

Private Bribery and Integrity in Doing Business

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Abstract: It is the fact that the Indonesian legal systems lack prohibition on private bribery. This situation leads to the problem of what is called "null of normen" (lack of regulation) known by most of the Indonesian legal scholars. Some argue that private bribery has been ruled within Indonesian Bribery Act, but some scholars argue otherwise. The last-mentioned argument further argues that the Indonesian system had a regulation that is sufficient to tackle bribery within the private sector. Anti-Monopoly and Business Competition Act often cited as the umbrella act for keeping integrity in doing business. To what extent that those often cited regulations match the standard of what so-called as private bribery "regulation"? Inevitably United Nations Convention Against Corruption (UNCAC) become the norm to check whether the Indonesian system has such regulation where according to their last report, the Indonesian lack of Anti Private bribery regulation. Using doctrinal legal approach and socio-legal approach, more specifically political approach, this paper is designed to answer whether the Indonesian need specific regulation on Private Bribery. In this paper, we argue that the Indonesian system needs to have regulation on Private Bribery as a matter of urgency to meet the International standard on combating corruption. The need to give healthier, conducive environment on doing business and putting the bar of Integrity amongst business player are also underlined within this paper to support the argument.

1 INTRODUCTION

Private bribery acts which suggested within UNCAC still absent in the Indonesian legal system. The report of UNCAC team stated so as the Indonesian system also lacks other prohibited act such as trading in influence and illicit enrichment. Arguably the Indonesian legal reformer in crafting the Anti-Corruption law believed that corruption domain is in public law involving public official only. Thus bribery between private to private is never considered as a corruption act. In fact, some might question the reason for private-to-private bribery, as there is no victim in this sense. This kind of argument cannot be accepted anymore, which explained in this paper.

In general, prohibition for bribery is ruled within several regulations such as in the Indonesian Anti-Corruption Law or Anti Bribery Law however private bribery still what the Indonesian legal scholar call as "null of normen." This situation disadvantaged Indonesian system to eradicate corruption systematically due to the norm within International level believed that private bribery regulation is strategic plans on nationally eradicate corruption. The

Indonesian law enforcer still put or acknowledged "private bribery" as private entities who bribed public official as we can see in their guidelines. This situation can be understood as the Anti-Corruption Law have not regulated "private to private" bribery.

In this part, Anti Bribery law and Anti-Monopoly law is described. The last mention regulation is a regulation that guarantees business process within Indonesia exercised within integrity and fair.

More specifically, those two regulation is considered, for some people can be used to prosecute private bribery. For example, it is said "...eventhough there are no sanctions for private bribery in the Indonesian Anti-Corruption Act, it does not per se mean that Indonesia does not have regulated criminal sanction on private bribery in the Law Number 11 Years 1980 concerning Anti Bribery Act (Marbun, MaPPI). However, some also argue that those regulations are not sufficient to be considered as fit with UNCAC standard. Those who argue that the Indonesian system lack of private bribery regulation mentioned that "...there isn't any corruption regulation on private bribery" (Ginting, 2016). Husodo (2016) has a similar argument that is argued:

"on the legal-formal perspective, we only have regulation on public sector corruption..."

The element of private bribery in UNCAC is explained in the following paragraph, discussed simultaneously with those two previously mentioned regulations.

Article 21 UNCAC mentioned as follow:

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offenses when committed intentionally in the course of economic, financial or commercial activities

The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting

The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

From the above-mentioned regulation, the concept of active and passive bribery is also used within private bribery concept. The same thing also applied that private bribery is also considered as an intentional action (*kesengajaan*). By this, proofing bribery is not an easy business.

Doctrinal legal research is considered beneficial for this research because it can provide more internal insights into the Indonesian legal system. The importance of doctrinal research in law is recognized by Bodig (2011) who has argued that: Doctrinal scholarship has a crucial role in cultivating the epistemic authority the legal profession lays claim to. It provides a sort of academic validation (authentication) to the claim that the legal profession possesses distinctive expertise without which quality governance is not possible.

