

## **The Damage of the Shadow Economy: The Urgency of Addressing Foreign Bribery in Indonesia**

Hendra Karianga<sup>1</sup> & Zico Junius Fernando<sup>2</sup>

### **Abstract**

Foreign bribery is a crime that occurs when an individual or company gives, promises, or offers something of value to a foreign official or person holding a public position in another country to obtain or retain a business advantage. This research explores the negative impact of the shadow economy, with a special focus on the practice of foreign bribery in Indonesia. This study uses a normative juridical approach. Researchers analyze and process collected materials qualitatively to classify legal materials and content analysis. The study's findings indicate that foreign bribery, a form of corruption involving illegal transactions between companies and foreign officials, is one manifestation of the shadow economy. This phenomenon threatens Indonesia's economic stability, social justice, and institutional integrity. Foreign bribery is against the principles of Pancasila, the Indonesian nation's basic ideology. This practice produces social and economic injustice by benefiting some people while harming others, often the most vulnerable. Indonesia needs urgent action to combat foreign bribery and its negative impact on the shadow economy. Through regulation of foreign bribery, effective law enforcement, and public education about the dangers of foreign bribery, Indonesia can strengthen the principles of Pancasila and build a more just and prosperous society.

**Keywords:** Shadow Economy, Foreign Bribery, UNCAC 2003, Law Enforcement, Pancasila

### **Introduction**

In the current era of globalization and free trade, business transactions involve not only domestic actors but also actors from other countries. Unfortunately, not all business transactions are lawful (Erbstoesser et al., 2007). Some were carried out illegally, including foreign bribery, which has become a phenomenon in the shadow economy (Karpoff et al., 2017). Handling foreign bribery in Indonesia urgently is the focus of this study to reduce the damage caused by the shadow economy. The shadow economy, also known as the underground economy or the informal economy, refers to economic activities that

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<sup>1</sup>Fakultas Hukum Universitas Khairun, Ternate, Indonesia. [kariangahendra35@gmail.com](mailto:kariangahendra35@gmail.com)

<sup>2</sup>Fakultas Hukum Universitas Bengkulu, Bengkulu, Indonesia. [zjfernando@unib.ac.id](mailto:zjfernando@unib.ac.id)

are not regulated or recognized by the government (Pham, 2022). Meanwhile, foreign bribery is a form of corruption that involves illegal transactions between companies and foreign officials. This practice not only hurts economic stability but also threatens the integrity and legitimacy of public institutions and undermines the prevailing values in society (Bonucci, 2013).

In Indonesia, the problem of foreign bribery is becoming increasingly pressing. As a developing country, Indonesia is vulnerable to corrupt practices, including foreign bribery. This situation is exacerbated by weak law enforcement and a need for a greater public understanding of the negative impacts of corrupt practices. This caused economic losses, undermined the nation's integrity, widened social inequality, and contradicted the principles of Pancasila, the Indonesian state ideology. Therefore, this research is directed to explore the damage caused by the practice of foreign bribery in the context of the shadow economy in Indonesia. Besides that, this study also aims to understand how such practices can undermine the principles of Pancasila and propose strategic steps that can be taken to prevent and combat foreign bribery. This research is expected to contribute to efforts to overcome corruption problems and strengthen good state governance in Indonesia. An example of a foreign bribery case in Indonesia is the Emirsyah Satar case. This incident began when Emirsyah Satar served as CEO of Garuda Indonesia from 2004 to 2015. When Emir resigned, Garuda recorded a loss of \$373 million, or around Rp 4.8 trillion, caused by the purchase of 34 new aircraft units in 2014, known as bribery. The KPK found that during his tenure, Emirsyah Satar allegedly received bribes of 46 billion rupiahs in cash and 2 million dollars' worth of goods spread across Singapore and Indonesia. The bribe was given by a British manufacturing company, Rolls-Royce, through Soetikno Soedarjo, owner of Connaught International Pte. Ltd., and PT Ardyaparamita Ayuprakarsa in the procurement of 50 Airbus aircraft. (Zico Junius Fernando et al, 2022) Soetikno gave the bribe because Emirsyah Satar played a role in procuring aircraft and aircraft engines for PT. Garuda Indonesia. Soetikno helped Rolls-Royce secure the project by arranging a meeting with Emirsyah Satar in Bali (Vidya Prahassacitta, 2017). After the meeting, a series of communications took place, ending with the signing of a contract for procuring aircraft and aircraft engines between PT Garuda Indonesia and Rolls-Royce. Rolls-Royce, on the other hand, does not only pay bribes in Indonesia. The Serious Fraud Office (SFO) investigation found that Rolls-Royce had engaged in bribery in several other countries, including Thailand, India, Nigeria, Malaysia, China, and Russia, between 1989 and 2013. According to an investigation by The Guardian and the BBC in 2016, Rolls-Royce has entered into business contracts in 12 different countries (BBC, 2013).

