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The Crime of Passive Bribery in Indonesia: A Comparison with Several Countries

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Abstract

This research aims to describe the form of regulation of the crime of passive bribery in countries such as the Netherlands, Malaysia and China. This is done because it sees the form of regulation of the criminal offence of passive bribery in Indonesia which experiences dualism of regulation, namely in Article 5 Paragraph (2) and Article 12 letter a of Law Number 20 of 2001 concerning Corruption. This research is a normative legal research with a comparative legal approach. The results of the research show that looking at the arrangements of countries such as Malaysia, the Netherlands, and China. These countries have various forms of regulation regarding the crime of passive bribery, there are countries that regulate in special rules and are included in the legal regime of corruption crimes such as Malaysia. However, there are also countries that include it in the general rules in the Criminal Code of each country such as the Netherlands and China. However, regardless of the regulatory model, the most substantial is the certainty of each country in formulating offences and providing sanctions that are not regulated in two different provisions (legal dualism).

Keywords: *Legal Certainty, Crime of Bribery, Passive Bribery.*

Introduction

Talking about bribery in Indonesia will always be interesting, apart from being an act that is one of the forms of criminal acts of corruption. On the other hand, the practice of bribery has also often been found in various fields, both by public officials and private parties. Bribery in the national legal system can be divided into 2 (two) categories, namely active bribery and passive bribery. Active bribery relates to the perpetrator giving the bribe while passive bribery is someone who receives a bribe. This can be seen in Article 2 and Article 3 of Law Number 11 of 1980 on the Crime of Bribery (Bribery Law).

Article 2 of the Bribery Act states: 'Whoever gives or promises something to a person with the intention to induce the person to do something or not to do something in his/her duty, which is contrary to his/her authority or obligation concerning the public interest, shall be punished for giving a bribe with imprisonment for a maximum of 5 (five) years and a fine of up to Rp.15,000,000,- (fifteen million rupiah)'.

Article 3 of the Law on the Crime of Bribery states: 'Whoever accepts a gift or promise, knowing or reasonably suspecting that the gift or promise is intended to induce him to do something or not to do something in his duty, which is contrary to his authority or duty concerning the public interest, shall be punished for accepting a bribe with imprisonment for a term of up to 3 (three) years or a fine of up to Rp.15,000,000.- (fifteen million rupiah)'.

A bribery transaction is characterised by the involvement of at least two persons where at least one acts with authority on behalf of the company or as an agent of the company. Both the giver and the receiver of the bribe are involved in the act of bribery. The giver is deemed to be attempting to influence the receiver to commit the unethical act of abusing his authority. The receiving party commits an unethical act of giving it to the principal and taking it as his own.

One of the forms of bribery isFacilitattion money, which is a payment for convenience also referred to as 'facilitation money', or 'convenience funds' which is a payment of a nominal amount. It is made to secure or expedite a routine action that the funder is obliged or required to perform. Bribery is an act that not only

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does not follow the rules of business ethics but also has legal implications, especially when bribes are made to civil servants or state officials as stipulated in Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning Corruption.

The rules on bribery are summarised in Law No. 20 of 2001 on the amendment of Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption. In the context of criminal law in Indonesia, the term bribery is formulated in the words 'gift, present or promise', although the definition of a gift, present or promise itself is not explained at all in the Coruption Law. In the Anti-Corruption Law 1999/2001, the crime of bribery is regulated in several articles, namely Article 5, Article 6, Article 11, Article 12 letters a, b, c, d and Article 12B of the Anti-Corruption Law 1999/2001. In the formulation of offences regulating bribery, there are also several subjects of offences that we can classify into 2 (two) groups, namely:

First, the group of criminal offence subjects that regulate the giver or active bribery (aktive omkoping), namely with the phrase 'every person', which according to the explanation in Chapter I of the general provisions of Article 1 number 3 states that every person is an individual or includes a corporation. The subject of this giver offence is regulated in the provisions of Article 5 paragraph (1) letters a and b, Article 6 paragraph (1) letters a and b and Article 13 of the GCPL Law.

Second, the group of criminal offence subjects that regulate recipients or passive bribery (passive omkoping) consisting of 'State Officials or State Administrators' as regulated in Article 5 paragraph (2) Jo. Article 5 paragraph (1), Article 11, Article 12 letters a and b, while for 'judges' who accept bribes are regulated in the provisions of Article 6 paragraph (2) Jo. Article 6 paragraph (1) letters a and 12 letter c, while for 'advocates' is regulated in Article 6 paragraph (2) Jo. Article 6 paragraph (1) letter b and Article 12 letter d and finally Article 12B concerning Gratuities.

Of the two groups of subject actors, what is interesting to study further is related to the subject of the offence of receiving bribes or passive bribery (passive omkoping) because if you read and compare the formulation of the provisions of the offence in the articles governing receiving bribes in the form of gifts or gifts or promises, they overlap between one provision and another, meaning that the provisions of the offence of receiving bribes are regulated in the same two formulations but the threats are different.