The socio-legal research is used in this research to give a better understanding of the phenomenon of private bribery within Indonesian sociological context. Several cases that are taken from mass media report were highlighted, such as the MMC hospital case. Two cases from Singapore that is considered as private bribery also described in this research as for giving better insight on how private bribery happen.

The last, it is important to understand that putting private bribery within the Indonesian reformer agenda is a matter of political will. Thus the political approach to see this political will to regulate private bribery is crucial to address.

2 BRIBE ON PRIVATE BRIBERY

2.1 Element of Any Person Who Directs or Works, in Any Capacity, for a Private Sector Entity

The perpetrator of private bribery might be a person or corporation. As in general bribery cases, corporate may also be liable if, for example, the briber acts for the account or on behalf of a company. It can be someone who works at a company (private entity), or it might be someone who works outside of the company but working at any company in any capacity. Important note on article 21 UNCAC based on Explanatory Report Council of Europe (1999) described as follow:

"This provision prohibits bribing any persons who "direct or work for, in any capacity, private sector entities." Again, this a sweeping notion of being interpreted broadly as it covers the employer-employee relationship but also other types of relationships such as partners, lawyer, and client and others in which there is no contract of employment. Within private enterprises, it should cover not only employees but also the management from top to bottom, including members of the board, but not the shareholders. It would also include persons who do not have the status of an employee or do not work permanently for the company -for example, consultants, commercial agents, etc.- but can engage the responsibility of the company."

This broad definition definitely includes a person who works within the company as an employee or someone outside non-employee such as contractor, sub-contractor, a consultant who works for the company based on a contract basis.

It should be noted that private bribery is not only for a high-rank person within the company, but this also for the lower rank or every person within a company. The company itself might be a company that haven't been registered before, no matter big or small. Thus what is important is emphasized on private-to-private relation without involving any public sector. It is considered as general/common bribery if one of the perpetrators is a public official who works on public administration.

The Indonesian Anti Bribery law, on the other hand, may not reach the corporation as a subject perpetrator of private bribery. The word "barang siapa" (every person) still defined as a person only (*naturelijk person*) which is the same as what the Indonesian Penal code (KUHP) refers too. Section 3 on the law use the word "ia" (she/he) which refers to a person as a subject.

In the next section, passive and active bribery is discussed within private bribery concept. Similar to ordinary bribery, passive bribery includes someone who solicited or accept bribe where active bribery includes promising, offering, or giving a bribe. In the context of trading in influence, the briber might be called as the instigator while the bribed is called as the influence peddler.

2.2 The Promise, Offering or Giving Elements on Active Bribery

The prohibition on active bribery within private bribery is similar to ordinary bribery which is regulated in UNCAC. In Explanatory Report Council of Europe 1999, active bribery explained as follows:

The three actions of the briber are slightly different. "Promising" may, for example, cover situations where the briber commits himself to give an undue advantage later (in most cases only once the public official has performed the action requested by the briber) or where there is an agreement between the briber and the bribee that the briber will give the undue advantage later. "Offering" may cover situations where the briber shows his readiness to give the undue advantage at any moment. Finally, "giving" may cover situations where the briber transfers the undue advantage.

In the context of private bribery, only non-officials carry out the act of promising, offering, and giving. Emphasis as in promising does not have to be given immediately also applies to the private sector. The definition of the offer includes situations where there is readiness in giving bribes if assisted as in ordinary bribery which involving public official. Also, the meaning of giving includes bribes made through transfers of fund between private-to-private.

