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Addressing Legal Gaps: Reformulating Penal Provisions for Non-Civil Servants in Passive Bribery Corruption Offenses in Indonesia

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ABSTRACT
This study analyzes the legal subject arrangements about passive bribery corruption offenses outlined in Article 12 of Law No. 20 of 2001, which is limited to civil servants and state organizers. In practice, this crime frequently encompasses individuals who share close relationships with civil servants, including friends or relatives, who often engage actively in these violations. This research examines the rechtsvacuum condition concerning legal subjects who are not civil servants within the framework of passive bribery corruption offenses. It will also address the challenges associated with ius constitutum and ius constituendum about the penal system. The results demonstrate that the regulations concerning the penal system for non-civil servant legal subjects remain unaddressed in Law No. 20 of 2001. This leads to judges and law enforcement officials interpreting the law in their ways, potentially resulting in inconsistencies in the management of corruption bribery cases. As a result, there is a presence of legal ambiguity that compromises the integrity of justice. This research suggests the necessity for reevaluating a just penal system for legal subjects who do not hold positions as civil servants or state organizers. This reformulation is anticipated to improve legal certainty and justice in enforcing laws about corruption offenses in Indonesia, ultimately establishing a more efficient system for a comprehensive approach to combating corruption.
Keywords: *Corruption Offense, Passive Bribery, Legal Subject, Penal Reformulation, Legal Certainty.*

I. INTRODUCTION

The role of law in achieving national objectives is crucial for maintaining the continuity and efficiency of national development (Lee, 2017; Widyawati, 2020). In this context, criminal law is a significant normative instrument that operates in a repressive capacity and in preventive, educational, and restorative ways (Azarenok, Nicolay et al., 2022; Fletcher, 2000; Zakomoldin & Duyunov, 2020). Criminal law is a fundamental component of the national legal framework, reflecting the state's commitment to establishing social order, justice, and security—essential elements for achieving sustainable development (Fletcher, 1998; Mahmutovic & Alhamoudi, 2024). The purpose of criminal law is clearly articulated in Law No. 1 of 2023 on the Criminal Code, especially in Article 51.

The article highlights that punishment serves not only as a means of retribution against those who commit crimes but also aims to reinforce legal standards that safeguard the well-being of society as a whole. The primary aim of punishment is to deter criminal behavior by enhancing the efficacy of legal standards (Robinson & Darley, 2004, 2019). In this context, criminal law functions as a reminder and cautionary measure, indicating that breaches of the law will result in repercussions. This motivates individuals to adhere to regulations, fostering an organized and harmonious society (Mendes, 2004; Stafford, 2015).

Additionally, criminal law extends beyond mere deterrence, highlighting the importance of rehabilitative elements through the coaching and mentoring of offenders. The objective of convict correction is to facilitate the reintegration of individuals who have completed their sentences into society as improved and more productive members, ensuring that their potential is harnessed effectively to contribute to national development. Consequently, punishment should be viewed not as a conclusion to an individual's social existence but as a pivotal moment for personal growth (Legodi & Dube, 2023; Muleya, 2022).

A significant factor to consider is the function of criminal law in addressing social conflicts that emerge from criminal offenses. This objective focuses on reestablishing social equilibrium, fostering a perception of meaningful justice, and enhancing security and tranquility within the community. This approach signifies a shift in national criminal law, prioritizing the interests of victims and society while also

addressing the need to sanction perpetrators. Criminal law thus engages in a process of social reconciliation that is both humane and constructive (Keiler et al., 2017; Murphy, 2010).

Ultimately, the objective of punishment outlined in Article 51 is to cultivate a sense of remorse and alleviate the convict's guilt. The punishment system in Indonesia demonstrates a multifaceted approach, addressing not only physical dimensions but also psychological and moral considerations. This framework aims to ensure that offenders genuinely acknowledge their wrongdoings and are motivated to avoid similar actions. Within this framework, punishment serves as a mechanism for personality transformation, thereby facilitating the attainment of a more just, peaceful, and civilized society (Fagan & Meares, 2008; Garland, 2018; Rochaeti & Maryani, 2020).

The provisions above indicate that criminal law serves as a mechanism for preventing harm resulting from criminal behavior, facilitating the rehabilitation of offenders for reintegration into society, and addressing the restitution of losses incurred by criminal acts, which encompasses restoring victims' rights and losses. This explanation leads to the conclusion that criminal law serves primarily as a mechanism for suppressing and eliminating criminal acts within society, which may obstruct national development and impede the achievement of national objectives (Martin & Storey, 2014; Robinson, 2017).

The legal subject in the crime of corruption, as outlined in Article 1 of Law No. 20 of 2001 amending Law No. 31 of 1999 on the Eradication of the Crime of Corruption, demonstrates a comprehensive and expansive framework designed to encompass a wide range of individuals who may be implicated in corrupt activities (Sukmareni et al., 2019; Wiriadinata, 2015). Legal subjects in this context can be systematically categorized into several primary groups. Initially, corporations emerge as legal subjects capable of being held accountable, encompassing legal and unincorporated entities. This provision establishes that institutions or organizations, irrespective of their formal legal status, may still face charges if implicated in corruption. The scope of civil servants as legal subjects has been expanded and clarified. This category encompasses civil servants as defined by civil service regulations and the Criminal Code and extends to individuals compensated through salaries or wages sourced from state and local finances.

Additionally, individuals employed by corporations that benefit from state or regional funding and those working for companies utilizing state or community resources or facilities are classified as civil servants within this legal framework. This illustrates the state's initiatives to adapt to different employment relationships directly or indirectly linked to public resources. Third, the concept of "every person" in this law encompasses not only natural individuals but also corporations, thereby broadening the scope of criminal responsibility in the fight against corruption. Furthermore, specific legal subjects, including judges, contractors, construction experts, and advocates, are clearly identified. The reference to these professions highlights that those engaged in decision-making, management of public funds, and participation in legal or development processes are subject to legal oversight and potential sanctions if found guilty of corruption.

Bribery represents a specific category within the broader spectrum of corruption offenses. Bribes are typically offered to individuals in positions of authority within an agency or institution. The party providing the bribe often has specific objectives they wish to fulfill. In criminal law, both the bribe giver and the recipient are recognized as legal subjects, each bearing responsibilities and rights that the law must uphold (Hattu & Fadillah, 2023; Sijabat, 2022).

The definition of bribery is outlined in Law No. 11 of 1980, which addresses the Crime of Bribery related to the Financial and Administrative Rights of Leaders and Members of the Supreme or Highest Institutions of the State and Former Members and Leaders of these institutions. Bribery is providing money, goods, or other compensation from the bribe giver to the bribe recipient, intended to influence the recipient's behavior in favor of the giver's interests, even when such behavior contradicts the recipient's stance. Therefore, this understanding reveals that the crime of bribery is characterized by the proactive behavior of an individual or group in offering money, goods, or services to state officials to gain favorable access to government resources, which is executed unlawfully. Bribery involves transactional actions facilitating access to benefits obtained through policies enacted by state officials who unlawfully accept bribes (Fatimah et al., 2023; Supriyadi, 2022).

The provisions of Law No. 20 of 2001, which amends Law No. 31 of 1999 regarding eradicating corruption, specifically address the punishment of passive bribery for Public Servants or State Administrators. However, it is essential to note that the crime of passive corruption can also be perpetrated by individuals who are not Public Servants or State Organizers. These individuals may exploit their close or familial relationships with Public Servants or Organizers within government agencies or local authorities to gain personal benefits (Hasibuan, 2023).

The lack of regulation concerning legal subjects who are neither Public Servants nor State Administrators in cases of passive bribery corruption has led to varied interpretations of the law by law enforcement officials, including Investigators, Prosecutors, and Judges. This divergence results in inconsistent legal perspectives and contributes to disparities in judicial decisions related to the application of criminal acts of passive bribery corruption for those not classified as Public Servants or State Administrators. This situation leads to legal ambiguity and inequity within the community; consequently, it is essential to reevaluate and reform the criminal framework concerning passive bribery corruption for individuals who do not hold positions as State Employees or State Administrators.

II. Reformulation Of The Punishment System For The Crime Of Corruption Of Passive Bribery For Legal Subjects Non-Civil Servants And State Officials: Realizing Justice Based On Pancasila

The legal subjects involved in the corruption crime of passive bribery, as outlined in Article 11 and Article 12 of the Law on the Eradication of Corruption Crimes, include State Employees, State Administrators, and Judges. The provisions outlined in Article 11 and Article 12 of the Law on the Eradication of Corruption Crimes classify the offense as qualified, applicable solely to those who are bribe recipients and hold the status of Public Servants, State Administrators, or Judges. In contrast, relatives, close friends, or individuals with a close relationship to state officials, who may have the initial intent and are actively engaged in facilitating the criminal act of passive bribery, do not fall within the legal subject qualifications for the crime of passive bribery as defined in these articles. This situation leads to legal ambiguity and inequity for the community concerning the criminalization of passive bribery corruption cases involving individuals who are neither Public Servants nor State Organizers. Consequently, it is essential to establish a criminalization framework that effectively addresses perpetrators of passive bribery corruption outside these roles (Ginting et al., 2023; Priandy et al., 2022).

Andi Hamzah (2005, 2017) articulates punishment as "the act of determining the law or deciding about the law (berechten)." Additionally, the sentencing system encompasses the legal framework governing criminal sanctions and penalties. In this instance, Subekti and Tjitrosoedibyo (2008) articulated that Punishment constitutes a form of retribution. Criminal punishment serves as a mechanism to fulfill the objectives associated with punitive measures. Crime presents a significant humanitarian and social challenge that every society encounters. In any society, the presence of criminal offenses is inevitable (Marpaung, 2012; Setiady, 2010). In the view of Bambang Waluyo (2004), criminalization refers to the process of sentencing, which is a lawful measure aimed at imposing penalties on individuals who have been legally and convincingly determined to be guilty of a criminal offense through the criminal justice system. Criminalization refers to establishing laws that define certain behaviors as punishable offenses, while sentencing pertains to the procedural aspects of determining and administering the penalties associated with those offenses. The notion of mono-dualistic balance posits that the principle of culpability is the counterpart to the principle of legality, necessitating explicit formulation within the law. The principle that there should be no punishment without established guilt is a foundational concept in ensuring accountability for individuals who have committed criminal offenses (Arief, 1996).

Criminal punishment serves primarily as a mechanism to fulfill a specific objective, thus necessitating a clear definition of the purpose behind the imposition of punishment. The purpose of punishment can be understood through the interplay of two primary goals: the protection of society and the safety or cultivation of individual criminal offenders. This dual focus establishes the foundation for the conditions of punishment, which are rooted in two fundamental principles of criminal law: the principle of legality and the principle of guilt or culpability. Thus, the punishment system is intricately linked to criminal offenses and the concept of criminal responsibility (Arief, 1996).

Marc Ancel (1998) articulated that "modern criminal science" is comprised of three integral components: "Criminology," "Criminal Law," and "Penal Policy." He emphasized that "Penal Policy" embodies both scientific and artistic elements, ultimately aiming to enhance the formulation of effective legal regulations. This discipline serves as a guiding framework for lawmakers, the judiciary, and those responsible for implementing court decisions (Arief, 1996).

Efforts and policies to establish effective criminal law regulations are inherently linked to preventing crime. Consequently, the policy or politics surrounding criminal law is integral to criminal politics. In this context, the politics of criminal law aligns closely with the concept of "crime prevention policy through criminal law" .

Penal reform constitutes a significant aspect of the broader criminal law framework, often called penal policy. It involves a systematic effort to realign and transform criminal law in alignment with the

fundamental values underpinning society's sociopolitical, socio-philosophical, and socio-cultural dimensions, which influence social policy, criminal policy, and law enforcement practices.

Two primary issues in criminal policy utilizing penal measures involve the determination of the timeframe: identifying which actions should be classified as criminal offenses and deciding on the appropriate sanctions for offenders. The formulation of criminal law policy, which addresses these issues, must adopt a policy-oriented approach that extends beyond criminal law to encompass broader legal development. Essentially, criminal law reform signifies an initiative to review and reassess in alignment with the fundamental socio-political, socio-philosophical, and socio-cultural values of Indonesian society, which underpin social policy, criminal policy, and law enforcement policy in Indonesia (Arief, 1996).

