

Law Enforcement in the Practice of Bribery in Business and Trade in Indonesia: Between Theory and Practice

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Abstract: Abuse of power for the sake of business and trade profit has become an increasingly average occurrence in the practice of public procurement in this era of moral disruption. It is commonplace that government officials make an illicit arrangement with companies through bribery scheme to win tenders in the procurement of goods and services. This practice resulted in a shift of ideology and abuse of authority by government officials. This practice is contrary to the professional code of ethics, so it is necessary to settle such cases through juridical channels. The intervention of public officials in determining the award of contracts of government projects to certain parties has resulted in a crisis of public trust in law enforcement in Indonesia. This article reviews the basic principles of the criminal act of corruption and the commitment and integrity of government officials in implementing the professional code of ethics, and upholding honesty in order to achieve equitable law enforcement. This paper proves and confirms that the abuse of power by government officials for the sake of business profit in the public procurement has weakened Indonesia's investment sector. In many cases, these activities may even lead to unfair competition in the trade and business sectors.

Keywords: *trading authority; corruption; bureaucracy; business; bribery*

Abstrak: Memperdagangkan otoritas guna melancarkan praktik bisnis dan perdagangan merupakan hal yang banyak terjadi di era disrupsi moral ini. Para pejabat pemerintah sering kali bekerja sama dengan para pengusaha dengan cara membantu memberikan stimulus berupa kemenangan tender dalam pengadaan barang dan jasa. Praktik tersebut mengakibatkan terjadinya penyalahgunaan wewenang oleh para pejabat pemerintah. Hal ini bertentangan dengan kode etik profesi, sehingga diperlukan penyelesaian perkara melalui jalur yuridis. Adanya intervensi pejabat publik dalam penetapan pihak yang menangani proyek pemerintah menyebabkan terjadinya krisis kepercayaan publik terhadap penegakan hukum di Indonesia. Artikel ini menelaah ulang dasar pokok aturan-aturan tentang tindak pidana korupsi serta bagaimana komitmen dan integritas para pejabat pemerintah dalam melaksanakan kode etik profesi, menjunjung tinggi kejujuran guna mewujudkan penegakan hukum yang adil. Tulisan ini membuktikan dan menegaskan bahwa perdagangan otoritas dalam

praktik bisnis melemahkan sektor investasi Indonesia. Pada banyak kasus, kegiatan ini bahkan cenderung memperkuat kondisi persaingan tidak sehat dalam sektor perdagangan dan bisnis.

Kata kunci: *memperdagangkan otoritas; korupsi; birokrasi; bisnis; penyuapan*

Introduction

It is no secret that we want a service that we receive to run smoothly and as desired, must be with facilitation payments or service fees.¹ Without this service fee, the service we want will be difficult to run smoothly. This service fee is commonly referred to as a criminal act of corruption. In Indonesia, particularly, we have encountered very often in various television news and newspaper about cases of bribery committed by our society. In 427 BC - 374 BC, Plato had an idea that the servants of the nation must give their services without receiving gifts. Those who disobey, if proven guilty, are killed without ceremony. The Plato's idea means that public servants must serve the community well without having to accept any gifts to do that.² In almost same context, the development of laws and regulation cannot be separated by development of the society itself. However, law always finds rigidity, and humans always find gaps between existing laws.³ This is what allows various types of fraud in most cases, including bribery in the trade sector.

The bribery case also occurs not only in Indonesian but also in various countries in the world. In general, bribes are given to someone who is influential in fulfilling the needs of the provider by doing or not doing something related to the giver. Usually, bribery cases happened among state officials, judges, prosecutors, and others, even bribery can also occur in the business sector. This is used to fulfil the tender of a company. High-profile bribery can harm the state

¹ I Gusti Agung Satria Wedantha, Ari Atu Dewi, and Anak Agung Istri, "Penyuapan Sebagai Bentuk Tindak Pidana Korupsi," *Kertba Wicara* 4, no. 1 (September 2015): p. 1–2.

² KPK, *Memahami untuk Membasmi: Buku Panduan untuk Memahami Tindak Pidana Korupsi* (Jakarta: Komisi Pemberantasan Korupsi, 2012), p. 21, <https://acch.kpk.go.id/id/berkas/buku-antikorupsi>.

