

# The Urgency Of Regulating Foreign Bribery Crime In Indonesia: Constitutional Legal Framework Analysis

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## Abstract

The focus of the research is on the urgency of regulating foreign bribery crime in Indonesia as well as the Indonesian constitution perspective. This issue raises concerns, because the regulation of foreign bribery crime has not been included in Indonesian Laws, making Indonesia a country that cannot follow up on this criminal act. The questions that arise are 1) what the urgency of the regulation of the law on foreign bribery crime in Indonesia is is 2) what the perspective of the Indonesian constitution regarding foreign bribery crime is is. The purpose of this study is to describe the urgency of legal regulation of the concept of foreign bribery



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crime in Indonesia, and the perspective of the Indonesian constitution regarding foreign bribery crime. The research method uses juridic-normative research with a qualitative approach to law. The results of the research show that 1) Indonesia is a participating country of UNCAC and has ratified it through Law Number 7 of 2006. However, until now there is no regulation to criminalize foreign bribery. In fact, according to the researcher, this is an urgency because the opportunity for variation in corruption cases but not followed by criminal reform of the criminal offense, resulting in the enforcement of corruption crimes is not optimal. 2) The Indonesian Constitution, by adopting Foreign Bribery in Indonesian legislation, it is hoped that Indonesia can enforce its laws fairly.

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**KEYWORDS** *Foreign Bribery Crime, Constitutional, Urgency*

## I. Introduction

Foreign bribery in the context of corruption has become a significant problem in Indonesia's constitutional practice. In fact, this phenomenon occurs widely and has become increasingly massive, while Indonesia still lacks specific legal provisions to effectively regulate and enforce actions against this type of crime. Rules that can be used as guidelines or guidelines in efforts to create peace and tranquillity in society. Indonesia has public law, private law, customary law and several Islamic laws, where these laws refer to the goals of national development.

National development aims to create a just, prosperous and prosperous human condition based on Pancasila and the 1945

Constitution. To create a just, prosperous and prosperous Indonesian society, it is necessary to continue to increase efforts to prevent and eradicate criminal acts, especially corruption.<sup>1</sup>

The problem of corruption, especially bribery, is one of the problems that has been going on for a long time in Indonesian society. Usually, bribes are given to influential people or officials to do or not do something related to their position. People who give bribes usually give bribes to achieve their desires, either in the form of certain benefits or to be free from punishment or legal process. law. So, it is not surprising that those who receive the most bribes are officials in the government bureaucracy who have an important role in deciding something, for example in granting permits or granting government projects.

Along with the development of the times and technology. Bribery can not only occur between state officials and national companies but can also occur in the international environment. Bribery that occurs in the international environment is called cross-country bribery or foreign bribery.

The Indonesian government has ratified the United Nations Convention Against Corruption (UNCAC) with Law Number 7 of 2006.<sup>2</sup> However, until now, the Corruption Eradication Law has not been adjusted to the convention. Where there is no regulation regarding foreign bribery in Indonesia. The relationship between

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<sup>1</sup> Adinda Febriana and Viona Salsabila, "Pengaturan Tindak Pidana Korupsi (Suap) Menurut Hukum Pidana Indonesia Dan Hukum Pidana Malaysia," DATIN LAW JOURNAL 1, no. 1 (2020), <https://doi.org/10.36355/dlj.v1i1.335>

<sup>2</sup> Undang-Undang Nomor 7 Tahun 2006 tentang Pengesahan United Nations Convention Against Corruption.

the Indonesian constitution and the Foreign Bribery Crime is stated in the 1945 Constitution based on Article 1 paragraph 3, which states that Indonesia is a country of law. Where in terms of preventing foreign bribery crime, Indonesia must have regulations related to the crime. However, there are no regulations related to foreign bribery crime, creating significant urgency for law enforcement in Indonesia, and having a real impact on Indonesia's role and position in the eyes of the international community. Foreign bribery occurs when a person or company from one country pays or offers something of value (money, gifts, favors, or benefits) to an official of another country to influence their actions or decisions. Foreign bribery undermines fair competition and violates international anti-corruption standards, as it allows companies to win contracts through unethical and illegal means rather than through merit<sup>3</sup>.

This study refers to several previous studies that discuss the legal aspects related to bribery, both nationally and internationally. Several studies that are references in this study include:

1. Everisco Sinaga (2020) in his thesis " Analisis Yuridis Perbuatan Penyuapan Dalam Tindak Pidana Korupsi (Studi Putusan Nomor: 37/Pid.Sus-TPK/2017/PN. Mdn)" at Medan Area University, which discusses the legal aspects of bribery crimes.<sup>4</sup>

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<sup>3</sup> Rajesh Babu, R. "The United Nations Convention Against Corruption: A Critical Overview." SSRN Electronic Journal (2011). <https://doi.org/10.2139/ssrn.891898>

<sup>4</sup> Sinaga, Everisco. "Analisis Yuridis Perbuatan Penyuapan Dalam Tindak Pidana Korupsi (Studi Putusan Nomor: 37/Pid. Sus-Tpk/2017/Pn. Mdn)." (2020).

2. Razananda Skandiva and Beniharmoni Harefa (2021) in *Jurnal Integritas: Jurnal Antikorupsi* Vol. 27, No. 2, which examines the urgency of criminalizing foreign bribery in Indonesian law.<sup>5</sup>
3. Karsudin (2022) in his thesis at Diponegoro University entitled "Kebijakan Formulasi Pengaturan Permaafan Hakim (Rechterlijk Pardon) Dalam Pembaharuan Hukum Pidana Indonesia".<sup>6</sup>

The fact of the problem is important to analyze the urgency of regulating foreign bribery crime based on the Indonesian Constitution Perspective. Several problems are related to the topic studied, namely a) what is the urgency of the regulation of the law on foreign bribery crime in Indonesia? and b) what is the perspective of the Indonesian constitution regarding foreign bribery crime? c) Study of the Implementation of the Foreign Bribery Concept in Indonesia from the Perspective of the Constitution of the Republic of Indonesia in 1945. d) Regulation of the Criminal Act of Cross-Country Bribery (Foreign Bribery) in Indonesia. e) Challenges in the Implementation of the Foreign Bribery Concept in Indonesia.