Barda Nawawi Arief (1996, 2005, 2021) asserts that criminal law reform should be approached through policy, as it fundamentally represents a strategic step within legal politics, law enforcement, criminal law politics, and social politics. Each policy inherently involves value considerations. Consequently, criminal law reform must also focus on values.

Rules related to corruption in Indonesia have existed since the old order era. The current regulations about corruption crimes that are still valid in Indonesia are Law No. 11 of 1980 concerning the Crime of Bribery of Financial/Administrative Rights of Leaders and Members of the Highest State Institutions and Former Members of the Highest State Institutions and Former Leaders of the Highest State Institutions and Former Members of the Highest State Institutions, Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption and currently the government has also passed Law No. 1 of 2023 concerning the Criminal Code which will take effect in 2026. The three laws contain regulations related to corruption crimes and their criminal sanctions, including the corruption crime of bribery. However, they have not yet regulated provisions related to legal subjects who are not Public Servants or State Administrators as perpetrators of the corruption crime of passive bribery. Bribes are typically offered to individuals in positions of authority within an agency or institution, while the party providing the bribe seeks to fulfill specific desires. In the context of criminal law, both the bribe giver and the recipient are considered legal subjects with responsibilities and rights defined by the law. It is important to note that bribery is distinct from gratuities in its characteristics.

The legal framework surrounding the crime of bribery, as outlined in Law No. 20 of 2001 amending Law No. 31 of 1999 on the Eradication of the Crime of Corruption, identifies two distinct categories of individuals involved. On the one hand, individuals or groups outside the realm of Public Servants or State Administrators are classified as bribe givers, falling under the legal definition of active bribery as detailed in Articles 5 and 6. Conversely, Public Servants, State Administrators, or Judges who hold specific authority within government agencies are categorized as recipients of bribes, thus constituting passive bribery as defined in Articles 11 and 12. Notably, recent developments indicate that passive bribery is not exclusively perpetrated by Public Servants or State Organizers but also by individuals who do not hold such statuses.

The lack of regulation concerning legal entities that are neither public servants nor state administrators has led to various legal frameworks within Indonesia's corrupt criminal justice system. This is particularly evident among judges, who are crucial in delivering justice to the community. Furthermore, the criminalization of family members, relatives, or individuals closely associated with a Public Official or State Organizer involved in passive bribery cannot always be interpreted as participation or assistance in facilitating the crime, especially when considering Article 55 of the Criminal Code in conjunction with the Law on the Eradication of Corruption Crimes.

The crime of bribery does not solely arise from the intentions of the bribe giver or the State Organizer accepting the bribe; it can also stem from influences exerted by family, relatives, or individuals closely associated with the State Employee or State Organizer. Furthermore, the application of Article 55 of the Criminal Code in conjunction with Article 11 or Article 12 of the Law on the Eradication of Corruption Crimes appears to be inappropriate, as Articles 11 and 12 pertain to criminal offenses that can only be applied to State Employees or State Organizers due to their classification as qualified offenses.

Pompe (1959) outlines three scenarios regarding participation in a criminal offense (Arief, 2016). The first scenario involves both individuals meeting all the criteria outlined in the offense definition. For instance, two individuals collaborate to commit theft in a rice warehouse. The second scenario occurs when one individual meets all the criteria while the other does not. An example is two pickpockets, where one (A) distracts the target while the other (B) steals the wallet. The third scenario involves neither individual fulfilling all the criteria, yet they collectively engage in the offense. An illustration of this is

theft by mischief (Article 363 paragraph (1) 5), where one perpetrator breaks in while the accomplice enters the house to take the goods, which are handed over to the burglar (Setiawan et al., 2019).

A person who has the initiative and is actively involved in realizing the criminal act of bribery cannot be equated with the role and position of a co-perpetrator, and vice versa. People whose status is not a Public Servant but have a close relationship with a Public Servant or State Administrator utilize their close relationship by taking the initiative and being actively involved in communicating and connecting with Public Servants or State Administrators and parties who have an interest in causing the criminal act of bribery to occur cannot necessarily be applied Article 55 or 56 of the Criminal Code and be equated as a party who participates in giving bribes or participating in receiving bribes. In addition, the qualification in Article 12 of the Anti-Corruption Eradication Law, which explicitly regulates Public Servants or State Administrators as legal subjects of the criminal act of passive bribery, makes the act an offense with special qualifications so that people whose status is not Public Servants or State Administrators are not included in the qualifications of Article 12 of the Anti-Corruption Eradication Law and cannot necessarily be applied Article 55 of the Criminal Code.

The pluralism of the legal paradigm of the judge's decision can be seen in Decision No.: 76/Pid. Sus-TPK/2018/PN. Jkt. Pst related to the bribery case of regional balance funds in the State Budget for the Fiscal Year 2018. The Panel of Judges of the Jakarta Corruption Court in the case found Eka Kamaluddin, who is a private consultant, guilty of committing a criminal act of corruption jointly with Amin Santono as a Member of Commission XI of the House of Representatives and Yaya Purnomo as a civil servant at the Ministry of Finance to receive bribes. However, one of the members of the panel of judges in the case had a dissenting opinion regarding one of the elements in the indictment in Article 12 letter of the Anti-Corruption Eradication Law in conjunction with Article 55 paragraph (1) to 1 in conjunction with Article 65 paragraph (1) of the Criminal Code, with the consideration that based on the provisions in Article 12 letter an of the Anti-Corruption Eradication Law there are elements of civil servants and state administrators, which means that the defendant must have positions as civil servants and state administrators. At the same time, Eka Kamaluddin is a consultant or private party.

Another decision can also be seen in the case of Procurement of Goods for Emergency Response to the Covid-19 Pandemic Disaster at the Social Service of the West Bandung Regency Government for the 2020 Budget Year, which involved several defendants, namely Aa Umbara Sutisna as the Regent of West Bandung, Andri Wibawa who is AA Umbara Sutisna's biological son and M. Totoh Gunawan, Aa Umbara Sutisna's close friend since childhood as well as the owner of PT Jagat Dirgantara and CV Sentral Sayuran Garden City Lembang, in which case both Andri Wibawa and M. Totoh Gunawan are legal subjects and not public servants or state administrators. In this case, the Panel of Judges of the Bandung Corruption Crime through decision No.: 56/Pid.Sus-TPK/2021/PN. Bdg decided that Aa Umbara Sutisna, as the Regent of West Bandung Regency for the period 2018-2023, had been proven legally and convincingly intentionally participating in contracting, procurement, or rental and gratuities as charged by the Public Prosecutor, namely First violating Article 12 letter i of Law No. 31 of 1999 concerning Eradication of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption jo. Article 55, paragraph (1) to 1 of the Criminal Code, and Second, violating Article 12 B of Law No. 31 of 1999 concerning Eradication of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption jo. Article 65 paragraph (1) of the Criminal Code, meanwhile, against Andri Wibawa and defendant M. Totoh Gunawan, who was brought to trial together with Aa Umbara, the Panel of Judges thought that both of them were not Public Servants or State Administrators so that they did not fulfill the elements of Public Servants or State Administrators and both were acquitted.

The two cases illustrate the presence of legal ambiguity and inequity within the criminal system concerning passive bribery corruption for legal entities that do not fall under the category of public servants or state administrators. Consequently, there is a pressing need to reevaluate and reform the criminal framework addressing passive bribery corruption for these legal subjects. This reform should aim to integrate legal entities outside the realm of State Employees or State Administrators and their respective offenses into Law No. 20 of 2001, which amends Law No. 31 of 1999 on eradicating corruption. Such adjustments are essential to fulfill the principle of justice articulated in the Preamble of the 1945 Constitution of the Republic of Indonesia, which emphasizes justice rooted in the values of Pancasila.

Pancasila justice represents a framework of principles that inform the legal system. This form of justice emphasizes the importance of human rights and equal protection under the law, reflecting the foundational principles of Pancasila. The characteristics inherent in Pancasila-based justice, particularly

safeguarding human rights and the assurance of equality before the law, are intrinsically linked to the five precepts of Pancasila. Thus, Pancasila justice emerges from a thoughtful consideration of these five principles, serving as a guiding framework for legal formation that prioritizes human rights and equitable legal protection.

The discussion in this research will incorporate a comparative analysis of criminal law. Barda Nawawi (2011) identifies various terminologies associated with comparative law. In English, the term aligns with comparative law, comparative jurisprudence, and foreign law. In the Netherlands, comparative law is closely related to vergleihende rechtstlehre, while in France, it corresponds to droit comparé. In Germany, the term can be understood as rechtsvergleichung or vergleichende. Comparative jurisprudence, an English term, examines legal science principles by comparing global legal systems. Conversely, comparative law pertains to studying different foreign legal systems for comparison.

The analysis of criminal law within this research focuses on the criminalization framework concerning passive bribery corruption for legal subjects who are neither Public Servants nor State Administrators, as outlined in the Corruption Eradication Law in Singapore and Malaysia. Singapore and Malaysia, like Indonesia, are in Southeast Asia and share similar social and cultural characteristics. However, according to the Transparency International (TI) 2023 report, Singapore has achieved the highest anti-corruption rating in Southeast Asia, with Malaysia in second place. Given their success in combating corruption, Singapore and Malaysia are pertinent benchmarks for evaluating anti-corruption efforts, particularly regarding passive bribery offenses involving legal subjects outside public service or state administration.

III. Historical, Juridical, And Ethical Dimensions Of The Crime Of Bribery: Between Social Norms, National Law, And Sharia Perspectives

Bribery originates from the French term briberie, which translates to 'begging' or 'vagrancy'. In Latin, it is referred to as a bribe, which translates to a piece of bread given to a beggar. In its evolution, the term bribe has come to signify 'alms,' 'blackmail,' or 'extortion,' particularly in the context of 'gifts exchanged to exert corrupt influence' (Hidayat, 2017; Setiyawan & Farida, 2022).

Bribery represents a specific category of corruption crime, governed by Law No. 20 of 2001, which amends Law No. 31 of 1999 and focuses on the eradication of corruption crimes. Additionally, it is addressed in Law No. 1 of 2023 about the Criminal Code. Bribery, or Risywah, originates from the Arabic terms "rasya, yarsyu, rasywan," which denote "bribe" or "inducement." In society, there are various analogous terms such as "bribe," "stick money," "polish money," or "grease." Risywah, or bribery, represents a deviation from normative social conduct within group dynamics and opposes Islamic principles. Risywah refers to a gift intended to fulfill personal interests or misuse rights through improper methods (Irfan, 2011).

Rasuah, originating from the Arabic term "risywah," is defined as corruption in the standard Arabic-Indonesian dictionary. Risywah, or bribery, denotes a gift provided by an individual to a judge or another party to secure a favorable outcome in a case through unethical methods or to achieve a specific role (Syarbaini, 2024; Utami & Nugrahaningsih, 2015). Baharuddin Lopa articulates that corruption encompasses a broad spectrum of domains, such as bribery, economic manipulation, and breaches of public interest (Kasiyanto, 2018).

The literature surrounding Islamic language and law presents the concept of rishwah, or bribery, as multifaceted and profound, highlighting the critical moral considerations and the imperative role of law in upholding social integrity and justice (Irfan, 2022). The concept of rishwah encompasses not just the tangible elements of the gift but also considers the gift's intent, circumstances, and consequences about the principles of truth and justice. The authors of Al-Mu'jam Al-Wasith characterize rishwah as a form of exchange aimed at achieving a particular advantage; however, it may also serve as a rationale for unethical actions or a means of casting aspersions on legitimate ones. Rishwah can serve as a manipulative instrument that erodes moral values when applied in dishonest situations.

Louis Ma'luf and Al-Jurjani provide comparable definitions, characterizing riywah as a means to rationalize misconduct, thereby highlighting the underlying intention to manipulate the truth through such actions. According to Ali Qara'ah, risywah is defined as something provided to solicit assistance, highlighting the inherent power imbalance between the provider and the receiver. In this scenario, the gift is a mechanism to secure access or preferential treatment that is otherwise unattainable through proper channels.

