



CRIMINAL LIABILITY OF STATE OFFICIALS WHO BRIBE FOREIGN PUBLIC OFFICIALS

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Abstract:

*This study examines the criminal liability of Indonesian state officials who offer bribes to foreign public officials under Law No. 11 of 1980 on the Crime of Bribery, and assesses how a normative comparison with the Dutch Criminal Code (Wetboek van Strafrecht) can inform legal reform in Indonesia. Employing a normative-legal research design, the study utilizes statutory analysis, doctrinal review, and comparative methods. Primary data were drawn from legislation, judicial decisions, and international conventions, while secondary data comprised scholarly literature. A qualitative content analysis was conducted to evaluate the scope of the offence and its practical enforcement. The findings indicate that the term "any person" in Law No. 11/1980 can be interpreted to include foreign public officials; however, the absence of explicit language generates legal uncertainty. The Dutch model is more categorical, expressly criminalizing cross-border bribery with penalties of up to six years' imprisonment and a category V fine. Based on these insights, the study recommends enacting a *lex specialis* in Indonesia that explicitly names foreign public officials as potential victims, establishes principal penalties of three to eight years' imprisonment and proportionate fines, and introduces supplementary sanctions such as asset forfeiture. Adoption of these measures is expected to enhance legal certainty and strengthen Indonesia's capacity to combat transnational corruption effectively.*

Keywords:

Transnational Crime, Corruption, Bribery Offense, Comparative Law

1. Introduction

1.1. Background of the Problem

In the current era, cooperation between countries has become increasingly borderless, especially in economic relations and cross-border investment development. (Fauziyyah and Paksi, 2023) Globalization creates a unified world in terms of international collaboration, which inevitably impacts national legal systems. This legal implication is evident from Indonesia's ratification of international agreements such as the Agreement Establishing the World Trade Organization (WTO) (Sulistiyawan, 2019) and the United Nations Convention Against Corruption (UNCAC, 2003). As Grotius once said, as cited by Aditya Y. S., "Where there is society, there is law." Hence, international cooperation demands harmonization between international and national law to ensure the fulfillment of justice, legal certainty, and utility through both preventive and repressive legal approaches. (Fauziyyah and Paksi, 2023)

These efforts serve as responses to criminal acts that arise within international cooperation. The term "transnational crime," first introduced by Philip C. Jessup, refers to criminal acts that surpass national borders. Transnational crime includes:

- a. Offenses occurring in more than one country;
- b. Offenses committed in one country but whose planning, direction, or control takes place in another;
- c. Crimes committed in one country but involving organized criminal groups operating across multiple countries; and
- d. Offenses committed in one country with significant consequences in another (Raja Gukguk and Jaya, 2019).

These aspects are defined under Article 3(2) of the United Nations Convention Against Transnational Organized Crime (UNTOC), which Indonesia ratified through Law No. 5 of 2009 (UNODC, 2004).

Corruption is one form of transnational crime. As stated in the preamble of Law No. 20 of 2001 amending Law No. 31 of 1999 on the Eradication of Corruption, corruption is a violation of human rights, particularly economic welfare and fair business competition. Its systematic and widespread nature qualifies corruption as a massive or high-level crime, not only harming individuals but also society at large. Moreover, UNCAC acknowledges that corruption is no longer a domestic issue but an international concern, requiring cross-border prosecution due to its global impact (Wahid, 2023).

The Corruption Eradication Law, Law No. 31 of 1999 as amended by Law No. 20 of 2001, classifies various forms of bribery. These include provisions under Articles 5, 6, 11, 12 (a–d), and 13, which collectively cover both active and passive bribery offenses. Active bribery refers to the giver of the bribe (any person), while passive bribery applies to civil servants, state officials, judges, and advocates. However, this limitation in the passive bribery subject raises a legal issue: foreign public officials are not recognized as potential recipients of bribes under Indonesian anti-corruption law.