³ Abu Bakar, "Restorasi Hukum di Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 47, no. 2 (2013): p. 583–610, <https://doi.org/10.14421/asy-syir'ah.2013.%x>.

in the economic sector so that it can disrupt development resources and can also endanger political stability in the concerned country. Bribery is also indicated to pose a danger to the security of humanity because it has spread to various important aspects in this country, Like education, health, and other social facilities. Thus, the case of bribery does not always relate directly to the financial strength of the state. Corruption which is an extraordinary crime and crime against humanity has proven to have brought many impacts on the life of the state.⁴ Corruption is generally also regarded as one of the most significant for economic development.⁵

Law No. 20/2001 concerning the Eradication of Corruption Crimes, providing an understanding that criminal acts of corruption are “the act of enriching oneself or others against the law that can harm the state’s finances or the economy of the country or the act of misusing authority, opportunity or means that exists because position or position with the aim of benefiting yourself or others and can harm the state’s finances”. Included in the definition of criminal acts of corruption are bribes against officials or civil servants.⁶

This era is an era where moral distortion by the community becomes something that needs to be highlighted and criticized. Today, bribery is no longer a case by individuals, but also by corporations (institutions or legal entities). Furthermore, in the same context, corporate crime itself recognized as an act of crime committed against a corporation which is carried out by the employer. The thing that deserves regret at this time is about the rampant corruption that involves government decisions at the top level, which can be found by corporations in it not only by one or two individuals, even more. In this case, the corporation or the perpetrators of the business sector try to control and dominate the decision making by

⁴ Denny Indrayana, *Indonesia Optimis* (Jakarta: Bhuana Ilmu Populer, 2011), p. 51–55.

⁵ Paolo Mauro, “Corruption and Growth,” *The Quarterly Journal of Economics* 110, no. 3 (August 1, 1995): p. 681–712, <https://doi.org/10.2307/2946696>; Havid Sularso, Dwiwiyati Astogini, and Putri Saraswati Dewi, “Pencegahan Fraud Pengadaan Barang/Jasa dan Implikasinya Terhadap Kinerja Keuangan (Studi pada Rumah Sakit Umum Daerah di Kabupaten Banyumas),” *Sustainable Competitive Advantage (SCA)* 5, no. 1 (2015), <http://jp.feb.unsoed.ac.id/index.php/sca-1/article/view/643>.

⁶ Evi Hartanti, *Tindak Pidana Korupsi* (Bandung: Sinar Grafika, 2007), p. 23.

top-level state officials or the bureaucracy of the country. The way used by businessman in business and trade to expedite the influence of the company to win the tender is usually done through giving bribes or bribes.⁷

The giving of money and gifts by corporations is a kind of way and seems to be a culture which is considered as a common thing and has become an open secret by businessman and the community. What needs to be known is that the world has suffered losses from corruption cases of 1 to 1.6 trillion and 40 billion USD per year in developing countries. This figure is equivalent to the Gross Domestic Product (GDP) of the 12th poorest country in the world which has a population of 240 million people. This loss is considered very felt in weakening the socio-economic conditions in a country, especially in a developing country. Considering the perspective of supply and demand theory there are two reasons why corporations can be involved in corrupt practices.⁸ *First*, the corporation becomes a victim of corrupt officials who take advantage through the position and

⁷ Djoko Subinarto, "Suap dan Pragmatisme Korporasi," *Pikiran Rakyat*, January 12, 2017; To further minimize abuses in sector of business and commerce, or to provide more legal protection for parties in carrying out their trading activities, it is not sufficient that the formulation of protection is given to the parties through their trade contracts. Matters relating to the intention to commit abuse / fraud become the authority government to regulate it as a criminal sanction in its own laws. Several statutory provisions relating to trading activities are provided with criminal sanctions clauses (double and overlapping arrangements), see also Agus Budianto, "Pembaharuan Kitab Hukum Dagang Indonesia: Antara Kodifikasi, Kompilasi dan Konsolidasi," *Ay-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 47, no. 2 (January 1, 2013): p. 703–25, <https://doi.org/10.14421/asy-syir'ah.2013.%x>; Ridwan Arifin, Hartini Atikasari, and Wasipah Wasipah, "The Intersection of Criminal Law, Technology and Business Commercial Law on Carding as Cyber Fraud," *Jurnal Hukum Novelty* 11, no. 2 (August 17, 2020): p. 235–46, <https://doi.org/10.26555/novelty.v11i2.a15700>; Massulthan Rafi Wijaya and Ridwan Arifin, "Cyber Crime in International Legal Instrument: How Indonesia and International Deal with This Crime?," *IJCLS (Indonesian Journal of Criminal Law Studies)* 5, no. 1 (May 17, 2020): p. 63–74, <https://doi.org/10.15294/ijcls.v5i1.23273>.