Mansur bin Yunus Idris Al-Bahuti offers a comprehensive examination, differentiating between prohibited risywah and gifts that do not fall under the category of risywah. He asserts that it is unequivocally forbidden if the gift aims to sway a decision towards falsehood or to dismiss the truth.

Nonetheless, when the intention is to oppose injustice or to compel an individual to meet a rightful obligation, it does not qualify as a bribe in the prohibited context. This method emphasizes the significance of the intention behind the gift and its impact when evaluating the ethicality of an action.

Moreover, As-Sayyid Abdullah Jamaludin characterizes rishwah explicitly as a type of gift, commission, or reward deemed haram according to the primary sources of Islamic law, which include the Qur'an, Hadith, and Ijma'. This approach posits that any gift intended to sway the justice process or an objective decision, irrespective of context or outcomes, fundamentally contradicts the principles of shar'iyyah.

From a sociological perspective, Syamsul Hak Azhim Abadi characterizes risywah as a deliberate effort to create specific relationships to achieve particular objectives through strategic manipulation. This definition emphasizes the manipulative strategies involved in bribery, which frequently occur concealed and systematically within power networks. Abdullah bin Abdul Muhsin Ath-Thariqi articulates that these gifts are commonly motivated by the ambition to attain status, gain financial gain, or ingratiate oneself with influential individuals. In this context, bribery represents a clear manifestation of leveraging power structures for individual benefit, thereby eroding the integrity of the broader social framework.

Ibn Hazm presents a particularly severe evaluation, characterizing risywah as a gift designed to undermine the truth or rationalize falsehood. Bribery represents a breach of ethical standards and undermines the foundational principle of truth. Qardhawi (1997) articulated that bribery functions as a gift to an individual in a position of authority aimed at ensuring the desired outcome of a case, eliminating adversaries, securing competitive advantages, or incapacitating opponents. This perspective highlights the detrimental nature of bribery within social structures, as it erodes the integrity of the justice system and reinforces the power of individuals with greater resources.

Wiyono (2009) asserts that in modern positive law, bribery is defined as providing money, goods, or an agreement to an authority figure, such as an official, intending to sway decisions for the personal advantage of the individual offering the bribe. This explanation illustrates that bribery distorts decision-making, which should be grounded in objectivity and the public interest.

Muladi (2015) defines bribery as a promise, lure, or inappropriate gift offered to a public official or employee, either directly or indirectly, to persuade the official or employee to violate or neglect their legitimate duties.

K. Wantjik (2002) posits that bribery fundamentally contradicts social, religious, and moral norms. Furthermore, it undermines the public interest, damages the community, and jeopardizes the safety of the state.

The criminal act of bribery is defined in Law No. 11 of 1980, which addresses the corruption of the financial and administrative rights of leaders and members of the highest state institutions, including former members and leaders. This act involves transferring money, goods, or other forms of value from the bribe giver to the bribe recipient, aimed at influencing the recipient's behavior in favor of the giver's interests, even when such behavior contradicts the recipient's stance.

The crime of bribery, as defined in Law No. 20 of 2001, amending Law No. 31 of 1999 on the Eradication of Corruption, is detailed in Articles 5, 6, 11, and 12. It describes bribery as giving or promising something to a Public Servant, State Organizer, or Judge intending to influence their actions. Additionally, Articles 605 and 606 of Law No. 1 of 2023 on the Criminal Code further define bribery as giving or promising a gift or favor to a Public Servant or State Organizer to induce them to act or refrain from acting about their official duties and powers (Wahyudi, 2019).

In conclusion, the crime of bribery is characterized by the proactive behavior of an individual or group who offers promises, money, goods, or services to a State Employee or State Organizer. This is done with the intent that the State Employee or State Organizer will act or refrain from acting in a manner related to their position and authority, aligning with the desires of the giver.

Article 15 of the UNCAC establishes an international legal framework that serves as a crucial reference in the fight against corruption, particularly regarding the bribery of national public officials. This provision outlines several key elements that define the characteristics of bribery as a form of corruption. Firstly, an act qualifies as a corruption crime only if executed intentionally, indicating a conscious intention or will on the perpetrator's part. Secondly, the act must manifest as a promise, offer, or tangible or intangible gift. Thirdly, the gift must be deemed improper or inappropriate, contravening legal norms or official ethics. Lastly, the act may occur either directly or indirectly, suggesting that the involvement of intermediaries or alternative channels still falls under the category of corrupt behavior (Weilert, 2016; Wouters et al., 2013).

Additionally, the fifth element highlights that the target of the act is a national public official, specifically an individual with functions and responsibilities within a state institution. The sixth element stipulates that the act must confer benefits or advantages to the official and to other parties, including individuals or legal entities. Ultimately, the motivation behind the gift must be to influence the actions or decisions of the official in question, guiding them to act or refrain from acting in a particular manner related to their public duties. Collectively, these provisions underscore the dynamics of power and the instrumental motives inherent in bribery practices, where gifts are not mere social gestures but tools for exerting influence over the decisions or actions of state officials.

In the national context, the corruption crime manifested as bribery, as outlined in Law No. 20 of 2001 and further reinforced by Law No. 1 of 2023 regarding the Criminal Code, exhibits a comparable elemental structure. This structure is articulated through a national legal framework and systematic methodology. Initially, it is crucial to note the presence of a perpetrator, which can be either an individual or a corporation acting as the bribe giver. This highlights that the legal subject involved in bribery extends beyond individuals to include business entities or collective legal entities capable of engaging in social and economic interactions. Furthermore, a recipient of the bribe, typically a judge, civil servant, or state organizer, holds a specific position or authority within an agency or region. This underscores that the bribe taker occupies a significant role within the administrative or judicial framework of the state.

The third element pertains to the tangible manifestation of the bribe, which may be goods, promises, or gifts. The evaluation of this gift extends beyond its physical characteristics to encompass the intention behind it and its potential effect on the integrity of the recipient official. The final element involves a defined intent or purpose associated with the gift, aimed explicitly at swaying the actions or decisions of the official receiving the bribe to align with the desires of the giver. This establishes a distinct cause-and-effect relationship between the gift and the anticipated action from the bribed party, encapsulating the fundamental nature of bribery as a variant of corruption.

Upon substantive comparison, the provisions in UNCAC and Indonesian national law underscore the principle that bribery undermines public office integrity and disrupts state institutions' operational mechanisms. However, distinctions arise in the specifics of formulation and jurisdictional scope. UNCAC, functioning as an international instrument, adopts a more general and principled approach to ensure universal applicability across nations. Conversely, national regulations offer more detailed specifications concerning the parties involved, the construction of the bribe, and the criminalization processes aligned with the national legal framework (Wouters et al., 2013).

The crime of bribery is categorized under Law No. 1 of 1946 on Criminal Law Regulations, which identifies two distinct types of bribery offenses. The first type, active bribery, involves giving bribes and is classified under crimes against public authorities, specifically in Article 209 and Article 210 of Chapter VIII Book II. The second type, passive bribery, pertains to receiving bribes and falls under official crimes, as outlined in Article 418, Article 419, and Article 420 of Chapter XVIII Book II (Chazawi, 2021).

The bribery provisions outlined in Law No. 1 of 1946 concerning Criminal Law Regulations were subsequently rendered invalid, leading to their incorporation into Law No. 20 of 2001, which amends Law No. 31 of 1999 regarding the Eradication of Corruption. Consequently, the bribery offenses defined in Law No. 20 of 2001, as an amendment to Law No. 31 of 1999, categorize bribery into two distinct types: active and passive (Prayitno, 2021).

In the legal framework addressing corruption, bribery can be categorized into two primary forms: active and passive. These forms are interconnected, establishing a reciprocal dynamic between the giver and receiver in a corrupt transaction. Active bribery pertains to the individual or entity, known as ar-rashi, that intentionally offers property, money, or services to gain an undue advantage. Such offerings are typically aimed at individuals in positions of authority or influence, with the expectation that these parties will act or refrain from acting in alignment with the desires of the bribe giver, potentially breaching established rules and procedures.

Law No. 20 of 2001 amends Law No. 31 of 1999 to address the crime of active bribery specifically. According to Article 5 and Article 13, individuals may face criminal charges for providing or promising something to a State Official or State Organizer intending to influence the official's actions in a manner that contradicts their official duties or to reward them for exercising certain powers. Furthermore, Article 6 focuses on gifts or promises made to judges and advocates to sway their opinions or decisions in legal matters. This provision underscores the legal system's commitment to maintaining the independence and integrity of the judiciary, as any form of bribery is viewed as a significant threat to the principles of justice.

In contrast, the crime of passive bribery centers on the bribe taker, referred to as al-murtasyi. This designation pertains to an individual who receives a gift, promise, or similar benefit with an awareness or strong suspicion that the gift is closely tied to the authority associated with their role. Passive bribery signifies the misuse of power by public officials for personal advantage, frequently serving as a primary factor in the deterioration of transparent and responsible governance.

Law No. 20 of 2001 provides a comprehensive framework for addressing various forms of passive bribery through multiple provisions. Specifically, Articles 5, 11, 12, and 13 outlines that a Public Servant or State Organizer who accepts any form of gift, whether directly or indirectly, may face penalties if it pertains to their official authority. Furthermore, Articles 6 and 12 focus on judges and advocates who are found to have accepted gifts or promises aimed at influencing their legal opinions or decisions in the cases they oversee. This regulation underscores the shared responsibility for upholding judicial integrity, highlighting that both the giver and the receiver must ensure independence, neutrality, and fairness.

The difference between active and passive bribery is of significant importance due to the distinct legal implications of each. While both parties may face criminal charges, the methodologies for establishing proof necessitate varied strategies and types of evidence. In the case of active bribery, the emphasis is placed on demonstrating the existence of the gift alongside the intent to influence. Conversely, passive bribery requires proof centered on accepting the gift and acknowledging that the action pertains to the individual's position. Furthermore, this classification elucidates the responsibility framework and mitigates potential legal loopholes that could be exploited to evade criminal liability.

The corruption crime of bribery regulated in the Anti-Corruption Law consists of active bribery (giving bribes) and passive bribery (receiving bribes). The crime of bribery differs from the crime of extortion and gratuity in its development. Bribery occurs when service users actively offer service officers rewards to make their affairs faster, even though they violate procedures. Conversely, extortion occurs when service officers actively offer services or ask for rewards to service users to speed up their services, even though they violate procedures. Facilitation payments can be a combination of bribery and extortion. Bribery and extortion will occur if there is a transaction or deal between the parties, unlike gratuities, where there is no agreement between the two. Gratuities arise if the service user gives something to the provider without any offer or transaction. This gift seems without any intention. But behind that, gratuities are given to inspire service officers so that the service user's goal can be facilitated in the future. The term is “planting a favor,” which one day can be collected. Gratuities according to Explanation of Article 12B of the Anti-Corruption Eradication Law, namely giving in a broad sense, which includes giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment, and other facilities. Bribery and extortion have an element of promise or aim to want something from the gift. While gratuities are gifts that do not have an element of promise, gratuities can also be called bribes if the party concerned has a relationship with the position that is contrary to the obligations and rights concerned.

IV. Criminal Law Policy In Regulating The Crime Of Bribery: Reflections On The Legislative Journey In Indonesia

The law represents a facet of human creativity employed to maintain and protect human dignity. The law encompasses both rational elements and intuitive aspects. Olsen & Toddington (2016) stated, “Law comprises not only rules and decisions but also a framework of institutions that establishes the conditions necessary for a functional existence and acceptance.” The formation of law is fundamentally aimed at establishing public order, justice, and legal certainty, which align with the objectives of the nation and state of the Republic of Indonesia, as outlined in the Preamble of the 1945 Constitution. A legislative regulation employs criminal law policy to assess the prohibition of an act or to classify an act as a criminal offense (Rismawati, 2015).

As articulated by Moeljatno (1983), criminal law constitutes a segment of the legal framework operative within a nation. It delineates the foundational principles and regulations for identifying impermissible acts, accompanied by prohibitions enforced through threats or sanctions in the form of specified penalties for transgressors. Furthermore, it establishes the conditions under which individuals who breach these prohibitions may be subjected to punitive measures and the procedural mechanisms for administering such penalties in cases involving individuals suspected of infractions.