2.3 The Solicitation or Acceptance Elements

As for passive private bribery, the same thing applies for general passive bribery with the exception of only those conducted by non-public official. The meaning of the solicitation is "menawarkan untuk disuap", some literature refers to what is called as "permohonan" where this is not a proper word because "permohonan" is a more positive word while "solicitation" means negative from the root of the word. Some literature uses the word "requesting," which in Indonesian is interpreted as "meminta" or "asking" and is not quite right also because the negative nuance of the act is not visible. Note for

general bribery is as follow (Explanatory Report Council of Europe 1999):

"Requesting" may, for example, refer to a unilateral act whereby the public official lets another person know, explicitly or implicitly, that he will have to "pay" to have some official act done or abstained from. It is immaterial whether the request was actually acted upon, the request itself being the core of the offense. Likewise, it does not matter whether the public official requested the undue advantage for himself or for anyone else.

So in private bribery, "menawarkan untuk disuap" means a series of actions with the aim of informing the other party either explicitly or implicitly if being bribed will act on certain actions or not doing anything as it was contrary with her/his obligation. Whether the act actually happened does not become a problem because the form of the offense formula is "delik formil," which contrary with "delik materil" where the result is necessary to be proven. As for "acceptance" is interpreted as "penerimaan" and some literature refers to as "receiving." Private parties who "receive" get the "actual benefits" even though they do not have to get it directly. This signaled that indirect benefit is acknowledged.

2.4 Direct or Indirectly Elements

Direct or indirect elements of private bribery indicate the possibility of "intermediaries" or third persons. There are two things that must be considered in the case of indirect bribery where direct bribery is considered to be no problem. Indirect can be mean how perpetrators accepting their bribe (the first), and the second is, who receives the benefits of the bribe. In an indirect bribery case, the relationship between the recipient and the third party must be proven. This lead to proof "indirect bribery" is a difficult task because in addition to proving the "bribe," law enforcer also have to prove the involvement of third parties as beneficiaries or as recipients of the bribes.

2.5 Undue Advantage Element

Undue advantage within Indonesian words literally means "keuntungan yang tidak semestinya". It is said, "tidak semestinya" / "improperly" due to it is contrary to the laws and regulations or internal regulations of the corporation or the values that exist in the community. Undue advantage can be "tangible" object or "intangible" object. The meaning is very broad as prohibited within the Indonesian Anti-Corruption Law. This includes sex gratification, position offers, rebates/discounts, and vouchers.

2.6 Element on “act or refrain from acting.”

This element is directly related to passive bribery actors where passive actors can "do something" (melakukan sesuatu) or "not doing anything" (tidak melakukan sesuatu) in their position in a private institution. In the context of common bribery where a public official is one of the passive actors, R Wiyono (2005) states that position (jabatan) of the public official is determinant to measure breach of duties as a public administrator. As in private bribery, “position” covers not only employees but also the management from top to bottom, including members of the board, but not the shareholders (Explanatory Report Council of Europe 1999).

Two important things that must be considered, the first is that it is not important that the passive briber actually does what the briber has asked. The explanatory report also explained that "It is immaterial whether the request was actually acted upon, the request itself became the core of the offense.". Second, "... it does not matter whether the public official requested the undue advantage for himself or for anyone else ". It means that the acceptance of bribes by passive actors does not have to be directed to him; it can be given to third parties. Passive actors must be proven that he knows for bribes given to third parties

2.7 Element of "in breach of his or her duties."

Breach of duty in a private organization is necessary because the word "duties" indicates the existence of certain positions attached to active and / or passive actors. If this element is not fulfilled, it cannot be said that bribery is in the private sector, but it can also meet another type of corruption called as "trading in influence" as mention in article 18 UNCAC. Bribes in the private sector, both active and passive, violate the tasks inherent in job or positions in the private sector. This element must be broadly interpreted not only as positions are known in Indonesia as structural positions, but it must be interpreted in every position or position that does not belong to the structural, such as private employees who control the entrance of goods in a privately owned warehouse or private employees who supervise other workers (see also explanation on 2.6. Element on "act or refrain from acting").

