professional commitments. Therefore, quoting from Ahmad Ali (2001) who said that as long as the dirty broom is not cleaned, any talk of justice will be empty.

# INTERNATIONAL LAW CONTEXT ON CORRUPTION CASES

## I. AGREEMENT IN ADDRESSING CORRUPTION CASES

The term internationalization of crime can be interpreted as the process of determining the actions of certain acts as international crimes (Hiariej, 2019). According to Illias Bantekas and Susan Nash (2007), certain actions which are then declared as international crimes can be through the doctrine, practice or practice of international law. Sanyal (2005) explains that there are five specific behavioral elements which if one element is fulfilled, then this behavior can be qualified as an international crime, such qualifications include:

1. Prohibited behavior has a significant effect on international interests, especially peace and international security;
2. Prohibited behavior is a bad act and is considered to threaten the values shared by the world community, including what has been considered by history as behavior that touches humanity's conscience. This is supported by many international opinions where international bribery must be eradicated;
3. Behavior that is prohibited has transnational implications involving or affecting more than one country in its planning, preparation or actions, both through the diversity of citizenship of perpetrators of crime or victims or equipment used beyond national borders;
4. Behavior that endangers the protection of international interests or against internationally protected people; and
5. This behavior violates protected international interests but does not reach the stage mentioned in the first and second points, but because of its nature, this behavior can be prevented and suppressed through international criminalization.

In the international context, the majority of countries agree to collaborate in fighting corruption. International cooperation is fundamental to prevent and eradicate corruption in an effective manner (Nurmalawaty, 2006). Indonesia is one of the countries that has followed the development of prevention of corruption by signing several international conventions, such as the UNCAC (United Nation Convention against Corruption) ratified by Law No.7 of 2006 and G-20 (Working Group on Anti-Corruption-WGAC).

In the context of corruption crimes that refer to UNCAC, the internationalization category of corruption crimes including treaties that do not declare prohibited acts as an international crime, but require participating countries to prosecute or extradite the perpetrators of these acts based on national law as stipulated in Article 30 UNCAC.

In recent years, not a few public assets that have been successfully corrupted have been rushed and stored in financial centers in developed countries that are protected by the legal system in force in the country (Frikasari, 2005). In this case, countries that feel disadvantaged cannot just enter the territorial territories of other countries to arrest the perpetrators of these crimes. This is because the international law applies the principle of respecting the sovereignty of jurisdictions so that there must be prior approval from that country. This is based on the general principle of international law that each country has sovereignty that must be upheld.

The commitment of the international community to tackle transnational crime through international cooperation can be seen from international legal instruments that were born lately. For example, the Palermo convention in 2000 which mentions several forms of international cooperation that can be carried out by the international community, namely: extradition agreements, mutual legal assistance in criminal matters, Transfer of sentenced person. The UN has even issued a Treaty on Extradition Model based on UN General Assembly Resolution Number. 45/117 dated December 14, 1990, which can be used as a model for international cooperation and also regulated in the 2003 United Nations Convention against Corruption which specifically regulates asset recovery from corruption.

The emergence of this extradition agreement is certainly inseparable from the implementation of the principle of international law as conveyed by Hugo Grotius, namely the principle of a degree as pure. Which means that the trial of the perpetrators of the crime can be carried out by the country where the crime occurred or extradited to the requesting country that has jurisdiction to try the perpetrator (Syarifudiin, 2016). In history, extradition is recognized as a mechanism in preventing and combating transnational crime or transnational crime.

The extradition treaty is a bilateral agreement that regulates the process of arrest, identification, and the sending of perpetrators of crimes in a jurisdiction of a country to another country that asks the perpetrator of the crime to be tried at the place where the crime is committed. Because, based on the principle of specialty that a criminal offender cannot be tried before the person is extradited, unless there is an agreement. And if the person requested has been submitted, the applicant country may only try

or punish the person requested based on the crime for which extradition is requested. Following is the legal basis for extradition:

1. National legislation
2. Extradition Agreement
3. International Conventions
4. International Student Order or Disguised Extradition

This is because the problem of corruption is now entering cross-border boundaries, this is stated in the fourth paragraph of the preamble of the UNCAC (Department of Foreign Affairs, 2008):

*"Convince that corruption is no longer local, but it is a transnational phenomenon of all societies and economies, making international cooperation to prevent and control it essential"*

## II. TROUBLESHOOTING AND SOLUTIONS OFFERED

Law enforcement is a supporting factor in legal development, while legal development is a component that cannot be separated from national development. Broadly speaking, law enforcement is the implementation of the life of the nation and state in order to create order and legal certainty oriented to justice. In a narrow sense, law enforcement can be interpreted as a series of activities in a preventive, repressive and educative judicial system (Santi, 2016).

Preventive actions are relatively easier, cheaper, and contain less risk than repressive actions. Far-reaching preventive actions in crime prevention efforts (Erdianto, 2014) through the "crime prevention approach" method. Preventive action is understood as an effort to reduce crime by preventing the crime (Amrani, 2014). While educational action leads to an increase in the quality of understanding of the concept of anti-corruption through the education system. Educational institutions are the best and strategic place to instill and disseminate anti-corruption values by mentoring mentally, spiritually or morally (Handayani, 2009).

Optimizing corruption eradication must be followed up with a comprehensive strategy to achieve maximum results. This comprehensive strategy covers various aspects, including (Waluyo, 2016):

- a. Increased integrity and ethics of state administration;
- b. Strengthening and accelerating bureaucratic reform;
- c. Strengthening the anti-corruption culture of the community; and
- d. A firm, consistent and integrated law enforcement.

Besides that, efforts to eradicate corruption that have been carried out so far still tend to lead to prosecution rather than prevention efforts that are focused on increasing public awareness, especially state apparatus in anti-corruption behavior. So, with this, it is hoped that a clean and free government from corruption will be created. These efforts can be done through upgrading or counseling, seminars, workshops, etc.

## CONCLUSION

Transnational crime is a crime that contains cross-country aspects. This is due to differences in interests in various regions. An example is a corruption. Corruption arises because of the abuse of power. However, there are also those who argue that corruption is a culture. In this case, the problem of corruption has become a problem for the international because it relates to national boundaries. There are two factors that driving someone to commit corruption, there is corruption by needs and corruption by greed. In addition, according to the theory put forward by Klitgaard, corruption is due to the practice of monopolistic power, with the opportunity to carry out considerable discretionary actions, but there is no adequate supervision through the performance of the accountability system. Besides that, corruption is a threat to the principles of democracy, which upholds transparency, accountability, and integrity, as well as the security and stability of the Indonesian nation and also has an impact on weakening political institutions because it can destroy the legitimacy and accountability of the government. In faced a serious problem like this, according to Benveniste corruption can only be eliminated if the supervisors truly carry out all their duties properly and are unwilling to accept bribes. This can only be realized if there is a very strong ideological and professional commitment. To support it all, a juridical (legal) foundation is needed to regulate the society. One of them is through international law and convention. International cooperation is a concrete solution in preventing and eradicating corruption. One form of implementation is that Indonesia plays a role in the UNCAC International Convention (United Nation Convention against Corruption).

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