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Criminal Liability for Corruption of Bribery: Problems and Legal Reform

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Abstract

This study aims to clarify the concerns of bribery and corruption within Indonesia's legal framework for combating corruption, particularly with the duality in establishing legal norms that support criminal liability for bribery offenses. After identifying the concerns, this study aims to suggest ideas for amending bribery and corruption legislation based on legal certainty. This normative legal examination utilizes a legislative methodology and a comparative law framework. The study's findings reveal that the Corruption Eradication Law, which regulates bribery offenses, engenders legal ambiguity in enforcing such crimes, as the legislators, namely the government and the Indonesian Parliament, have instituted provisions for bribery offenses that lack consistency. The manifestation of this phenomenon is mainly determined by the subjective assessments of law enforcement officials concerning the relevant statute. The subjective discretion of law enforcement officials in choosing relevant statutes may lead to the abuse of power concerning civil servants,state officials, and judges who accept bribes. To establish legal certainty, criminal liability for bribery may be achieved by amending Article 12(a) of the

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Corruption Eradication Law as follows: A civil servant or state official who accepts a gift or promise, with knowledge or reasonable suspicion that it is intended to induce him to act or refrain from acting contrary to his obligations, shall face a prison sentence of no less than 1 year and no more than 20 years, in addition to a penalty equivalent to five times the value of the bribe.

Keywords

Legal Reform, Corruption, Bribery, Legal Uncertainty.

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Introduction

The endeavor to eliminate and avert corruption within the public domain remains a compelling topic for discourse, particularly regarding the realm of law enforcement. This underscores the significance of each legal measure implemented in the pursuit of eliminating corruption. Consequently, it is reasonable to regard corruption as a profound offense, given its systematic and pervasive execution. The ramifications of unchecked corruption are likely to be catastrophic for both the economy and national progress. Consequently, the elimination of corruption necessitates exceptional legal interventions.[1]

This phenomenon is understandable, given the negative impact of this crime. The concluded impact can touch various fields of life. So we recognize that corruption is a serious problem; this crime can endanger the stability and security of society, endanger socio-economic development, and also politics, and can damage 'democratic values' and 'morality' because gradually, this act seems to become a culture. Corruption is a threat to the ideal of a just and prosperous society. Consequently, it is not an overstatement for Romli Atmasasmita to assert that 'corruption in Indonesia has evolved into a pervasive virus that has been undermining the entire government since the 1960s and the efforts to eradicate it remain inadequate'. [2]

According to Indonesia Corruption Watch, the cumulative figure for corruption during the susceptible period from 2013 to 2022 is estimated to be IDR 238.14 trillion, derived from final court rulings. With the following details:

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[1] Shubhan Noor Hidayat, Lego Karjoko, and Sapto Hermawan, 'Discourse on Legal Expression in Arrangements of Corruption Eradication in Indonesia', *JOURNAL of INDONESIAN LEGAL STUDIES* 5, no. 2 (2020): 391–418, https://doi.org/10.15294/jils.v5i2.40670.

[2] D A D Tawang, 'Suap Dalam Tidak Pidana Korupsi Yang Ditangani Oleh Komisi Pemberantasan Korupsi', *... Pidana Dan Pembangunan Hukum*, 2020.

Table 1: Total State Financial Losses 2013-2022

Years	Total State Financial Loss (In Trillion Rupiah)
2013	Rp. 3,46 trillion
2014	Rp. 10,69 trillion
2015	Rp. 1,74 trillion
2016	Rp. 3,08 trillion
2017	Rp. 29,42 trillion
2018	Rp. 9,29 trillion
2019	Rp. 12 trillion
2020	Rp. 56,74 trillion
2021	Rp. 62,93 trillion
2022	Rp. 48,79 trillion

Source: *Indonesia Corruption Watch* (ICW)

This figure is regarded as significantly substantial for a developing nation such as Indonesia, particularly in relation to some of the most corrupt entities, which encompass all principal institutions within the judicial sector (including police, courts, public prosecutors, and the Ministry of Justice), key revenue authorities (customs and tax agencies), the Ministry of Public Works, Bank Indonesia, and the Central Bank.[3]

Corrupt conduct is officially recognized as a criminal offense, governed by Law Number 28 of 1999, which pertains to the establishment of a state free from corruption, collusion, and nepotism (KKN). This is articulated in Article 1, number (3), which defines corruption as a criminal act in accordance with the relevant legal provisions addressing such offenses. The aforementioned crime is typically defined as 'Strafbaar Feilt.' According to Moeljatno, 'Strafbaar Feilt or criminal act is an act that is forbidden by a legal statute, with such

[3] Ratna Kumala Sari and Nyoman Serikat Putra Jaya, 'Kebijakan Formulasi Pertanggungjawaban Pidana Korporasi Terhadap Perbuatan Trading in Influence Sebagai Tindak Pidana Korupsi', *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 12–23, https://doi.org/10.14710/jphi.v2i1.12-23.

prohibition being accompanied by a threat (sanction) of a specific punishment for those who contravene the prohibition.'[4]

From the aforementioned explanation, it can be concluded that corruption constitutes a criminal act that fundamentally contravenes a prescribed legal statute. The aforementioned acts are subject to additional regulation under Law Number 31 of 1999, which pertains to the Eradication of Corruption. This Law was subsequently amended by Law Number 20 of 2001, which addresses modifications to Law Number 31 of 1999 regarding the same subject matter (hereinafter referred to in this paper as the Law on the Eradication of Corruption). One of the explanations is as follows:

> Article 2 Paragraph (1):
> *"Anyone who unlawfully acts to enrich themselves or others through a corporation that can harm the state finances or the state economy shall be punished with life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years imprisonment and a minimum fine of IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah): 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."*
>
> Article 3
> *"Another person or a corporation abuses the authority, opportunity, or means available to him because of his position or position or means available to him because of his position which could harm the state finances or the state economy, shall be punished with life imprisonment or a minimum of 1 (one) year and a maximum of 20 (twenty) years imprisonment and/or a minimum fine of Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."*

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[4] Elly Sudarti and Sahuri Lasmadi, 'Harmonisasi Sistem Pemidanaan Dan Tujuan Pemidanaan Pada Tindak Pidana Korupsi Suap', *Pandecta* 16, no. 1 (2021): 173–85.

According to Article 2, Paragraph (1) aforementioned, the delineation of criminal offenses is established as follows:

> *"Every person who unlawfully commits an act of enriching himself or herself or another person in a corporation that may harm the state finances or the economy of the State."*

Article 3 delineates the various criminal offenses, specifically enumerating them as follows:

> *"Any individual who seeks to gain advantage for themselves, another individual, or an organization, while misusing the authority, opportunities, or resources afforded by their position, thereby jeopardizing state finances or the economy, exemplifies the essence of corruption. The aforementioned definition delineates prohibited conduct characterized by self-enrichment that poses a threat to state finances, as well as the misuse of authority that endangers the economic stability of the state."*

In Indonesia, the phenomenon of corruption tends to proliferate in tandem with economic growth and development. This observation aligns with the contemporary understanding of corruption, which characterizes it as a criminal act involving the misappropriation of state resources. This definition is condensed due to the pervasive issue of corrupt practices within various nations, including the misappropriation of state assets or financial resources. Consequently, the issue of corruption is a persistent challenge in every nation, irrespective of its level of development.[5]

The formulation of corruption as a distinct offense within specialized legislation by the government serves to establish a foundational framework for law enforcement officials, thereby facilitating their endeavors to prevent and eliminate corruption. The enactment of Law Number 20 of 2001, which amends Law Number 31 of 1999 regarding the eradication of corruption, illustrates a concerted effort to combat this pervasive issue. Law enforcement agencies,

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[5] Zico Junius Fernando et al., *Deep Anti-Corruption Blueprint Mining, Mineral, and Coal Sector in Indonesia*, *Cogent Social Sciences*, vol. 9, 2023, https://doi.org/10.1080/23311886.2023.2187737.

including the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK), are actively engaged in the rigorous pursuit of those who perpetrate corruption.[6]

Corrupt behavior necessitates a regulatory framework that is both sound and reflective of the prevailing societal circumstances at any given time. This framework, which addresses corruption crimes, is enshrined in law and represents a facet of governmental policy enacted by authorized entities. Consequently, initiatives aimed at combating corruption through the efforts of law enforcement agencies such as the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK) are integral to the broader spectrum of legal enforcement. However, it is essential to acknowledge that within the realm of law enforcement, specific provisions articulated in various articles often invite diverse interpretations among officials. This complexity is exacerbated by the evolving nature of corruption, particularly in relation to bribery within the context of corrupt practices.[7]

The phenomenon of bribery within the national legal framework can be categorized into two distinct types: active bribery and passive bribery. Active bribery involves the individual who offers the bribe, whereas passive bribery pertains to the individual who accepts it. This is evident in Articles 2 and 3 of Law Number 11 of 1980 concerning the Crime of Bribery.

According to the Bribe Payer Index (BPI 2024), derived from a survey by Transparency International, BPI significantly influences the global economy, particularly in relation to the total ratio of foreign direct investment (FDI). However, data from the TRACE Bribery Risk Matrix indicates that Indonesia ranks 66th out of 195 countries, reflecting a substantial bribery risk with a score of 42. The positioning of Indonesia

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[6] Reynaldi Dwi Kusuma Akbar and Yeni Widowaty, 'Pertimbangan Hakim Menjatuhkan Sanksi Dalam Tindak Pidana Suap Di Bidang Pengadaan Barang Dan Jasa', *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 3, no. 2 (2022): 90–102, https://doi.org/10.18196/ijclc.v3i2.15525.