3 IN THE COURSE OF ECONOMIC, FINANCIAL, OR COMMERCIAL ACTIVITIES

This element is the character that distinguishes between bribery in the private sector and the public sector. Bribery in the private sector is a bribe in the context of business activity as stated below

" Business activity "is to be interpreted in a broad sense: it means any kind of commercial activity, in particular trading in goods and delivering services, including services to the public (transport, telecommunication, etc.) (Explanatory Report Council of Europe 1999)."

NGOs or other social institutions such as "Yayasan"/ foundations may not be included in this category. In the Indonesian context, this will be a problem due to some of the Yayasan, to support their funds, they do business. Likewise, with NGOs, support their movements, sometimes they also do trades that can be categorized as a business. So if there is a bribe involving Yayasan or NGO during their business activity, then it should be considered as bribery in the private sector.

3.1 Cases and Matter of Urgency to Regulate

This part discussed private bribery cases, overseas, and within the Indonesian system. The overseas case is taken from Singapore known as Dongah Geological Engineering bribery case and private bribery case known as a 1-dollar case. The case known as MMC hospital is discussed to give a better picture of the Indonesian situation. Those cases are chosen as a clear example of private to private bribery.

3.1.1 Dongah Geological Engineering

In 2018, there were bribery cases in Singapore involving several companies, namely Dongah Geological Engineering Company Ltd. (hereafter called as Dongah), based in Korea, Fasten Hardware and Engineering Pte Ltd and Taka Hardware and Engineering (S) Pte Ltd. The last two representatives of the company gave some money to the Dongah representative in Singapore. The purpose of the bribe is to facilitate cooperation between companies. The nominal bribes given and received were \$ 3000 (Singapore dollars) and \$ 4000 (Singapore dollars). The three representatives of the company were considered to have violated the Prevention of Corruption Act (Singapore Act) with a 5-year

criminal sentence and a \$ 100,000 fine (Singapore dollar). In total there are five suspects in the bribery case, two from Dongah and three from representatives of companies that gave the bribed. There was no public official involved in the case.

3.1.2 Cogent Container Depot / I Dolar Case

Two forklift operators of Cogent Container Depot employees were questioned for taking bribes from truck drivers of 1 dollar per truck. They were accused of one corruption charge for trying to get 1 Singapore dollar from a truck driver so as not to delay the return of containers to his vehicle. The action allegedly took place between September 2014 and March 2018. CPIB did not specify the total number of all alleged bribes against two suspects. If convicted, they will face jail for up to five years or a \$ 100,000 fine (Singapore dollars). Similar to Dongah case, there was no public involvement in the case. Lower rank workers within Cogent Container Depot are stressed in this case as it shows that any position within private entities can be subject to private bribery.

3.2 Bribery of PT. Interbat to MMC Hospital

One of the alleged cases of private bribery in Indonesia is the case of PT Interbat, which later emerged through a journalism investigation conducted by Tempo. PT Interbat allegedly committed bribes to several hospitals and doctors. One of the parties who received bribes was the Metropolitan Medical Center (MMC) Hospital which is a private hospital and a doctor who works at the hospital. MMC Hospital has received money from PT Interbat four times with a total amount of Rp. 253 million. The funds went through the account of Robby Tandiari, President Director of PT Kosala Agung Metropolitan, the company that owns MMC. As written in PT Interbat's financial records obtained by Tempo, the money was used to finance the construction of hospital facilities. In return, MMC promised to sell as many medicines as possible for the pharmaceutical company during the year, from August 2013 to September 2014.

Both PT Interbat and MMC hospital are private entities that cannot be prosecuted using the Indonesian Anti-Corruption Law. The evidence for the allegation was solid, and at the end, the consumer or patient becomes the one that loses. They have to pay more for their medication.