From the perspective of Barda Nawawi Arief (1996), the formulation of effective criminal law regulations is fundamentally linked to the objective of preventing crime. As Barda Nawawi Arief elaborated, crime

prevention through criminal law fundamentally constitutes a component of law enforcement policy, particularly within the realm of criminal law.

According to Barda Nawawi, crime prevention policy through criminal legislation is a fundamental component of social politics, representing a logical endeavor to attain public welfare while ensuring public protection. Regarding the criminalization policy within criminal law, Barda Nawawi Arief identifies two key issues that warrant careful consideration, particularly during the formulation stage: defining which actions should be classified as criminal offenses and deciding what sanctions should be applied to offenders.

Society's existence is dynamic, continuously evolving, and transforming in tandem with the progression of a more advanced era, which influences the legal requirements and perceptions of justice within the community. Eliminating corruption is a fundamental requirement for society, and it is the government's responsibility to achieve this goal, thereby fostering justice within the community. The culture and mindset of an increasingly advanced society have influenced the dynamics and changes in eradicating corruption in Indonesia across various aspects of life, including political, social, cultural, and defense and security. Consequently, it is essential to establish a law to eradicate corruption that aligns with contemporary standards and addresses the societal demand for justice.

The Indonesian government enacted the initial legislation to eliminate corruption following the declaration of independence of the Republic of Indonesia on August 17, 1945. This legislation is known as the Criminal Law outside the Criminal Code, specifically the Military Ruler Regulation No. Ptr/PM-06/1957 related to the elimination of corruption. This law has resulted in an increase in the criminal treasury, specifically related to "corruption." Corruption is introduced in the legal framework.

The achievement of independence from colonialism by the Indonesian people did not inherently lead to an improvement in their economic conditions or increased prosperity. The widespread corruption in different facets of government following the Proclamation of Independence significantly exacerbated the economic conditions faced by the populace. The government at that time was considered to have no authority in the eyes of the people, therefore, in 1960 the government issued a regulation to eradicate corruption, namely Government Regulation in Lieu of Law No. 24 of 1960 concerning Investigation, Prosecution and Examination of Corruption, with the hope of restoring people's trust in terms of eradicating corruption, but in its development Government Regulation in Lieu of Law No. 24 of 1960 was deemed insufficient to be able to realize the sense of justice as expected by the people, Many acts that harmed the state's finances and economy as well as national development at that time should have been punishable but were difficult for law enforcement officials to criminalize due to the unclear formulation of the crime of corruption in the regulation which only mentioned crimes or offenses that harmed the state's finances or economy directly or indirectly, therefore during the New Order government, namely in 1971 the government replaced Government Regulation in Lieu of Law No. 24 of 1960 with Law No. 3 of 1971 concerning Eradication of the Crime of Corruption.

Law No. 3 of 1971 on the Eradication of the Crime of Corruption defines the crime of corruption as actions aimed at enriching oneself, another person, or an entity that are executed "against the law." These actions are characterized by their potential to directly or indirectly harm state finances and the state economy, or they may be known or reasonably suspected to have such harmful effects. Articles about Crimes against Public Authorities and Crimes of Office, as outlined in Law No. 1 of 1946 concerning Criminal Law Regulations, fall under the category of corruption crimes defined by Law No. 3 of 1971. This includes Articles 209, 210, 387, 388, 415 to 420, 423, and Article 435. Furthermore, Law No. 3 of 1971 broadens the definition of Public Servants to encompass individuals who, while not classified as civil servants under Administrative Law, undertake specific duties and receive salaries or wages from state or regional finances or from agencies/legal entities that benefit from state or regional financial assistance, or other legal entities utilizing capital and concessions from the state or society.

As Indonesian society evolves in its educational, economic, and socio-cultural dimensions, corruption methods have become increasingly sophisticated and complex. Law No. 3 of 1971 has proven inadequate in addressing these developments, highlighting the need for a more effective legal framework for combating corruption. Consequently, in 1999, the government introduced Law No. 31 of 1999, aimed at replacing the outdated Law No. 3 of 1971 to tackle better the challenges posed by corruption.

The most significant development related to the regulation of corruption crimes in Law No. 31 of 1999 is the addition of legal subjects of corruption crimes, namely corporations, which in Law No. 3 of 1971 were not regulated, in addition, there is a special minimum penalty and the death penalty as an aggravation of punishment, limited or balanced reverse proof for the defendant and in Law No. 31 of

1999 there is also an expansion of the definition of Public Servants, namely people who receive salaries or wages from corporations that use capital or facilities from the State or society, However, after only being enacted for two years, Law No. 31 of 1999 caused a diversity of interpretations so that it was considered unable to realize justice and legal certainty for the community in terms of eradicating criminal acts of corruption, therefore, in 2001 the government issued Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Criminal Acts of Corruption with the hope that through Law No. 20 of 2001 the eradication of criminal acts of corruption can be more effective in eradicating criminal acts of corruption so as to realize justice and legal certainty for the community.

New provisions concerning corruption crimes outlined in Law No. 20 of 2001 include recognizing electronic evidence as valid "clue" evidence for proving corruption offenses. Additionally, the state is granted the right to initiate a civil lawsuit against the assets of a convicted individual that may be concealed and only identified after the court's decision becomes legally binding (inkracht). Furthermore, there is a specific convention for State Employees or State Administrators aimed at preventing the commission of bribery and gratuities, which eliminates the previous references to Articles 209, 210, 387, 388, 415 to 420, 423, 425, and Article 435 of Law No. 1 of 1946 regarding Criminal Law Regulations, as detailed in Articles 5 to 12 of Law No. 31 of 1999, opting instead to address the elements of the article directly.

The evolution of regulations concerning eradicating corruption crimes from the onset of independence to the present illustrates that, in tandem with societal advancement and civilization, the methods employed in corruption crimes have grown increasingly sophisticated and complex. This includes bribery, which is classified as one of the seven types of corruption crimes under the 2003 UNCAC, ratified by Law No. 7 of 2006.

Bribery has been a significant issue since its introduction in Law No. 1 of 1946 regarding Criminal Law Regulations, which is structured into three books. Bribery regulation is addressed explicitly in Book Two, Chapter VIII, which pertains to Crimes against Public Authorities, as outlined in Article 209. This article states that any individual who provides or promises something to an official to influence their actions contrary to their duties or who gives something to an official related to actions contrary to their responsibilities shall face a maximum penalty of two years and eight months of imprisonment or a fine not exceeding three hundred Rupiahs.

Article 209 of Law No. 1 of 1946 on Criminal Law Regulations defines bribery as the act of providing or promising something to an official to influence their actions or inactions related to their duties, particularly in ways that contradict their obligations. The interpretation of bribery, as outlined in Article 209, involves giving or promising something to an official without specifically distinguishing between private and government officials. However, it is essential to note that Article 209 is categorized within the Second Book of Crimes, Chapter VIII, which addresses Crimes against Public Authorities. Public Authorities include the President, legislature members, regional heads, and law enforcement officials performing government functions. Consequently, the provisions in this section of Law No. 1 of 1946 on Criminal Law Regulations pertain to offenses associated with government officials, indicating that the officials referenced in Article 209 are indeed government officials.

Article 209 of Law No. 1 of 1946 concerning the old Criminal Law Regulations addresses the offense of active bribery, defined as offering bribes to officials. The corresponding provision to Article 209 is located in Article 419, in the Second Book of Crimes, Chapter XXVIII, which pertains to Office Crimes and outlines the relevant regulations.

Any official who accepts a gift or promise, knowing it is intended to influence their actions contrary to their duty, shall face a maximum imprisonment of five years. This also applies to those who accept a gift, knowing it is given due to their prior actions that contravened their duties.

Article 419 of Law No. 1 of 1946 on Criminal Law Regulations delineates the offense of bribery, explicitly addressing the scenario in which an official accepts a gift or promise, fully aware that such inducement is intended to influence his actions—either to perform or refrain from performing duties associated with his role—contrary to his obligations, or as a consequence of prior actions taken in his official capacity that violate those obligations. Like the stipulations outlined in Article 209, Article 419 similarly refrains from explicitly categorizing the official in question as either a private official or a government official.

The provision outlined in Article 419 of Law No. 1 of 1946 concerning Criminal Law is within the Second Book of Crimes, specifically Chapter XXVIII, which addresses Crimes of Office. Notably, it does not explicitly reference its connection to public authorities or the government, allowing for a broader interpretation encompassing both government and private officials. However, Article 419 is intrinsically linked to Article 209, also found in Law No. 1 of 1946, located in the Second Book of Crimes, Chapter

VIII, which pertains to Crimes against Public Authorities. Consequently, the term 'officials' as defined in Article 419 is interpreted to refer specifically to those associated with Public Authorities, namely government officials.

Articles 209 and 419 of Law No. 1 of 1946, which address active and passive bribery, were fully integrated and categorized as corruption offenses in Law No. 31 of 1999 regarding the Eradication of Corruption Crimes. Consequently, the stipulations in Articles 209 and 419 continue to define the legal subjects, identifying "whoever" as the legal subject for the active bribery offense in Article 209 and "official" as the legal subject for the passive bribery offense in Article 419.

Law No. 31 of 1999, concerning the Eradication of Corruption, was later amended by Law No. 20 of 2001 and remains in effect today, governing the legal framework for Public Servants or State Administrators. The term "Public Servant" or "State Official," as defined in Law No. 20 of 2001, which amends Law No. 31 of 1999 concerning the Eradication of Corruption, is synonymous with "official," as described in Law No. 1 of 1946 regarding Criminal Law Regulations. From the implementation of Law No. 1 of 1946 concerning Criminal Law Regulations to the introduction of Law No. 20 of 2001, which amends Law No. 31 of 1999 on the Eradication of the Crime of Corruption, the legal framework addressing passive bribery has primarily focused on the categories of "official" and "Public Servant" or "State Organizer." This is evident in Law No. 1 of 1946 and further reinforced in Law No. 20 of 2001. Notably, these laws do not extend to individuals outside these defined roles as legal subjects in cases of passive bribery. Similarly, Law No. 1 of 2023, which establishes the National Criminal Code as part of Indonesia's criminal law reform, continues this trend by limiting the definition of perpetrators of passive bribery to "Public Servant" or "State Organizer."

Individuals with specific interests typically offer bribes to fulfill their desires or requests. Those in a position to grant these requests often hold authority, whether within governmental structures or in private sectors. Payments made to government officials typically correlate with activities orchestrated by the government. Motivated by personal interests, the individual offering a bribe employs various strategies to obtain benefits from government-organized activities. This may involve providing illicit payments to a Public Servant or State Organizer within a governmental agency or region, with the expectation that the recipient will either take specific actions or refrain from acting in alignment with the desires of the bribe giver.

The constriction of the definition of Public Servants or State Officials as recipients of bribes or subjects of passive bribery within the Corruption Eradication Law presents a potential vulnerability that corrupt individuals could exploit to evade criminal accountability and develop new strategies for bribery corruption. Recent developments indicate that bribery is perpetrated by public servants or state administrators acting as recipients and individuals outside these roles. This model is employed by those involved in corruption to ensure that both bribe givers and recipients evade criminal charges. The current Corruption Eradication Law primarily addresses criminal sanctions for bribe givers, or active participants, about State Employees or State Administrators while categorizing these individuals as recipients or legal subjects of the Corruption Crime of Passive Bribery.

Singapore exhibits a more advanced economic structure than Indonesia. It employs a structured approach to combating corruption through its Corruption Eradication Law, specifically the Prevention of Corruption Act (PCA). The PCA's provisions, particularly in sections 5 to 12, play a significant role in addressing the issues of bribery and gratuities.

The Prevention of Corruption Act (PCA) defines bribery in Part III Offences and Penalties Section 5, indicating that an individual may be deemed to have engaged in corrupt practices if they, either alone or in collaboration with others, intentionally solicit, receive, or agree to receive gratuities for themselves or others. Additionally, it encompasses corruptly giving, promising, or offering something to another party, whether for personal gain or that of another, in exchange for or to encourage a specific action or decision regarding certain affairs or transactions, whether they are currently in progress or planned. This encompasses actions or failures to act by any member, officer, or servant of a public authority engaged in these matters. The breach of this provision may result in a financial penalty of as much as $100,000, imprisonment for a duration of up to five years, or a combination of both consequences.