Indonesia's ratification of UNCAC 2003, through Law No. 7 of 2006, obliges the state to criminalize bribery of foreign public officials, as stipulated in Article 16(1), a mandatory provision (Valerian, 2019). This obligation includes enabling domestic prosecution and extradition for such crimes (Hiariej, 2019), as elaborated in Article 30 of UNCAC (Argandoña, 2007). Besides the Criminal Code (KUHP) and the Corruption Law, bribery offenses are also governed by Law No. 11 of 1980 on Bribery. This law targets bribery outside the scope of KUHP and the repealed Law No. 3 of 1971, now replaced by Law No. 31 of 1999 and its amendment. Law No. 11 of 1980 thus fills the legal gap for public interest-related bribery not covered under KUHP or the Corruption Law. This context raises a fundamental legal issue: can Law No. 11 of 1980 serve as the legal basis for prosecuting state officials who bribe foreign public officials? The article focuses specifically on state officials as perpetrators, in light of Articles 58 and 59 of the new Indonesian Criminal Code (Law No. 1 of 2023), which impose a one-third increase in penalties for crimes committed by officials abusing their authority.

1.2. Research Questions

1. How should criminal liability be imposed on Indonesian state officials who offer bribes to foreign public officials?
2. How does the legal regulation of bribery involving foreign public officials under the Dutch Criminal Code (Wetboek van Strafrecht) compare with Indonesia's Law No. 11 of 1980 on Bribery?

1.3. Research Methodology

The legal research method employed in this study is normative legal research. The central issue is whether the act of bribery involving foreign public officials complies with the norms stipulated in Law No. 11 of 1980 on Bribery. This research applies three approaches (Marzuki, 2022):

- a. Statutory Approach – systematically analyzes the legal provisions under Law No. 1 of 1946 on the Indonesian Criminal Code (KUHP), Law No. 31 of 1999 on the Eradication of Corruption and its amendment, and Law No. 1 of 2023 on the New Criminal Code. This analysis seeks to establish Law No. 11 of 1980 as a *lex specialis derogat legi generali*.
- b. Conceptual Approach – examines doctrines and scholarly views concerning bribery, unlawful acts, criminal responsibility, transnational crimes, and the applicability of criminal law based on time and location of the offense.
- c. Comparative Approach – compares provisions on bribery under the Dutch Criminal Code with Indonesian laws, especially those related to bribery of foreign public officials, in order to identify similarities and differences between the two legal systems.

Primary legal sources include the aforementioned statutes and other relevant legislation. Secondary sources consist of scholarly journals, books, theses, and scientific articles.

2. Discussion

2.1. General Overview of the Crime of Bribery

According to Moeljatno (Wati, 2020), a crime is an act that contradicts prevailing societal norms and has been institutionalized in written law through codification. A criminal act, in turn, refers to an unlawful conduct subject to

penal sanctions as prescribed by criminal law. Thus, a criminal offense entails a prohibition of specific conduct and a clearly defined penalty for violating that prohibition.

The term "corruption" originates from the Latin *corruptio* and the English term *corruptus*, both derived from *corrumpere*, meaning spoiled, dishonest, bribeable, or immoral. Corruption is widely acknowledged as one of the oldest crimes in history (Hiariej, 2019). The United Nations Convention Against Corruption (UNCAC, 2003) designates corruption as a transnational crime, citing its pervasive damage to economic growth and governance (Argandoña, 2007). It states: "Corruption is no longer a local matter, but a transnational phenomenon affecting all societies and economies."

Indonesia's legal regulation of corruption began during the New Order regime with Law No. 3 of 1971 on the Eradication of Corruption. Reinforcing this commitment, the People's Consultative Assembly (MPR) issued Decree No. XI/MPR/1998 on the Implementation of a Clean Government Free from Corruption, Collusion, and Nepotism. On August 16, 1999, the government enacted Law No. 31 of 1999, revoking Law No. 3 of 1971. This was further strengthened by Law No. 20 of 2001, which amended the 1999 law to enhance anti-corruption efforts.

Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 categorizes corruption into several types, including (Hiariej, 2019):

- a. Acts causing state financial or economic loss;
- b. Bribery;
- c. Extortion by public officials;
- d. Fraudulent acts;
- e. Conflicts of interest in procurement;
- f. Receipt of gratuities contrary to official duties.

The term "bribery" in French is *briberie*, and in English, bribery, referring to the act of offering a gift or promise to influence someone to act contrary to their obligations or authority. This is reflected in the bribery provisions of Indonesia's anti-corruption laws.

The Corruption Eradication Commission's (KPK) handbook, "Understanding to Eradicate: A Guide to Understanding Corruption Offenses," explains various forms of bribery and their legal foundations under Law No. 31 of 1999 and Law No. 20 of 2001. The guide provides a systematic analysis of bribery offenses, their elements, and applicable sanctions (KPK, 2006). The table below summarizes key bribery provisions in Indonesian anti-corruption law, outlining the elements of each offense and their corresponding sanctions:

Article	Legal Source	Elements	Principal Sanctions
Article 5(1)(a)	Refers to Article 209(1)(1) KUHP and Article 5 of Law 31/1999	Any person; gives or promises something; to a civil servant/state official; with the intent to influence actions contrary to their duties	1–5 years imprisonment and/or IDR 50–250 million fine
Article 5(1)(b)	Article 209(1)(2) KUHP	Any person; gives something; to a civil servant/state official; in relation to a violation of duty	Same as above
Article 5(2)	New in Law 20/2001	Civil servant/state official; receives gift/promise as described in 5(1)(a) or (b)	Same as above
Article 6(1)(a)	Article 210 KUHP	Any person; gives/promises something to a judge; to influence a decision	5–15 years and IDR 150–750 million fine

Article	Legal Source	Elements	Principal Sanctions
Article 6(1)(b)	Article 210(2) KUHP	Any person; gives/promises something to an advocate; to influence legal advice	3–15 years and same fine
Article 11	Article 418 KUHP	Civil servant/state official; accepts a gift/promise; related to their office	1–5 years and/or fine
Article 12(a)	Article 419(1) KUHP	Civil servant/state official; accepts a gift/promise; to act/not act in violation of duty	4–20 years or life imprisonment; IDR 200 million – 1 billion fine
Article 13	Derived from Law No. 3/1971	Any person; gives a gift/promise to a civil servant; based on their position	Max 3 years or fine up to IDR 150 million

2.2. Bribery as a Transnational Crime

According to the United Nations Convention Against Corruption (UNCAC, 2003), which was ratified by Indonesia through Law No. 7 of 2006, every state party is obliged to criminalize the act of bribing foreign public officials. This obligation is set forth in Article 16(1) of the UNCAC and reinforced by Article 1 of the OECD Anti-Bribery Convention. Both provisions require state parties to criminalize the bribery of foreign public officials under their respective national laws. This global consensus underscores that cross-border bribery is a serious crime that must be explicitly regulated to uphold integrity and transparency in international relations and the global economy (UNODC, 2015).

As previously discussed, bribery may occur across national borders, classifying it as a transnational crime and an extraordinary crime. This is due to the inherently systemic, organized, and multinational nature of corruption—especially bribery. The provisions on bribery in Indonesia’s Anti-Corruption Law, including Articles 5, 6, 11, 12 (a–d), and 13, apply exclusively to domestic public officials.

Article 16 of UNCAC mandates that states criminalize bribery in the transnational context. This implies that Indonesia must incorporate legal provisions addressing bribery of foreign public officials. By applying an a contrario interpretation, it can be inferred that current Indonesian laws are still limited to defining recipients of bribes as national public officials, namely civil servants, state administrators, or judges with Indonesian nationality or jurisdiction.

Law No. 11 of 1980 on Bribery was enacted to regulate forms of bribery that fall outside the scope of the KUHP and the Anti-Corruption Law. The preamble of Law No. 11/1980 acknowledges the diversity and complexity of bribery practices, many of which cannot be addressed by existing legislation. It identifies bribery as an offense contrary to the moral norms and ethical values of Pancasila and a threat to society and the nation. Therefore, the law was created as a complementary legal instrument to regulate bribery beyond the KUHP and Anti-Corruption Law.