3.3 Bribery of PT. Interbat to the MMC Doctor

Two specialists doctors at MMC who received a total of Rp. 318 million from PT Interbat is another concern whether it should be considered as corrupt conduct or merely unethical conduct. Under the Medical Ethics Code, it is expressly stipulated that doctors must not receive commission money from pharmaceutical companies. The provisions stipulate that doctors are prohibited from making medical decisions under the influence of other parties and are prohibited from receiving tribute from prescription drugs. The possible punishment was clear, namely the revocation of the practice permit. Penalties will be more severe if the status of the doctor is PNS (Public official) where they are threatened with crime with the Minister of Health Regulation No. 14 of 2014 concerning Gratification Control in the Ministry of Health and the Anti-Corruption Law. The problem is as if the doctor is a private or working within private hospitals such as in this MMC doctor case. The ethical reaction may not enough to deter doctor who keeps accepting gratification or bribe from pharmacies.

3.4 State Own Enterprise (SOE) Son's Is Not State Own Enterprise (SOE)

It is decided that Badan Usaha Milik Negara / BUMN or State Own Enterprise is more public than private. However, this position may not be the same for their "son" enterprises as it considered more private than public. Corruption within SOE son's in Indonesia is out of the Indonesian anti-corruption radar. Bribery between private-to-private is possible and prohibited within International society. Thus it is possible that between SOE son's or SOE son's with other private entities exercise corrupt conduct such as bribery.

4 ANTI BRIBERY LAW AND ANTI-MONOPOLY AND BUSINESS COMPETITION LAW, CONFLICTING OR SUPPLEMENTING?

As previously mentioned, the Indonesian acknowledged prohibition for bribery within Law No. 11 of 1980 (Anti Bribery Law). It is ruled on the prohibition of giving or receiving bribes. The prohibition of bribery is set forth in Article 2 which

prohibits each person giving or promising others to do or not do something in his or her duty, contrary to his authority or obligation in the public interest while the prohibition on accepting bribes is set out in article 3 which prohibits everyone from accepting the offer or promise as set forth in article 2.

According to article 2 and article 3 of Bribery Law, basically bribes committed between private to private may be subject to the Bribery Act as long as in public interest. Therefore, in a contrario manner, bribery between private parties that are not related to the public interest cannot be reached by the Law. Moreover, it is common amongst legal scholar to believe that the Anti Bribery Law is made to tackle issues related to sports integrity. In addition, as the Bribery Act is not considered as a "corruption matter," the Anti-Corruption Commission (KPK) lack of jurisdiction to investigate the case. It is the Indonesian police who has jurisdiction to investigate it.

KPK is considered as an Independent state institution with the power to coordinating with other law enforcer agencies which are authorized to eradicate corruption, supervision of agencies authorized to eradicate corruption, carry out investigations, prosecute corruption, take steps to prevent corruption, and monitor the implementation of state government. However, the KPK is not authorized to carry out acts of eradication, prevention, and monitoring of bribery in the private sector due to it does not fall within the scope of corruption as mentioned in Anti-Corruption Law. This indicates that the criminal law policy regarding bribery in the private sector in Indonesia is currently absent as part of anti-corruption eradication campaign.

It can be concluded that the legislation in Indonesia has not yet regulated the crime of private bribery, as mentioned in Article 21 of UNCAC. The bribery arrangement in the Anti-Corruption Law is limited to bribery relating to the public official, state administrators, judges, and advocates so that the act of bribing someone who is not a state official cannot be qualified as corruption in the Anti-Corruption Law. While the Anti Bribery Law may ensnare the private sector who commit bribery, but within the act itself, there is an obstacle that is related to the phrase "public interest" as a condition of the prohibition act. Therefore all acts of bribery not related to the public interest cannot be reached by the Law. Also, the KPK is not authorized to take actions to eradicate, prevent, and monitor bribery in the private sector because it does not fall within the scope of criminal acts of corruption.