[7] Rr Halimatu Hira, Yolanda Savira, and Yunika Tresia, 'Pemberantasan Tindak Pidana Suap Di Sektor Pertambangan Melalui Penguatan Kerja Sama Lembaga Penegak Hukum Di Indonesia', *Jurnal Anti Korupsi* 3, no. 2 (2021): 1–20, https://doi.org/10.19184/jak.v3i2.32300.

at rank 66 according to the TRACE Bribery Risk Matrix is complemented by various other indicators, including elements of law enforcement, engagement with governmental bodies, and the transparency of public services.[8]

The aforementioned explanation indicates that the prevalence of bribery across various nations, as reported by the BPI survey, reveals that such practices are concentrated within specific, distinct business sectors. The prevalence of bribery among entrepreneurs in the public works and construction sectors suggests that business practices in Indonesia may incur significant costs, reflecting a troubling trend of corruption within these industries. In the hierarchy of corruption offenses, bribery occupies the second position, closely following other forms of corruption in relation to state losses and the misuse of office. This includes scenarios such as securing tenders or contracts and the procurement of goods and services. There exists a discernible connection between corrupt practices and bribery, a connection that is poised to escalate in tandem with Indonesia's national development.[9]

The business community embodies a dual role, acting as both an agent of bribery and a casualty of a flawed system of corruption. A considerable number of entrepreneurs find themselves reluctant to engage in bribery, yet they feel compelled to resort to such measures to sustain their enterprises. "The notion that 'if we abstain from bribery, our rivals will not' frequently arises in conversations among entrepreneurs." It is essential to acknowledge that, particularly in Indonesia, numerous entrepreneurs manage to navigate a corrupt system. However, a significant number express that they would cease engaging in bribery if the system were to provide adequate support and if their competitors refrained from such practices.[10] One might perceive a

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[8] Qingjie Du and Yuna Heo, 'Political Corruption, Dodd–Frank Whistleblowing, and Corporate Investment', *Journal of Corporate Finance* 73 (2022): 102145, https://doi.org/https://doi.org/10.1016/j.jcorpfin.2021.102145.

[9] Tommaso Trinchera, 'Confiscation And Asset Recovery: Better Tools To Fight Bribery And Corruption Crime', *Criminal Law Forum* 31, no. 1 (2020): 49 – 79, https://doi.org/10.1007/s10609-020-09382-1.

[10] Rian Saputra, M Zaid, and Devi Triasari, 'Executability of the Constitutional Court ' s Formal Testing Decision : Indonesia ' s Omnibus Law Review', *Journal of Law,*

profound sense of powerlessness when confronted with a market environment that appears fundamentally incompatible with ethical business practices devoid of corruption.[11]

Under optimal market conditions, entrepreneurs will engage in competition predicated on the quality of their goods or services and the affordability of their pricing. In a market marred by corruption, entrepreneurs engage in bribery competition, leading to a neglect of quality and efficiency. Bribery leads to an escalation in production costs, subsequently diminishing competitiveness—an exceedingly detrimental scenario for entrepreneurs in the contemporary landscape of globalization. Consequently, combating bribery is an endeavor that will enhance the organization, necessitating the implementation of a strategic approach to address bribery within corporate governance. However, the organization cannot achieve its objectives in isolation; it must collaborate with other enterprises within an association and forge alliances with various community entities, including civil society and the mass media.[12]

Bribery transactions involve a minimum of two individuals, with at least one possessing the authority to represent the company or serving as its agent. The act of bribery implicates both the giver and the recipient in a mutual engagement. The giver appears to be attempting to persuade the recipient to engage in unethical behavior, specifically the misuse of their authority. The individual engages in the morally questionable behavior of presenting it to the principal while claiming it as their own.[13]

Environmental and Justice 1, no. 3 (2023): 244–58, https://doi.org/10.62264/jlej.v1i3.18.

11 Ridwan Arifin, Sigit Riyanto, and Akbar Kurnia Putra, 'Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era', *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 329–43, https://doi.org/10.22219/ljih.v31i2.29381.

12 Ariadna H Ochnio, 'Recent Developments in EU Anti-Corruption Strategy: The Missing Element of the Return of Corrupt Assets to "Victim Countries"', *Journal of Money Laundering Control* 27, no. 7 (2024): 1 – 12, https://doi.org/10.1108/JMLC-11-2023-0176.

13 Laurence R Helfer, Cecily Rose, and Rachel Brewster, 'Flexible Institution Building in the International Anti-Corruption Regime: Proposing a Transnational Asset Recovery Mechanism', *American Journal of International Law* 117, no. 4 (2023): 559 – 600, https://doi.org/10.1017/ajil.2023.32.

One manifestation of bribery is facilitation money, a payment made to secure convenience, often termed 'grease money' or 'convenience funds', characterized by a small nominal amount. This is undertaken to ensure or expedite the customary actions that fall within the responsibilities of the funder. Bribery constitutes a violation of business ethics and carries significant legal ramifications, particularly when the bribe is directed towards a civil servant or state official, as outlined in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 regarding Corruption Crimes.

Corruption represents a criminal phenomenon that inflicts significant detriment upon both the economic framework of the state and the broader societal fabric. Furthermore, such corrupt practices can catalyze the emergence of novel criminal activities, which fall under the category of White Collar Crime. This classification was notably addressed during the deliberations at the 9th UN Congress in 1995, where it was articulated that one manifestation of bribery involves securing economic advantages.[14]

In light of the preceding discourse on corruption, particularly concerning the bribery of officials across various nations aimed at securing economic advantages through the persuasion of officials for preferential treatment, one can observe the judicial approach to corruption offenses in Indonesia as illustrated by the Supreme Court decision Number: 164 PK/Pid.Sus/2009. This case, which scrutinized special criminal matters at the review level, concluded with the conviction of An. Artalya Suryani, also known as Ayin, was found legally and convincingly guilty of corruption under Article 5 paragraph (1). Consequently, the Defendant was sentenced to 4 years and 6 months of imprisonment, alongside a monetary penalty of Rp. 250,000,000 (two hundred and fifty million rupiah), with the stipulation that failure to pay the fine would result in an additional 5 months of imprisonment. In the interim, at the level of cassation, the Supreme Court (MA) has upheld the sentence of 20 years imprisonment and a financial penalty of Rp. 500 million imposed on Urip Tri Gunawan. The ruling reaffirmed the

[14] Áine Clancy, 'A Better Deal? Negotiated Responses to the Proceeds of Grand Corruption', *Criminal Law Forum* 33, no. 2 (2022): 149 – 188, https://doi.org/10.1007/s10609-022-09436-6.

verdict rendered by the Corruption Court of Appeal. Urip faced charges pursuant to Article 12 letter b and Article 12 letter e of Law Number 31 of 1999, as amended by Law Number 20 of 2001, which pertains to the eradication of corruption.

The panel of judges, in their legal deliberations, concluded that Urip had intentionally disclosed details of the investigation concerning the Bank Indonesia Liquidity Assistance (BLBI) case, potentially implicating the leadership of Bank Dagang Nasional Indonesia (BDNI). Urip was found to have disclosed the details of the investigation to Artalyta Suryani, an entrepreneur reputedly associated with Sjamsul Nursalim, in return for remuneration. The aforementioned fundamentally elucidates the dynamics of bribery and the phenomenon of criminalization, as the act of corruption is increasingly perceived not merely as a conventional offense but rather as an extraordinary transgression, given that corrupt conduct can culminate in the crime of bribery.

The regulations pertaining to bribery are encapsulated in Law Number 20 of 2001, which amends Law Number 31 of 1999 regarding the eradication of corruption. Within the framework of criminal law in Indonesia, the concept of bribery is articulated through the terms 'gift, reward, or promise'; however, the Anti-Corruption Law fails to provide any elucidation regarding the definitions of these terms. The Corruption Eradication Law of 1999/2001 delineates the offense of bribery across multiple provisions, specifically Article 5, Article 6, Article 11, and various subsections of Article 12, including letters a, b, c, and d, as well as Article 12B. The formulation of the crime pertaining to bribery encompasses various subjects, which can be categorized into two distinct groups:

1. The group of subjects of the offense of giving or active bribery is 'every person,' according to the explanation in Chapter I of the general provisions of Article 1, number 3, which states that every person is a natural person or includes a corporation. The subject of this offense is regulated in the provisions of Article 5, paragraph (1) letters a and b, Article 6, paragraph (1) letters a and b, and Article 13 of the Corruption Eradication Law.
2. The group of subjects of the offense of receiving or passive bribery (passive ongoing), consisting of 'Civil Servants or State

> Organizers' as regulated in Article 5 paragraph (2) Jo. Article 5 paragraph (1), Article 11, Article 12 letters a and b, while for 'judges' who accept bribes is regulated in the provisions of Article 6 paragraph (2) Jo. Article 6 paragraph (1) letter a and 12 letter c, while for 'advocates' is regulated in Article 6 paragraph (2) Jo. Article 6 paragraph (1) letter b, Article 12 letter d, and Article 12B concerning Gratuities.

Among the two categories of offense subjects, the one that warrants deeper examination is the offense subject of the bribe recipient or passive bribery. A careful analysis of the legal provisions governing the acceptance of bribes, whether manifested as gifts or promises, reveals a notable overlap in their formulations. This indicates that the legal framework addressing bribe recipients is articulated through two analogous provisions, albeit accompanied by distinct penalties. Threats manifest in various forms.[15]

The stipulations outlined in Article 5, paragraph (2) mirror the language found in Article 12, letters a and b, as well as Article 12 B, albeit with distinct penalties. Specifically, Article 5, paragraph (2) prescribes a custodial sentence ranging from a minimum of 1 year to a maximum of 5 years and/or a monetary fine starting at Rp 50,000,000 (fifty million rupiahs) and capping at Rp 1,000,000,000 (one billion rupiahs). In contrast, the punitive measures associated with Article 12, Letters A and Article 12 B diverge significantly. The financial penalties range from zero to fifty million rupiah, with a cap of one billion rupiah. Meanwhile, the criminal repercussions outlined in Article 12 letters a, b, and Article 12 B include life imprisonment or a minimum sentence of four years, extending up to a maximum of twenty years. Similarly, the stipulations outlined in Article 6, paragraph (2), which prescribe a minimum incarceration period of three years alongside a minimum financial penalty of Rp.150,000,000 (one hundred and fifty million rupiahs) and a maximum of Rp.750,000,000 (seven hundred and fifty million

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[15] Muhammad Paeway Ebiem Kahar et al., 'Delik Suap Dan Gratifikasi Dalam Tindak Pidana Korupsi: Studi Kasus Putusan Hakim Dalam Praktik Penegakan Hukum', *Jurnal Anti Korupsi* 13, no. 1 (2023): 46, https://doi.org/10.19184/jak.v13i1.40007.

rupiahs), exhibit a parallel formulation of offenses as articulated in Article 12, letters c and d.