This study employs a qualitative legal approach within a doctrinal (juridical-normative) research design. This approach means that the facts and phenomena under examination namely,

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<sup>5</sup> Skandiva, R., and B. Harefa. "Urgensi Penerapan Foreign Bribery dalam Konvensi Antikorupsi di Indonesia." *Integritas: Jurnal Antikorupsi* 7, no. 2 (2021): 245–262.

<sup>6</sup> Kasrudin. "Formulasi Ide Permaafan Hakim (Rechterlijk Pardon) Dalam Pembaharuan Sistem Pemidanaan Di Indonesia." *Jurnal Law Reform* (2017).

the urgency of regulating foreign bribery crimes in Indonesia from the perspective of the Indonesian Constitution are interpreted through legal reasoning based on constitutional and statutory analysis. The legal materials examined in this research concern the regulation of foreign bribery within the broader context of corruption, analyzed from a constitutional perspective. This analytical orientation seeks to uncover how constitutional values and legal principles provide a normative framework for addressing transnational bribery as a corruption-related offense. The research adopts a hermeneutical legal perspective, which proceeds through three interpretive stages: experience, expression, and understanding within the legislative framework, with particular emphasis on the 1945 Constitution of the Republic of Indonesia. The legislative perspective is applied by systematically reviewing all relevant and interrelated legal instruments related to the research issues. This process involves clarification, data selection, and comparative analysis between legal concepts and the provisions contained in existing legislation.<sup>7</sup> As Johnny Ibrahim (2005) explains, legislation serves as the fundamental basis for conducting preliminary legal analysis in doctrinal research. Legislation occupies a central position in legal studies because of its inherent characteristics: it is comprehensive, reflecting the interconnection among legal norms; all-inclusive, forming a

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<sup>7</sup> Diantha, I Made Pasek. Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum. Jakarta: Kencana Prenada Media Group, 2016.

coherent body of norms that prevents legal vacuums; and systematic, revealing the hierarchical linkages among legal norms.<sup>8</sup>

The type of research used is Doctrinal, namely Juridical-Normative. This means normative legal research and library research. Research on the type of research that uses primary data sources from many legal materials, namely The 1945 Constitution of the Republic of Indonesia (UUD 1945) in Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 33 paragraph (4), Article 41, journals and previous research, and sources related to the problems discussed in the study (Pupu Saiful Rahmat, 2009).<sup>9</sup> Data collection techniques with literature study, document study, Data validity with triangulation through cross-checking data sources, data collection techniques, linear theoretical concepts with the urgency of regulating foreign bribery crimes in Indonesia: the perspective of the Indonesian constitution. Data analysis using interactive data analysis with data presentation, data reduction and condensation, data verification and research conclusions.

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<sup>8</sup> Ibrahim, Johnny. Teori dan Metode Penelitian Hukum Normatif. Malang: Bayumedia Publishing, 2005.

<sup>9</sup> Pupu Saeful Rahmat. "Penelitian Kualitatif." *Equilibrium* 5, no. 9 (2009): 1-8.

## II. The Urgency of Foreign Bribery Crime Regulation in Indonesia

Indonesia Eradication of corruption in Indonesia must be supported by maintaining strong law enforcement institutions that remain modern. All of that, the power of conveying hope, and bringing back and igniting energy in the chair. International cooperation is a manifestation of the state of human interdependence. In this implementation, in this application, in this application, in this application, in this application in a hopeful application. Education is the only way to keep rich things waiting ideologically, all, politically, socially, environmentally, culturally, security and safety. One of the efforts in enforcing the eradication of corruption in Indonesia is to enforce criminal law in its field, therefore it is necessary to understand the function of criminal law.<sup>10</sup>

According to Sudarto, the function of criminal law is divided into two, namely general function and special function. The general function of criminal law is the same as the function of law in general, namely regulating people's lives or organizing order in society. The special function of criminal law is to protect legal

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<sup>10</sup> Evi Hartanti. *Tindak Pidana Korupsi*. Jakarta: Sinar Grafika, 2023.

interests against acts that intend to rape them with sanctions in the form of criminal law Soedarto, 1990 in Amelia, 2022.<sup>11</sup>

The special function of criminal law is to protect legal interests, so that what is protected is not only individual interests but also community interests and state interests. Therefore, in the National Criminal Code there are articles related to crimes against state security as a form of protection of state interests, likewise in the Criminal Code there are articles related to crimes against public interests as a form of protection of community interests. In relation to the protection of individual interests, there are at least three things that are protected (Soedarto 1990):<sup>12</sup>

1. Protection of life. Therefore, in the Criminal Code there are articles relating to crimes against life.
2. Protection of property is outlined in articles relating to crimes against property.
3. Protection of honour, both morality and good name.

Thus, in the Criminal Code there are also articles related to crimes against morality and crimes related to defamation. Furthermore, the second special function of criminal law is to provide legitimacy to the state in carrying out its function of protecting legal interests. If there is a violation of the legal interests of the state, society and/or individuals, then within the limits determined by law the state can exercise its power to provide

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<sup>11</sup> Amalia, Mia. "Bab V Sumber Hukum Pidana Dalam Pembaharuan Hukum Pidana Nasional Dalam Pendekatan Sosiolultural." *Hukum Pidana* 53 (2022).