Below tables are a comparison between section 21 UNCAC and section 2 and section 3 Anti Bribery Law:

Active (private) bribery

	UNCAC	Anti-Bribery Law
Subjet	Person and Corporate	Person
Actus reus	Giving, offering and promising	Giving and promising
	Direct or indirectly	Directly
	Undue advantage	Something (advantage ?)
Person capacity	who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person	Who have duties and obligation to serve the public interest
	A private sector entity	The entity to serve the public interest
The briber aim to the bribed	breach of his or her duties, act or refrain from acting	Breach of his or her duties and obligation, act or refrain from acting

Passive (private) bribery

	UNCAC	Anti-Bribery Law
Subjet	Person and Corporate	Person
Actus reus	The solicitation or acceptance	Acceptance
	Direct or indirectly	Directly
	Undue advantage	Something (advantage ?)
Person capacity	who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person	Who have duties and obligation to serve the public interest
	A private sector entity	The entity to serve the public interest
The bribed	breach of his or her duties, act or refrain from acting	Breach of his or her duties and obligation, act or refrain from acting

Above table shows that the Indonesian Anti Bribery Law lack of several significant elements of private bribery as section 21 UNCAC ruled. The absent of these elements might lead to problems in eradicating corruption systematically. For example:

1. Problem on prosecuting corporate on bribing other corporate

2. Several acts which highlighted in both active and passive bribery were missing, such as "offers" and "solicitation."
3. The possibility of indirect bribery within the private sector is still unruled.
4. The terms "undue advantage" definition includes tangible and intangible
5. Debate on the meaning of public interest instead of the private sector

Next paragraph discusses what is ruled within the Anti-Monopoly and Business Competition Law. This is to understand whether the law, significantly effective to curb corruption within private sectors.

4.1 Anti-Monopoly and Business Competition Law

The Anti-Monopoly and Business Competition Law (UNDANG-UNDANG NOMOR 5 TAHUN 1999 TENTANG LARANGAN PRAKTIK MONOPOLI DAN PERSAINGAN USAHA TIDAK SEHAT) is made to keep business in Indonesia accord with the Indonesian regulations and to maintain integrity. Bribery in the private sector means doing business improperly or in a way that does not have integrity. Conspiracy to get tenders in the world of business by using bribery seems to escape the radar of law enforcement because it is considered normal, and there is no rule that prohibits it. Then what is conspiracy is important to understand within the Indonesian context.

"Persekongkolan" or Conspiracy according to criminal perspective:

A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is innocent in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

This definition might be slightly different from the definition of conspiracy according to the Indonesian Anti-Monopoly and Business Competition Law where emphasized added on the aims of the conspiracy is to occupied market. There are two approaches used within Anti-Monopoly and Business Competition Law known as "per se illegal" dan "rule of reason."

The juridical approach is typical of the application of the Anti-Monopoly and Business Competition Law where the rule of reason approach is an approach used by business competition authority institutions to make an evaluation of the consequences of certain

agreements or business activities, to determine whether an agreement or activity is inhibiting or support competition. Conversely, the per se illegal approach is to declare any agreement or certain business activities illegal, without further proof of the impact arising from the agreement or business activity.

There are 3 types of "persekongkolan" conspiracy within Anti-Monopoly Law:

- a) Tender conspiracy
- b) Conspiracy to get secret information from a company
- c) Conspiracy for slowing down production and or market

The juridical approach used within Anti-Monopoly Law is the rule of reason where the clause in the article that reads "... can lead to unfair business competition" means that agreements or actions regulated in the Antimonopoly Law is not per se prohibited, because on a contrario basis, if the act does not have a negative impact or does not intend to cause a condition of unfair competition, then the agreement or the act cannot be penalized.