Articles 12, letters a and b, are indeed governed by Article 5, paragraph (2) of the 2001 PTPK Law in conjunction with the 1999 legislation, leading to an overlap that raises concerns regarding the severity of the criminal implications. Similarly, the essence of the offense of gratification is intrinsically linked to the individual's position. It opposes their obligations or duties as outlined in Article 12 B, leading to ambiguity in differentiating it from the stipulations of other passive bribery corruption offenses. The execution of these provisions often resides in an ambiguous realm regarding the applicability of specific clauses.

For instance, we may compare various cases that garnered public interest. The case of Urip Tri Gunawan exemplifies the complexities of public service ethics, as he, as a civil servant, accepted funds from Artalyta and subsequently faced prosecution and conviction under Article 12B of the Corruption Eradication Law. The case concerning Syarifuddin, who accepted bribes in his role as a judge, revealed a breach of Article 5 paragraph (2) in conjunction with Article 5 paragraph (1) letter b of the Corruption Eradication Law, which stipulates a maximum penalty of merely 5 years. Similarly, the case involving Kompol Arafat and Sri Sumartini, who share the same role as Urip Tri Gunawan (as a Civil Servant or State Organiser), resulted in a conviction for violating Article 11 of the Corruption Eradication Law, which prescribes penalties that are significantly lower than those applicable to Urip Tri Gunawan. The implementation of these articles undoubtedly influenced the duration of the sentences rendered, specifically resulting in 20-year imprisonment for the defendant Urip Tri Gunawan, a mere 4 years for Judge Syarifuddin, 5 years for Arafat, and a scant 2 years for Sri Sumartini.[16]

Implementing the provisions concerning the offense of the bribe recipient is inherently subjective, leading to frequent discrimination in applying the relevant article against the suspect or defendant. The invocation of a legal article about a criminal act perpetrated by an

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[16] Elvara Yolanda, Usman Usman, and Elly Sudarti, 'Pemidanaan Pelaku Tindak Pidana Korupsi', *PAMPAS: Journal of Criminal Law* 3, no. 2 (2023): 125–45, https://doi.org/10.22437/pampas.v3i2.18153.

individual ought to be grounded in justifiable and proportionate reasoning aimed at safeguarding both legal and public interests and the rights of the suspect or defendant.[17]

The preceding elucidations further illustrate the distinctions in penal measures within the dualistic framework governing bribery offenses as delineated in the Corruption Eradication Act, particularly in Article 5, which fundamentally states: The penalties include a prison sentence ranging from a minimum of one year to a maximum of five years, as outlined in Article 12. Additionally, this article stipulates that certain offenses may incur life imprisonment or a sentence of no less than four years and no more than twenty years. The disparity in criminal sanctions delineated in Article 5, Paragraph (2) and Article 12 letter engenders a perception of inequity within law enforcement endeavors, particularly evident in the comparatively lenient treatment afforded by Article 5. This situation has consequently elicited considerable discourse regarding the application of this provision. Such observations are grounded in the principle of criminal accountability concerning the imposition of sanctions, which posits that 'If the legal system fails to offer such an opportunity, an aberrant process (due process) transpires in the accountability of the crime's perpetrator.' The aforementioned regulations concerning corruption crimes ought to be grounded in the principles of the classical school, specifically:

1. The principle of legality, which states that there is no crime without a law, no criminal offense without a law, and no prosecution without a law.
2. The principle of guilt states that people can only be convicted of crimes they have committed intentionally or through negligence.
3. The principle of secular retribution (*retribution of punishment*) states that punishment is not specifically imposed to achieve a beneficial result but is commensurate with the severity of the act committed.

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[17] Kajian Putusan and Warih Anjari, 'Penerapan Pemberatan Pidana Dalam Tindak Pidana Korupsi', *Jurnal Yudisial* 15, no. 2 (2022): 263–81, https://doi.org/10.29123/jy.v15i2.507.

In light of the preceding discussion, the principle of legality asserts that an individual may face conviction by established regulations, wherein the criminal act embodies the principle of culpability. Conviction is contingent upon the presence of intent or negligence. Furthermore, the apprehension and sentencing of the offender serve as a manifestation of justice, underscoring the necessity for retributive principles, which advocate for punishment that is proportionate to the gravity of the offense. Ultimately, the criminal provisions and sanctions delineated in Article 5, Paragraph (2) and Article 12 concerning the corruption crime warrant a comprehensive examination.[18]

Particularly when juxtaposed with the principle of legal certainty, as delineated in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which asserts that 'Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law.' The stipulations outlined in Article 5, Paragraph (2) and Article 12 of the Corruption Eradication Act engender a degree of legal ambiguity concerning the offense of passive bribery.

In this context, the implementation of Law Number 1 of 2023 about the Criminal Code (hereinafter referred to as the New Criminal Code) fails to address the legal concerns previously articulated by the author regarding the duality in regulating the crime of passive bribery. The New Criminal Code clearly articulates, via its transitional provisions in Article 622, that Article 5 of the Corruption Eradication Law is among the articles that have been repealed following the enactment of the New Criminal Code.

Nonetheless, a significant conundrum arises from Article 605, which delineates the provisions concerning the crime of bribery, mirroring the formulation of articles and sanctions found in Article 5, Paragraph (2) of the Law on Eradication of Corruption. In essence, Article 605 of the New Criminal Code incorporates Article 5, Paragraph (2) of the Law on Eradication of Corruption, thereby engendering a perplexing legal uncertainty in enforcing bribery offenses. This situation

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[18] Mas Putra et al., 'Penerapan Doktrin Business Judgment Rule Dalam Perkara Tindak Pidana Korupsi Karen Agustiawan', *Jurnal Ius Constituendum* 7, no. 1 (2022): 143–58.

is regrettable, given the significance of legal certainty as the fundamental basis for achieving legal justice.[19]

In discussions surrounding corruption, individuals often invoke the established regulations despite the acknowledged imperfections inherent within these frameworks. The lack of suitable legal frameworks may foster the emergence of novel avenues for collusion, corruption, and nepotism, particularly within the judicial system. In light of these circumstances, it becomes evident that those pursuing justice are indeed the victims, whose human rights are infringed upon by the hubris of the authorities in their capacity as law enforcement officials, thereby intensifying the prevailing legal ambiguity within society.[20]

The administration of criminal justice ought to be conducted through procedures governed by precise and unambiguous rules, ensuring that its execution upholds human rights while fostering a sense of justice and legal certainty for both the perpetrator (suspect/defendant) and the community. Ultimately, it is imperative to remain vigilant and foresee potential opportunities that may arise from the previously mentioned confusion and issues. This situation could create a conducive environment for case brokers or allow certain entities to exploit the regulatory framework. Moreover, the aspect of legal certainty for defendants and the public is inadequately addressed within the Corruption Eradication Law itself.[21]

In discussing the concept of legal certainty, it becomes evident that justice, certainty, and the advantages of the law exist as an interconnected whole; within the framework of legal development, these elements must work in harmony with one another. The principle of legal certainty serves as a safeguard for individuals pursuing justice in the face of arbitrary actions, ensuring that one can anticipate and attain specific outcomes

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[19] Rian Saputra et al., 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (Journal of Indonesian Legal Studies)* 6, no. 2 (2021): 437–82, https://doi.org/10.15294/jils.v6i2.51371.

[20] Tatu Aditya, 'Reforming Criminal Impacts in the Law of State Finance : Legal Certainty for State-Owned Enterprise', *Indonesian Law Journal* 15, no. 2 (2022): 125–40, https://doi.org/10.33331/ilj.v15i2.97.

[21] Matthew Marcellinno and M Yazid Fathoni, 'The Establishment of Simple Lawsuit Rules in Business Disputes in Indonesia : An Challenge to Achieve Fair Legal Certainty', *Journal of Law, Environmental and Justice* 1, no. 1 (2023): 19–35.

under specified conditions. This assertion aligns with Van Apeldoorn's perspective that legal certainty encompasses two dimensions: the determinability of law in specific cases and the assurance of legal security. This indicates that individuals pursuing justice desire clarity regarding the applicable law in a specific case before initiating legal proceedings and seeking safeguards for those searching for justice.[22]

To demonstrate the novelty of this paper, the author compares it with several previous studies, including: First, an article entitled 'The Urgency of Implementing Foreign Bribery in Anti-Corruption Conventions in Indonesia', which concludes that "Indonesia has ratified UNCAC through Law Number 7 of 2006. However, not all corruption crimes in UNCAC were adopted into regulations related to corruption in Indonesia. One of the several corruption crimes is foreign bribery. This research will use a theoretical and conceptual approach related to foreign bribery, which is actually Indonesia's obligation to prevent a legal vacuum. The purpose of this study is to show the urgency of criminalizing foreign bribery in regulations related to corruption in Indonesia. Researchers found that without the criminalization of foreign bribery, it will be difficult for Indonesian jurisdictions to protect Indonesian corporations doing business abroad".[23]

Second, a paper entitled "The Urgency of Formulating the Act of Trading Influence as a Corruption Crime. This article discusses the act of trading in influence as a form of corruption as regulated in the United Nations Convention Against Corruption (UNCAC). Still, it has not been implemented into Indonesian criminal law even though it was ratified in 2006. Trading in influence is a form of trilateral relationship of corruption that involves at least three parties, namely an influential party, a party that has the authority, and an interest. This article concludes that the formulation of trading influence as a criminal act of corruption is urgent in three aspects. First, the regulation in national law

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[22] Ponco Hartanto, Subagio Gigih, and Riami Chancy, 'Discourse of Ecological Damage as a State Financial Loss : Evidence from Indonesia', *Journal of Law, Environmental and Justice* 2, no. 3 (2024): 307–31, https://doi.org/10.62264/jlej.v2i3.110.