⁸ Paku Utama, *Memahami Asset Recovery and Gatekeeper* (Jakarta: Indonesian Legal Roundtable, 2013), p. 7; Ridwan Arifin, *Hukum Internasional: Teori dan Berbagai Perkembangannya* (Semarang: BPFH UNNES, 2020), p. 57–59; Ridwan Arifin, *International Law Perspective on Mutual Legal Assistance Treaty in the Context of Assets Recovery* (Semarang: BPFH UNNES, 2019), p. 18–20.

authority possessed by the official by asking for bribes from the business sector in return for smooth business projects proposed by the company. *Second*, it is the business sector that is nosy offering bribes to state officials so that it is expected that decisions will be made that benefit the corporation.⁹

In Indonesia, based on the narrative of a former Deputy Chair of the Corruption Eradication Commission (KPK), Bambang Widjojanto, two types of criminal acts included corrupt practices in the form of bribery, namely procurement of goods and services and misuse of the budget. One by one the cases revealed were proven by bureaucratic officials in the constitutional sector, both legislative, executive, and judicial. Bribery has become a criminal act of corruption which is most common with 168 cases, followed by cases of procurement of goods and services as many as 115 cases, and misuse of the budget of 38 cases. When analyzed, the trend of bribery has increased since 2007 in the era of President Susilo Bambang Yudhoyono (SBY).¹⁰ This paper would examine four main problems concerning to what is the meaning of bribery, what is the legal basis for bribery, what sanctions will be given in cases of bribery, and what is the case of bribery committed in the business world.

The Basic Meaning of Bribery

Bribery comes from the French language, *briberie*, which means begging or vagrancy. In Latin it is called *bribe* which means *a piece of bread is given to beggar*.¹¹ Joel S Helman, et al support the suggestion that the indirect costs of corruption are the more insidious and make the important point that the most important public good that the state can provide is predictability in the institutional and policy environment.¹² In the other perspective, bribery in criminology occurs

⁹ Utama, *Memahami Asset Recovery*, p. 7.

¹⁰ "KPK Ungkap Modus Baru Praktek Korupsi," *Indonesia Jurnal* (blog), accessed April 17, 2018, <http://indonesiajurnal.com/kpk-ungkap-modus-baru-praktek-korupsi/>.

¹¹ Ridwan Zachrie Wijayanto, *Korupsi Mengorupsi Indonesia* (Jakarta: Gramedia Pustaka Utama, 2009), p. 28–29.

¹² Joel S. Hellman, Geraint Jones, and Daniel Kaufmann, *Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition* (World Bank, World Bank Institute, Governance, Regulation, and Finance Division, and, Europe and Central

through the interaction between the bribe giver and the recipient of the bribe. Those who have an interest here are the bribe giver, whereas the recipient of the bribe has a relationship with the bribe giver because he has the authority to do or not to do the bribe's interest. If the bribed party is not willing to make a transaction, it is an attempt to bribe. Because the character of bribery is very criminogenic (can be other sources of crime) and victimization (can potentially harm various dimensions of interest).¹³

George Moody emphasized that corruption is various criminal acts relating to differences that do not exist from people who are in a trusted position. J.J. Santuria stated that corruption is a public power forget personal benefits,¹⁴ and bribes together with embezzlement of funds public (embezzlement of public funds) is often referred to as the core or the basic form of corruption. Corruption itself is universal interpreted as moral depravity, improper deeds, or blemishes (depravity, deviation, or stain); friendship integrity, virtue, or moral principles (disruption of integrity, virtue, or morals principle).¹⁵

A bribe is a gift or an attempt to influence what is illegal or unnatural. Impatience and irregularity are interpreted when there is a conversion of funds or goods provided into an act of power to take a decision that is unfair and not transparent. Bribery transactions are usually characterized by the involvement of two or more people

Asia Region, Public Sector Group, and, European Bank for Reconstruction and Development, Office of the Chief Economist, 2004), p. 101–3.