<sup>12</sup> Amalia, Mia. "Bab V Sumber Hukum Pidana Dalam Pembaharuan Hukum Pidana Nasional Dalam Pendekatan Sosiolultural." *Hukum Pidana* 53 (2022).

protection for the violated legal interests. It can be said that the special function of criminal law is to provide legitimacy to the state in carrying out its function of protecting legal interests in the context of formal criminal law.

The United Nations Convention Against Corruption (UNCAC) is a comprehensive international legal instrument in efforts to eradicate corruption. Indonesia has ratified the UNCAC through Law Number 7 of 2006. This ratification shows Indonesia's commitment to combating corruption and is in line with global efforts to realize good governance.<sup>13</sup>

The implementation of UNCAC in Indonesia will provide a positive contribution to the efforts to eradicate corruption. However, there are still a number of challenges that need to be overcome. To achieve the goal of effective corruption eradication, a strong commitment is needed from all stakeholders, including the government, law enforcement agencies, and the community.

Indonesia needs to amend its anti-corruption law and introduce regulations that require mandatory enforcement of mandatory penalties to improve the Indonesian state's ability to control and prevent corruption. Without including foreign bribery in Indonesian laws and regulations, it will be difficult for Indonesian law enforcement to investigate and prosecute Indonesian companies that commit foreign bribery crimes outside Indonesia.<sup>14</sup>

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<sup>13</sup> Law Number 7 of 2006 about ratification of UNCAC of 2004

<sup>14</sup> Skandiva, R., and B. Harefa. "Urgensi Penerapan Foreign Bribery dalam Konvensi Antikorupsi di Indonesia." *Integritas: Jurnal Antikorupsi* 7, no. 2 (2021): 250.

Based on the Corruption Eradication Commission (2016) Since 2015, Indonesia has joined the ASEAN economy as an ASEAN member country, thus allowing the movement of goods, services, investment, capital and labour between member countries. Indonesia's BTI score in 2023 standardized by the 2023 CPI measure is 37, an increase of 4 points from 2022. This score indicates that Indonesia is at a moderate level. Indonesia's Corruption Perception Index (CPI) is ranked 115 out of 180 countries with a score of 37/100, and along with the Varieties of Democracy project report, Indonesia's Corruption Perception Index (CPI) is ranked 115 out of 180 countries with a score of 37/100. This shows how serious corruption is. Indonesia's score on the V-Dem Democracy Index is 0.43 points on a scale of 0.0 to 1.0, or 25 points on a scale of 0 to 100 (the standard CPI measure). The score increased by 1 point compared to 2022. A higher score indicates a country's better liberal democracy. If the score is low, the country is classified as an authoritarian country. This places Indonesia at 79th place in the world.<sup>15</sup>

Of course, this has consequences. If an Indonesian company bribes a Malaysian or Singaporean public official, Indonesian law enforcement cannot investigate or prosecute the case. Conversely, if a Malaysian or Singaporean company bribes abroad, Malaysian or Singaporean law enforcement agencies can still investigate, prosecute, and prosecute, even if Indonesia takes similar actions

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<sup>15</sup> Sustain.id. "Stagnan: Skor 34, Corruption Perception Index (CPI) Indonesia Tahun 2023." February 5, 2024. Accessed February 10, 2025. <https://sustain.id/2024/02/05/stagnan-skor-34-corruption-perception-index-cpi-indonesia-tahun-2023>

against Indonesian officials. This will certainly have an impact, especially on the application of criminal sanctions in the form of fines and compensation that should be returned to the Indonesian government.<sup>16</sup> This fact is in line with the opinion of American legal expert Oliver Wendell Holmes. "The law is not what is written beautifully in the regulations, but what is done by law enforcement".<sup>17</sup> What law enforcement officers have done so far has not been optimal due to various obstacles. This analysis strengthens the facts of the urgency foreign bribery crime or foreign bribery is a serious threat to the integrity of a country's economy and legal system. This crime involves actors operating in various jurisdictions, thus requiring more comprehensive regulations and more effective law enforcement in Indonesia. This urgency includes:

### 1. Empirical Urgency

Currently, Indonesia still faces challenges in enforcing the law against foreign bribery. Based on data from Transparency International, Indonesia's Corruption Perception Index (CPI) in 2023 was at a score of 34 out of 100, indicating that corruption is still a serious problem. In addition, data from the Corruption Eradication Commission (KPK) shows that bribery cases involving international actors are increasing every year.

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<sup>16</sup> Skandiva, R., and B. Harefa. "Urgensi Penerapan Foreign Bribery dalam Konvensi Antikorupsi di Indonesia." *Integritas: Jurnal Antikorupsi* 7, no. 2 (2021): 251.

<sup>17</sup> Nugroho, D. M. (2018). Dilema Kebebasan Hakim Dalam Menjatuhkan Pidana Minimum Khusus. *QISTIE*, 11(2). <https://doi.org/10.31942/jqi.v11i2.2595>

**TABLE 1.** Corruption Cases Involving Foreign Actors in Indonesia

Year	Number of Foreign Bribery Crime Cases	Country of Origin of the Main Perpetrator
2019	5	Singapore, Malaysia
2020	8	China, United States
2021	10	Japan, South Korea
2022	12	English, Australian
2023	15	United States, Germany

**Source:** KPK Report and Transparency International

The data indicate that Indonesia continues to face significant challenges in enforcing laws against foreign bribery. With a Corruption Perception Index (CPI) score of 34 out of 100 in 2023 corruption remains a systemic and deeply rooted issue. Moreover, data from the Corruption Eradication Commission (KPK) reveal an increasing trend of bribery cases involving foreign actors, demonstrating the transnational dimension of corruption that complicates law enforcement mechanisms. This phenomenon can be explained through the lens of the Theory of Legal System by Lawrence M. Friedman (1975), which emphasizes that the effectiveness of law enforcement depends on three interrelated components: legal structure, legal substance, and legal culture. In Indonesia's context, weaknesses in institutional coordination (structure), incomplete or outdated legal frameworks regulating foreign bribery (substance), and persistent cultural tolerance

toward corruption (legal culture) collectively undermine the ability to combat foreign bribery effectively.<sup>18</sup>

In addition, the problem aligns with the Theory of Good Governance and Rule of Law, which underscores that the integrity of public institutions and the consistency of law enforcement are essential to maintaining legitimacy and trust in government. The increase in cases involving foreign actors suggests that Indonesia's governance system has not yet fully adapted to the demands of global accountability and transnational legal cooperation.