Analyzing these provisions reveals that the PCA offers an extensive and detailed definition of bribery, encompassing both the active participation in giving bribes and the passive involvement in receiving bribes or gratuities. This crime extends beyond public officials, encompassing individuals directly or indirectly engaged in associated transactions or matters. The legal subjects involved in the crime of passive bribery under the PCA encompass a range of entities. This includes natural persons as specified in Section

5(a), agents from both the private and government sectors as outlined in Section 6(a), individuals with control over government contracts or projects as detailed in Sections 7A and 10(b), members of parliament according to Section 11(b), and members of public bodies as indicated in Section 12(b). Examining legal subjects suggests that the PCA employs a more comprehensive and expansive framework in contrast to Law No. 20 of 2001 in Indonesia, which is limited to Public Servants or State Officials as offenders of passive bribery. Consequently, the PCA expands the legal framework in the pursuit of corruption eradication by not confining the perpetrators solely to their employment status.

In addition, Malaysia addresses the issue of bribery through the Malaysian Anti-Corruption Commission Act 2009 (ASPRM 2009). This regulation outlines the provisions regarding bribery in Part I Permulaan, which offers a detailed definition of "bribery." Bribery, as defined in the ASPRM 2009, encompasses a range of gifts, including monetary contributions, alms, tangible and intangible assets, financial advantages, job positions, loan payments or settlements, discounts, commissions, bonuses, rebates, and various forms of assistance or protection from punitive measures, sanctions, or legal repercussions. It encompasses contingent or otherwise commitments to deliver these types of satisfaction. This definition indicates that Malaysia has a comprehensive interpretation of bribery, extending beyond financial transactions or material benefits to encompass non-material aspects that hold significant value or influence within the power and social relations framework.

Notably, the 2009 ASPRM does not stipulate that the individual committing a bribe must be a public official. A person can face charges under anti-bribery law irrespective of their governmental status. This contrasts with the provisions outlined in Law No. 20 Year 2001 in Indonesia, which clearly defines the offenders of the corruption crime of passive bribery as Public Servants or State Administrators. Consequently, via the ASPRM 2009, Malaysia establishes an expansive jurisdictional framework to address corruption, extending the reach of accountability beyond specific formal positions or statuses of the offenders.

Additionally, the framework governing the offense of passive bribery in Malaysia is detailed in Section 16 of the ASPRM 2009. This provision indicates that any individual, whether acting alone, through an intermediary, or in collaboration with another, who engages in corrupt solicitation, acceptance, or agreement to accept a bribe for themselves or on behalf of another, or who corruptly provides, promises, or proposes a bribe to another party with the intent to sway the actions of an individual in a specific matter or transaction, is deemed guilty. Actions of this nature may encompass requests or gifts aimed at influencing an individual, including a public official, to take or refrain from taking specific actions concerning a transaction or activity currently in progress, scheduled, or anticipated, particularly relating to a public entity.

In this context, public bodies in the ASPRM 2009 are characterized as government officials or institutions that align functionally with Public Servant or State Organizer as outlined in Law No. 20 of 2001 in Indonesia. Nevertheless, the ASPRM 2009 encompasses a broader range of perpetrators since it does not consider employment status as a definitive criterion. The individuals responsible for passive bribery in Malaysia can be classified into private individuals and public officials. This stands in contrast to Indonesia, where the scope of accountability is restricted solely to Public Servants or State Administrators. This limitation presents significant challenges for law enforcement in Indonesia, as it raises the possibility that perpetrators outside these categories may evade charges despite having substantially engaged in the crime of bribery.

V. Legal Vacuum And Its Implications For The Enforcement Of Corruption Of Passive Bribery By Private Subjects

Judges and law enforcement officials, including investigators and prosecutors, utilize Articles 55 and/or 56 of the Criminal Code alongside Articles 11 and 12 of the Anti-Corruption Eradication Law. However, it is essential to note that the legal definitions of passive bribery corruption outlined in Articles 11 and 12 letters a, b, and c of the Anti-Corruption Eradication Law specify that the subjects involved must be Public Servants or State Administrators. Consequently, the enforcement of Article 55 or 56 of the Criminal Code should be limited to those who are also Public Servants or State Administrators. Extending this application to relatives, families, or individuals with close ties to the Public Servant or State Administrator who accepted the bribe is inappropriate.

The invocation of Article 55 or Article 56 of the Criminal Code in conjunction with Article 12 of the Law on the Eradication of Corruption Crimes does not necessarily imply that an individual is merely participating or assisting in executing the bribery offense. It is plausible that, due to familial ties or close

relationships, the individual may be the one who actively engages in and instigates the commission of the bribery act, driven by the intent to gain from the illicit funds received by the Public Servant or Organizer. The provisions of Article 55 of the Criminal Code serve as a norm related to the doctrine of participation, aimed at identifying perpetrators as outlined in this doctrine, including instigators, inducements, and co-perpetrators. The role of superiors as non-material perpetrators is increasingly recognized, alongside the established forms of doen plegen and uitlokken within Indonesian criminal law. While these constructs apply to superiors, it is essential to note that not all roles, such as omissions or failures to prevent corrupt acts, align with the definitions of doen plegen and uitlokken.

The lack of regulation concerning the crime of passive bribery for individuals who are not public servants or state administrators has led to varying legal interpretations among judges. This is exemplified in the judicial decision regarding the bribery involving regional balance funds in the State Budget for the Fiscal Year 2018 with the defendant Eka Kamaluddin.

The Jakarta Corruption Court's Panel of Judges determined that Eka Kamaluddin, in collaboration with Amin Santono, a Member of Commission XI of the House of Representatives, and Yaya Purnomo, a civil servant at the Ministry of Finance, was guilty of corruption. They accepted bribes totaling Rp3.685 billion from Ahmad Ghiast, the Director of CV Iwan Binangkit, and Mustafa, the Regent of Central Lampung, facilitated by Taufik Rahman, the Head of the Central Lampung Bina Marga Office. Eka Kamaluddin has been found to have breached Article 12 letter an of Law No. 31 of 1999, as amended by Law No. 20 of 2001, concerning the Eradication of Corruption, in conjunction with Article 55 paragraph (1) to 1 and Article 65 paragraph (1) of the Criminal Code. The judges' panel imposed a sentence of 4 years in prison on Eka Kamaludin, along with a fine of Rp200 million, which can be substituted by an additional month of imprisonment.

In Decision No.: 76/Pid, one panel of judges member expressed a dissenting opinion. Sus-TPK/2018/PN. Jkt. The indictment pertains to a specific element outlined in Article 12 letter of the Anti-Corruption Eradication Law, in conjunction with Article 55 paragraph (1) to 1 juncto Article 65 paragraph (1) of the Criminal Code. It is essential to note that, according to the provisions in Article 12 of the Anti-Corruption Eradication Law, the elements include civil servants and state administrators. This implies that the defendant is required to hold positions as a civil servant and state administrator, whereas Eka Kamaluddin is classified as a consultant or private party. The verdict indicates that, in the context of passive bribery, the legal subject does not include civil servants or state organizers who are not involved in the crime of office. Consequently, the civil servant or state administrator role attributed to the defendant, Eka Kalamuddin, is not established. Based on this analysis, the panel of judges concludes that Eka Kamaludin, identified as a private consultant, should be acquitted of the Public Prosecutor's charges under both Article 12 Letter A and Article 11 of the Law on the Eradication of Corruption Crimes, which require the presence of civil servants and state administrators as perpetrators of the alleged criminal acts. In his dissenting opinion, one of the judges argued that "The main element of civil servants and gifts" applies to civil servants, indicating that this element is not satisfied. Consequently, since the elements of the indictment are not met, the defendant should be acquitted of these charges.

The lack of regulation concerning the legal status of passive bribery involving non-state Employees or State Administrators in the Corruption Eradication Law may lead to a situation where individuals committing such acts are not held accountable. This is exemplified by the case related to the Procurement of Goods for Emergency Response to the Covid-19 Pandemic Disaster at the Social Service of the West Bandung Regency Government during the 2020 Fiscal Year, which included multiple defendants, such as Aa Umbara Sutisna, the Regent of West Bandung, Andri Wibawa, his biological son, and M. Totoh Gunawan. Totoh Gunawan, a long-time friend of Aa Umbara Sutisna, owns PT Jagat Dirgantara and CV Sentral Sayuran Garden City Lembang, alongside Andri Wibawa and M. In this instance, Totoh Gunawan represents legal entities that do not fall under State Employees or State Administrators.

Aa Umbara Sutisna was brought to trial by the KPK Public Prosecutor alongside Andri Wibawa, and M. Totoh Gunawan is identified as an individual involved in actions related to contracting, procurement, or rental and gratification, specifically highlighting Aa Umbara Sutisna, who served as a State Employee and held the position of Regent of West Bandung. He orchestrated the appointment of his biological son, Andri Wibawa, along with M. Totoh Gunawan, a close associate of Aa Umbara Sutisna, who serves as the executor for the Procurement of Goods for Emergency Response to the Covid-19 Pandemic Disaster within the Social Service of the West Bandung Regency Government. In exchange, Andri Wibawa and M. Totoh Gunawan, a close associate of Aa Umbara Sutisna, played a significant role in the Procurement of Goods for Emergency Response to the Covid-19 Pandemic Disaster, specifically for the Social Service

of the West Bandung Regency Government during the 2020 Budget Year. In exchange, Andri Wibawa and M. Totoh Gunawan are set to offer a fee of 1%. Totoh Gunawan will allocate a fee of 1% to the Social Service of the West Bandung Regency Government based on the project's value obtained, which will subsequently involve Andri Wibawa through CV. Jayakusuma Cipta Mandiri and CV Satria Jakatamilung have been awarded a procurement project for Social Safety Net (JPS) food packages, specifically for the COVID-19 Pandemic Disaster Emergency Response Activities. The project involves the distribution of 120,675 packages, with a total value of Rp 36,202,500,000 (thirty-six billion two hundred two million five hundred thousand rupiahs). Meanwhile, M. Totoh Gunawan, via his enterprises, specifically PT Jagat Dirgantara and CV. Sentral Sayuran Garden City received 55,378 food packages valued at Rp 15,948,750,000.

The Corruption Eradication Commission Public Prosecutor has brought cumulative charges against the Defendant, Aa Umbara Sutisna. The first charge pertains to a violation of Article 12 letter i of Law No. 31 of 1999, which addresses the Eradication of Corruption, as amended by Law No. 20 of 2001, concerning amendments to Law No. 31 of 1999 regarding the same subject. Article 55 paragraph (1) to 1 of the Criminal Code, and additionally, the violation of Article 12 B of Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001 regarding the Amendment to Law No. 31 of 1999 on the Eradication of Corruption jo. Article 65, paragraph (1) of the Criminal Code addresses the situation concerning Andri Wibawa and M. Totoh Gunawan, who faces charges under Article 12 letter i of Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001, which pertains to the amendment of Law No. 31 of 1999 on the Eradication of Corruption jo: article 55, paragraph (1) to 1 of the Criminal Code.

The Panel of Judges at the Bandung Corruption Court contended that Defendant Aa Umbara serves as a State Organizer, specifically a State Official tasked with executing functions in alignment with the relevant laws and regulations. Defendant Aa Umbara Sutisna, serving as the Regent of West Bandung Regency from 2018 to 2023, receives compensation in the form of salaries, allowances, and honoraria from the State via the West Bandung Regency Budget. This positions him as a State Employee. Evidence presented during the trial demonstrates that Defendant Aa Umbara Sutisna has been legally and convincingly found to have intentionally engaged in contracting, procurement, or rental activities and gratification, as alleged by the Public Prosecutor. Specifically, he is charged with violating Article 12 letter i of Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001, which pertains to the same subject matter. Article 55 paragraph (1) to 1 of the Criminal Code, and additionally, the infringement of Article 12 B of Law No. 31 of 1999 regarding the Eradication of Corruption, as modified by Law No. 20 of 2001, which pertains to amendments to Law No. 31 of 1999 concerning the Eradication of Corruption jo. Paragraph (1) of Article 65 in the Criminal Code.