¹³ Petter Gottschalk, *The Convenience of White-Collar Crime in Business* (New York: Springer Nature, 2020), p. 176–77; For more comprehensive and intimate discussion concerning white-collar crime in criminology, please also see Petter Gottschalk, "Theory of Convenience: Determinants of White-Collar Crime Intention," *Deviant Behavior* 41, no. 11 (November 1, 2020): p. 1431–39, <https://doi.org/10.1080/01639625.2019.1624101>; Yenni Wiranti and Ridwan Arifin, "Tantangan dan Permasalahan Penegakan Hukum Tindak Pidana Korupsi di Indonesia," *Kosmik Hukum* 20, no. 1 (August 19, 2020): p. 45–55, <https://doi.org/10.30595/kosmikhukum.v20i1.3822>; Septhian Eka Adiyatma et al., "How Should Law Student Think in Criminal Cases?," *Law Research Review Quarterly* 6, no. 4 (November 24, 2020), <https://doi.org/10.15294/lrrq.v6i4.42809>; "Bidang_pidana_suap.Pdf," accessed March 1, 2020, https://www.bphn.go.id/data/documents/bidang_pidana_suap.pdf.

¹⁴ George Moody-Stuart, *Grand Corruption* (Oxford: WorldView Publications, 1997), p. 121–23.

¹⁵ "Bidang_pidana_suap.Pdf."

where one of them acts as an agent of a company or as a representative of a business sector. This bribe-giving party is considered unethical by trying to influence the recipient to abuse his authority or is often referred to as the authority trade. Then, the recipient will take advantage of the gift given by the giver's party as his own property.¹⁶

The fundamental difference regarding the notion of bribery in the *Undang-Undang Tindak Pidana Korupsi* (UUTPK), Act on Corruption Crimes, with *Undang-Undang Tindak Pidana Suap* (UUTPS), The Bribery Act, can be seen from the requirements have been proposed, namely if the UUTPS does not have a requirement regarding the term "public official", where there is a relationship between power and office, on the contrary the requirement for the term "public interest" is not contained in the UUTPK.

Today, government officials often conduct trade authority to facilitate business and trade practices carried out by business sector actors and the public. Giving bribes which are of course done in secret are usually intended to provide convenience or stimulus in the form of winning bids from the owner or by the business sector as the bribe giver to the government official or the public service sector as the recipient of bribes. Acceptance of these prizes is usually referred to as gratification. Every gratuity given to the state administration apparatus will be considered as a bribe if a relationship is found between his position and the gratuity provided and is contrary to his duty or duty. Prevention of alleged gratification can be done through reporting on the transparency of the gift to the KPK.

This is because the interaction process between the organizer and the client rather than the range is directly related. In this case, there is a domain that moves and requires a government official or bureaucrat to establish performance with clients or commonly referred to as the business sector, as well as the public sector. Therefore, it is not surprising, that officials are often found in the bureaucratic environment caught red-handed committing bribery. One of the main factors that is the main factor for this polemic, that is, because it is in the government bureaucracy environment that has an important role in the act of granting permits and giving government projects.

¹⁶ K. Wantjik Saleh, *Tindak Pidana* (Jakarta: Ghalia Indonesia, 2002), p. 28.

In essence, bribery is an act that belongs to corruption. Bribery is the core or basis of an act of corruption. Whereas corruption, that is, an action which is a moral flaw, depraved behavior, improper actions, or blemishes; a destruction of integrity, virtue, or moral principles that can harm individuals, institutions or agencies, or the public sector. In essence, the implementation of a consolidation of honesty by actors in the public service sector (bureaucrats) in the bureaucratic system, business sector players, and the public sector are often negligent to be carried out, due to various reasons and reasons for which validity cannot be accounted for. Misuse of authority and influence of power are the main things that become a benchmark why this bribery can occur. The bribery that is currently happening is no longer a conventional or ordinary crime but is an extraordinary crime which has harmed various parties, especially the public. Bribery is considered an act of criminalization, so that it can be a source of other crimes, as well as *victimogen*, which has the potential to be considered as detrimental to various dimensions of interest.

Basically, bribery is not always about money, but can also be in the form of promises about giving gifts. From this, it can be concluded that the act of bribery as part of corruption does not have to directly contain the element of *harming the country's economy*. In the case of bribery the actions that deserve to be highlighted are about abuse of power, discriminatory actions on the basis of financial or other benefits, violations of trust in the corrupt actors who will also affect other actors who are idealists not to committing bribery and corruption because it is feared that they will be tempted by a sense of satisfaction with the financial excess of the recipient of the bribe, defects in elements of democracy due to deviant actions from the fourth precept regarding policy in fulfillment as representatives of the people, dishonesty of the community and the backwardness of mental cowardice by the financiers and officials, and instability in competition.