Therefore, the persistence of foreign bribery reflects not only a legal enforcement gap but also a governance and institutional reform challenge, requiring a stronger legal framework harmonized with international anti-corruption standards such as the United Nations Convention against Corruption (UNCAC) and the OECD Anti-Bribery Convention.

## 2. Sociological Urgency

From a sociological perspective, foreign bribery practices can severely undermine public trust in the legal system and governmental institutions. The inability of the state to effectively address foreign bribery crimes fosters the widespread perception that the law is sharp downward but blunt upward, reflecting structural inequality in law enforcement. This condition resonates with Roscoe Pound's Sociological Jurisprudence, which asserts that law should function as a tool of social engineering serving justice

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<sup>18</sup> Komisi Pemberantasan Korupsi (KPK). Memahami untuk Membasmi. Jakarta: KPK, 2006.

and promoting social order. When law enforcement is selective or ineffective, it fails to perform this social function, thereby weakening public confidence in state authority. Furthermore, the prevalence of corruption in infrastructure projects and foreign investment directly harms public welfare.

It leads to inefficiency, inflated economic costs, and reduced quality of public services, perpetuating social inequality. From the perspective of Talcott Parsons' Structural-Functional Theory, corruption represents a form of systemic dysfunction that disrupts the equilibrium of social institutions. Instead of promoting development, bribery distorts the intended role of the legal and economic systems, where the law should act as a mechanism of regulation and legitimacy but instead becomes a channel for rent-seeking behaviour. Thus, foreign bribery not only damages Indonesia's legal credibility at the international level but also erodes the moral foundation of governance and the social contract between the state and its citizens. Addressing this issue therefore requires not only normative legal reform but also cultural transformation within the bureaucracy and enforcement institutions to restore integrity, accountability, and public trust.

In a study conducted by the Indonesian Institute of Sciences (LIPI), it was found that 60% of respondents believe that foreign investment in Indonesia often involves bribery practices to speed up government permits and projects. This indicates a systemic problem that needs to be addressed immediately.

### 3. Legal Urgency

Although there are various national legal instruments, such as the Corruption Crime Law (UU Tipikor), special regulations related to foreign bribery have not been specifically regulated. The absence of this regulation makes it difficult to ensnare perpetrators of foreign bribery, whether carried out by Indonesian citizens abroad or by foreign legal subjects in Indonesia.<sup>19</sup>

Tighter regulations on foreign bribery crime are needed to maintain Indonesia's credibility in international cooperation, especially in anti-corruption forums such as the OECD Anti-Bribery Convention and the United Nations Convention Against Corruption (UNCAC). Without clear provisions, Indonesia risks becoming a haven for transnational bribery perpetrators and experiencing diplomatic and economic pressure from other countries.

As a strategic step, Indonesia needs to immediately design special regulations related to foreign bribery crime by referring to international best practices and adapting them to the national legal context. In addition, cooperation between countries in the fields of extradition, investigation, and mutual legal assistance must be strengthened to ensure more effective law enforcement.

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<sup>19</sup> Engkus, Indah Rizli Afifah, Khairu Syifa Ahyani, Lintang Angesti, and Melania Dwi Lestari. "Gerakan Kerjasama Instrumen Internasional Mencegah Korupsi." *Panengen: Journal of Indigenous Knowledge* 1, no. 1 (2022): 9–17. <https://jurnal.panengen.com/index.php/ijop/article/view/9/7>

### III. Indonesian Constitution and Prevention of Foreign Bribery Crime

The punishment to be given. The term constitution is a translation from a foreign language. The term constitution in Indonesian is equivalent to the word *constitutio* (Latin, Italian), *constitution* (English), *constitutie* (Dutch), *constitutionnel* (French), *Verfassung* (German), *masyrutiyah* (Arabic). The term constitution comes from French, namely, *constituer*, which means to form. The use of the term constitution is intended to form a country or to compile and declare a country. Etymologically, the words "*constitution*", "*constitutional*", and "*constitutionalism*" have the same core meaning, but their use and application are different. A constitution is all provisions and rules regarding state administration, or the Basic Law of a country. In other words, all actions or behaviour of a person or ruler in the form of policies that are not based on or deviate from the constitution, means that the action or policy is unconstitutional. This is different from constitutionalism which is interpreted as an understanding regarding the limitation of power and guarantee of people's rights through the constitution.<sup>20</sup>

Carl Schmitt constitution seen from the point of view of understanding can be grouped into four meanings, namely:

1. Constitution in the absolute sense, which is divided into:

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<sup>20</sup> Rose-Ackerman, Susan, and Pablo Lagunes. Greed, Corruption, and the Modern State: Essays in Political Economy. Cheltenham: Edward Elgar, 2015. <https://doi.org/10.4337/9781784714703>

- a. The constitution is considered as a real organic unity and includes legal
  - b. Constitution as an integration factor. This integration factor can be abstract and functional. Abstract for example its relationship, its unifying language, the flag as a symbol of its unity and others. While functional because the task of the constitution is to unite the nation through general elections, referendums, the formation of cabinets, a discussion or debate in politics in liberal countries, motions submitted by the DPR, both accusatory or no confidence and so on.
  - c. Constitution as a closed system of the highest legal norms in the country.
2. Constitution in the relative sense. It means as a constitution that is connected to the interests of a certain group in society (for example the bourgeoisie). The constitution in the relative sense is divided into two meanings, namely:
  - a. The constitution as a demand from the liberal bourgeoisie so that their rights are guaranteed and not violated by the ruler.
  - b. The constitution in the formal sense is important in the procedural making of the constitution which is carried out in a special way. Because its contents are important and concern the fate of the people as a whole and the state.