The provisions of Article 5 paragraph (2) are the same formulation as the provisions of Article 12 letters a, b and also the same as Article 12 B but with different threats, namely in Article 5 paragraph (2) is threatened with imprisonment for a minimum of 1 year and a maximum of 5 years and or a fine of at least Rp.50,000,000,- (fifty million rupiah) and a maximum of Rp.1,000,000,000,- (one billion rupiah), while the criminal penalties of Article 12 letters a, b and Article 12 B are life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 years. Likewise, the provisions of Article 6 paragraph (2) with a minimum penalty of 3 (three) years and a fine of at least Rp.150,000,000, - (one hundred and fifty million rupiahs) and a maximum of Rp.750,000,000, - (seven hundred and fifty million rupiahs) are the same as the formulation of the offence as Article 12 letters c and d. Article 12 letters a and b are actually already in place.

Article 12 letters a and b have actually been regulated in Article 5 paragraph (2), so the result is overlapping and the problem is the amount of criminal penalties. Likewise, the core of the gratification offence 'related to his position and contrary to his obligations or duties' in the provisions of Article 12 B which results in confusion in distinguishing it from the provisions of other passive bribery corruption offences. The implementation of the application of these provisions tends to be in the grey area of which provisions are applied.

On the basis of the dualism that results in the vagueness and uncertainty of the regulation, it is interesting to look at the regulatory model of the crime of passive bribery in several countries, as an effort to enrich and search for the ideal form of regulation of the crime of passive bribery in the future.

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Research Methods

This research is normative legal research, which is conducted by examining legal rules that have a relationship with the legal issues studied. The approach used in this research is a statutory approach and a comparative legal approach. The countries used as legal comparison materials include Malaysia, China and the Netherlands. Furthermore, after the legal comparison is carried out, it will be analysed whether the current regulation of the crime of passive bribery in Indonesia has similarities and differences with these countries.

Discussion

Regulation of the Offence of Bribery in Malaysia

The provision of corruption offences in Malaysian law is specifically regulated in the Prevention of Corruption Act which was passed in 1961 and updated in 2009 which is now known as Akta Suruhanjaya Pencegahan Rasuah Malaysia Number 694 of 2009. This was later made into a corruption prevention agency under SPRM. In Akta Suruhan jaya Pencegahan Rasuah Malaysia 2009 (Akta SPRM 2009) or Akta 694, the types of corruption offences are regulated in article 16 to article 23, which are as follows.

Table I. Types of Offences of Rasuah Akta Suruhanjaya Pencegahan Rasuah Malaysia No. 694 Tahun 2009

Article	Crime
Article 16	Offences of active and passive bribery - general
Article 17	Corruption offences related to business or commercial agents, i.e. a business agent who gives or receives a bribe before or after carrying out his/her business duties.
Article 18	The offence of corruption is related to the agent himself giving the bribe, i.e. an agent doing or giving to an agent, as well as the agent himself doing the baiting with the intention of deceiving the principal.
Article 20	Corruption offences related to obtaining reverse tender withdrawals in a corrupt manner.
Article 21	Bribery of a public agency employee
Article 22	Bribery of foreign public servants
Article 23	Misuse of office or position for bribery (Trading influence)

Source: Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta SPRM 2009)

The criminal penalties for the criminal offences of rusuah in articles 16, 17, 18, 20, 21, 22 and 23, are regulated in Article 24, namely:

Any person who commits an offence under sections 16, 17, 20, 21, 22 and 23 shall, upon conviction, be: a) imprisoned for a term not exceeding twenty years; and b) fined not less than five times the double amount or value of the bribe which is the subject matter of the offence if the bribe is assessable or in the form of wang, or ten thousand ringgit, whichever is higher.

Any person who commits an offence under section 18 shall, if convicted, be liable to: a) imprisonment for a term not exceeding twenty years; and b) a fine not less than five times the double amount or value of the false or misleading item if the false or misleading item can be valued or in the form of wang, or ten thousand ringgit, whichever is higher.

From article 24, we can see that in Malaysia, for the offences set out in articles 16, 17, 20, 21, 22 and 23, there is a maximum sentence of 20 years and a minimum fine of 5 times the value of the bribe if it can be valued or in the form of money, or 10,000 ringgit (whichever is greater). As for the offence stipulated in

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article 18, it is punishable by a maximum sentence of 20 years and a minimum fine of 5 times the value of the bribe if it can be valued or in the form of money, or 10,000 ringgit (whichever is greater).

In this regard, the Malaysian Rasuah Suppression Act specifies a maximum term of imprisonment of 20 years, but does not specify a minimum term. In contrast, for fines, Malaysia specifies the minimum fine payable as 5 times the value of the bribe or 10,000 ringgit, whichever is higher. If after calculating 5 times the value of the bribe does not reach 10,000 ringgit, the minimum amount of 10,000 ringgit will be used. Conversely, if after calculating 5 times the value of the bribe, it reaches or exceeds 10,000 ringgit, the minimum amount of 5 times the value of the bribe will be used.

The article describes in detail the acts that can be punished for bribery corruption. The regulation of the corruption offence of bribery in Malaysia is more detailed and broader in scope because Malaysia has revised its corruption laws based on UNCAC with the promulgation of the Malaysian Prevention of Corruption Act 2009 (Akta 694) in 2009, so that the Malaysian corruption law has accommodated bribery in the private sector, bribery by foreign officials and trading in influence. Thus, there is no dualism in the regulation of the criminal offence of bribery in Malaysia.

Criminal sanctions for the corruption offence of bribery should be formulated with the aim of recovering losses to the state and society and there is also an element of suffering in it. Malaysia has accommodated both in the formulation of criminal sanctions for corruption offences with a fine of five times the amount of the bribe. In addition to prioritising the recovery of state losses as the main objective, the amount of the fine that is more than the amount of the bribe is a burden of suffering given to the perpetrator.