[23] Razananda Skandiva and Beniharmoni Harefa, 'Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi Di Indonesia', *Integritas : Jurnal Antikorupsi* 7, no. 2 (2022): 245–62, https://doi.org/10.32697/integritas.v7i2.826.

is a form of transformation of UNCAC provisions that have been ratified. Second, several cases of corruption so far, as in the two cases discussed here, actually show a form of trading in influence, even though law enforcement is imposed with bribery. Third, efforts to impose actors of trading in influence with the bribery Article so far are actually limited to actors who are state administrators or civil servants; in the event that the actor is not part of the two, the subjective elements of the bribery Article are not fulfilled. Therefore, in future criminal law policy, it is necessary to accommodate the formulation of trading in influence as a criminal act of corruption, in this case, offered through the revision of the Corruption Eradication Act.[24]

Third, a paper entitled "Re-understanding corruption in the Indonesian public sector through three behavioral lenses". The authors establish that the rampaging corruption in the Indonesian public sector is an outcome of cumulative decision-making processes by the participants. Individual and organizational schemata influence a process of interpreting problems and situations based on past knowledge and experience. The discussion in this paper highlights the mechanisms of corruption normalization used to sustain corruption networks, especially in the Indonesian public sector, which will be very difficult to break with conventional means such as detection and prosecution. Essentially, the entire process of normalization will cause moral degradation among public servants to the point where their actions are driven solely by the fear of punishment and expectation of personal benefits. The three pillars of institutionalization, rationalization, and socialization strengthen one another to make the entire normalization structure so trivially resilient that short-term-oriented anti-corruption measures may not even put a dent in it. The normalization structure can be brought down only when it is continuously struck with sufficient force on its pillars. Corruption will truly perish from Indonesia only when the societal, organizational,

[24] Imentari Siin Sembiring, Elly Sudarti, and Andi Najemi, 'Urgensi Perumusan Perbuatan Memperdagangkan Pengaruh Sebagai Tindak Pidana Korupsi', *Undang: Jurnal Hukum* 3, no. 1 (2020): 59–84, https://doi.org/10.22437/ujh.3.1.59-84.

and individual schemata have been re-engineered to interpret it as an aberration and not as a norm.[25]

Fourth, the paper entitled "Preventing bribery in the private sector through legal reform based on Pancasila". The results of this paper conclude that "As a participating country in the United Nations Convention Against Corruption (UNCAC) 2003, Indonesia is one of the state parties that has signed and ratified the UNCAC 2003 conference. Indonesia has the right not to comply fully with the arrangements in UNCAC 2003. Still, looking at the current conditions, the losses caused by bribery in the private sector are about material loss, creating inefficiency, increasing crime, slowing down economic growth, and worsening the image or reputation of Indonesia in the national/international investment climate, so that it becomes an urgent thing to pay attention to. The research method used is the normative legal method in the form of library research, carried out by collecting secondary and tertiary legal materials. The technique of collecting materials used in this research is a literature study. The collected materials were analyzed".[26]

Based on the above publications, the author can conclude that this study is novel in that it analyses the problem of regulating bribery as a form of corruption in Indonesia and then proposes solutions in the form of future reforms to the law on bribery.

The methodology employed in the preparation of this paper is normative legal research.[27] This study examines the philosophical

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[25] Sri Wulan Hadjar, Osgar Sahim Matompo, and Irmawaty, 'Small Claim Court as a Refund State Losses Due to Corruption Crime By State Attorney', *Indonesian Research Journal in Legal Studies* 01, no. 01 (2022): 73–86.

[26] Zico Junius Fernando et al., 'Preventing Bribery in the Private Sector through Legal Reform Based on Pancasila', *Cogent Social Sciences* 8, no. 1 (2022), https://doi.org/10.1080/23311886.2022.2138906.

[27] Rian Saputra, Willy Naresta, and Vincent Ariesto, 'Post-Mining Land Use Regulations and Practices in the United States of America : Lesson for Indonesia', *Journal of Law, Environmental and Justice* 3, no. 1 (2025): 104–33, https://doi.org/10.62264/jlej.v3i1.118; M. Zaid, Rikcy Ricky, and Rakotoarisoa M H Sedera, 'Blue Carbon Regulations and Implementation in Several Countries : Lessons for Indonesia', *Journal of Law, Environmental and Justice* 3, no. 1 (2025): 30–78, https://doi.org/10.62264/jlej.v3i1.117; Itok Dwi Kurniawan et al., 'Formal Requirements for Class Action Lawsuits in Environmental Cases in Indonesia :

underpinnings of law, the foundational legal principles, and the systematic structures of law regarding the conceptualization of bribery within the framework of the Law on Eradication of Criminal Acts of Corruption, which presents a case of normative dualism.[28] Consequently, arguments concerning legal certainty were presented as a fundamental premise to illustrate an issue with the formulation of bribery within the framework of corruption offenses (minor premise). Moreover, a regulatory framework and a comparative legal analysis were employed to examine this legal matter.[29] The nations selected for comparison were Malaysia, China, and the Netherlands.[30]

Problems and Solutions', *Journal of Law, Environmental and Justice* 3, no. 1 (2025): 79–103, https://doi.org/10.62264/jlej.v3i1.114.

[28] Nilam Firmandayu and Ayman Alameen Mohammed Abdalrhman, 'Spatial Policy Regarding Carbon Trading for Climate Change Mitigation in Indonesia : Environmental Justice Perspective', *Journal of Law, Environmental and Justice* 3, no. 1 (2025): 1–29, https://doi.org/10.62264/jlej.v3i1.113; Muhammad Bagus Adi Wicaksono and Devi Triasari, 'Coal Post-Mining Reclamation Policies in Several Countries : Lessons for Indonesia', *Journal of Law, Environmental and Justice* 2, no. 3 (2024): 229–53, https://doi.org/10.62264/jlej.v2i3.106; Willy Naresta Hanum and Muhamad Nafi Uz Zaman, 'Existence of Human Rights Protection in Land and Mining Conflicts : Evidence from Indonesia', *Journal of Law, Environmental and Justice* 2, no. 3 (2024): 285–306, https://doi.org/10.62264/jlej.v2i3.107.

[29] Januar Rahadian Mahendra, Rizal Akbar Aldyan, and Silas Oghenemaro Emovwodo, 'Examining Indonesian Government Policies in Tackling Deforestation: Balancing Economy and Environment', *Journal of Law, Environmental and Justice* 2, no. 1 (2024): 42–62, https://doi.org/10.62264/jlej.v2i1.93; Rian Saputra, Albertus Usada, and Muhammad Saiful Islam, 'Ecological Justice in Environmental Criminal Sanctions for Corporations in Indonesia: Problems and Solution', *Journal of Law, Environmental and Justice* 2, no. 1 (2024): 1–17, https://doi.org/10.62264/jlej.v2i1.19.

[30] Rian Saputra et al., 'Ecological Justice in Indonesia and China Post- Mining Land Use ?', *Journal of Law, Environmental and Justice* 2, no. 3 (2024): 254–84, https://doi.org/10.62264/jlej.v2i3.108; Arsyad Aldyan et al., 'Local Wisdom-Based Environmental Management Policy in Indonesia : Challenges and Implementation', *Journal of Law, Environmental and Justice* 2, no. 3 (2024): 332–54, https://doi.org/10.62264/jlej.v2i3.100.

A. The implications of the duality of liability for bribery offences in the corruption regime for the criminal justice system

The uncertainty of the law on criminal liability for passive bribery is related to the principle of legality.

The principle of legality arose in response to the overwhelming authority wielded by monarchs during the era of absolutism. During the Roman era, a category of offenses referred to as criminal extraordinary existed, signifying crimes not explicitly addressed within the legal framework. Among these extraordinary crimes, the most renowned is stellionatus, which denotes malevolent and nefarious actions. Nevertheless, there exists an absence of stipulations concerning the specific nature of actions classified as malevolent or villainous. Throughout history, criminal extraordinary sovereigns instituted criminal extraordinary and enforced in a manner that was often capricious, reflecting the desires and exigencies of these monarchs.[31]

The principle of legality originates from German jurisprudence, attributed explicitly to von Feuerbach. This indicates that the principle emerged in the early 19th century and should be regarded as a manifestation of classical legal doctrines. This principle is articulated in von Feuerbach's work, Lehrbuch des Peinlichen Rechts, published in 1801. It states that "nullum delictum nulla poena sine praevia lege poenali", which translates to no act can be punished except by the authority of criminal law as established in existing legislation prior to the commission of the act.[32]

Prior to the formulation of the principle of legality by von Feuerbach, Montesquieu articulated his thoughts in L'esprit des Lois in 1748, followed by J.J. Rousseau's contributions in Die Contract Social

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[31] Nanang Nurcahyo et al., 'Reform of the Criminal Law System in Indonesia Which Prioritizes Substantive Justice', *Journal of Law, Environmental and Justice* 2, no. 1 (2024): 89–108, https://doi.org/10.62264/jlej.v2i1.91.