Bribery in the Trade Sector: Some Related Laws

Bribery is an extraordinary crime, so there is a need for a legal regulation that is capable of handling and following up criminal cases in a fair and transparent manner. The regulation of bribery in criminal acts has existed since the Dutch colonial era, namely in the Criminal Code. Specifically, bribes have been regulated in Law No. 11 of 1981

concerning Bribery. In addition, there is also the Draft Penal Code contained in articles 623, 624, 681, 682 and 683.

Corruption as a criminal act has been regulated through the Criminal Code which was later amended, corrected, and supplemented through various laws and regulations in Indonesia which can be mentioned as follows:

1. The Military Ruler Regulation No. PRT/PM/06/1957 was issued by the Military Ruler of the Army and applies to the army's territories.
2. The Military Ruling Regulation No. PRT/PM/08/1957 contains the establishment of an authorized body representing the state to sue civilly those accused of committing various forms of civil corruption (other acts of corruption) through the High Court. The body in question is the Owner of Property Rights (PHB).
3. Military Rulers Regulation No. PRT/PM/011/1957 which is a regulation that becomes the legal basis of the authority possessed by PHB to confiscate property deemed to be the result of other corruption, pending the decision of the High Court. Legal Basis of Corruption Related to the Business Sector.
4. Regulation of the Ruler of the War of the Army Chief of Staff No. PRT/ PERPU/031/1958 and the implementing regulations.
5. Regulation of the Ruler of the Central War of the Navy Chief of Staff No. PRT z.I / I / 7/1958.
6. Perpu No. 24/1960 was amended by Act No. 1/1961 to become Law No. 24/ Prp/1960 concerning Investigation, Prosecution, and Examination of Corruption Crimes.
7. Presidential Decree No. 52/1970 concerning registration of private property for important officials (by Commission IV-Wilopo).
8. Law No. 3/1971 concerning Eradication of Corruption Crimes.
9. Law No. 11/1980 concerning Criminal Bribery.
10. Law No. 28/1999 concerning State Administrators free from Collusion, Corruption and Nepotism (KKN).

11. Law No. 30/2002 concerning the Corruption Eradication Commission.

The legal substance that is often the basis for the expansion of the regulation of bribery in the form of “*retour commissiveness*” or gratuity is regulated in article 418 of the Criminal Code. This article was later also appointed as the legal basis for corruption (Law No. 31/1999 *jo* Law No. 20/2001) which reads: “Gratuity is a broad gift and includes: giving money, goods, discounts, commissions, interest-free loans, travel tickets, lodging facilities, travel, free medical treatment, and other facilities.”¹⁷

In the law No. 31/1999 concerning Eradication of Actions Corruption Crime, grouped into two: first, act criminality which is regulated in Article 2 to Article 20, second, other criminal acts relating to the criminal act of corruption stipulated in Article 21 up to 24.¹⁸ In carrying out its business, the corporation may face a dilemma between giving something to the authorities so that the business can get convenience, more profit and speed of service or remain silent waiting for uncertainty.

The dilemma of giving something to the public servants or state administrators gradually becomes a habit and things that are considered normal. In the other hands, the rules in the legislation clearly prohibit this matter. Provisions regarding the prosecution of various forms of giving are not only charged to the recipient, but also to the giver. For the giver, giving to the civil servants can be contrary to the articles stipulated in Law 30/1999 *jo* Law 20/2001 concerning the Eradication of Corruption Crimes, especially article 5 paragraph (1) and article 13.

With relatively significant progress in the existence of increasingly complete legal regulations in the field of substance and legal structure above, in fact it is not enough to make people satisfied with the eradication of KKN (Corruption, Collusion and Nepotism), including bribery. The factor which is the weight of eradication is about the legal culture and moral quality of its human resources so that the legal basis created is able to support human behavior and

¹⁷ KPK, *Memahami Untuk Membasmi*.