Malaysia does not regulate additional punishment as one of the types of punishment. Meanwhile in Indonesia, additional punishment is contained in Article 18 paragraph (1) of Law Number 31 Year 1999 jo Law Number 20 Year 2001 on the Eradication of Corruption, namely: '(a) Forfeiture of tangible or intangible movable property or immovable property used for or obtained from the crime of corruption, including companies owned by the convicted person where the crime of corruption was committed; (b) Payment of compensation money in an amount equal to the property obtained from the crime of corruption; (c) Closure of all or part of the company for a maximum period of 1 (one) year; (d) Revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or can be given by the Government to the convicted person'.

The system of formulation of criminal sanctions in Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694) is to use the Cumulative Formulation System, namely Article 16, Article 17, Article 21, Article 22, and Article 23 of Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694). This requires the judge to impose punishment and cannot choose the application of punishment that is considered most suitable for the actions committed by the defendant, because the judge is faced with a definite type of punishment.

In determining the length of criminal punishment, Indonesia uses an absolute approach by determining its own quality for each criminal offence, namely by determining the maximum criminal punishment and minimum criminal punishment for each criminal offence, so that the judge can only impose a decision on the convict according to the minimum and maximum limits that have been determined. On the one hand, the special minimum criminal punishment is considered to curb the freedom of judges, but on the other hand, this special minimum criminal punishment will prevent disparity in the imposition of punishment. Meanwhile, Malaysia uses a relative approach. The relative system or approach does not determine the quality of each criminal offence individually, but by classifying criminal offences in several levels and at the same time determining the maximum penalty for each group of criminal offences, so that judges are more flexible in imposing decisions on convicts.

It can be concluded that Malaysia prioritises fines over imprisonment. This means that the Malaysian corruption law, namely Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694) prioritises the recovery of state losses as its main objective, and can even be seen as an effort to get more value than the value of the loss in the case with the threat of the perpetrator being fined not less than five times the amount

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of the bribe. This formulation of criminal sanctions is a fairly effective arrangement in tackling corruption offences. The fine imposed on the perpetrator is adjusted to the amount of bribery committed.

Criminal law policies related to the strengthening of criminal fines and the regulation of punishment in lieu of fines can be one of the effective steps in tackling corruption. Strengthening criminal fines and criminal arrangements in lieu of fines in the formulation of criminal sanctions for corruption crimes, which are crimes in the economic field, can achieve the purpose of punishment, namely the protection of society to achieve public welfare, especially those related to economic value, namely by returning state losses. On the other hand, the criminal offence of corruption of bribery is not only related to economic issues but also related to bad morality, damage to integrity. Therefore, the formulation of criminal sanctions for bribery must be able to accommodate both.

The punishment system can be said to be in line with the purpose of punishment if the punishment imposed can cover the losses caused by the crime of bribery both in terms of finance and morals. The loss in terms of finance means the recovery of losses suffered by the state due to the act of bribery, while in terms of morals, due to the characteristics of bribery, which is carried out without violence, but accompanied by fraudulent and despicable actions by manipulating and violating trust. Through these fraudulent and despicable acts, there is a moral decline to the point of destroying individual integrity, namely a change from good to bad and corrupt. This must be redeemed beyond the return of state financial losses charged, so the ideal formulation of sanctions is by imposing a fine which is a doubling of the amount of the bribe.

The provision of a fine of not less than five times the amount of the bribe or ten thousand ringgit or whichever is higher in the Malaysian penal system can be effective in combating corruption. Therefore, the provision of this fine can be adopted in the criminal system of corruption offences of bribery in Indonesia by formulating the criminal system of corruption offences of bribery by strengthening the fine by not determining the exact amount of fine in the law, but determined based on the amount of bribe multiplied by a minimum of two times or a maximum of five times in the future regulation of the criminal system of corruption offences of bribery in Indonesia.

Regulation of Bribery Offences in China

The crime of bribery in China is regulated in the Chinese Criminal Code, in Chapter VIII of the Chinese Criminal Code regulates bribery and bribery, because this chapter is included in the crime of corruption which is punishable by death. The articles that are punishable by death in this chapter, namely Article 383 regarding the crime of bribery, Article 384 regarding misuse of state finances, and Article 386 regarding receipt of bribes. The corruption offence of bribery is formulated in Article 383 of the Chinese Criminal Code, the full formulation of which is as follows: "Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and in accordance with the following provisions:

An individual who embezzles not less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.

An individual who embezzles not less than 50,000 yuan but less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property;

An individual who embezzles not less than 5,000 yuan but less than 50,000 yuan shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. If an individual who embezzles not less than 5,000 yuan and less than 10,000 yuan, shows true repentance after committing the crime, and gives up the embezzled money of his own accord, he may be given a mitigated punishment, or he may be exempted from criminal punishment but shall be subjected to

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administrative sanctions by his work unit or by the competent authorities at a higher level.

An individual who embezzles less than 5,000 yuan, if the circumstances are relatively serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level.

The definition of bribery in this article is the same as the definition of bribery in general, which means giving a sum of money to another person, in this case anyone, to do or not do something contrary to his obligations. Or the same as bribery. The sentence 'Individuals involved in the criminal offence of bribery' means that not only the bribe giver can be charged but the bribe receiver can also be charged, this is confirmed in the formulation of Article 386 of the Chinese Criminal Code, as follows:

"Anyone who commits the offence of accepting a bribe will be punished under Article 383 of this law according to the amount of the bribe. More severe punishment will be given to anyone who accepts a bribe".