According to the United Nations Office on Drugs and Crime (UNODC) in its report State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation (UNODC, 2015), expanding the term “public official” to include foreign public officials cannot be justified normatively if such expansion contradicts the legislative intent or drafting history of the law. Hence, generic terms such as “civil servant” or “public functionary,” commonly used in national anti-bribery laws, cannot automatically be interpreted to include foreign public officials or officials from international organizations, especially in the absence of supporting jurisprudence or established practice.

The lack of explicit language regarding foreign public officials directly affects the application of the legality principle in criminal law. However, Article 2 of Law No. 11 of 1980 opens the possibility for broader interpretation of the term “someone,” which may encompass individuals performing public functions in both domestic and foreign

contexts, provided they possess specific authority or responsibility. This authority may originate from statutory, professional, or organizational sources.

Such an interpretation aligns with the authentic meaning provided in the General Elucidation of Law No. 11 of 1980, which states:

“Bribery may also occur abroad, whether committed by Indonesian nationals or by foreigners. Therefore, this law must be applicable to such acts of bribery by providing Indonesian criminal sanctions.”

This statement confirms that Indonesia’s jurisdiction can be extended to cover cross-border bribery offenses, thereby enhancing the integrity and effectiveness of the national anti-corruption framework.

The phrase above implies that bribery offenses may occur outside Indonesian territory (*locus delicti*), whereas the KUHP and Anti-Corruption Law limit jurisdiction to national territory and only apply passive bribery provisions to domestic civil servants or judges. Consequently, the inclusion of cross-border bribery in Law No. 11 of 1980 reflects the universal principle of criminal jurisdiction, enabling Indonesian courts to prosecute foreign-targeted bribery.

This broad interpretation of the term “any person” is consistent with UNCAC, which uses general terms such as “any person” as the recipient of a bribe. According to UNODC’s research, legal scholars have acknowledged that such vague or general provisions may suffice to fulfill UNCAC’s objectives, so long as there is no implicit restriction that undermines the convention’s scope. For instance, if no limitation is inferred regarding domestic economic damage, and the country shows a willingness to implement Article 16 of UNCAC (UNODC, 2004), then such general provisions are deemed acceptable.

2.3. Legal Analysis of Law No. 11 of 1980

Article 2 of Law No. 11 of 1980 reads as follows:

“Any person who gives or promises something to another person with the intent to persuade that person to do or refrain from doing something in the performance of their duty—contrary to their authority or obligations involving public interest—shall be punished for bribery by imprisonment for a maximum of five (5) years and a fine of up to IDR 15,000,000.”

The legal elements of this provision include:

- a. Any person (the bribe-giver);
- b. Gives or promises something;
- c. To another person (the bribe-recipient);
- d. With the intent;
- e. To influence the recipient to act or refrain from acting in the course of their duties, contrary to their legal authority or obligations, and in relation to public interest.

In active bribery (i.e., the giver of the bribe), the term “any person” signifies that the offense may be committed by any state officials, judges, civil servants, business actors, advocates, or private individuals. However, this study focuses exclusively on state officials as active bribery offenders, to narrow the scope and sharpen the legal analysis (Wati, 2020).

This focus aligns with Article 59 of the new Criminal Code (Law No. 1 of 2023), which states that if a crime is committed by a state official during or by abusing their position, the punishment may be increased by up to one-third. This aggravating factor demonstrates the heightened moral and legal expectations placed upon public officials. Bribery, as a criminal offense, is an act of unlawfulness. Specifically, when committed by a public official, the act of “giving or promising something” with intent to influence the recipient to violate their public duty constitutes an abuse of authority. Therefore, Article 2 of Law No. 11 of 1980 criminalizes acts intended to persuade public functionaries—whether domestic or foreign—to misuse their official powers in ways that contradict the public interest (Prasetyo, 2020).