[32] Januar Rahadian Mahendra, Edwin Setiawan, and Arbend Ficasso Van Hellend, 'Corruption Eradication in Four Asian Countries : A Comparative Legal Analysis', *Journal of Law, Environmental and Justice* 2, no. 2 (2024): 162–84, https://doi.org/10.62264/jlej.v2i2.98.

in 1762. The volume aimed to safeguard personal liberties against the harshness of unrestrained authority, as European monarchs of that era often exercised power without justification. This principle initially manifested as a legal statute. Specifically, Article 8 of the Declaration of the Rights of Man and of the Citizen (1789) articulates that no individual may be convicted except under a law duly established and legitimately promulgated. This principle necessitates that the law initially delineates the actions subject to punishment, thereby enabling the populace to be informed beforehand and to refrain from engaging in such conduct.[33]

The principle of legality is currently articulated in Article 1, paragraph 1) of the Criminal Code (KUHP), which stipulates that an act may not be subject to punishment unless grounded in the prevailing criminal law provisions. Furthermore, the principle of legality mandates that each formulation of criminal law be articulated precisely to preclude any potential misinterpretations. This aligns with the restriction against employing analogy in interpreting and enforcing criminal law.[34]

The elucidation of the principle of legality presented above indicates that its fundamental basis lies in the assurance of legal certainty and the endeavor to safeguard individuals or society from the potential criminalization stemming from the capricious actions of authorities in law enforcement, who may wield criminal law instruments to instill fear among the populace. The dualism concerning the regulation of legal liability for the crime of passive bribery within the Law on Eradication of Corruption Crimes in Indonesia deviates from the principle of legality, specifically concerning points a and b. From the perspective of law enforcement, particularly when considering the established legal frameworks, enforcing laws pertaining to passive bribery corruption

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[33] Januar Rahadian and Silas Oghenemaro, 'Monodualistic and Pluralistic Punishment Politics in Criminal Code Reform : Lessons from Indonesia', *Journal of Law, Environmental and Justice* 1, no. 3 (2023): 225–43, https://doi.org/10.62264/jlej.v1i3.17.

[34] Christian Lund, 'An Air of Legality–Legalization under Conditions of Rightlessness in Indonesia', *Journal of Peasant Studies* 50, no. 4 (2023): 1295 – 1316, https://doi.org/10.1080/03066150.2022.2096448.

presents a complex challenge, potentially leading to confusion among law enforcement officials and offenders. [35]

From the perspective of the law enforcement apparatus, this situation will create ambiguity regarding the application of Article 5 Paragraph (2) of the Corruption Eradication Act versus Article 12 letter of the same Act, as the definitions provided are analogous, yet the associated criminal penalties exhibit a significant disparity. The duality in the perpetrator's actions makes law enforcement unpredictable and uncertain. In an ideal scenario, an individual poised to engage in a criminal act, or one who has already done so, would clearly comprehend the potential legal repercussions associated with their actions, including the nature of the penalties and duration. The interplay between the duality of passive bribery and the corresponding regulations and sanctions renders the matter exceedingly perplexing.

Dualism of Criminal Liability for Corruption Offences of Bribery and Its Impact on the National Criminal Code

It is essential to recognize that the fundamental premise and notion underlying the inception of Law Number 1 of 2023 regarding the Criminal Code (hereinafter referred to as the New Criminal Code) is to implement a thorough 'national recodification and reunification.' Recodification and reunification are conducted with consideration of:

a. The development of criminal offenses in laws outside the Criminal Code that specifically regulate 'crimes' and administrative offenses.
b. Being adaptive to the development of international crime based on various Conventions that have been or have not yet been ratified.
c. Consider the rationale of 'gender sensitivity' to protect the dignity of women.

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[35] Salsabila Salsabila and Slamet Tri Wahyudi, 'Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan Restorative Justice', *Masalah-Masalah Hukum* 51, no. 1 (2022): 61–70, https://doi.org/10.14710/mmh.51.1.2022.61-70.

The assertion is that the current Special Law, which exists outside the Criminal Code (WvS), is developing in a manner akin to wild, unstructured growth—akin to small plants or buildings that lack coherence, consistency, and legal clarity, ultimately undermining the integrity of the overarching system. This represents a fundamental principle of the New Criminal Code, as delineated in the Academic Manuscript about the Criminal Code Bill. The author expresses no astonishment upon encountering a criminal formulation within the New Criminal Code that appears to replicate a criminal norm from the Corruption Eradication Act. In the discourse of this paper, the adoption is noted explicitly in the criminal formulation of passive bribery as delineated in Article 5, Paragraph (2) of the Corruption Eradication Act, which subsequently transforms into Article 605 of the New Criminal Code.[36]

The author previously elucidated that the offense of passive bribery, as delineated in Article 5 of the Corruption Eradication Law, has indeed been abrogated by introducing the New Criminal Code. This is articulated in Article 622 Paragraph (1) letter l of the New Criminal Code, which asserts: 'Upon the enactment of this Law, the provisions in: Article 2 paragraph (1), Article 3, Article 5, Article 11, and Article 13 of Law Number 31 of 1999 regarding the Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 1999 Number 140, Supplement to the State Gazette of the Republic of Indonesia Number 3874), as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 regarding the Eradication of Corruption, are hereby revoked and rendered invalid.

Nonetheless, the revocation does not aim to abolish these articles, particularly Article 5, which is merely being transitioned to the New Criminal Code. This is because a meticulous examination of the New Criminal Code reveals that the formulation of Article 5, particularly Article 5 Paragraph (2) of the Law on Eradication of Corruption, has

[36] Yohanes Pattinasarany, 'Kepastian Hukum Kasasi Perkara Tata Usaha Negara Yang Dikeluarkan Oleh Pejabat Daerah', *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2022): 203–24, https://doi.org/10.24246/jrh.2022.v6.i2.p203-224.

been incorporated into Article 605 Paragraph (2) of the New Criminal Code, specifically:

(1) Punishable by a minimum of 1 (one) year and a maximum of 5 (five) years' imprisonment and a minimum fine of category III and a maximum fine of category V, anyone who:
   a. gives or promises something to a civil servant or state official with the intention that the civil servant or state official does or does not do something in their official capacity that is contrary to their duties; or
   b. giving something to a civil servant or state official because of or in connection with something contrary to their duties, which is done or not done in their position.

(2) A civil servant or state official who receives a gift or promise as referred to in paragraph (1) shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 6 (six) years and a minimum fine of category III and a maximum of category V.

It can be inferred that the stipulations in Article 5, Paragraph (2) of the Law on Eradication of Corruption Crimes are merely transposed into Article 605, Paragraph (2) of the New Criminal Code. This transference raises concerns regarding legal ambiguity, particularly when addressing whether the actions in question qualify as special criminal acts.[37]

In considering the liability associated with the offense of passive bribery, it becomes evident that introducing the New Penal Code does not significantly enhance legal certainty. Instead, it introduces complexities regarding criminal liability for passive bribery moving forward. Consequently, the reformation of criminal liability concerning passive bribery, grounded in the principle of legal certainty, serves as a foundational concept for this paper. Ideally, it necessitates aligning the Corruption Eradication Law with the New Criminal Code to effectively establish the framework for addressing criminal liability in passive

[37] Fariaman laila, 'Penerapan Hukum Pidana Pada Tindak Pidana Gratifikasi Yang Dilakukan Dalam Jabatan', *Jurnal Panah Keadilan* 1, no. 2 (2022): 1–16.

bribery offenses moving forward, whether it falls under the general criminal framework or the specialized criminal framework.[38]

In straightforward terms, the reformulation mentioned by the author in the subsequent section aims to reinterpret Article 605 of the New Criminal Code, which, as is widely recognized, has already been enacted. Nonetheless, the New Criminal Code is set to take effect on 1 January 2026. Thus, upon its implementation, the dichotomy of norms alluded to by the author, specifically between Article 5 Paragraph (2) and Article 12 letter of the Corruption Eradication Law, will cease to hold significance. The duality of norms concerning the crime of passive bribery juxtaposes the stipulations of Article 605 of the new Criminal Code and Article 12 of the Corruption Eradication Law.

B. Criminal Offence of Bribery: Renewal through the Framework of Legal Certainty

Comparison of Provisions on Bribery Offences in Indonesia, the Netherlands, Malaysia, and China

In undertaking a comparative analysis of the regulations about bribe recipients, one can identify at least three principal aspects that warrant comparison, as delineated in the earlier problem formulation presented in the introduction. Initially, the regulations concerning the offence of bribery were discussed. Secondly, concerning the matter of the offense of 'bribe-taking,' and thirdly, concerning the various manifestations of bribery acknowledged by the perpetrator of the crime, as well as the categories of coercion associated with bribery offenses across the countries selected for comparative analysis, including the following:

1. Provisions on the crime of bribery in Indonesia, the Netherlands, and China

   The regulatory framework governing bribery in Indonesia exhibits distinct characteristics compared to those of the Netherlands, Singapore, and China. In Indonesia, bribery

[38] Sadi Muhammad, 'Kepastian Hukum Terhadap Perlindungan Dan Pengelolaan Lngkungan Hidup Di Indonesia', *Jurnal Yudisial* 13, no. 3 (2020): 311–27, https://doi.org/10.29123/jy.v13i3.345.

offenses are governed solely by a Special Law, specifically Law Number 31 of 1999, regarding the Eradication of Corruption Crimes, in conjunction with Law Number 20 of 2001 (amendment). The provisions in the Criminal Code, which served as a precursor to the corruption law, have been rendered obsolete due to specific regulatory measures. In the Netherlands and China, the regulations about bribery are exclusively outlined within the Criminal Code.[39] In Singapore, alongside the stipulations outlined in the Criminal Code (Articles 161 to 165, Article 213, and Article 215), relevant provisions are also present in Articles 5 and 6 of the Prevention of Corruption Act or PCA (Cap 241, 1993 Rev Ed).[40]

2. Subject of Criminal Acts 'Bribe Receiver'

Regarding the subject of the crime of accepting bribes, each country has similarities and differences, namely:

a. In the Netherlands, the offense of accepting bribes is categorised into five distinct types. The first category encompasses officials, as outlined in Article 362 and Article 364. The second category pertains to judges. The third and fourth categories extend to individuals equated with officials, as specified in Article 364a, which includes persons from foreign nations or international legal organizations regarded as equivalent to officials and former officials. Additionally, individuals considered equivalent to

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[39] Chenghao Huang et al., 'The Real Effects of Corruption on M&A Flows: Evidence from China's Anti-Corruption Campaign', *Journal of Banking & Finance* 150 (2023): 106815, https://doi.org/https://doi.org/10.1016/j.jbankfin.2023.106815; Branislav Hock, 'Policing Corporate Bribery: Negotiated Settlements and Bundling', *Policing and Society* 31, no. 8 (2021): 950–66, https://doi.org/10.1080/10439463.2020.1808650.