¹⁸ Barda Nawawi Arief, *Masalah Pengakuan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan* (Jakarta: Kencana, 2008), p. 142.

behavior in everyday life so as to avoid bribery in all aspects, especially in the aspect of business and trade.¹⁹

Legal Sanction for Bribery

In understanding bribery as a form of crime, a basic understanding of what is meant by a criminal act is necessary. This is necessary given the broad definition of bribery and there are various forms of bribery, but only actions that are expressly regulated based on legislation that can be categorized as a bribery that can be subject to criminal sanctions. Some criminal law experts define criminal acts, one of which is Indiyanto Seno Adji (who is also a former KPK leader), defines a criminal act as an act committed by someone who is threatened by a criminal, his actions are illegal, there is a mistake and for the culprit can be accounted for his actions.

Bribery has been regulated for a long time in the Criminal Code²⁰ and Law No. 11/1980 concerning Criminal Bribery. In relation to corruption, in Law No. 31/1999 *jo* Law No. 20/2001 concerning Eradication of Criminal Acts of Corruption there are at least 12 articles which regulate bribery.

The corporation needs to understand the criminal sanctions that can be given to the bribe giver. Bribery always involves actively giving bribes to recipients, generally accompanied by an agreement between the two parties regarding the amount or value of bribery transacted and the manner of delivery.

As stipulated in the Law, active and passive benefits are both threatened with imprisonment and fines. The Lawmaker gave the same criminal sanctions for Rp. 15,000,000. The legislator distinguishes his criminal sanctions, passive bribes are threatened with a heavier criminal sentence (a maximum of five years imprisonment) while active compensation is a maximum of three years in prison.²¹

¹⁹ Faris Ihsan, "Pencegahan Korupsi di Sektor Publik," adoc.pub, p. 1–2, accessed March 1, 2015, <https://adoc.pub/pencegahan-korupsi-di-sektor-publik-1-oleh-drs-faris-ihsan-m.html>.

²⁰ Indonesian Criminal Code, *Kitab Undang-Undang Hukum Pidana (KUHP)*.

²¹ Fransiska Novita Eleanor, "Pembuktian Unsur Sifat Melawan Hukum dalam Tindak Pidana Penyuapan," *Jurnal Ilmiah Hukum dan Dinamika Masyarakat* 9, no. 2 (2012): p. 202, <http://jurnal.untagsmg.ac.id/index.php/hdm/article/view/310>.

The giver may be subject to a sanction of imprisonment of 1 (one) year to 5 (five) years and a fine of at least IDR 50,000,000 and up to IDR 250,000,000. This sanction is lower than the recipient, namely the sanction of life imprisonment or imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).²² From below we can see the articles of Law No. 11 of 1980 further;²³

Article 624:

Any person who receives something or promises, even though it is known or reasonably suspected that giving something or promises is intended to do or not to do something in their duties that is contrary to their obligations or obligations that concern the public interest or harm others, convicted of accepting bribes, with a maximum imprisonment of three years imprisonment or a maximum fine of category IV.

Article 682 (1):

Every person who gives, promise something or give gratuity to a judge in order to influence the case decision being examined, shall be sentenced to a maximum of 12 (twelve) years of imprisonment and a maximum fine of category VI.

Article 683:

Every person who gives or promises something to a public official foreign countries or public officials of international organizations with a view to obtain or retain trading business or other benefits which is not appropriate in relation to international trade, is punished with a maximum imprisonment of 7 (seven) years and the maximum fine category IV. Influence the decision of the case which is being examined, shall be punished with a maximum imprisonment of 12 (twelve) years and a maximum fine of category VI.

²² R. Wiyono, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi* (Sinar Grafika, 2012), p. 122.

²³ Law No. 11 of 1980 concerning Criminal Bribery.

Furthermore, some laws and regulations concerning to bribery act is stipulated in many legal instruments, as explained by KPK,²⁴ as follows:

Article 5 paragraph (1) letter a, the formulation of this article is derived from article 209 paragraph (1) number 1 of the Criminal Code, referred to in article 1 paragraph (1) letter c of Law No. 3/1971 and Article 5 of Law no. 31/1999:

1. everyone;
2. that give something or promise something;
3. to public servants or State administrators
4. with a view to doing something or not doing something in his position so that it is contrary to his obligations.

Criminal imprisonment of at least 1 year and a maximum of 5 years and or a fine of at least 50 million and a maximum of 250 million rupiah.