The guilty verdict issued for Aa Umbara Sutisna contrasts with the verdicts rendered for Andri Wibawa and the defendant, M. Totoh Gunawan. The Panel of Judges at the Bandung Corruption Court concluded that Andri Wibawa and the defendant, M., were involved in the case under consideration. Totoh Gunawan was not legally and convincingly proven to have committed the crime of corruption as alleged by the Public Prosecutor, specifically violating Article 12 letter i of Law No. 31 of 1999 concerning the Eradication of the Crime of Corruption, as amended by Law No. 20 of 2001 regarding Amendments to Law No. 31 of 1999 concerning the Eradication of the Crime of Corruption jo. According to Article 55, paragraph (1) to 1 of the Criminal Code, the conclusion reached is the acquittal of the defendants Andri Wibawa and M. Totoh Gunawan. The Panel of Judges concluded that the defendant, Andri Wibawa, and the defendant, M. The Panel of Judges determined that the Public Prosecutor's Indictment exhibited a lack of diligence, as the defendant's status did not align with the Article cited by the Public Prosecutor. Specifically, Article 12 Letter I of the Anti-Corruption Law includes the requirement of being a Public Servant or State Organizer, rendering the application of Article 12 Letter I of Law No. 31 of 1999, as amended by Law No. 20 of 2001, inappropriate in this context: article 55, paragraph (1) to 1 of the Criminal Code.

The analysis of the cases above reveals that the lack of a regulatory framework regarding the legal status of individuals involved in passive bribery corruption, who are neither Public Servants nor State Administrators, has led to varied interpretations by judges and law enforcement officials, including Investigators and Prosecutors. This ambiguity has allowed perpetrators of passive bribery corruption, who do not hold the status of Public Servants or State Administrators, to evade punishment, thereby contributing to legal uncertainty and perceived injustice within the community.

Wawan Yunarwanto, an Investigator at the Corruption Eradication Commission, points out that the crimes outlined in Articles 11, 12 a, b, and c of the Corruption Eradication Law focus solely on Public Servants, State Organizers, and Judges. However, a significant risk exists of passive bribery corruption involving individuals who are not classified as Public Servants or State Organizers or Judges yet maintain close relationships with these officials. Such individuals can influence the decisions or actions of Judges, State Officials, or State Organizers, aligning them with the interests of the bribe giver. Therefore, it is essential to establish a regulatory framework for the punishment of passive bribery corruption that encompasses perpetrators or legal subjects outside the current definitions in the Corruption Eradication Law.

Eko Aryanto, a Judge at the Jakarta Corruption Court, states that an individual may face accusations of a criminal offense if their actions contradict the law or the prevailing societal values of decency. Judges, when imposing criminal sanctions, adhere to established rules, formal provisions, and the evidence presented during the trial. This approach ensures that the verdict aligns with societal notions of justice and contributes to the realization of legal certainty. The presence of explicit provisions regarding legal entities that are neither Public Servants nor State Administrators as offenders of passive bribery is crucial. This aspect, which remains unaddressed in Law No. 20 of 2001, amending Law No. 31 of 1999 on the Eradication of Corruption Crimes, is essential for mitigating disparities and inconsistencies in judicial decisions concerning passive bribery offenses involving these legal subjects.

Judges are perceived as having comprehensive knowledge of the laws, thus pivotal in enforcing legal principles. Judges must not only ensure fairness but also possess the ability to interpret the law in alignment with societal needs and developments. This interpretation should still consider the principles of justice, legal certainty, and benefit values. A judge's decisions involve applying established law and implementing legal reforms when confronted with cases that lack regulatory guidance or where existing rules are considered inadequate for the current circumstances and conditions.

In their examination and decision-making processes, judges encounter the reality that written laws (legislation) do not always provide solutions to the issues presented in cases. Judges frequently discover the law (rechtsvinding) and generate new legal principles (rechtsschepping) to enhance the framework of existing legislation when adjudicating a case. Judges maintain an objective assessment of the legal facts presented during the trial of a criminal case. The uniqueness of each case, influenced by its specific position and background, combined with the varying legal perspectives of judges based on their knowledge, contributes to the differences in judicial decisions. Some frequently perceive this variation as a manifestation of injustice.

Andrew Ashworth stated that the variation in sentencing is inherently linked to the discretion exercised by judges when determining sentences in criminal cases. The variation in sentencing in Indonesia is intricately linked to the autonomy of judges. The judge must not be influenced by any party when delivering a verdict. Law No. 48 of 2009 on Judicial Power mandates that judges must investigate, adhere to, and comprehend the legal values and societal perceptions of justice that exist within the community. The punishment model outlined in the legislation, specifically establishing maximum criminal sanctions, plays a significant role in this context. The judge must consider both the defendant's positive and negative traits. Numerous elements contribute to the variation in decision-making processes. Ultimately, the judge plays the most significant role in determining the disparity.

Judges' autonomy in administering criminal penalties is subject to certain constraints. Eva Achjani Zulfa (2011) articulated that nulla poena sine lege constrains judges in determining criminal sanctions to those parameters explicitly established within the legislation. The existence of a measure does not eliminate the issue of disparity, as the gap between the minimum and maximum criminal sanctions within that measure remains excessively wide.

It is not feasible to eradicate discrepancies in judges' rulings for comparable cases entirely. Efforts have been implemented to reduce disparities, including establishing sentencing guidelines. The potential for judges to misuse their discretion suggests that implementing sentencing guidelines is an effective method to restrict their autonomy. According to Andrew Asworth (2005), the sentencing guidelines should be characterized as 'a firm and restrictive guideline'. Similarly, Eva Achjani Zulfa (2011) articulated that the concept of proportional punishment evolved into formulating a sentencing guideline designed to minimize the subjectivity of judges in case determinations.

The diminishment of the law's purpose signifies a decline in humanity and justice, leading to a detachment from human morality. Consequently, the law risks becoming fragile or degraded, reduced to mere formalities that stray from societal needs and the philosophical ideals of justice. This situation leads

to the law resembling rusty iron; it serves merely as a tool that becomes increasingly fragile in the face of uncontrolled social dynamics. Ultimately, the law loses its relevance to the fundamental values that embody the essence of social life. The author's perspective aligns with that of Satjipto Rahardjo (2003), who asserts that the law has inherent flaws from its inception, resulting in its continual struggle to keep pace with social developments.

The diminished legal significance regarding the punishment of legal subjects involved in passive bribery corruption crimes, who are neither State Employees nor State Administrators, stems from the unclear legal reasoning of judges. This ambiguity arises from the lack of specific regulations addressing these legal subjects within the Corruption Eradication Law. Judges' interpretation and decisions regarding the imposition of criminal provisions on perpetrators of passive bribery corruption, particularly those not classified as Public Servants or State Organizers, are significantly impacted. In the cases of bribery corruption outlined earlier, the strategy to address perpetrators of passive bribery corruption outside the Public Servant or State Organizer framework involves linking the application of Article 12 of the Anti-Corruption Eradication Law with Article 55 of the Criminal Code.

The development of criminal law lacks an explicit provision that defines the criteria for categorizing an individual as a participant in a criminal act. This concept has evolved in practice through legal opinions, court rulings, and theories proposed by experts in criminal law. The Memorie van Toelichting (MvT) defines a co-perpetrator or medepleger as an individual who deliberately engages in the execution of a criminal act. The explanation provided by the MvT is succinct yet necessitates additional detail to ensure its appropriate application across different contexts in criminal cases. Pompe (1959) is one of the experts who offers further insights on this matter. Pompe identifies three potential forms of involvement in committing a criminal offense. Initially, each individual involved satisfies all components outlined in the definition of the crime, exemplified by a scenario where two individuals collaborate to execute theft in a rice warehouse. Secondly, it is observed that only one of the individuals involved meets all the criteria of the offense, whereas the other does not. For instance, in a scenario involving two pickpockets collaborating, one individual distracts the victim by bumping into them while the other steals the victim's wallet. Third, while none of the perpetrators individually meet all the criteria of the offense, they collectively execute the criminal act. For instance, in the case of aggravated theft, as outlined in Article 363 paragraph (1) 5th of the Criminal Code, one perpetrator is responsible for overseeing or guarding. At the same time, the other enters the premises to retrieve items and returns them to the first perpetrator. Analyzing the perspectives of MvT and Pompe regarding the criteria for identifying a participant maker (medepleger), it can be concluded that a person qualifies as a participant maker if their actions contribute to the commission of a criminal offense and they share the same intent with the executor (pleger). The participant-maker's actions are not required to meet all elements of the criminal offense, provided that these actions contribute to the offense's execution and that the participant-maker shares the same intent as the executor. Article 55 of the Criminal Code cannot be applied immediately to individuals involved in the crime of passive bribery who are not Public Servants or State Administrators. Its application necessitates delineating the perpetrator's role in committing passive bribery. The individual who initiates the crime should not be conflated with those who ordered or participated in its execution. Furthermore, the Corruption Eradication Law provides a specific qualification indicating that the legal subject of a bribe or passive bribe must be a Public Servant or State Administrator. Consequently, the enforcement of Article 55 of the Criminal Code applies only to those who participate in the crime of passive bribery and hold the status of Public Servant or State Administrator.

According to Mia Amiati Iskandar, the crimes outlined in Articles 11, 12 a, b, and c of the Anti-Corruption Eradication Law focus solely on Public Servants and Judges as legal subjects. However, it is essential to recognize that the potential for passive bribery corruption extends beyond these categories. Individuals who are not civil servants or judges yet maintain a close relationship with a Judge, Public Servant, or State Organizer can also engage in such criminal acts. Their influence may lead these officials to act according to the desires of the bribe giver.

The legal framework regarding passive bribery, as outlined in Article 11 and Article 12 letters a, b, and c of the Law on the Eradication of Corruption Crimes, cannot be legally linked to Article 55 of the Criminal Code. The application of penalties to relatives, families, or parties closely associated with a Public Official or State Organizer involved in receiving a bribe does not necessarily equate to their involvement or facilitation in executing the criminal act of passive bribery. Articles 11 and 12, letters a, b, and c, of the Law on the Eradication of Corruption Crimes define specific offenses that explicitly identify the legal subject as a Public Servant or State Organizer, indicating that these provisions apply

solely to Public Servants or State Organizers. The occurrence of corruption through bribery is not exclusively dependent on the intentions of the bribe giver or the State Organizer accepting the bribe. It can also stem from the intentions of family members, relatives, or individuals closely associated with the Public Servant or State Organizer, who may exploit these relationships to obtain benefits.

The interpretation of Article 55 of the Criminal Code, which categorizes relatives, families, or parties closely associated with a State Employee or State Organizer as participants benefiting from the proceeds of bribery, is flawed. This is because such actions lack the necessary elements of the crime of passive bribery as outlined in Article 12 of the Law on the Eradication of Corruption Crimes. Individuals related to or closely associated with State Employees or State Administrators who benefit from the proceeds of bribery are implicated in the offense of money laundering, as outlined in Law No. 8 of 2010 regarding the Prevention and Eradication of Money Laundering.

The current lack of regulation regarding legal subjects who are neither Public Servants nor State Administrators as perpetrators of passive bribery corruption in the Anti-Corruption Law creates a rechtsvacuum condition. This situation undermines criminal law policy's objectives, which aim to provide legal certainty and a clear foundation for legal interpretation in bribery cases. Marc Ancel (1998) posits that “Penal Policy” constitutes a science that enhances the formulation of effective legal regulations. It serves as a resource for lawmakers, guiding not only their legislative efforts but also assisting courts in applying the law and those responsible for implementing court decisions.

Ancel’s perspective illustrates that criminal law policy, viewed through a scientific lens, must prioritize formulating positive legal regulations. In this context, ‘better’ implies that effective criminal law should not only be well-drafted but also capable of being operationalized by law enforcement, particularly concerning the application of criminal law. Ancel demonstrates that legal certainty is essential in shaping criminal law policy, particularly when analyzed through the lens of Penal Policy.