In relation to private bribery, conspiracy is often the result of tacit collusion that sometimes involves bribery of business actors who should be competitors. The Anti-Monopoly and Business Competition Law does not touch if a tender conspiracy, either in the context of general conspiracy to gain trade secrets or hindering production and / or marketing which is involving bribery between them. The Law considers bribery within business processes for the intention of controlling the relevant market for the interests of business actors who conspire to, only be a part that is actually considered not prohibited. That is if there is a bribe between business actors, but there is no intention of controlling the market, then it is considered permissible because it is not considered as corruption. It is even not considered as breaching Anti-Monopoly and Business Competition Law. Our Anti-Corruption Law regime only touches if one of the perpetrators is a public official, and it is related to the public administration (the decision-maker).

Actually, in the business world itself, especially in large corporations and transnational corporations, they have internal regulations that prohibit corrupt behavior, including in the case of bribery in conducting business. This internal regulation is made with at least two objectives, namely to meet international standards which they must have this internal regulation/ policy to meet the ISO, and second, in the case where there is personnel who commit corrupt acts as prohibited in their internal rules, then the corporation cannot be held responsible.

In addition, awareness in the international business world to jointly fighting corruption is also a reason, because pragmatically, corruption is considered detrimental to the business world.

5 EVALUATION WITH "IF."

This section specifically discusses the need for private bribery prohibition. If we have special rules related to private bribery, how will this affect the business climate in Indonesia?

5.1 The Urgency to Prohibit Private Bribery

In general, the prohibition of private bribery need to be made as a matter of urgent due to the Indonesian has ratified UNCAC where private bribery is one of the recommended criminal acts although it is not mandatory to be adopted. If we do not ban private bribery, the evaluation result for the implementation of UNCAC in Indonesia will always bring up findings that Indonesia still does not comply with UNCAC. This condition certainly raises the notion that the climate of eradicating corruption in Indonesia is still considered to be problematic because it is not in accordance with UNCAC, which certainly affects the business climate and investment from abroad. The Indonesian regulations both regulating the Anti Bribery Law and the Anti-Corruption Law cannot yet reach the character of bribery in the private sector as targeted by UNCAC. Even in the Anti-Monopoly and Business Competition Law, it does not specifically prohibit bribery in the private sector, although in practice, conspiracy often involves bribery among business actors.

More specifically, the reason to prohibit private bribery according to the Explanatory Report Council of Europe 1999 is as follows:

First of all, because corruption in the private sphere undermines values like trust, confidence, or loyalty, which are necessary for the maintenance and development of social and economic relations. Even in the absence of specific pecuniary damage to the victim, private corruption causes damage to society as a whole. In general, it can be said that there is an increasing tendency towards limiting the differences between the rules applicable to the public and private sectors. This requires redesigning the rules that protect the interests of the private sector and govern its relations with its employees and the public at large. Secondly, criminalization of private sector corruption was necessary to ensure respect for fair competition.

Thirdly, it also has to do with the privatization process.

It was also stated in the document that the old approach to eradicating corruption/bribery in the private sector using anti-monopoly regulations and general criminal regulations was considered to be sectoral. To eradicate corruption, a comprehensive step is needed whereby banning bribes in the private sector can contribute to such comprehensive efforts. In addition, if a businessman in business sector says "No" to bribery and uphold business integrity, a healthy and conducive business climate in Indonesia is formed so that more investment into the country, opening up a lot of work opportunities and hopefully it can increasing the country's economy. At least this can be predicted as the domino effect of bribery arrangements in the private sector. However, further research is needed on different perspective such as political, economic, social, cultural, defense, and security to give more comprehensive information for the legal reform in adopting private bribery prohibition. Every effort to make National Business Integrity guidelines is strongly supported in this paper.

6 CONCLUSIONS

This paper argues that the Indonesian system needs to have regulation on Private Bribery as a matter of urgency to meet the International standard on combating corruption. The need to give healthier, conducive environment on doing business and putting the bar of Integrity amongst business player are manifold as clearly described. However, we further suggest that comprehensive research still needed within the aspect of political, economic, social, cultural, defense, and security before transplanting article 21 UNCAC into the Indonesian legal system.

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