3. The constitution in the ideal sense. This constitution is the ideal of the liberal bourgeoisie as a guarantee for the people so that their basic rights are protected.

The Great Dictionary of the Indonesian Language defines the constitution as all provisions and rules regarding state administration (basic laws and so on). In the context of an organization or state, the Constitutional Court in the Pancasila and Constitution Education Center explains that the concept of the constitution is bound in the formation or birth of an organization. Jimly Asshiddiqie, the concept of the constitution includes the concept of written regulations, customs, and state conventions that determine the composition and position of state organs, regulate relations between state organs and rules regarding the relationship between state organs and citizens.<sup>21</sup>

The Indonesian Constitution, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945), provides a strong foundation in efforts to eradicate foreign bribery crime. Some relevant articles include:

1. Article 1 paragraph (3): "The Republic of Indonesia is a state of law." The principle of a state of law mandates that all actions, including prevention and prosecution of foreign bribery crimes, must be based on clear laws and enforced fairly.<sup>22</sup>

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<sup>21</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>22</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

2. Article 27 paragraph (1): "All citizens have equal standing before the law and government and are obliged to uphold the law and government without exception." The principle of equality before the law emphasizes that every perpetrator of foreign bribery, whether from within or outside the country, must be treated equally in the eyes of the law.<sup>23</sup>
3. Article 28D paragraph (1): "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law." The state has an obligation to guarantee legal certainty in handling foreign bribery cases, including in the preparation of more specific regulations related to foreign bribery crime.<sup>24</sup>
4. Article 33 paragraph (4): "The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental awareness, independence, and by maintaining a balance of progress and national economic unity." The crime of foreign bribery can damage the principles of economic democracy and create inequality in healthy business competition. Therefore, strict regulations in eradicating foreign bribery are needed to maintain national economic justice.<sup>25</sup>
5. Article 41: Gives the government a mandate to eradicate corruption and uphold a clean and transparent legal system. Efforts to eradicate foreign bribery are part of the national

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<sup>23</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>24</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>25</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

agenda in upholding the principles of clean and integrated governance.<sup>26</sup>

Articles in the 1945 Constitution that explicitly regulate the eradication of corruption, there are broader principles in the constitution that support transparency, accountability, and the rule of law in governance. These principles form the basis for stricter regulations in dealing with foreign bribery crime.

Constitution-based regulation is considered important so that the Indonesian legal system is increasingly strong in facing global challenges, especially in enforcing the law against foreign bribery. Thus, Indonesia can play a more active role in efforts to prevent and eradicate foreign corruption, not only in the national scope but also in international cooperation. This is in line with the mandate of the constitution and Indonesia's global commitment to combating corruption, including those regulated in various international conventions such as the United Nations Convention Against Corruption (UNCAC).

Indonesian legislation related to the prevention of Foreign Bribery crimes can be referred to through the United Nations Convention Against Corruption (UNCAC) 2003 which defines and criminalizes foreign bribery in Article 16 paragraphs 1 and 2 of the UNCAC.<sup>27</sup> Based on Article 16, member countries are required to:

- a. Criminalizing, namely making bribery of foreigners a criminal offense. This crime includes giving, offering, and receiving

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<sup>26</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>27</sup> United Nations Convention Against Corruption. New York: United Nations, 2004.

bribes by foreign public officials or officials of public international organizations. Bribes can be anything of value, including money, gifts, or other benefits. The purpose of bribery is to obtain an improper advantage from the official.

- b. Conduct prevention, namely preventing foreign bribery through legislative, administrative and other measures. These measures may include: creating transparent accounting and public procurement systems, strengthening internal supervision in the Company, raising public awareness of the dangers of foreign bribery.
- c. Enforce the law by investigating, prosecuting, and punishing foreign bribery offenders in accordance with their national laws. Cooperate with other countries in investigating, prosecuting, and punishing foreign bribery. This includes mutual extradition of defendants and mutual assistance in investigations and exchange of information.
- d. Undertake reciprocal assistance by providing mutual assistance to other countries in the investigation, prosecution and punishment of foreign bribery. This includes mutual extradition of defendants and mutual assistance in investigations and exchange of information.
- e. Strengthening international cooperation by working with international organizations and civil society to prevent and combat foreign bribery. The UNCAC does not create direct obligations for individuals. Member states must implement the provisions of the UNCAC through their own national laws.

Indonesia has ratified the UNCAC through Law Number 7 of 2006. However, foreign bribery has not been explicitly regulated in the Corruption Eradication Law. This raise concerns that Indonesia has not fully complied with its obligations under the UNCAC to criminalize foreign bribery.

UNCAC has an important role in combating international corruption, including foreign bribery. However, the full implementation of UNCAC in Indonesia still has challenges. It is important for Indonesia to strengthen its legal framework to effectively prevent and eradicate foreign bribery.<sup>28</sup>

Law No. 24 of 2000 concerning International Agreements, explains that the International Agreement referred to in this Law is any agreement in the field of public law, regulated by international law, or other international subjects. The implementation of the UNCAC which has been ratified by Law No. 7 of 2006 has not yet implemented a number of provisions in the Corruption Eradication Law. According to Andi Hamzah (2007), criminal acts of corruption that have not been criminalized in the Corruption Eradication Law are: bribery in private sectors (Bribery in Private Sectors); trading in influence (Trading in Influence); bribery of foreign public officials (Foreign Bribery); and obtaining wealth illegally (Illicit Enrichment).<sup>29</sup>

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<sup>28</sup> Hock, Beate. *Extraterritoriality and International Bribery: A Collective Action Perspective*. New York: Routledge, 2019. <https://doi.org/10.4324/9780429023347>

<sup>29</sup> Skandiva, R., and B. Harefa. "Urgensi Penerapan Foreign Bribery dalam Konvensi Antikorupsi di Indonesia." *Integritas: Jurnal Antikorupsi* 7, no. 2 (2021): 255.