The offence of corruption by misappropriation of state funds, is formulated in Article 384 of the Chinese Penal Code, the full formulation of which is as follows 'State personnel who take advantage of the office in which they work and divert state funds for personal use and unauthorised activities or divert a substantial amount of state-owned funds without intending to return the money within three months, shall be guilty of the crime of corruption and shall be sentenced to a term of imprisonment not exceeding five years'. In serious cases, the offender is expected to receive a prison sentence of more than five years. Those who misuse state funds without attempting to return them shall be sentenced to more than 10 years' imprisonment or life imprisonment or the death penalty, as well as those who misuse natural disaster relief funds, flood disaster funds, poor funds, which are used for personal use, shall be sentenced to death'.

In Article 384 of the Chinese Criminal Code, in this case what is meant by taking advantage is when state personnel inflate funds (mark up) from the office where they work. Then what is meant by misappropriation and misuse of state funds when state personnel divert budget items that have been designated for personal or group interests. In this context, the above definition is relevant to the definition of a 'serious case', where the implications of the misappropriation and misuse of state funds committed by a state official can disturb and harm the community.

However, Article 384 of the Chinese Criminal Code provides relief, this can be seen in the formulation which states that 'without intending' to return the money that has been misappropriated within a period of three months, state personnel are said to be guilty. This means that in less than three months there is a demonstrable effort to return the state-owned funds, the state personnel in question are not convicted.

In Article 383 paragraphs (1) and (2) of the Chinese Criminal Code, death penalty charges can be filed if the perpetrator commits bribery or receives a bribe of more than 50,000 yuan. Meanwhile, what is meant by 'serious cases' so that the perpetrators are sentenced to death, according to the author, are corruption cases committed by state officials and cases that get attention and disturb the public. This is different from the 'certain circumstances' that exist in Law Number 31 Year 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption.

The article also states that 'all assets are confiscated', so not only the bribery money is confiscated but also all the property of the perpetrator, unlike in the Indonesian Corruption Act which only has fines and the return of corruption proceeds. This is of course to deter the perpetrators and to scare off other potential perpetrators. Article 383 of the Chinese Criminal Code is similar to Articles 5(1) and 6(1) of Law No. 20/2001 on the Eradication of the Crime of Corruption. However, the difference is the object of punishment, in Article 383 of the Chinese Criminal Code the object of punishment is based on the amount of money bribed, while Article 5 paragraph (1) and 6 paragraph (1) of Law No. 20/2001 the object of punishment is based on the person bribed, whether the recipient of the bribe is a civil servant or state official (Article 5) and a judge or advocate (Article 6).

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For the crime of corruption, Article 386 of the Chinese Criminal Code regarding the recipient of the bribe, there is a sentence that states: "Whoever has committed the crime of acceptance of bribes shall, on the basis of the amount of money or property accepted and the seriousness of the circumstances, be punished in accordance with the provisions of Article 383 of this Law. Whoever extorts bribes from another person shall be given a heavier punishment".

More or less has a meaning that states that: 'heavier punishment will be given to anyone who accepts bribes'. This sentence confirms that the recipient of the bribe will certainly get a heavier punishment than the bribe giver, logically this makes sense because in general the people who are bribed are state officials and law enforcement officials, with their bribery of course at stake is the integrity and capability as state officials and as law enforcers.

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The interesting thing about the regulation of the criminal offence of bribery for bribe recipients (passive bribery) regulated in the Chinese Criminal Code is that there is no dualism of regulation which does not cause differences in views and creates legal certainty. This is different from the Indonesian context where the criminal offence of passive bribery is regulated in the provisions of Article 5 Paragraph (2) and Article 12 b of the Anti-Corruption Law, which has the potential to cause abuse of authority by law enforcement officials.

Regulation of the Crime of Bribery in the Netherlands

The criminal offence of bribery in the Netherlands is regulated in the Dutch Criminal Code, which also recognises the terms passive bribery and active bribery or bribe giver and receiver. Provisions for active bribery of public officials can be seen in Articles 177, 177a, and Article 178 DDC. Article 177 is then divided into two parts which regulate the following matters, any person who:

gives a gift or makes a promise to a civil servant or provides or offers him a service with a view to inducing

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him to act or to refrain from certain acts in the performance of his office, in violation of his duty;

gives a gift or makes a promise to a civil servant or provides or offers him a service as a result or as a consequence of certain acts he has undertaken or has refrained from undertaking in the performance of his current or former office, in violation of his duty;

From the elements as contained in Article 177 letter a above, it can be seen that the provisions of this Article can ensnare the perpetrators of bribery. In detail, it can be explained that bribery in Article 177 letter a only applies to abuse of authority of public officials in the form of violating their duties, even though the implementation in violating their duties has not been completed.

Meanwhile, Article 177 letter b applies to the bribe giver. In principle, this provision only applies when what is requested by the bribe giver has been completed by the recipient of the bribe (public official) in relation to his/her actions that refrain from performing in the performance of his/her current or former office that directly violates the duties of his/her office. Thus the focus of this provision is that the offence has been completed by the recipient of the bribe. Acts that fulfil Section 177 of the DCC are punishable with imprisonment of not more than four years or a fifth category fine.