The lack of regulation concerning legal subjects who are neither Public Servants nor State Administrators in the Law on the Eradication of Corruption has resulted in legal ambiguity. Consequently, law enforcement officials, such as investigators, prosecutors, and judges, exhibit varying perspectives and interpretations of the law based on their beliefs when addressing bribery and corruption cases. This scenario adversely affects the effectiveness of law enforcement regarding corruption crimes and contributes to societal injustice.

VI. Legal Certainty And Regulation Of Corruption In Indonesia: Integrating Pancasila Principles In Criminal Law

The principle of legal certainty in Indonesia has evolved into a national principle, reflecting its universal legal significance and alignment with the legal ideals of Pancasila, specifically Precept II (Fair and Civilized Humanity) and Precept V (Social Justice for All Indonesian People) (Setiyono & Natalis, 2023). As a national legal principle, its implementation is foundational in creating laws and regulations. This is outlined in Article 1 paragraph (1) of Law No. 1 of 1946 regarding Criminal Law Regulations, establishing the principle of legal certainty (legality). Specifically, it states that an act cannot be punished unless it is based on the provisions of existing criminal legislation.

The foundation of legal certainty in the evolution of criminal law rests on the principle that laws must be codified as positive criminal law. Discussing criminal law parallels the examination of Dutch colonial heritage law, particularly in its documented nature. The emergence of written criminal law coincided with the arrival of the Dutch in Indonesia. Initially, customary criminal law served as the foundation for the criminal law system in Indonesia. Criminal law encompasses the comprehensive framework that delineates which actions constitute criminal offenses, identifies prohibited behaviors, and specifies the penalties imposed on individuals disregarding these prohibitions. Pompe’s perspective reinforces that criminal law depends on the principle of legal certainty. Pempe (1959) articulated that criminal law constitutes a comprehensive framework of rules concerning legal provisions associated with punishable acts by established criminal regulations.

Jan Michiel Otto (2012) asserts that legal certainty encompasses multiple significant elements. Initially, well-defined, uniform, and easily accessible regulations were promulgated and acknowledged by governmental authorities. Secondly, government agencies are expected to implement legal rules uniformly and adhere to established provisions. Third, citizens need to comprehend and concur with the content of the regulations, enabling them to align with the standards established by the government. Moreover, judges are anticipated to maintain independence in consistently applying the rule of law while

adjudicating legal disputes. Ultimately, the decisions made by the judiciary need to be executed tangibly, thereby enhancing the effectiveness of the current legal framework.

Apeldoorn (1978) contended that criminal law is characterized by its distinction between material criminal law, which pertains to criminal acts that may incur sanctions, and formal criminal law, which focuses on material criminal law enforcement mechanisms. The lack of regulation concerning the legal status of individuals involved in passive bribery, who are neither Public Servants nor State Organizers, within the Corruption Eradication Law leads to ineffective enforcement of material criminal law. This inadequacy affects the imposition of criminal sanctions on those who receive bribes but do not hold public office. Consequently, this situation also undermines the enforcement of formal criminal law, specifically the Criminal Procedure Law.

Simons (1929) subsequently categorized criminal law into two distinct branches: objective criminal law and subjective criminal law. Objective criminal law is the applicable or positive, commonly known as Ius Poenale. Criminal law, in its subjective interpretation, refers to the authority of the State to link breaches of regulations with punitive measures, known as (Ius Puniendi). According to Simons' perspective, it can be inferred that the lack of regulation concerning legal subjects who are neither Public Servants nor State Administrators as passive bribe-takers results from the restricted definition of Public Servants or State Administrators in Law No. 20 of 2001, which amends Law No. 31 of 1999 on the Eradication of Corruption. This situation pertains to the domain of criminal law in a subjective context, encompassing Ius Puniendi or Ius Constituendum. The issue within this subjective aspect of criminal law subsequently transitions to the objective element, Ius Poenale or Ius Constitutum, highlighting a legal vacuum.

Law No. 20 of 2001, which amends Law No. 31 of 1999 regarding the Eradication of Corruption, delineates 30 distinct corruption offenses. These offenses can be categorized into seven groups, including losses to State finances as outlined in Article 2 and Article 3, and bribery as specified in Article 5, paragraph (1), letters a and b. Paragraph (2); Article 13, Article 12 letters a, b, c, d; Article 11, Article 6 paragraph (1) letters a and b), embezzlement in office (Article 8, Article 9, Article 10 letters a, b, c), extortion (Article 12, letters e, g, h), fraudulent acts (Article 7 paragraph (1) letters a, b, c, d, and paragraph (2)), conflict of interest in procurement (Article 12 letter i) and Gratification (Article 12B jo. Article 12 C).

Bribery in Indonesia was initially perceived as a private matter, leading to the resolution of any violations through private legal avenues. The act of one private party bribing another was considered unlawful under civil law, as evidenced by the Lindenbaum-Cohen Arrest of 1919. Cohen and Lindenbaum were both proprietors of printing presses and competed with one another. Cohen engaged in unethical practices by bribing a Lindenbaum employee to obtain a list of customers, aiming to increase his clientele. The Dutch Supreme Court subsequently ruled that Cohen's actions were unlawful (Adji, 2001).

Bribery regulation within the private sector is subsequently addressed in public law via criminal law mechanisms. Before Indonesia signed and ratified the UNCAC, the country had already established Law No. 11 of 1980 concerning the Crime of Bribery, which addresses active and passive bribery offenses. This law pertains to subjects that fall outside the scope of Law No. 3 of 1971, which focused on eradicating corruption and has since been revoked and replaced by Law No. 31 of 1999, aimed at combating corruption, as amended by Law No. 20 of 2001. Article 2 establishes an explicit prohibition against individuals offering bribes to others with the intent that the recipient will either fulfill or neglect their obligations in a manner that harms the public interest. In contrast, Article 3 outlines the criminal provisions directed at the party accepting the bribe. Bribing an individual who does not hold a position as a civil servant or state official does not meet the criteria for corruption as defined by the Corruption Eradication Law. The Corruption Eradication Law specifically addresses bribery involving civil servants, who can act as both recipients and givers of bribes.

In contrast, non-civil servants or private individuals, including entrepreneurs, are limited to the role of bribe-givers only. Oemar Seno Adji states that civil servants are the primary subjects of corruption crimes. In contrast, non-civil servants can only be implicated in bribery-related crimes, as the Anti-Corruption Law outlines (I. S. Adji, 2012).

Seno Adji's perspective implies that even though both articles employ the term "whoever," this does not indicate that they are communa delict; instead, they are delict propria. The perspective of Oemar Seno Adji subsequently established the formal foundation for understanding the role of the private sector as a subject involved in acts of corruption. The role of the private sector as a legal entity in the context of corruption has evolved beyond the interpretations provided by Oemar Seno Adji (O. S. Adji & Wahyono, 1985). The minutes of the discussion regarding Law No. 20 of 2001, which amends Law No. 31 of 1999

on the Eradication of the Crime of Corruption, reveal a notable absence of dialogue concerning the legal subject of passive bribery involving individuals who are not Public Servants or State Administrators. The rationale behind the actions of the bribe taker remains consistent with the reasoning articulated by Oemar Seno Adji, indicating that the legal framework surrounding passive bribery exclusively applies to Public Servants or State Administrators endowed with the authority to influence state policy.

Seno Adji's perspective is supported by the ongoing formulation regarding the actions of individuals involved in receiving bribes or passive bribes among Civil Servants or State Organizers, which has been preserved until the amendment of Law No. 31 of 1999 on the Eradication of Corruption by Law No. 20 of 2001. The Problem Inventory List (DIM) includes changing Article 12 under DIM number 34. The discussions in the Working Committee Meeting concerning DIM Law No. 20 from 2001 were limited to prison sanctions.

The crime of bribery in Indonesia is governed by Articles 5, 6, 11, and 12 of Law No. 20 Year 2001, which focuses on eradicating corruption. Identifying the components of a criminal act is essential for assessing its provability and enforceability under the law. D. Schaffmeister, N. Keijner, and E. PH. Sutorius (2011), contended that the critical components of a criminal act encompass the characteristics of unlawfulness or fault, the documented elements in the definition of the offense, and the penalties applied. Achmad Ali (2015) identifies two primary methodologies for comprehending the law. The empirical approach encompasses socio-psychological, anthropological, economic, and religious dimensions, positioning law as a phenomenon observable in practice. Secondly, a strategy that focuses on the structure of law as consisting of rules, norms, or principles. This approach delineates that legal elements encompass legal principles, standards, and regulations, collectively establishing the foundation for effective law enforcement.

In criminal law, three fundamental principles must be adhered to when considering the criminalization of an act: Lex Scripta, Lex Certa, and Lex Stricta. Lex Scripta posits that statutory law must govern behaviors deemed criminal offenses. Those actions cannot be classified as criminal offenses without legal regulations outlining prohibitions and sanctions for specific actions. Lex Certa underscores the necessity for lawmakers to provide clear definitions, avoiding vagueness (nullum crimen sine lege stricta), to eliminate any ambiguity in the formulation of prohibited acts and corresponding sanctions. Ambiguous or excessively intricate formulations will inevitably lead to legal uncertainty and obstruct the effectiveness of (criminal) prosecution efforts, as individuals will consistently argue that such provisions fail to serve as practical guidelines for behavior. Lex Stricta asserts that material within the legislation must be understood strictly according to its written form, meaning that the principle of a provision or legislation cannot be extended beyond what is explicitly stated in the text (Rahardjo, 2006).

The ratification of the United Nations Convention Against Corruption (UNCAC) in Indonesia is formalized through Law No. 7 of 2006, which pertains to the ratification of the UNCAC established in 2003. Despite the ratification of the United Nations Convention Against Corruption through Law of the Republic of Indonesia No. 7 of 2006, which pertains to the UNCAC of 2003, the formulation and implementation of Law No. 20 of 2001, which amends Law No. 31 of 1999 regarding the eradication of corruption, remain misaligned with the provisions of UNCAC 2003.

The UNCAC aims to prevent and eliminate corruption thoroughly and effectively systematically. In this scenario, it is crucial to establish effective coordination among institutions dedicated to combating corruption, which includes ensuring safeguards for individuals who report suspected corrupt activities. Furthermore, UNCAC promotes international collaboration and technical support, along with the repatriation of illicit assets, applicable to both member states of the convention and non-member states. Furthermore, UNCAC advocates for integrity, accountability, transparency, and effective management within the public sector.

UNCAC establishes a framework that criminalizes eleven distinct categories of corruption offenses. These include bribery involving national and international public officials, embezzlement perpetrated by public officials, and the abuse of functions by those in power. The crimes are classified into two distinct categories: mandatory offenses, which require regulation in the national laws of member states, and non-mandatory offenses, which do not necessitate regulation by member states. The formulation of criminal offenses regulated in UNCAC exhibits distinct characteristics, frequently resulting in overlaps among various criminalized acts, which complicates law enforcement in accordance with the principle of lex certa (Hiariej, 2020). This may hinder a clear comprehension of the necessary components required for law enforcement. The legal framework for enforcing passive bribery is delineated in Article 15 and Article 16

of UNCAC. These articles require each member state to develop legislation that categorizes bribery, applicable to both national and international public officials, as a punishable offense.

In relation to Article 16 of the UNCAC, it can be concluded that each member state shall enact such laws and other measures as it deems necessary, when it is found that a promise, offer or gift has been made to a foreign public official or a public international official, directly or indirectly, of an undue advantage, for the official himself or herself or for any other person or entity, in order for the official to act or refrain from acting in the performance of his or her official duties, to obtain or retain business or other undue advantage in relation to the conduct of international affairs, subsection (2) further provides that each member state shall consider taking such legislative and other measures as may be necessary to make it a criminal offence, when knowingly committed, to solicit or accept by a foreign public official or an official of a public international organization, directly or indirectly, any undue advantage, for the official himself or herself or any other person or body, to induce the official to act or omit to act in the performance of his or her official duties.