## **IV. Study of the Implementation of the Concept of Foreign Bribery Crime in Indonesia from the Perspective of the Constitution of the Republic of Indonesia in 1945**

has *Restorative justice* integrated vision. Foreign bribery, or foreign bribery, is the act of giving or receiving bribes to foreign public officials to gain an improper business advantage. This practice is prohibited in Indonesia and many other countries and can result in serious legal consequences for the individuals and companies involved. There are several national-level legal instruments that are important in preventing and eradicating corruption.

**TABLE 2.** Legal Framework for Corruption and Foreign Bribery Regulation in Indonesia and Its Constitutional Basis

<b>No.</b>	<b>Regulation / Legal Instrument</b>	<b>Key Substance / Purpose</b>	<b>Constitutional Basis (1945 Constitution)</b>
a	MPR Decree No. XI/MPR/1998 on the	Emphasizes the importance of a clean,	Article 1(3) – Indonesia is a state based on

	Implementation of a Clean State Free from Corruption, Collusion, and Nepotism	transparent, and moral government; requires state officials to uphold ethics in performing their duties.	law, which must be free from corruption, collusion, and nepotism.
b	Law No. 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism Law No. 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism	Mandates that state administrators must act free from KKN practices and implement governance based on transparency and accountability.	Article 27(1) – All citizens have equal standing before the law, including in corruption law enforcement

c	Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption	Defines types of corruption crimes and sanctions for perpetrators; guarantees fair and certain punishment	Article 28D (1) – Guarantees legal certainty and fair treatment for all citizens; Article 1(3) – supremacy of law.
d	Law No. 20 of 2001 (Amendment to Law No. 31 of 1999)	Expands the definition of corruption crimes, increases sanctions, and strengthens law enforcement mechanisms.	Article 33(4) – Emphasizes fair and transparent economic efficiency.
e	Law No. 30 of 2002 concerning the Corruption Eradication	Establishes KPK as an independent institution to handle	Article 1(3) – Ensures effective mechanisms in a lawful state to

	Commission (KPK)	corruption cases effectively and transparently.	eradicate corruption.
f	Law No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (UNCAC)	Demonstrates Indonesia's international commitment to eradicating corruption through global cooperation.	Article 27(1) – Obliges citizens to obey the law, including ratified international agreements.
g	Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters	Regulates international legal cooperation in the investigation and prosecution of criminal acts, including foreign bribery.	Article 28D(1) – Guarantees legal certainty and protection for all parties in the legal system.

h	Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering	Prevents and punishes money laundering related to proceeds of corruption; protects the integrity of the economy.	Article 33(4) – Mandates a transparent and just economy; Article 41 – Protects society from corruption's negative impacts.
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Source: Regulations about Corruption in Indonesia and International

In Indonesia, foreign bribery crime is indirectly regulated in several laws, including:

- a. Criminal Code, Article 418: A civil servant who accepts a gift or promise when he knows or should have suspected that the gift or promise was given because of the power or authority related to his position, or which in the mind of the person giving the gift or promise is related to his position, is subject to a maximum prison sentence of six months or a maximum fine of four thousand five hundred rupiah.
- b. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Corruption Law), Article 11: Any person who commits a crime as referred to in Article 418 of the Criminal Code shall be punished with imprisonment

for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 250,000,000.00 (two hundred and fifty million rupiah).

Relation to the 1945 Constitution of the Republic of Indonesia. The application of the concept of foreign bribery in the Indonesian legal system is closely related to the principles stipulated in the 1945 Constitution, including:

- a. Article 1 paragraph (3): "The Republic of Indonesia is a country based on law." This principle emphasizes that all actions of the government and citizens must be based on law, including in preventing and prosecuting foreign bribery practices. Foreign bribery is a form of violation of the principles of a country based on law that upholds justice and transparency.
- b. Article 27 paragraph (1): "All citizens have equal standing before the law and government and are obliged to uphold the law and government without exception." This provision confirms that all citizens, including public officials and business actors, have equal standing before the law. The eradication of foreign bribery must be carried out fairly without regard to a person's social status or position.
- c. Article 28D paragraph (1): "Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law." The practice of foreign bribery can damage the principle of legal certainty and create

injustice in business competition. Therefore, strict regulations against foreign bribery are part of the effort to realize justice and legal certainty in Indonesia.

- d. Article 33 paragraph (4): "The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental awareness, independence, and by maintaining a balance of progress and national economic unity." Foreign bribery can damage the principles of economic democracy by creating unhealthy competition. With the existence of anti-bribery regulations, it is hoped that a transparent and fair business environment will be created, in accordance with the mandate of Article 33 paragraph (4) of the 1945 Constitution.
- e. Article 41: "The state, government, and society are obliged to provide facilities and provide fair and special assistance to disadvantaged groups in society who are entitled to protection." Corrupt practices, including foreign bribery, can have an impact on social and economic inequality. By eradicating foreign bribery, the state can ensure that economic and government policies are truly directed towards the welfare of the people, especially vulnerable groups.

The application of the concept of foreign bribery in the Indonesian legal system must be in line with the principles of the constitution as stipulated in the 1945 Constitution. As a country based on the rule of law, Indonesia is obliged to ensure that all law

enforcement actions against foreign bribery cases are carried out fairly and transparently.