Furthermore, the term “something” or “promise” in this article is not limited to money or material gifts. Rather, it encompasses anything of value or benefit that could provide personal satisfaction to the recipient. Thus, both tangible and intangible offerings, if capable of influencing the recipient, fall within the legal definition of a bribe, provided the other elements are fulfilled (Skandiva and Harefa, 2022).

As discussed earlier, the UNODC supports the interpretation of vague or general terminology (such as “any person”) in passive bribery laws, provided it refers to individuals with authority related to public interest. In

Indonesia, those who hold such authority typically include state officials, civil servants, and judges, whose powers may derive from (Sri Rahayu, 2014):

- a. Attribution (powers directly granted by the Constitution or law);
 - b. Delegation (transferred powers from one authority to another);
 - c. Mandate (task assigned by a superior without transferring responsibility); or
 - d. Discretion (autonomous decision-making within legal bounds).
- All these powers pertain to the execution of public functions.

In a globalized world, the integrity of public officials whether domestic or foreign is vital to maintaining economic development, investment, and international cooperation. The abuse of public office through cross-border bribery undermines fair competition and trust between states. Accordingly, countries that have ratified UNCAC have criminalized such conduct and pledged to prosecute or extradite offenders, including their own nationals who bribe foreign public officials (Wahid, 2023). Consequently, the phrase “any person” in Article 2 of Law No. 11 of 1980 should be functionally interpreted to include foreign public officials, especially when their decisions directly affect the public or economic interests of the bribe-giver’s home country.

2.4. Forms of Criminal Penalties for State Officials Who Bribe Foreign Public Officials

According to Article 64 of Law No. 1 of 2023 on the Criminal Code (KUHP), Indonesian criminal law recognizes three categories of punishment:

- a. principal punishments;
 - b. additional punishments; and
 - c. special punishments for specific crimes stipulated in statutory provisions.
- d. fines; and
- e. community service.

However, Law No. 11 of 1980 on Bribery only provides for two types of principal punishment:

- a. imprisonment for a maximum of five (5) years; and
- b. a fine not exceeding IDR 15,000,000 (fifteen million rupiah).

It is common in Indonesian penal legislation, including the KUHP, that fines are fixed nominally within statutes, making them vulnerable to devaluation over time due to inflation and currency changes. The fine in Article 2 of Law No. 11 of 1980 is now outdated and no longer proportionate to the seriousness of the offense. A maximum fine of IDR 15 million no longer reflects the damage or gravity of bribery acts. Therefore, the monetary value should be re-evaluated and adjusted in accordance with Article 79(2) of Law No. 1 of 2023, which mandates that changes in currency value must be followed by government regulations revising the statutory maximum fines.

The Anti-Corruption Law (Law No. 31 of 1999 as amended by Law No. 20 of 2001), which serves as *lex specialis*, allows for cumulative or alternative sentencing imposing both imprisonment and fines, or one of the two. The principal punishments under this law include the death penalty, imprisonment, and fines. Article 18 also provides for additional punishments, expanding on the provisions of Article 10 of the old KUHP, including:

- a. Confiscation of movable or immovable property used or obtained from corrupt acts;
- b. Obligation to pay compensation up to the value of assets gained through corruption;
- c. In cases involving a corporation, closure of business operations (partially or wholly) for up to one year;
- d. Revocation of specific rights or benefits obtained from the corrupt act.

Accordingly, state officials convicted of bribing foreign public officials may also be subject to additional penalties such as revocation of office, in accordance with Article 66(1) jo. Article 86 of Law No. 1 of 2023. This is applicable when an official commits a bribery offense by abusing their authority, position, or means granted by their office (as outlined in Article 87).

Article 91 of the KUHP also allows for the forfeiture of goods, claims, or proceeds derived from criminal acts. Given that bribery often involves economically valuable or beneficial objects, law enforcement authorities—during investigation, prosecution, or trial may seize and confiscate such items. Moreover, Article 59 of the KUHP strengthens the legal basis for penalty enhancement where an offense is committed by a state official by misusing their authority. In such cases, the primary sentence may be increased by one-third of the maximum penalty.