[40] Jon S T Quah, 'Singapore's Success in Combating Corruption: Lessons for Policy Makers', *Asian Education and Development Studies* 6, no. 3 (2017): 263 – 274, https://doi.org/10.1108/AEDS-03-2017-0030.

judges encompass judges from foreign jurisdictions or international entities.[41]

b. In China, the entities implicated in the offense include state officials and corporations, specifically state organs, state-owned enterprises, companies, institutions, or community organizations. In Indonesia, the focus of the offense of receiving bribes pertains to civil servants or state administrators, as delineated in Article 2 of Law No. 28 of 1999, which addresses the implementation of a clean state free from corruption, collusion, and nepotism. Chinese, Dutch, and Singaporean regulations delineate civil servants or state administrators as a unified concept. In China, this group is classified as state officials, in the Netherlands as officials, and in Singapore as civil servants.[42]

3. Forms of bribery that are regulated in Indonesia, Malaysia, China, and the Netherlands.

The Indonesian Corruption Eradication Law delineates the nature of bribery extended to the recipient of the bribe, employing abstract terminology such as "giving" or "promising" as articulated in Article 5, paragraph (2), letters a and b, as well as Article 6, paragraph (2), letter a. Furthermore, it incorporates the terminology of "gifts" or "promises" as specified in Articles 11 and 12, letters a, b, and c. The Netherlands resembles Indonesia, particularly in its use of terminology related to the reception of gifts, promises, or services. In Singapore, the terminology associated with bribery directed towards the bribe recipient is notably more abstract, encompassing concepts such as satisfaction, receipt of any gratification, and pleasure. In contrast to Indonesia, Singapore,

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[41] Barbara Huber, *Sanctions against Bribery Offences in Criminal Law*, *Corruption, Integrity and Law Enforcement*, 2021, https://doi.org/10.1163/9789004481213_010.

[42] Zhiyuan Guo, 'Anti-Corruption Mechanisms in China after the Supervision Law', *Journal of Economic Criminology* 1 (2023): 100002, https://doi.org/https://doi.org/10.1016/j.jeconc.2023.100002.

and the Netherlands, China presents a more tangible definition, explicitly referring to 'illegally receiving money from others or property in exchange.' Furthermore, extorting money or property from individuals in China is classified as bribery, whereas in Indonesia, the Netherlands, and Singapore, it is governed by distinct regulations.[43]

How bribery is presented to the recipient, as articulated by the author, is deemed more suitable when expressed in abstract terms. This perspective arises from recognizing that our world is evolving at an unprecedented pace. Should the form of bribery be delineated in concrete terms, numerous individuals would likely engage in corrupt practices through diverse means, including providing services, hospitality, or entertainment, among others.

4. Forms of criminal sanctions for crimes of bribery

Upon examining the implications of criminal sanctions, it becomes evident that the offense of accepting bribes, as delineated in Law Number 31 of 1999 regarding the Eradication of Criminal Acts of Corruption, in conjunction with Law No. 20 of 2001 (amendment), imposes significantly more stringent penalties than those articulated in the Dutch Penal Code. This holds even though the fundamental elements of the offense remain consistent across both legal frameworks. Notably, the Dutch Penal Code does not stipulate a minimum number of witnesses; instead, it establishes a maximum, as evidenced by Article 362, which prescribes a maximum of two years imprisonment, and Article 363, which allows for a maximum of four years imprisonment, and Article 364, which permits a maximum of nine years imprisonment. Furthermore,

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[43] Hongli Chu, Shengmin Sun, and Jian Wei, 'Fiscal Pressure and Judicial Decisions: Evidence from Financial Penalties for Official Corruption in China', *International Review of Law and Economics* 77 (2024): 106156, https://doi.org/https://doi.org/10.1016/j.irle.2023.106156; Hock, 'Policing Corporate Bribery: Negotiated Settlements and Bundling'; T H E Control and O F Corruption, *Institutions, Governance and the Control of Corruption*, *Institutions, Governance and the Control of Corruption*, 2018, https://doi.org/10.1007/978-3-319-65684-7.

the prison sentences in question are alternatives to criminal fines. In contrast, the Indonesian Corruption Law stipulates that such sentences are not merely alternative but cumulative.[44]

Another distinction lies in the Dutch Criminal Code, which delineates bribery offenses with a structured approach, commencing with a minor infraction of accepting a bribe without dereliction of duty (Article 362), escalating to a more serious violation involving neglect of obligations (Article 363), and further intensified if perpetrated by a judge (Article 364). In contrast, the Indonesian Corruption Law lacks this clarity, presenting a somewhat ambiguous framework where the qualification of offenses remains uncertain despite the expectation for a more defined categorization.[45]

The stipulations regarding bribery within the Corruption Eradication Law are derived from the Indonesian Criminal Code, which was subsequently integrated into the Anti-Corruption Law. Thus, it can be inferred that the provisions outlined in Articles 418, 419, and 420 of the Criminal Code represent criminal regulations that are stratified based on the severity and classification of the offense or are categorized offenses with varying criminal penalties as delineated in the Criminal Code. Qualified offenses represent distinct variations that encompass all the components of the fundamental form yet include one or more circumstances that intensify the severity of the crime, regardless of whether these circumstances are classified as elements. Examples include theft by dismantling, persecution leading to death, and premeditated murder, among others. 233 Nevertheless, this does not pertain to the stipulations outlined in the Corruption Eradication Act, which leads to ambiguity, specifically:

a. Qualified offenses incur identical penalties, outlined explicitly in Article 11, which does not overlook the obligations stipulated in Article 5, paragraph (2). Those who neglect their responsibilities face a uniform criminal penalty of five years. Furthermore, the stipulations in Article 12, letters a and b, align with those in Article 12, letter c, resulting in a consistent penalty of life imprisonment. It is imperative to note that, given the

[44] Huber, *Sanctions against Bribery Offences in Criminal Law*.
[45] Huber, *Sanctions against Bribery Offences in Criminal Law*.

nature of the qualified offense, the provisions in Article 5, paragraph (2) should impose a more stringent penalty than those in Article 11. Additionally, the penalties for Article 12, letters a and b, should not mirror those of Article 12, letter c.

b. Offences characterized by more severe qualifications are penalized under those with lighter qualifications, specifically between Article 12, letters a and b, and Article 6 paragraph (2) stipulations. Article 12, letters a and b, stipulations that pertain to civil servants or state administrators accepting bribes, prescribe a life sentence. In contrast, the provisions of Article 6 paragraph (2), which address judges accepting bribes with a more serious qualification, impose a sentence of merely 15 (fifteen) years.
c. The identical offense is articulated yet governed by two distinct articles, each prescribing varying penalties, specifically:
    1) The regulations governing offenses related to civil servants or state administrators who engage in bribery are delineated in two specific articles: Article 5, paragraph (2), and Article 12, letters a and b. Furthermore, it is noteworthy that the criminal penalties exhibit a disparity; in Article 5, paragraph (2), the prescribed penalty is five years, whereas in Article 12, letters a and b, the penalty escalates to life imprisonment.
    2) The offense of a judge receiving a bribe is governed by two specific articles, namely Article 6 paragraph (2) and Article 12 letter c. Interestingly, there is a discrepancy in the outlined criminal penalties; specifically, Article 6 paragraph (2) stipulates a penalty of merely 15 years, whereas Article 12 letter c prescribes life imprisonment.
    3) In comparative analyses of relevant criminal Law, it is noteworthy that the Netherlands, serving as the foundation for derivative Law in Indonesia, continues categorizing the provisions concerning civil servants or state officials and judges who accept bribes as qualified offenses. Specifically, Article 362 of the Dutch Criminal Code aligns with Article 418, which is integrated into Article 11 of the Law on Eradicating Corruption, both of which stipulate a penalty of three years. Article 363 of the Dutch Criminal Code

> parallels Article 419, as reflected in Article 5 paragraph (2) and Article 12 letters a and b, where the prescribed penalty is four years. Furthermore, Article 363 also resembles Article 420, which is referenced in Article 6 paragraph (2) and Article 12 letter c, imposing a penalty of nine years, with a maximum of twelve years for certain criminal cases. Furthermore, in the Netherlands, the legal framework does not encompass the crime of bribery in a manner that is delineated across multiple articles, unlike the provisions in Indonesia, where bribery is addressed in two distinct articles that prescribe markedly different penalties. This is exemplified by Article 5 paragraph (2) in conjunction with Article 12 letters a and b and Article 6 paragraph (2) alongside Article 12 letter c of the Law on the Eradication of Corruption, as previously elucidated.