Article 5 paragraph (1) letter b, the formulation of this article is derived from article 209 paragraph (1) number 2 of the Criminal Code referred to in article 1 paragraph (1) letter c of Law No. 3/1971 and Article 5 of Law No. 31/1999:

1. each person;
2. give something;
3. to public servants or State administrators;
4. because it deals with something that is contrary to the obligation, done or not done in his position.

Criminal imprisonment of at least 1 year and a maximum of 5 years and or a fine of at least 50 million and a maximum of 250 million rupiah.

Article 5 paragraph (2) of this article is a formulation of new corruption crimes made by Law No. 20/2001:

1. civil servants or state administrators;
2. receive gifts or promises;
3. as referred to in Article 5 paragraph (1) letter a or letter b.

²⁴ KPK, *Buku Saku Memahami Gratifikasi* (Jakarta: Komisi Pemberantasan Korupsi, 2014), p. 23–24.

Criminal imprisonment of at least 1 year and a maximum of 5 years and or a fine of at least 50 million and maximum of 250 million rupiah

Meanwhile, in the ICW notes, from January to June 2006, from 83 local and national media (which had a web site) and public complaints to the ICW office, data was obtained that 140 cases of corruption were handled in litigation and reported by the media there were 140 cases. of these, 20% were newly handled cases in 2006 while 80% were cases that had been handled since before 2006. Of these, 5.71% of the modes were bribery. This figure is smaller than other modes such as markup (29.29%), budget deviation (24.29%), embezzlement / circumcison (17.86%) and manipulation (7.86%).²⁵

The small mode of bribery does not mean that there are few bribery cases, but rather because there are very few bribery cases that are revealed to the mass media or responded to legally (litigation), as described above. In addition, bribery is only one part of corruption committed.

Bribery in Business and Trade in Indonesia

The private sector plays an important role in maintaining the national integrity of a state. Corporations are formed to pursue profits. If a corporation fails to make a profit, employees and related parties will suffer, and slowly go bankrupt. The old opinion that corporations were established solely to pursue profit, has begun to fade and is replaced by a new awareness, namely the corporation has broader responsibilities, not only to customers and clients, but also to the environment and society. This includes the awareness that “employees prefer to work for companies that they value adhering to ethics, and that they do in a rapidly growing market competition.”

With the increasing role of corporations in the provision of goods and services for the public and public services, the broader corporate responsibility is a powerful tool to eradicate corruption. In this process, the corporation sees itself more than in the past, namely being part of civil society. When pursuing profits, corporations merely

²⁵ Febri Diansyah, Emerson Yuntho, and Donal Fariz, *Laporan Penelitian Pemberantasan Korupsi Melalui Fungsi Koordinasi dan Supervise KPK* (Jakarta: Indonesia Corruption Watch, 2011).

think of their own interests, but when they participate in realizing broader goals and visions of society and the environment, companies behave as members of civil society.²⁶

Corporations in an effort to make a profit, including when involved in legal cases, often bribe the bureaucracy. This bribery action can occur if:²⁷

- a. Bureaucracies that monopolize public services abuse their power
- b. Corporations benefit by giving these bribes
- c. Law enforcement against bribery is weak

In addition to the factors of the relationship with the bureaucracy, the factors of competition with other corporations, which are feared or believed to also carry out bribery, so as not to lose business competition, corporations choose to bribe.

More and more corporations have a broad view and in various countries around the world more and more found a very high standard of leadership ethics at every level of management. If it is desired that the market can serve the needs of all parties, then the market must be effective, efficient, fair - and above all, the market must not be corrupt, and because if it is corrupt, the negative impact will harm all parties without exception.

In fact, corruption is endemic and everywhere.²⁸ Corruption is not only a matter of government officials who abuse their power, misuse state money. Corruption is also a matter of people, everyone, social groups and corporations who abuse their position in pursuit of goals with bribes such as corporations that bribe state officials to win construction tenders and corporations that bribe regional heads in order to obtain mining, plantation or loan use permits for real estate within forest areas. Regional heads who struggle with bribery to

²⁶ Muhammad Mustofa, "Suap Menyuap dan Mafia Peradilan di Indonesia: Telaah Kriminologis," *Masalah-Masalah Hukum* 42, no. 1 (January 22, 2013): p. 4–5, <https://doi.org/10.14710/mmh.42.1.2013.1-5>.

²⁷ Li Shaomin and Ming Ouyang, "A Dynamic Modern Explain the Bribery Behavior of Firms," *International Journal of Management* 24, no. 3 (2007): p. 605–6.