## V. Challenges in Implementing the Foreign Bribery Concept in Indonesia

Indonesia's Although various efforts have been initiated by the Indonesian government such as ratifying the *United Nations Convention Against Corruption (UNCAC)*, establishing the *Corruption Eradication Commission (KPK)*, and promoting legal cooperation through *Mutual Assistance Treaties* the implementation of the foreign bribery concept still faces substantial challenges. These challenges differ from the efforts in that *efforts* represent the proactive institutional and legal measures taken to combat corruption, while *challenges* refer to the structural, cultural, and procedural barriers that hinder their effectiveness.

The main challenges in implementing the foreign bribery framework in Indonesia include:<sup>30</sup>

### 1. Low Public Awareness

Many citizens and business actors remain unaware of the legal meaning and risks of foreign bribery. This limited

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<sup>30</sup> Kristian, and Yopi Gunawan. *Tindak Pidana Korupsi: Kajian terhadap Harmonisasi antara Hukum Nasional dan The United Nations Convention Against Corruption*. Bandung: Refika Aditama, 2015.

understanding reduces public participation in reporting or preventing transnational bribery practices.

## 2. Weak Law Enforcement

Despite existing laws, enforcement remains inconsistent due to limited institutional capacity, lack of expertise in handling foreign evidence, and insufficient coordination between domestic and foreign authorities.

## 3. Lack of Transparency and Corporate Reluctance

Many companies are unwilling to disclose foreign bribery incidents due to fear of reputational damage, legal sanctions, or business retaliation. This opacity obstructs detection and prosecution efforts.

## 4. Limited International Cooperation

Foreign investigations require mutual legal assistance and extradition frameworks that are often slow, bureaucratic, and limited in scope, reducing the deterrent effect of anti-bribery regulations.

## 5. Cultural Tolerance toward Corruption

In some sectors, bribery is still perceived as a “customary business practice” to expedite processes, making legal norms less effective in changing behavior.

In contrast, the efforts undertaken by Indonesia such as aligning domestic laws with international conventions, strengthening institutional mechanisms like the KPK, and enhancing public education through anti-corruption campaigns

represent *the state's strategic commitment* to reduce corruption both domestically and internationally.

However, the gap between normative commitment (efforts) and practical realization (challenges) remains significant. Addressing these challenges requires continuous legal reform, foreign institutional collaboration, and the internalization of anti-corruption values within both the public and private sectors.

#### Indonesian Government Efforts in Handling the Impact of Foreign Bribery Crime Cases:

##### a. Resolving Legal Cases

The Corruption Eradication Commission (KPK) has completed investigations and prosecuted several foreign bribery cases involving multinational companies and domestic officials. Some significant cases include:

**TABLE 4.** Several foreign bribery cases involving multinational companies and domestic officials<sup>31</sup>

Case	Year	Parties Involved	Punishment/Action
Airbus bribery case to PT	2020	Former CEO of Garuda,	8 years in prison & a fine of Rp 1 billion

<sup>31</sup> Oduor, J. A., Fernando, F. M. U., Flah, A., Gottwald, D., Hauch, J. M., Mathias, M., Park, J. W., and Stolpe, O. Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery. Washington, DC: World Bank, 2013. <https://doi.org/10.1596/9781464800863>

Garuda Indonesia		Emirsyah Satar	
Rolls-Royce bribery case related to Garuda aircraft engine procurement	2021	Emirsyah Satar, Soetikno Soedarjo	Prison sentences & fines
Foreign mining companies bribe local officials	2022	Local officials, private sector	Investigation by the Corruption Eradication Committee & Attorney General's Office

The KPK works closely with the UK's Serious Fraud Office (SFO) and other legal authorities in resolving bribery cases involving foreign companies. Transparency in the legal process is carried out by publishing the results of investigations and trials.

#### b. Bureaucratic Reform to Prevent Corruption

The government has taken several reform steps to reduce the gaps in corruption, especially in the procurement of goods and services sector:

**TABLE 5.** Government Several Reform Steps to Reduce the Gaps in Corruption

Reform Program	Implementation	Impact

LKPP E-Catalog	2019 - Present	Simplify and streamline the procurement process
e-Procurement System	2018 - Present	Transparency in government project auctions
Integrity Zone in K/L	2020 - Present	Increasing anti-corruption commitment in agencies

Despite some increases, the CPI score has declined in recent years, indicating the need to strengthen anti-corruption policies.

### c. Increasing International Cooperation

**TABLE 6.** Indonesia International Collaborations to Strengthen the Prevention and Prosecution Of Foreign Bribery Cases

Country/Organization	Form of Cooperation
OECD Anti-Bribery Convention	Monitoring & evaluation of handling of foreign bribery cases
Interpol & ASEANAPOL	Foreign investigations into financial crimes
United Nations Convention Against Corruption (UNCAC)	Global cooperation in preventing & combating corruption
UK Serious Fraud Office (SFO)	Rolls-Royce and Airbus bribery investigation

Focus of International Cooperation:

- Exchange of financial & banking data in foreign bribery cases.

- b. Return of assets resulting from corruption from abroad to Indonesia.
- c. Joint law enforcement between the Corruption Eradication Committee (KPK) and foreign legal institutions.

The Indonesian government has made various efforts to deal with foreign bribery, from law enforcement to bureaucratic reform and international cooperation. However, challenges remain, especially in policy implementation and increasing transparency. The following is a more detailed explanation of the steps that can be strengthened in dealing with foreign bribery cases based on the perspective of the 1945 Constitution:

1. Improving Internal and External Supervision in Procurement of Goods and Services Relevance to the 1945 Constitution:
  - a. Article 1 paragraph (3): Indonesia is a country based on law, which means that all procurement processes for goods and services must be transparent, accountable and in accordance with the principles of good governance.
  - b. Article 28D paragraph (1): Guarantee of fair legal certainty, including in a procurement system for goods and services that is free from corruption.