The next type of active bribery is found in Article 178 which regulates bribery to judges. In this Article, the punishment is more detailed as contained in an article integral to this provision. shall be punished with imprisonment for a term not exceeding six years. However, if there is bribery with the intention of reducing the sentence in a criminal case, the perpetrator will be subject to a maximum imprisonment of nine years. Another penalty is that an advocate who bribes in the course of practising his/her profession may be dismissed from the practice of his/her profession.

Since the introduction of the first Dutch Criminal Code in 1809, passive bribery of public officials has been a criminal offence. When the current Criminal Code came into force in 1886, the offence was included in two articles (Article 362 and Article 363). When joining GRECO in 2001 and ratifying the Criminal Law Convention on Corruption in 2002, in 2005 the GRECO evaluation team recommended increasing the level of fines in respect of some bribery offences. This recommendation was implemented in the context of revisions to the Criminal Code and certain other laws, including provisions on passive bribery of public officials.

Passive bribery is the opposite of active bribery. These two types of bribery are two sides of the same phenomenon. A person gives something of value to a public official, expecting the official to use his or her position in that person's favour. Passive bribery of a public official includes receiving a gift or service before or after an act or omission, as well as soliciting a gift or service, before or after an act or omission. In addition, it is important to note that in order to penalise this type of bribery, it is not necessary that the act or omission in question actually occurred. It is sufficient that the public official at the time he or she received the gift, knew or suspected that the gift was made to induce him or her to act or refrain from acting.

The offence of passive bribery of a public official is regulated under Sections 362 to 364a DCC. Offences that fulfil the elements of Section 363 DCC are subject to imprisonment of not more than four years or a fifth category fine. The difference between these two Articles (Article 362 DCC and Article 363 DCC) lies in the clause 'without breaching his duties' in Article 362 and the clause 'in breach of his duties' in Article 363.

The rest of the elements of the criminal offence contained in the two Articles are the same. According to Idlir Peci and Eelke Sikkema, Article 362 which was amended to accommodate the recommendations of the GRECO convention is inappropriate, because according to him the convention does not distinguish between violations of duty or not, but has an impact on citizens' confidence in the implementation of public administration. In addition to Article 362 and Article 363 of the DCC, passive bribery provisions can also be found in Article 364 and Article 364a. These two Articles regulate bribery of judges. Where a judge who accepts a gift or promise or service, knowing or reasonably suspecting that the gift or promise is given or promised to him to influence a decision in a case before his court, shall be punished by a maximum

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imprisonment of nine years or a maximum fine of the fifth category.

Comparative Analysis of the Provisions of the Offence of Bribery in Indonesia, the Netherlands, Malaysia and China

In conducting a comparative analysis of the provisions governing the recipient of bribes, there are at least three main things that can be compared as formulated in the formulation of the previous problem in the introduction. Second, regarding the subject of the criminal offence of 'bribe recipient' and third, regarding the forms of bribes received by the subject of the offence as well as the types of threats that exist in the criminal offence of bribery in each country that is used as material for comparison, including the following:

The provisions of the criminal offence of bribery in each country (Indonesia, the Netherlands, Singapore, China). In terms of substance, the regulation of the crime of bribery in Indonesia is different compared to the Netherlands, Singapore and China. In Indonesia, the crime of bribery is regulated only in a special law, namely Law No. 31/1999 on the Eradication of Corruption Jo. Law No. 20 of 2001 (amendment) and because it has been specifically regulated, the existing provisions in the Criminal Code which are the forerunners of the provisions of the corruption law are no longer applicable. Whereas in the Netherlands and China the provisions governing bribery are only regulated in the Criminal Code. For Singapore, in addition to the provisions contained in the Criminal Code (Article 161 to Article 165, Article 213 and Article 215), there are also provisions in Articles 5 and 6 of the Prevention of Corruption Act or PCA (Cap 241, 1993 Rev Ed).

Subject of the Offence of 'Receiving a Bribe'. In relation to the subject of the offence of receiving bribes, each country has similarities and differences, namely: a. In the Netherlands, the subject of the offence of accepting bribes is classified into 5 types, namely: Officials (Article 362 and Article 364), secondly Judges, thirdly and fourthly people who are equal to officials (expansion) Article 364a (people in the community from a foreign country or international legal organisation will be considered equal to officials and former officials are considered equal to officials) and people who are equal to judges (expansion) are considered to include a judge from a foreign country or international legal organisation. b. For China, the subject of the offence is state officials and corporations, namely: state organs, state-owned enterprises, companies, institutions or community organisations. While Indonesia as the subject of the offence of receiving bribes is a civil servant or state administrator (as referred to in Article 2 of Law No. 28 of 1999 concerning the Implementation of a State that is Clean and Free from Corruption, Collusion and Nepotism). According to the provisions of China, the Netherlands and Singapore, civil servants or state administrators are defined as one unit, which in China is categorised as state officials, in the Netherlands as officials, while in Singapore it is categorised as civil servants.