²⁸ Moh. Saleh, "Pembatasan Hak Politik Bagi Pelaku Tindak Pidana Korupsi di Indonesia," in *To Fulfill and To Protect: Membaca Kasus-Kasus Aktual Tentang Hak Asasi Manusi* (Yogyakarta: PUSHAM UII, 2012), p. 158.

obtain victory in the elections by influencing the Constitutional Court's ruling. Some people who are ambitious to occupy the top of the political party by raising capital to regulate the allocation of the state budget and projects. As found in the research of Wallace N Davidson et al²⁹ that bribery by corporations seems to be considered normal in the corporation or capital market. Consideration of profit and loss in bribery which is part of the judicial mafia, in a social perspective is a rational choice.³⁰

In the corporate sphere, bribery in the private sector is rampant throughout the world and in various fields of industry and business. In today's global economy, corruption in the private sector is as large as corruption in the government sector. Foreign bank accounts are used to hold bribes. Covering bribery in corporations can give rise to fake financial records, bank accounts partially kept secret, calculation of counterfeit taxable income, and staff infected mentally taking part in bribes. Corruption cannot be justified because corruption destroys free and fair competition. Also, corruption in the market hampers the development of the private sector. New business people cannot enter, inefficiency is instead pushed instead of being eliminated. Investors are filled with concern if their capital is used for bribes and gratuities so that the expected profit is difficult to estimate.

In some countries, the legal system has not allowed prosecution as a legal entity because it violates criminal law, because it is still held firmly to the assumption that only humans can have evil intentions and commit crimes. Unlike countries that have laws that allow corporations to be prosecuted before a court for bribery and corruption, the legal system will encourage corporations to have internal procedures to comply with anti-corruption laws.

A common question, can corporations with good ethics compete in a corrupt market? Is it ethical, the corporation tries to compete and win it in such an environment? Does the corporation not face the risk of large losses and loss of employment and source of

²⁹ Wallace N. Davidson, Dan L. Worrell, and Chun I. Lee, "Stock Market Reactions to Announced Corporate Illegalities," *Journal of Business Ethics* 13, no. 12 (December 1, 1994): p. 979–87, <https://doi.org/10.1007/BF00881667>.

³⁰ Bill McCarthy, "New Economics of Sociological Criminology," *Annual Review of Sociology* 28, no. 1 (August 1, 2002): p. 417–42, <https://doi.org/10.1146/annurev.soc.28.110601.140752>.

life for its employees? There is an opinion which says that, in general, a corporation can be justified in terms of ethics to run a business in a culture that has some unethical elements, if the elements are unavoidable, at least for the time being. Or on the grounds that corporations conduct activities to achieve economic goals and good social goals. As well, corporations conduct business activities with a mission to eliminate bad practices such as bribery and corruption. This view relates to several real events that complaints by corporate groups have succeeded in changing bribery practices in number of countries. However, large corporations that are in a better position are strongly advised to start and withdraw from jobs that are full of bribery and tainted by corruption.

At present, the global corruption prevention movement for the business world leads to the development of *internal integrity standards* for corporate management. This movement is carried out by non-profit organizations in collaboration with businesses in various countries. Furthermore, bribery can be prevented by trying several ways, such as improving the system by providing adequate supervision over the authority or power of civil servants or state officials and promote the intensive and effective report on the wealth of civil servants and state administrators, which in this case can be used to track an increase in unreasonable assets and receipt of assets that are not in accordance with their income as civil servant.³¹

Conclusion

Bribery is the offer or acceptance of anything of value in exchange for influence on a government/public official or employee. Cases of bribery in business and trade in Indonesia are a disability in enforcing legal events. If viewed from a legal and social perspective, then to maximize the fair implementation of law, there is a need for moral improvement from bureaucrat officials, business sector actors, and the public sector. The author realizes that the paper that the writer made is far from perfect and has many shortcomings both in terms of content and other aspects. the author advises readers to read other references, both from official journals, books, and other learning resources to support readers' understanding so that they can

³¹ "Novel Baswedan: MENCEGAH SUAP," *Novel Baswedan* (blog), June 27, 2013, <http://novelbaswedan.blogspot.com/2013/06/mencegah-suap.html>.

be better. The consolidation of the performance of the criminal justice system must also be balanced with the existence of legal substance and a unified structure.

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