The legal subjects involved in the passive bribery corruption offense, as outlined in Article 15 and Article 16 of UNCAC, are public officials. Article 15 pertains to national public officials or those within the governmental framework, while Article 16 addresses foreign or international public officials. Articles 15 and 16 of UNCAC contain terms such as "directly" and “indirectly,” which broaden the scope of legal subjects public officials consider about bribery. Consequently, under these articles, it is not solely public officials who can be prosecuted for passive bribery; any individual may be deemed a perpetrator of bribery or passive bribery, provided that the bribe is intended to influence public officials to act against their duties. This contrasts Articles 11 and 12 of Law No. 20 of 2001, which amend Law No. 31 of 1999, as these articles specifically define “Public Servants” or “State Administrators” as the exclusive legal subjects in passive bribery corruption cases.

Article 18 of the UNCAC outlines the regulations about the legal subject of passive bribery as a corruption crime. This article outlines the requirement for each member state to evaluate the adoption of legislative and other measures essential for designating specific acts as criminal offenses. This encompasses commitments, proposals, or incentives directed towards a public official or another individual, whether directly or indirectly, that provide an undue benefit. The objective is for the public official or individual to exploit their actual and perceived influence to gain an unauthorized benefit from the public administration or authority. This article further encompasses stipulations regarding soliciting or accepting improper benefits by public officials or other individuals. This action aims to enable the public official or individual to exploit their influence to gain an unethical advantage from the public administration or authority.

Article 18 of the UNCAC outlines the obligation of each member state to evaluate the implementation of laws and policies aimed at law enforcement concerning the promise, offer, or provision of an undue advantage to a public official or any individual, whether directly or indirectly. This is intended to ensure that such actions do not lead to the abuse of influence by the public official or individual about the administration or public policy of the member state, thereby securing an undue advantage for the inducer or another party. Additionally, Article 18 addresses the request or acceptance of an undue advantage by a public official or any individual, again emphasizing the potential for abuse of influence over the administration or public policy to secure a disproportionate advantage. Consequently, as outlined in Article 18 of the UNCAC, the offense of passive bribery or receiving bribes pertains to the misuse of influence by public officials and individuals outside of this category. The legal subject encompasses public officials and those who solicit or accept promises, offers, or gifts from parties with vested interests.

The offense of bribery is not confined to governmental structures; it can also manifest within the private sector. Consequently, UNCAC has established regulations about bribery in this domain, as outlined in Article 21, as follows: Article 21 of the UNCAC addresses the issue of bribery within the private sector. It recommends that each member state implement appropriate laws and legislative measures to effectively enforce regulations concerning acts of corruption related to economic, financial, or trade activities. This article examines two primary actions that should be subject to criminalization: firstly, the promise, offer, or provision of an undue advantage to an individual involved in the private sector, whether directly or indirectly. This encourages the individual to violate their obligations through either action or inaction. Secondly, this article addresses the solicitation or acceptance of unauthorized benefits by individuals involved in a private sector entity intended to influence their actions or inactions that contradict their responsibilities.

Article 21 of the UNCAC outlines that corruption through bribery is not confined to governmental contexts; it can also manifest within the private sector's economic, financial, or trade activities. Furthermore, individuals engaging in bribery are not limited to public officials; they may also originate from the private sector, regardless of their status as non-public officials.

The issues of bribery associated with abuse of influence and corruption in the private sector, as outlined in UNCAC, are classified as non-mandatory offenses. This classification indicates that member states of the convention are not required to integrate these provisions into their national legislation. This is evident in Indonesia, which has yet to adopt the stipulations found in Article 18 and Article 21 of UNCAC within its Anti-Corruption Eradication Law. The regulations concerning the crime of bribery, as outlined in Law No. 20 of 2001, which amends Law No. 31 of 1999 on the Eradication of Corruption, are primarily confined to the realm of government. They specifically address legal subjects or individuals who receive bribes, namely State Employees or State Administrators. However, recent developments indicate that the individuals involved in passive bribery are not exclusively from these government sectors. Many cases now include individuals who are not State Employees or State Administrators, including family members, relatives, or others who maintain close relationships with those in positions of authority within government agencies or regions.

Ibnu Artadi, a Professor of Criminal Law at Gunung Jati University Cirebon, analyzes Article 5 of Law No. 20 of 2001, which amends Law No. 31 of 1999 regarding the Eradication of the Crime of Corruption. He notes that this article restrictively defines the legal subjects who can be convicted as recipients of bribes or passive bribery corruption to State Employees or State Administrators. However, he points out that passive bribery corruption is perpetrated by these officials and individuals outside this category, including family members, relatives, or others with close ties to State Employees or State Administrators. The impetus for bribery corruption typically originates from family members, relatives, or individuals closely associated with State Employees or State Organizers. Therefore, it is essential to establish regulations concerning the individuals or legal entities involved in passive bribery corruption who do not hold positions as State Employees or State Organizers.

Ibn Artadi's perspective indicates that the evolution of the concept of punishment is influenced more by the dynamics of community life than by the stipulations of positive criminal law regulations. The fixed nature of legal frameworks in their evolution presents challenges in tracking the ever-changing dynamics of criminal behavior. Criminal events often emerge before the establishment of corresponding regulations.

Sudikno Mertokusumo (2010) defines legal discovery as a systematic endeavor to identify and ascertain rules or laws about various occurrences within society. According to Meuwissen (2006) , legal discovery is a systematic process that solidifies the outputs of law formation. Additionally, Meuwissen asserts that legal discovery involves identifying specific legal regulations that directly result in legal implications for societal situations. Meuwissen subsequently noted that, in a particular context, legal discovery serves as a manifestation of the process of law formation.

Pancasila serves as the fundamental basis for the Unitary State of the Republic of Indonesia, as articulated in the Preamble of the 1945 Constitution of the Republic of Indonesia in the Fourth Aline: To establish an Indonesian State Government that safeguards the entire Indonesian nation and all citizens while promoting general welfare, enhancing the quality of life, and contributing to a global order founded on independence, enduring peace, and social justice, the framework of Indonesian national independence is articulated through the Indonesian State Constitution. This constitution is structured around the principles of the Republic of Indonesia, emphasizing popular sovereignty grounded in the belief in One True God, Fair and Civilized Humanity, Indonesian Unity, Democracy Guided by Wisdom in Consultation/Representation, and the realization of Social Justice for all Indonesian citizens.

The description in the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia indicates that Pancasila serves as a foundational guide for the state in achieving a democratic, religious, and humanist legal framework. This implies that the formulation of all legal regulations and their implementation must align with the values inherent in each of the Pancasila precepts. Consequently, the legal state in Indonesia is characterized as a Pancasila legal state, which is grounded not only in legal statutes but also in the supreme norm of Pancasila.

In discussing Pancasila as the foundational source of law, Kaelan (1991) asserts that the values inherent in Pancasila serve as the core of Indonesian state philosophy. This perspective positions Pancasila as an objective framework that encompasses life views, legal aspirations, and moral ideals, reflecting the psychological climate and character of the Indonesian nation.

Sri Endah Wahyuningsih (2013) proposed that if the aspiration of national law is to embody the Pancasila legal system, it is essential to study and develop laws that reflect the values inherent in Pancasila. This entails creating laws that are aligned with the value of God Almighty, laws that emphasize Fair and Civilized Humanity, laws grounded in the principle of Unity, and laws that are infused with the value of Democracy Led by Wisdom in Consultation/Representation, as well as the value of Social Justice for All Indonesian People.

Consistent with Sri Endah's perspective, Notonagoro (1988) articulated that: Pancasila serves as the benchmark for the practical philosophy of Indonesian national law. It embodies the noble values inherent in Indonesian society. It reflects the nation's ideals, which encompass a just and prosperous society, both materially and spiritually, as well as the collective life of the Indonesian people.

Barda Nawawi Arief (2021) articulated that the evolution of legal frameworks represents a concerted effort to rejuvenate societal values, which should subsequently be examined thoroughly as foundational material for formulating national law, underscoring the responsibility of the academic community. It is quite ironic that many law faculty graduates comprehend and grasp the legal values within their communities. This situation is exacerbated if he experiences feelings of alienation, which may lead to unconscious antagonism and even result in his demise. Barda Nawawi Arief elaborated that legal reform fundamentally involves reorienting and reassessing the sociopolitical, socio-philosophical, and sociocultural values that underpin and enrich the normative and substantive aspects of the desired law.

Concerning reforming criminal law values, it is essential to realign them with the mandate and perspective outlined in Pancasila. Experts in criminal law, such as Van Hamel, have explained the party that should be regarded as the perpetrator of a criminal offense. Van Hamel defines the perpetrator of a criminal offense in the following manner: The individual responsible for a criminal offense is defined solely by their actions or omissions that meet all the criteria outlined in the specific formulation of the offense. This includes both explicitly mentioned elements and implied, establishing that the perpetrator is a person who has directly engaged in the criminal act in question (Lamintang, 1984).

The qualification of Public Servants or State Officials as legal subjects in the context of passive bribery, as outlined in Article 11 and Article 12 of Law No. 20 of 2001, indicates that the penalties associated with this corruption crime are specifically directed at individuals within government circles. Consequently, those who do not hold positions as Public Servants or State Officials are excluded from being classified as perpetrators of such criminal acts.

Padmo Wahyono (1983) asserts that the Pancasila state of law is founded on kinship, prioritizing social interests while ensuring that individual human rights are not compromised. This perspective aligns with Muhammad Tahir Azhary (2015) emphasis on harmony, facilitating a national and state life characterized by togetherness and kinship. This results in realizing national unity and territorial integrity within the Unitary State of the Republic of Indonesia. Philipus M. Hadjon (1987) noted that the components of the Pancasila rule of law encompass harmonious interactions between the populace and the government grounded in harmony, proportional relationships among state institutions, resolution of disputes through deliberation, and a balance between rights and obligations. In conclusion, the legal framework in Indonesia is characterized as the Pancasila state of law, which is designed to achieve the objectives outlined in the Fourth Paragraph of the Preamble of the 1945 Constitution. Pancasila functions as the foundational basis for all legal sources in Indonesia. Kaelan articulated that the principles of Pancasila serve not only as the foundation of state philosophy but also embody a comprehensive perspective on life, legal aspirations, and ethical standards, encompassing the psychological climate and character of the Indonesian nation.

In examining the purpose of the law, Sri Endah Wahyuningsih (2013) posits that if the aspiration of national law is the Pancasila legal system, it is essential to analyze and cultivate laws that embody Pancasila values. This entails laws that reflect the value of God Almighty, laws oriented towards Fair and Civilized Humanity, laws grounded in the principle of Unity, and laws infused with the value of Democracy Led by Wisdom in Consultation/Representation, as well as the principle of Social Justice for All Indonesian People. This perspective aligns with Notonagoro's assertion that the benchmark for the practical philosophy of Indonesian national law is Pancasila. This principle serves as an abstraction of the noble values inherent in Indonesian society, encapsulating the nation's ideals of achieving a just and prosperous society, both materially and spiritually, as well as the holistic well-being of the Indonesian populace.

VII. CONCLUSION

The punishment system for the corruption crime of passive bribery involving non-state Officials or State Administrators remains unregulated in Law No. 20 of 2001, which amends Law No. 31 of 1999 concerning the Eradication of Corruption and other pertinent legislation. This situation suggests that the current punishment system implementation for non-state Officials and State Officials fails to deliver legal certainty and justice for the community. The current legislation acknowledges only Public Servants or State Administrators as offenders in cases of passive bribery corruption. However, it overlooks that individuals outside this classification can also engage in comparable misconduct. Consequently, it is essential to reformulate the punishment system, which can be achieved by incorporating a provision into the Corruption Eradication Law. This provision indicates that any individual who accepts a gift or promise due to their relationship with a State Official or State Organizer and is aware that the gift aims to sway the official's actions in their role may also face sanctions. Consequently, it is evident that punishment is not limited to public servants or state administrators; individuals outside these categories can also be identified as perpetrators of the criminal act of passive bribery corruption. Consequently, it is essential to develop regulations concerning offenses and criminal sanctions applicable to legal subjects who are neither State Officials nor State Administrators within the Corruption Eradication Law. This approach aims to establish legal certainty and justice that align with the values of Pancasila for the community.

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