Forms of bribery regulated in the criminal law of each country, in the Indonesian Corruption Eradication Law, the form of bribery given to the recipient of the bribe (the subject of the offence) uses the abstract terminology of gifts or promises (Article 5 paragraph (2) letters a, b and Article 6 paragraph (2) letter a and the terminology of gifts or promises (Article 11 and Article 12 a, b and c).The Netherlands is almost the same as Indonesia, namely using the terminology of receiving gifts, promises or services. Meanwhile, in Singapore, the form of bribery given to the recipient of the bribe (the subject of the offence) uses more abstract terminology, namely; any satisfaction, receiving any gratuity and any pleasure. Somewhat different from Indonesia, Singapore and the Netherlands, China is more concrete in its form, namely 'receiving money from others illegally or property in return'. In addition, in China extorting other people's money or property is considered a bribe while Indonesia, the Netherlands and Singapore are regulated separately. The form of bribe given to the recipient of the bribe (the subject of the offence) by using abstract terminology according to the author is more appropriate, considering that the development of the world is now so fast and fast that if the form of bribery is made concrete many people commit corruption with various modes, such as: giving in the form of services, entertainment or entertainment and so on..

The form of threats that regulate criminal offences, if we look at the threats of corporate criminal sanctions, the offence of accepting bribes contained in Law No. 31 of 1999 concerning the Eradication of the Criminal Act of Corruption Jo. Law No. 20 of 2001 (amendment) is much more severe than the criminal sanctions

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contained in the Dutch Criminal Code even though the elements of the offence or the acts threatened are the same and the Dutch Criminal Code does not use a minimum witness but only a maximum, namely; Article 362, a maximum of 2 (two) years in prison, Article 363 a maximum of 4 (four) years in prison and Article 364 a maximum of 9 (nine) years in prison. In addition, the imprisonment sanction has an alternative position with fines, while in the Indonesian Corruption Law the threat of imprisonment with fines is not only alternative but also cumulative (and/or).

Another difference is that the Dutch Criminal Code arranges the provisions of the offence of bribery in a qualified manner, starting with the lesser offence of accepting a bribe without neglecting one's duty (Article 362), then it is regulated by the aggravating circumstance of neglecting one's duty (Article 363) and further aggravated if the act is committed by a judge (Article 364), whereas in the Indonesian Corruption Law this is not the case and even looks 'ambiguous' because the qualifications are not clear, where the offence should be a qualified offence. The bribery provisions in the Corruption Eradication Law originate from the Indonesian Criminal Code which is then 'pulled' into the Corruption Law, so it can be concluded that the provisions of Articles 418, 419, 420 in the Criminal Code are tiered criminal provisions in accordance with the weight and qualifications of the offence or are qualified offences whose criminal penalties are much different in the Criminal Code. Qualified offences are special forms, having all the elements of the basic form, but one or more circumstances that aggravate the punishment (it does not matter whether it is an element or not) such as: theft by dismantling, assault resulting in death, premeditated murder and others.233 However, this does not apply to the provisions stipulated in the Anti-Corruption Law 1999 Jo. However, this does not apply to the provisions set out in the Anti-Corruption Law 1999 Jo: Firstly, qualified offences are threatened with the same punishment, namely: The provisions of Article 11 which do not neglect their obligations with the provisions of Article 5 paragraph (2) which neglect their obligations, the punishment is the same, namely both 5 (five) years and the provisions of Article 12 letters a, b with the provisions of Article 12 letter c, the punishment is also the same, namely both for life, where it should be because the offence is qualified, then the provisions of Article 5 paragraph (2) should be more severe than the provisions of Article 11 as well as the provisions of Article 12 letters a and b should not be the same as the provisions of Article 12 letter c. Second, the qualified offence, then the provisions of Article 5 paragraph (2) should be more severe than the provisions of Article 11; Secondly, the offence whose qualification is heavier is punished under the offence whose qualification is lighter, namely: between Article 12 letters a and b and the provisions of Article 6 paragraph (2), where the provisions of Article 12 letters a and b regarding civil servants or state officials who accept bribes carry a life sentence, but the provisions of Article 6 paragraph (2) regarding judges accepting bribes whose qualifications are more severe carry a sentence of only 15 (fifteen) years; Third, the formulation of the same offence but regulated in two different article provisions and also with different threats.

Unlike Indonesia, and the Netherlands, the provisions in China the severity of the penalty is determined by the amount of money received as stipulated in Article 383 of the Criminal Code of China with four categories, namely: the heaviest is more than 100,000 yuan, then less than 100,000 yuan but not less than 50,000 yuan, the third is less than 50,000 yuan but not less than 5000 yuan, and the last is less than 5,000 yuan. In addition, another underlying difference is that there is a provision regarding administrative witnesses in the Chinese Criminal Code's offence of bribe-takers, namely if the value is less than 5,000 yuan and the circumstances are relatively not serious, he must be given administrative sanctions at the discretion of his work unit or authorised officials at a higher level. Slightly similar to China although not similar Indonesia also distinguishes the threat of punishment based on the amount of money received but in the Anti-Corruption Law 2001 jo 1999 only in two categories namely for the value (bribe) which is less than Rp. 5,000,000, - (five million rupiah) and which is equal to or more than Rp. 5,000,000, - (five million rupiah) as stipulated in Article 12 A of the Anti-Corruption Law 1999 Jo. 2001.

From the four countries, it is known that the heaviest criminal sanctions are in the provisions ofthe CriminalCode of China (Criminal Law of the People's Republic of China) because there is a death penalty and a minimum sentence of 10 years. In addition, the provisions that have a minimum threat are only Indonesia and China. When compared to the four provisions, only Indonesia has ambiguous delict qualifications because there are no provisions in the laws of other countries with the same delict formulation

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but the punishment is much different.