Compared to Indonesia and the Netherlands, the regulations in China are notably stringent. The severity of punishment is delineated by the monetary value stipulated in Article 383 of the Chinese Penal Code, which categorizes offenses into four distinct tiers: the most severe involves amounts exceeding 100,000 yuan, followed by those less than 100,000 yuan but not below 50,000 yuan, the third category encompasses sums less than 50,000 yuan yet not under 5,000 yuan, and finally, the least severe pertains to amounts below 5,000 yuan. Furthermore, a notable distinction lies in the stipulation concerning administrative witnesses within the Chinese Penal Code about the offense of receiving bribes. Specifically, suppose the value is below 5,000 yuan, and the circumstances are minor. In that case, the individual is subject to administrative sanctions at the discretion of their work unit or an authorized official of higher rank.[46] Indonesia is similar to China, though not identical, as it distinguishes the severity of punishment according to the financial gain involved. In the Corruption Eradication Act, there exist merely two classifications: one for bribes amounting to

[46] Kuo Zhou et al., 'The Power of Anti-Corruption in Environmental Innovation: Evidence from a Quasi-Natural Experiment in China', *Technological Forecasting and Social Change* 182 (2022): 121831, https://doi.org/https://doi.org/10.1016/j.techfore.2022.121831.

less than 5,000,000 IDR (five million rupiah) and another for those equalling or exceeding 5,000,000 IDR (five million rupiah), as delineated in Article 12 A of the Act. Five million rupiah, as delineated in Article 12 A of the Law on Eradication of Corruption.

Among the four nations, it is recognized that the most severe criminal penalties are articulated within the Chinese Criminal Code (Criminal Law of the People's Republic of China), where the imposition of the death penalty looms as a possibility, alongside a minimum incarceration period of ten years. Moreover, it is noteworthy that only Indonesia and China possess stipulations regarding minimum sentences. In the analysis of the four provisions, it becomes evident that Indonesia presents a unique case with its ambiguous qualifications for offenses, as the specific offense in question does not appear in the legal frameworks of other nations. However, the associated criminal penalties exhibit significant variation.[47]

IUS Constituendum: Criminal Liability for Corruption Crimes, Bribery Based on Legal Certainty

The assurance of legal certainty stands as the cornerstone of contemporary jurisprudence. The concept of legal certainty, often termed the principle of legal certainty, extends beyond merely the written dimensions of the law. The law establishes legal certainty as it seeks to foster order within society. The concept of legal certainty is fundamentally intertwined with the essence of law, particularly with codified statutes.[48] As articulated by Fence M. Wantu, 'a law devoid of the principle of legal certainty forfeits its significance, as it ceases to serve as a reliable guide for the conduct of all individuals. A regulation is

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[47] Hongming Cheng and L Ling, 'White Collar Crime and the Criminal Justice System: Government Response to Bank Fraud and Corruption in China', *Journal of Financial Crime* 16, no. 2 (2009): 166 – 179, https://doi.org/10.1108/13590790910951849.

[48] Muhammad Bagus Adi Wicaksono and Wiwit Rahmawati, 'Ecological Justice-Based Reclamation and Post- Mining Regulations in Indonesia : Legal Uncertainty and Solutions', *Journal of Law, Environmental and Justice* 2, no. 2 (2024): 109–36, https://doi.org/10.62264/jlej.v2i2.103.

established and announced precisely, as it governs clearly and rationally.[49] Unambiguous in a manner that eliminates uncertainty and is rational, thereby forming a coherent framework of principles that harmonize with other principles without resulting in contradictions or conflicts. Conflicts of norms stemming from regulatory ambiguity may manifest as contestation, reduction, or distortion of those norms.[50]

True legal certainty exists when laws and regulations align with established legal principles and norms. As articulated by Bisdan Sigalingging, there exists a necessity for equilibrium between the certainty of legal substance and the certainty of law enforcement. Legal certainty ought not to rely solely on the statutes as inscribed. However, genuine legal certainty emerges when the written law is effectively enforced in alignment with the foundational principles and norms that govern the pursuit of legal justice.[51]

According to this description, the most essential element of legal certainty is the assurance of the legal substance. The essence of the matter indicates that the law may be subject to various interpretations, leading to potential discord and inconsistency among different legal principles. Upon examining these descriptions, it becomes evident that the dualistic approach to regulating liability for the offense of passive bribery, as outlined in Article 5, Paragraph (2) and Article 12 of the Law on Eradication of Criminal Corruption, significantly deviates from the

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[49] Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, 'Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)', *JOURNAL of INDONESIAN LEGAL STUDIES* 8, no. 1 (2023): 243–88, https://doi.org/10.15294/jils.v8i1.67632; Rian Saputra et al., 'Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)', *Lex Scientia Law Review* 7, no. 1 (2023): 61–118, https://doi.org/10.15294/lesrev.v7i1.64143.

[50] FX. Hastowo Broto Laksito, Aji Bawono, and Afridah Ikrimah, 'Reducing Community Participation in the Preparation of Environmental Impact Assessments (EIA): Evidence from Indonesia', *Journal of Law, Environmental and Justice* 2, no. 2 (2024): 137–61, https://doi.org/10.62264/jlej.v2i2.101.

[51] Willy Naresta Hanum, Tran Thi Dieu Ha, and Nilam Firmandayu, 'Eliminating Ecological Damage in Geothermal Energy Extraction : Fulfillment of Ecological Rights by Proposing Permits Standardization', *Journal of Law, Environmental and Justice* 2, no. 2 (2024): 205–28, https://doi.org/10.62264/jlej.v2i2.105.

principle of legal certainty. This ambiguity stems from the inquiry into the feasibility of an action being subjected to dual sanctions models within the legal norm.

Even when we thoroughly compare with nations like Malaysia, China, Singapore, and the Netherlands, as the author elucidated at the outset of the discourse. The nations in question exhibit varying approaches to regulating passive bribery, with punitive measures ranging from minimal consequences to extreme capital punishment. However, the countries referenced by the author do not address the aspect of criminal liability characterized by legal dualism.

First, in the State of Malaysia, perpetrators of corruption offences involving bribery (both passive and active) as regulated in Article 16 of the Corruption Offences Act of the Malaysian Anti-Corruption Commission No. 694 of 2009, are punishable by:[52]

1) imprisoned for a period not exceeding twenty years; and
2) fined not less than five times the amount or value of the bribe that is the subject of the offense if the bribe can be valued or is in the form of money, or ten thousand ringgit, whichever is higher.

Perpetrators of corruption offences involving bribery, whether passive or active, within the criminal law system on corruption in Malaysia are punishable by a maximum prison sentence of 20 (twenty) years, or a fine of five times the amount of the bribe. Therefore, based on the provisions of Section 16 of the Corruption Offences Act of the Malaysian Anti-Corruption Commission Act No. 694 of 2009, the substantive legal certainty of corruption offences involving bribery in Malaysia is apparent.[53]

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[52] Tinuk Dwi Cahyani, Muhamad Helmi Md Said, and Muhamad Sayuti Hassan, 'A Comparison Between Indonesian and Malaysian Anti-Corruption Laws', *Padjadjaran Jurnal Ilmu Hukum* 10, no. 2 (2023): 275–99, https://doi.org/10.22304/pjih.v10n2.a7.

[53] Noore Alam Siddiquee and Habib Zafarullah, 'Absolute Power, Absolute Venality: The Politics of Corruption and Anti-Corruption in Malaysia', *Public Integrity* 24, no. 1 (2022): 1 – 17, https://doi.org/10.1080/10999922.2020.1830541.

Second, in China. Corruption offences involving bribery are defined in Article 383 of the Chinese Criminal Code, which states as follows:[54]

Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and accordance with the following provisions:

1) An individual who embezzles not less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are dire, he shall be sentenced to death and also to confiscation of property.
2) An individual who embezzles not less than 50,000 yuan but less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are dire, he shall be sentenced to life imprisonment and confiscation of property;
3) An individual who embezzles not less than 5,000 yuan but less than 50,000 yuan shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years; if the circumstances are severe, he shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. Suppose an individual who embezzles not less than 5,000 yuan and less than 10,000 yuan shows true repentance after committing the crime, and gives up the embezzled money of his own accord. In that case, he may be given a mitigated punishment, or he may be exempted from criminal punishment. Still, he shall be subjected to administrative sanctions by his work unit or by the competent authorities at a higher level.
4) An individual who embezzles less than 5,000 yuan, if the circumstances are relatively severe, shall be sentenced to fixed-

[54] Kai D Bussmann, Anja Niemeczek, and Marcel Vockrodt, 'Company Culture and Prevention of Corruption in Germany, China and Russia', *European Journal of Criminology* 15, no. 3 (2018): 255 – 277, https://doi.org/10.1177/1477370817731058.

> term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level.

The definition of bribery presented in this article of the Criminal Code of China aligns with the broader understanding of the term, signifying providing financial incentives to another party, in this instance, any individual, to perform or refrain from actions that contradict their duties. Alternatively, it can be equated with bribery. The term 'Individuals involved in bribery' indicates that both the giver and the receiver of a bribe are subject to prosecution.[55] This principle is underscored in the wording of Article 386 of the Chinese Criminal Code, as detailed below:

> *"Anyone who commits the crime of accepting a bribe will be punished under Article 383 of this law according to the amount of the bribe. A heavier penalty will be imposed on anyone who accepts a bribe".*

The criminal penalties for individuals involved in bribery, whether passive recipients or active participants, in China, exhibit considerable variation. Nonetheless, this diversity does not engender ambiguity, as the spectrum of sanctions, ranging from a minimum of two years to the maximum death penalty, is predicated upon the sum of bribe money involved. The most severe consequence applies to bribery offenses exceeding 100,000 Yuan, which may result in the imposition of the death penalty.[56]

The fourth is the Netherlands. In the Netherlands, the crime of passive bribery by civil servants or state administrators is regulated in Articles 362-364 of the *Dutch Criminal Code* (DCC). Article 362 of the DCC, which is classified as active bribery, reads as follows:[57]

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[55] Gang Xu et al., 'Anti-Corruption, Safety Compliance and Coal Mine Deaths: Evidence from China', *Journal of Economic Behavior & Organization* 188 (2021): 458–88, https://doi.org/https://doi.org/10.1016/j.jebo.2021.05.013.

[56] Fan Su and Chao Xu, 'Curbing Credit Corruption in China: The Role of FinTech', *Journal of Innovation & Knowledge* 8, no. 1 (2023): 100292, https://doi.org/https://doi.org/10.1016/j.jik.2022.100292.