Nevertheless, the author argues that the penalties prescribed by Law No. 11 of 1980 are no longer proportionate compared to those found in the Anti-Corruption Law or the 2023 Criminal Code. The disparity indicates an urgent

need to revise Law No. 11 of 1980 in line with modern criminal policy and substantive justice principles, especially in the context of fighting bribery and corruption.

2.5. Provisions on Bribery of Foreign Public Officials in the Dutch Criminal Code (Wetboek van Strafrecht)

The Dutch Criminal Code explicitly criminalizes bribery of foreign public officials under Article 177(1) jo. Article 178a. Article 177(1) states (‘Code Penal’, 2025):

"Anyone who gives a gift or promise, or renders or offers a service to a public official with the intent to induce them to act or refrain from acting in the exercise of their duties shall be punished with imprisonment of up to six years or a fine of the fifth category."

"Punishable by a maximum of six years' imprisonment or a fifth-category fine:

Anyone who gives a gift or promise to a public official, or renders or offers a service, with the intent to influence that official to act or refrain from acting in the execution of their official duties."

This provision is substantially similar to Article 2 of Indonesia's Law No. 11 of 1980, in that both prohibit offering gifts or promises to public officials. The Dutch version also expands the scope to include "rendering or offering a service," and explicitly targets the act of influencing the official's duties.

The "intent" requirement corresponds to the concept of *mens rea* (*dolus*), reflecting the perpetrator's deliberate objective to unlawfully influence a public official. This aligns with the category of *opzet als oogmerk* in Dutch legal doctrine, i.e., intent as purpose.

Furthermore, Article 178a (1) of the Dutch Criminal Code extends the passive bribery subject to include foreign public officials. This legislative clarity ensures that, under the principle of legality (*nullum crimen sine lege*), acts of bribery committed abroad may be prosecuted and punished under Dutch law, regardless of the location.

3. Conclusion

a. Textually, Law No. 11 of 1980 on Bribery defines the passive subject of bribery simply as "any person," without limiting the nationality or position of the recipient. Through authentic and a *contrario* interpretation, this term can be reasonably extended to include foreign public officials. Therefore, a state official who offers a bribe to a foreign public official can be held criminally liable under Article 2 of Law No. 11 of 1980, provided that the elements of offering/promising something with the intent to influence a decision involving public interest are fulfilled.

b. In contrast, the Dutch Criminal Code (Wetboek van Strafrecht) explicitly criminalizes bribery of both domestic and foreign public officials, with penalties of up to six years' imprisonment or a fifth-category fine (€103,000). The Dutch provisions are more detailed and legally certain, particularly in naming "foreign public officials" as passive subjects of bribery. While the Indonesian provision contains similar legal substance, it lacks legislative clarity, leaving interpretation open to judicial discretion.

4. Recommendations

a. To the judiciary (judges): Judges should apply a systematic and teleological interpretation of Law No. 11 of 1980, allowing the term "any person" to be interpreted as including foreign public officials. In doing so, judicial rulings should also refer to relevant international instruments, particularly Article 16 of UNCAC, and consult UNODC jurisprudence and legal commentary to strengthen the legal basis for enforcing transnational bribery offenses under the principle of universal jurisdiction.

b. To the legislative body (DPR RI): There is an urgent need to draft a *lex specialis* either through a new law or by amending the Criminal Code that explicitly regulates bribery involving foreign public officials. Such legislation should:

1. Establish principal penalties of imprisonment ranging from three (3) to eight (8) years, aligning with anti-corruption laws;
2. Impose proportionate fines based on the degree of state loss or harm to public integrity, with adjustments updated periodically through government regulations;
3. Include supplementary penalties such as asset forfeiture, revocation of public rights, and mandatory community service, consistent with Law No. 1 of 2023.

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