Another interesting thing is that the three comparator countries do not have legal dualism in regulating the liability for the crime of passive bribery in the legal system of each country. This is different from Indonesia where the same provisions are regulated in two different article formulations and different sanctions which result in legal uncertainty and potentially lead to abuse of authority in applying the rule of law.

Conclusion

Looking at the regulation of countries such as Malaysia, the Netherlands, and China from the three countries. There are countries that regulate in special rules and are included in the legal regime of corruption offences such as Malaysia. However, there are also countries that include it in the general rules in the Criminal Code of each country such as the Netherlands and China. However, regardless of the regulatory model, the most substantial is the certainty of each country in formulating offences and providing sanctions that are not regulated in two different provisions (legal dualism).

References

Abdul Rahim, Rushdi, Azmil Mohd Amin, and Norsam Tasli Mohd Razali, 'Scenario Planning for Development of a National Anti-Corruption Framework', Foresight, 23.3 (2020), 299–310 <https://doi.org/10.1108/FS-04-2020-0040>

Addink, G H, and J B J M Ten Berge, 'Study on Innovation of Legal Means for Eliminating Corruption in the Public Service in the Netherlands', Electronic Journal of Comparative Law, 11.1 (2007), 1–34

Arifin, Ridwan, Sigit Riyanto, and Akbar Kurnia Putra, 'Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era', Legality: Jurnal Ilmiah Hukum, 31.2 (2023), 329–43 <https://doi.org/10.22219/ljih.v31i2.29381>

Bussmann, Kai D, Anja Niemeczek, and Marcel Vockrodt, 'Company Culture and Prevention of Corruption in Germany, China and Russia', European Journal of Criminology, 15.3 (2018), 255 – 277 <https://doi.org/10.1177/1477370817731058>

Cheng, Hongming, and L Ling, 'White Collar Crime and the Criminal Justice System: Government Response to Bank Fraud and Corruption in China', Journal of Financial Crime, 16.2 (2009), 166 – 179 <https://doi.org/10.1108/13590790910951849>

Fabri, Marco, 'Criminal Procedure And Public Prosecution Reform In Italy: A Flash Back', International Journal For Court Administration, 29January (2008), 3–15

Fernando, Zico Junius, Pujiyono Pujiyono, Heru Susetyo, Septa Candra, and Panca Sarjana Putra, 'Preventing Bribery in the Private Sector through Legal Reform Based on Pancasila', Cogent Social Sciences, 8.1 (2022) <https://doi.org/10.1080/23311886.2022.2138906>

Gong, Ting, Shiru Wang, and Hui Li, 'Sentencing Disparities in Corruption Cases in China', Journal of Contemporary China, 28.116 (2019), 245 – 259 <https://doi.org/10.1080/10670564.2018.1511395>

de Graaf, Gjalt, Leo Huberts, and Tebbine Strüwer, 'Integrity Violations and Corruption in Western Public Governance: Empirical Evidence and Reflection from the Netherlands', Public Integrity, 20.2 (2018), 131–49 <https://doi.org/10.1080/10999922.2017.1350796>

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

Huang, Chenghao, Zhi Jin, Siyang Tian, and Eliza Wu, 'The Real Effects of Corruption on M&A Flows: Evidence from China's Anti-Corruption Campaign', Journal of Banking & Finance, 150 (2023), 106815 <https://doi.org/https://doi.org/10.1016/j.jbankfin.2023.106815>

Junaedi, Junaedi, 'Efforts to Prevent Bureaucratic Corruption Based on the Piercing Principles of the Governance Veil in Realizing Good Governance and Clean Governance in Indonesia', Journal La Sociale, 1.2 (2020), 10–16 <https://doi.org/10.37899/journal-la-sociale.v1i2.87>

Kapeli, Nur Shafiqa, and Nafsiah Mohamed, 'Battling Corruption in Malaysia: What Can Be Learned?', Journal of Financial Crime, 26.2 (2019), 549 – 555 <https://doi.org/10.1108/JFC-04-2018-0044>

Khalif, Muhammad, FX Hastowo Broto Laksito, and Andriamalala Laurent, 'Role and Position of Indonesian Medical Disciplinary Honour Council : Fair Medical Dispute Resolution', Journal of Law, Environmental and Justice, 1.3 (2023), 185–201 <https://doi.org/10.62264/jlej.v1i3.15>

Levi, Michael, and Fangmin Ruan, 'Corruption Legislation and Socio-Economic Change in the People's Republic of China', Journal of Financial Crime, 4.2 (1996), 116 – 128 <https://doi.org/10.1108/eb025766>

Li, Ling, 'Performing Bribery in China: Guanxipractice, Corruption with a Human Face', Journal of Contemporary China, 20.68 (2011), 1 – 20 <https://doi.org/10.1080/10670564.2011.520841>

Mallow Muzaffar Syah, 'Corruption: The Law and Challenges in Malaysia ', Proceedings of ADVED 2018 - 4th International Conference on Advances in Education and Social Sciences, October, 2018, 15–17

Mawardi, Chalik, and Farah Hanum, 'Policy on the Handling of Rohingya Refugees in Aceh : Balancing State Sovereignty and Human Rights ?', Journal of Law, Environmental and Justice, 1.2 (2023), 122–36 <https://doi.org/10.62264/jlej.v1i2.7>