[57] Hock, 'Policing Corporate Bribery: Negotiated Settlements and Bundling'.

Any civil servant who:

1) accepts a gift or promise or service, knowing or reasonably suspecting that it was given, made, or rendered to him in order to induce him to act or to refrain from certain acts in the performance of his office, without violating his duty;
2) accepts a gift or promise or service, knowing or reasonably suspecting that it was given, made or rendered to him as a result or as a consequence of certain acts he has undertaken or has refrained from undertaking in the performance of his current or former office, without violating his duty;

For actions that satisfy the criteria outlined in Article 362 DCC, a custodial sentence not exceeding two years or a fine of the fifth category shall be applied. Other provisions can also be seen in Article 363 DCC which regulates as follows:[58]

Any civil servant who:

3) accepts a gift or promise or service, knowing or reasonably suspecting that it is given, made or rendered to him in order to induce him to act or to refrain from certain acts in the performance of his office, in violation of his duty;
4) accepts a gift or promise or service, knowing or reasonably suspecting that it is given, made or rendered to him as a result or as a consequence of certain acts he has undertaken or has refrained from undertaking in the performance of his current or former office, in violation of his duty;

For actions that meet the criteria outlined in Article 363 DCC, a custodial sentence not exceeding four years or a fine of the fifth category shall be enforced. Upon contemplation of the regulatory framework governing the offense of passive bribery as delineated in Articles 362-363 of the Criminal Code, it becomes evident that there exist constraints about the nature of sanctions enforced. Article 362 of the Criminal Code addresses the offense of passive bribery committed by a civil servant or state official while remaining within the bounds of their duties and

[58] Huber, *Sanctions against Bribery Offences in Criminal Law*; Hock, 'Policing Corporate Bribery: Negotiated Settlements and Bundling'.

obligations. The penalty consists of incarceration for a duration not surpassing two years or a fine classified as the fifth category.[59]

In the interim, Article 363 DCC addresses the offense of passive bribery committed by a civil servant or state officials who deviate from their responsibilities and obligations, with penalties including imprisonment for a maximum of four years or a fine of the fifth category. Article 344 DCC delineates the offense of passive bribery perpetrated by judges.

> *"A judge who requests a gift or promise or service, in order to get him to exercise influence on the decision in a case before his court, shall be liable to a term of imprisonment not exceeding nine years or a fine of the fifth category".*

This implies that a judge who seeks a gift, promise, or service to sway a decision in a case under their jurisdiction faces a potential maximum prison term of nine years or a fine categorized as fifth level. The regulation of bribery within the Netherlands, as delineated in the Dutch Criminal Code, reveals that the framework and model of punishment are contingent upon the nature of the bribery. This ensures that the principle of legal certainty regarding the punishment for bribery is upheld within Dutch criminal law.[60]

A comparative legal analysis of nations including Malaysia, the Netherlands, and China shows that the optimal framework for addressing passive bribery offenses in Indonesia necessitates the incorporation of legal certainty, which a clear understanding of legal substance should underpin. This holds significant weight, as the essence of legal statutes serves as the foundation for the law enforcement process. The guidelines provided for law enforcement officials in executing their duties hinge upon this premise, indicating that the caliber of legal

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[59] Hock, 'Policing Corporate Bribery: Negotiated Settlements and Bundling'; Huber, *Sanctions against Bribery Offences in Criminal Law*.

[60] Huber, *Sanctions against Bribery Offences in Criminal Law*; Hock, 'Policing Corporate Bribery: Negotiated Settlements and Bundling'.

regulations will, to a considerable extent, influence the efficacy of their enforcement in practice.[61]

In composing this paper, the author endeavors to articulate a novel legal framework concerning the regulation of liability for the offense of passive bribery within the national legal system. Consequently, to ensure legal clarity concerning liability for the offense of passive bribery, it is possible to reconcile Article 5, Paragraph (2) of the Law on the Eradication of Corruption with Article 12 of the same Law. In examining the regulatory frameworks of Malaysia, China, Singapore, and the Netherlands regarding the liability for passive bribery, it is noteworthy that some jurisdictions, like Malaysia, impose sanctions that include fines amounting to five times the value of the bribe. Certain nations impose the most severe penalties, including life imprisonment or capital punishment, exemplified by China.[62]

In composing this paper, the author proposes a formulation that serves as a compromise between the dualistic legal regulations about criminal liability for the offense of passive bribery, found explicitly in Article 5, Paragraph (2) and Article 12 of the Corruption Eradication Act. Article 5, Paragraph (2) stipulates that individuals found guilty of the crime of passive bribery shall face a custodial sentence ranging from a minimum of one year to a maximum of five years, in addition to a financial penalty that shall not be less than Rp 50,000,000.00 (fifty million rupiah) and may extend up to Rp 250,000,000.00 (two hundred and fifty million rupiah).

In composing this paper, the author endeavors to articulate a novel legal framework concerning the regulation of liability for the offense of passive bribery within the national legal system. Consequently, to ensure legal clarity concerning liability for the offense of passive bribery, it can reconcile the provisions of Article 5, Paragraph (2) of the Law on

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[61] Hock, 'Policing Corporate Bribery: Negotiated Settlements and Bundling'; Huber, *Sanctions against Bribery Offences in Criminal Law*.

[62] Huber, *Sanctions against Bribery Offences in Criminal Law*; Nurisyal Muhamad and Norhaninah A. Gani, 'A Decade of Corruption Studies in Malaysia', *Journal of Financial Crime* 27, no. 2 (2020): 423 – 436, https://doi.org/10.1108/JFC-07-2019-0099; Jinting Deng, 'The National Supervision Commission: A New Anti-Corruption Model in China', *International Journal of Law, Crime and Justice* 52 (2018): 58–73, https://doi.org/https://doi.org/10.1016/j.ijlcj.2017.09.005.

Eradication of Crime of Corruption with Article 12 of the same law. In examining the regulatory frameworks of Malaysia, China, Singapore, and the Netherlands regarding the liability for passive bribery, it is noteworthy that some jurisdictions, like Malaysia, impose sanctions that include fines amounting to five times the value of the bribe. Certain nations impose the most severe penalties, including life imprisonment or capital punishment, exemplified by China.

In composing this paper, the author proposes a formulation that serves as a compromise between the dualistic nature of legal regulations about criminal liability for the offense of passive bribery, found explicitly in Article 5, Paragraph (2) and Article 12 of the Corruption Eradication Act. Article 5, Paragraph (2) stipulates that individuals convicted of passive bribery face a minimum imprisonment of one year and a maximum of five years, alongside potential financial penalties ranging from a minimum of Rp 50,000,000.00 (fifty million rupiahs) to a maximum of Rp 250,000,000.00 (two hundred and fifty million rupiahs).

In the interim, the stipulations outlined in Article 3 of the Law on the Eradication of Criminal Acts of Corruption articulate that: 'Any individual who, with the intent of securing personal gain or that of another individual or entity, misuses the authority, opportunities, or resources afforded to them by their position or status, resulting in potential harm to state finances or the economy, shall face penalties including life imprisonment or a term of incarceration ranging from a minimum of 1 (one) year to a maximum of 20 (twenty) years, alongside a financial penalty of no less than Rp. 50,000,000.00 (fifty million rupiah) and no more than Rp. 1,000,000,000.00 (one billion rupiah). 50,000,000.00 (fifty million rupiah) and a ceiling of Rp. 1,000,000,000.00 (one billion rupiah).

In the framework established by the author, which aligns with the stipulations outlined in Article 5 Paragraph (2) and Article 12 letter of the Corruption Eradication Law, the penal consequence for passive bribery is set at a term of imprisonment ranging from a minimum of 1 year to a maximum of 20 years, accompanied by a financial penalty amounting to five times the value of the bribe.

It is important to note that the criminal framework stipulating a penalty of five times the value of the bribe is similarly reflected in the legal

provisions addressing passive bribery in Malaysia, specifically articulated in Article 16 of the Malaysian Anti-Corruption Commission Act Number 694 of 2009. The aforementioned formulation opts to eliminate the stipulations of Article 5 Paragraph (2) of the Corruption Eradication Law and revise Article 12 letter of the same law, which stipulates a prison sentence ranging from a minimum of 1 year to a maximum of 20 years, alongside a financial penalty amounting to five times the value of the bribe for cases of passive bribery. In addition to serving as a method, the removal of Article 5 Paragraph (2) is also grounded in a logical framework, given that the stipulations of Article 5 Paragraph (2) of the Corruption Eradication Act have been incorporated into Article 605 of Law Number 01 of 2023 regarding the Criminal Code.

Conclusion

The study's findings indicate that the Corruption Eradication Law, particularly the provisions concerning passive bribery, contributes to legal uncertainty in enforcing crimes related to passive bribery. This situation arises within the Corruption Eradication Law, wherein the legislators, specifically the government in conjunction with the Indonesian Parliament, have crafted provisions that lack coherence with one another. Consequently, during the implementation phase, the determining factor is the subjective evaluation and interpretation of law enforcement officials regarding which article to apply. The evaluative judgment exercised by law enforcement officials in selecting the appropriate article for application carries the inherent risk of power being misused in the enforcement of its provisions. Legal reform is essential to address the existing duality of norms. This can be achieved by removing Article 5 Paragraph (2) of the Corruption Eradication Law, as it is already encompassed within Article 605 of Law Number 01 of 2023 concerning the Criminal Code. Additionally, it is imperative to amend Article 12 letter of the Corruption Eradication Law to state, 'A civil servant or state official who accepts a gift or promise, even when aware or should be aware that the gift or promise is intended to induce him to act or refrain from acting in a manner contrary to his obligations, shall face a prison

sentence of no less than 1 year and no more than 20 years, along with a fine amounting to 5 (five) times the value of the bribe.'

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