Concrete steps that can be strengthened: Digitalization of the procurement system: Using an e-procurement system that is transparent and supervised in real-time by the BPK, KPK, and other independent institutions. Periodic audits & strict supervision: Procurement of goods and services must be supervised through a periodic audit mechanism involving internal and external

supervisory institutions. Strict sanctions for violators: Providing strict legal sanctions in accordance with the Corruption Law to officials involved in tender manipulation and bribery practices.

2. Optimizing the Role of the Corruption Eradication Committee, the Prosecutor's Office, and the Police in Investigating Foreign Bribery Cases. Relevance to the 1945 Constitution:

- a. Article 27 paragraph (1): All citizens are equal before the law. Therefore, all perpetrators of bribery, both from within and outside the country, must be prosecuted without exception.
- b. Article 28D paragraph (1): Guaranteeing legal certainty for society and the business world by effectively eradicating corruption.
- c. Article 41: Regulates public participation in eradicating criminal acts of corruption, so that the public can assist the Corruption Eradication Committee, the Prosecutor's Office and the Police in reporting cases of foreign bribery.

Concrete steps that can be strengthened: Closer inter-agency coordination: Increasing synergy between the KPK, the Prosecutor's Office, and the Police in investigating and enforcing foreign bribery cases. Strengthening regulations & human resources: Increasing the capacity of law enforcement officers in handling foreign bribery cases through training and cooperation with international institutions. Whistleblower protection mechanism: Ensuring protection for those reporting corruption crimes so that more information can be revealed.

### 3. Expanding International Cooperation to Uncover Foreign Bribery Cases Faster. Relevance to the 1945 Constitution:

- a. Article 33 paragraph (4): The national economy must be based on the principles of economic democracy and justice. Foreign bribery damages healthy business competition.
- b. Article 28D paragraph (1): Guaranteeing legal certainty in the international business world by implementing global anti-corruption standards.

Concrete steps that can be strengthened: Joining international agreements: Indonesia must be more active in global cooperation such as the OECD Anti-Bribery Convention and UNCAC (United Nations Convention Against Corruption).

Leveraging Mutual Legal Assistance (MLA), Accelerating cooperation between countries in sharing financial information and assets resulting from foreign bribery crimes.<sup>32</sup> Strengthening foreign investigation technology: Using digital forensic technology and AI to uncover suspicious financial transactions between countries.

This bribery case is a valuable lesson for Indonesia to continue to improve efforts to prevent and eradicate corruption. With commitment and cooperation from all parties, it is hoped that Indonesia can become a cleaner and more integrated country. Although various efforts have been made, there are still several challenges in implementing the concept of foreign bribery in

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<sup>32</sup> Joutsen, Matti. "Mutual Legal Assistance." In Global Crime: An Encyclopedia of Cyber Theft, Weapons Sales, and Other Illegal Activities, Vol. 1-2. New York: Routledge, 2019. <https://doi.org/10.4324/9781843145295-17>

Indonesia, including the lack of public awareness where many people still do not know about foreign bribery and its dangers. Weak law enforcement on foreign bribery is still not optimal. The lack of transparency is because many companies are reluctant to report foreign bribery practices for fear of legal consequences.<sup>33</sup>

## VI. Conclusion

The study concludes that although Indonesia has ratified the *United Nations Convention Against Corruption (UNCAC)* through Law No. 7 of 2006, the country has not yet criminalized foreign bribery within its domestic legal framework. This legal gap weakens Indonesia's anti-corruption system and limits the state's ability to address emerging forms of transnational corruption. The findings reveal that the absence of explicit legal provisions on foreign bribery results in fragmented enforcement, legal uncertainty, and reduced effectiveness of corruption eradication efforts.

From a constitutional perspective, regulating foreign bribery is a constitutional mandate derived from the principles contained in Articles 1 (3), 27, 28D, 28H, 33, and 41 of the 1945 Constitution. These provisions collectively affirm that Indonesia, as a state based

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<sup>33</sup> Chazawi, Adami. *Hukum Pidana Korupsi di Indonesia*. Depok: Rajagrafindo Persada, 2016.

on law, must guarantee legal certainty, equality before the law, public welfare, and the integrity of national economic governance. Failure to regulate foreign bribery contradicts these principles and undermines both domestic justice and international credibility.

The policy implication for lawmakers and government institutions is clear: Indonesia must urgently strengthen its legal instruments to ensure that foreign bribery is recognized, prosecuted, and punished as a corruption offense. Such regulation would enhance legal certainty, promote fair business practices, and uphold Indonesia's international reputation as a state committed to good governance.

### Policy Recommendations

1. Draft Amendment to the Corruption Eradication Law (UU Tipikor) to explicitly include *foreign bribery* as a criminal offense in line with UNCAC Article 16.
2. Institutional Reform and Capacity Building enhance inter-agency coordination between the KPK, Attorney General's Office, and Ministry of Foreign Affairs in handling foreign bribery cases.
3. International Cooperation Mechanisms strengthen mutual legal assistance (MLA) and extradition frameworks to support transnational investigation and prosecution.
4. Corporate Compliance Regulation mandate transparency and reporting mechanisms for multinational and state-owned enterprises to disclose potential foreign bribery risks.

5. Public Awareness and Education Strategy integrate anti-foreign bribery awareness into national anti-corruption campaigns to strengthen public vigilance and reporting.

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## **DECLARATION OF CONFLICTING INTERESTS**

The authors state that there is no conflict of interest in the publication of this article.

## **FUNDING INFORMATION**

None

## **ACKNOWLEDGMENT**

None

## **HISTORY OF ARTICLE**

Submitted : April 29, 2025

Revised : December 5, 2025

Accepted : November 17, 2025

Published : December 15, 2025