Meyer, Bram, Tessa van Roomen, and Eelke Sikkema, 'Corporate Criminal Liability for Corruption Offences and the Due Diligence Defence a Comparison of the Dutch and English Legal Frameworks', Utrecht Law Review, 10.3 (2014), 37–54 <https://doi.org/10.18352/ulr.283>

Muhamad, Nurisyal, and Norhaninah A. Gani, 'A Decade of Corruption Studies in Malaysia', Journal of Financial Crime, 27.2 (2020), 423 – 436 <https://doi.org/10.1108/JFC-07-2019-0099>

Niemeijer, Bert, and Machteld Pel, 'Court-Based Mediation in the Netherlands: Research, Evaluation and Future Expectations.', Dickinson Law Review, 110.2 (2005), 345–79

Pan, Zimeng, 'Culture-Specific Conceptualisations Relating to Corruption in China English', Lingua, 245 (2020), 102948 <https://doi.org/https://doi.org/10.1016/j.lingua.2020.102948>

Pane, Musa Darwin, and Diah Pudjiastuti, 'The Legal Aspect of New Normal and the Corruption Eradication in Indonesia', Padjadjaran Jurnal IImu Hukum, 7.2 (2020), 181–206

Peçi, Idlir, and Eelke Sikkema, 'Corruption and Legal Certainty; the Case of Albania and the Netherlands Implementation of the Criminal Law Convention on Corruption in a Transitional and Consolidated Democracy', Utrecht Law Review, 6.1 (2010), 101 <https://doi.org/10.18352/ulr.117>

Prakasa, Satria Unggul Wicaksana, 'Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures', Lentera Hukum, 6.3 (2019), 413–30 <https://doi.org/10.19184/ejlh.v6i3.14112>

Pujiyono, Sufmi Dasco Ahmad, and Rani Tiyas Budiyanti, 'Sex Selection Using Assisted Reproductive Technology: An Islamic Law Perspective', Medicine and Law, 36.4 (2017), 45 – 52

Purnamasari, Pupung, Noor Afza Amran, A. Harits Nu'man, Rusman Frendika, Mohamad Naimi Mohamad Nor, and Mohamad Sharofi Ismail, 'Penta-Helix Model of E-Government in Combating Corruption in Indonesia and Malaysia: Religiosity as a Moderating Role', F1000Research, 11 (2022), 932 <https://doi.org/10.12688/f1000research.121746.1>

Rahadian, Januar, and Silas Oghenemaro, 'Monodualistic and Pluralistic Punishment Politics in Criminal Code Reform : Lessons from Indonesia', Journal of Law, Environmental and Justice, 1.3 (2023), 225–43 <https://doi.org/10.62264/jlej.v1i3.17>

Rasdi, Rasdi, Pujiyono Pujiyono, Nur Rochaeti, and Rehulina Rehulina, 'Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice', Lex Scientia Law Review, 6.2 (2022), 479–518 <https://doi.org/10.15294/lesrev.v6i2.58320>

ROSE-ACKERMAN, Susan, 'Corruption and the Criminal Law Legalization and Criminalization', Forum on Crime and Society, 2.1 (2002), 20

S.T. Quah, Jon, 'Curbing Police Corruption in Singapore: Lessons for Other Asian Countries', Asian Education and Development Studies, 3.3 (2014), 186–222 <https://doi.org/10.1108/AEDS-07-2014-0029>

Saman, Wan, and Abrar Haider, 'Electronic Court Records Management: A Case Study', Journal of E-Government Studies and Best Practices, 2012 (2012), 1–11 <https://doi.org/10.5171/2012.925115>

Saputra, Rian, Albertus Usada, and Muhammad Saiful Islam, 'Ecological Justice in Environmental Criminal Sanctions for Corporations in Indonesia: Problems and Solution', Journal of Law, Environmental and Justice, 2.1 (2024), 1–17 <https://doi.org/10.62264/jlej.v2i1.19>

Sasono, Satryo, Isharyanto Isharyanto, and Delasari Krisda, 'Child and Women Domestic Abuse Victims ' Social Health Insurance Protection : An Affirmative Justice Perspective', Journal of Law, Environmental and Justice, 1.2 (2023), 105–21 <https://doi.org/10.62264/jlej.v1i2.8>

Siddiquee, Noore Alam, 'Combating Corruption and Managing Integrity in Malaysia: A Critical Overview of Recent Strategies and Initiatives', Public Organization Review, 10.2 (2010), 153–71 <https://doi.org/10.1007/s11115-009-0102-y>

Siddiquee, Noore Alam, and Habib Zafarullah, 'Absolute Power, Absolute Venality: The Politics of Corruption and Anti-Corruption in Malaysia', Public Integrity, 24.1 (2022), 1 – 17 <https://doi.org/10.1080/10999922.2020.1830541>

Xu, Gang, Xue Wang, Ruiting Wang, Go Yano, and Rong Zou, 'Anti-Corruption, Safety Compliance and Coal Mine Deaths: Evidence from China', Journal of Economic Behavior & Organization, 188 (2021), 458–88 <https://doi.org/https://doi.org/10.1016/j.jebo.2021.05.013>

Zhou, Kuo, Haotian Luo, Diyu Ye, and Yunqing Tao, 'The Power of Anti-Corruption in Environmental Innovation: Evidence from a Quasi-Natural Experiment in China', Technological Forecasting and Social Change, 182 (2022), 121831 <https://doi.org/https://doi.org/10.1016/j.techfore.2022.121831>