The foreign bribery case, as happened in the Emirsyah Satar and Rolls-Royce cases, is an example of shadow economy activity. In this case, the bribe given to Emirsyah Satar by Rolls-Royce through Soetikno Soedarjo was a transaction that was not reported and regulated by law and therefore was part of the shadow economy. In addition, the proceeds from these bribes were used to procure aircraft and aircraft engines that were outside the control of the government, demonstrating how the shadow economy can operate on a large scale and have a significant impact on the formal economy. Ultimately, foreign bribery and the shadow economy damage a country's economy because they avoid paying taxes and harm the wider community. It reduces government revenue (Nguyen et al., 2023).

Corruption has undeniably become one of the main obstacles in the development process in many countries, including Indonesia (Zico Junius Fernando et al, 2023a). In its various forms, corruption hampers the economy and creates various social problems (Bahoo et al., 2020). One form of corruption that often escapes attention is foreign bribery. This practice occurs when a company pays foreign officials bribes to gain or maintain a business advantage. This practice undermines the economic order and potentially creates social instability (Transparency International, 2020). The shadow economy emerges, allowing business transactions to take place without government oversight. In the shadow economy, foreign bribery practices can go undetected, exacerbating the negative impact. This practice can result in enormous economic losses. In addition, this practice can damage the country's reputation and undermine public trust in government institutions and businesses.

Foreign bribery and the shadow economy are legal and economic issues, as well as moral and ethical issues. This practice is against the principles of Pancasila, which is the ideological basis of the Indonesian nation. The first principle, belief in one Almighty God, emphasizes the importance of ethical and moral behaviour in every aspect of life. Meanwhile, the second and fifth principles, Just and Civilized Humanity and Social Justice for All Indonesian People, teach the importance of justice and equality. In this context, foreign bribery and the shadow economy undermine these principles because they create injustice and inequality. However, despite the challenges, Indonesia can still fight foreign bribery and the shadow economy. The first step that needs to be taken is to strengthen law enforcement.

This study will discuss the negative impact of the shadow economy in Indonesia, explore the urgency of regulating and addressing foreign bribery in the Indonesian context, and examine the relationship between the concepts of foreign bribery, the shadow economy, the new Criminal Code, and Pancasila's values.

How does the shadow economy affect Indonesia's economic growth? Why is it important to regulate and handle foreign bribery, and how does it affect institutional integrity and the national economy? Furthermore, how are the concepts of foreign bribery, the shadow economy, the new Penal Code, and Pancasila values interrelated, and what are the implications for Indonesia's legal and moral systems?

### **Methods**

This research, entitled "The Damage of the Shadow Economy: The Urgency of Addressing Foreign Bribery in Indonesia," uses a normative juridical approach or library research (Ariawan, 2013). This approach involves collecting primary, secondary, and tertiary legal materials (Agusalim et al, 2022). Researchers identified literature in legislation, books, official documents, papers, and several other sources related to this research to carry out the material collection technique in this study. This research involves study and analysis using statutory, conceptual, comparative, and historical approaches (Peter Mahmud Marzuki, 2005). This research uses descriptive-prescriptive research writing, aiming to describe and explain phenomena as they are and then provide solutions or recommendations. Furthermore, we collected, analyzed, and processed all materials qualitatively. Content analysis was then used to classify legal materials and obtain the desired answers or results for this research (Fernando et al., 2023).

### **Results and Discussion**

#### **a. The Negative Impact of the Shadow Economy in Indonesia**

In the increasingly advanced era of globalization and modernization, the complexity of crime is also increasing, including in the economic field (Bacchus & Boulding, 2022). Corruption crimes, particularly cross-border or foreign bribery and shadow economic practices, have become a major concern in many countries, including Indonesia. These practices undermine the integrity of a country's economic and political system and jeopardize sustainable social and economic development (Girling, 2002). In the Indonesian context, this issue becomes even more important, considering that Indonesia is a country with a high level of corruption and a large shadow economy.

The shadow economy refers to economic activities that occur outside of the government's control (Almenar et al., 2020). These activities can include everything from unregistered small businesses to illegal activities such as selling counterfeit goods and practicing foreign bribery. While some of the activities in the shadow economy may appear harmless or even beneficial to the individuals involved, the overall effect of the shadow economy on national economies and social stability can be devastating (Canh et al., 2021). One of the most significant effects of the shadow economy is a reduction in government revenue. Because

activity in the shadow economy is often not subject to taxes or duties, governments lose revenue that could otherwise be spent on infrastructure, public services, and other development initiatives (Baklouti & Boujelbene, 2019). This affects people's quality of life and can hinder long-term economic growth. In addition, the shadow economy can also undermine fairness and competition in the market. Companies operating in the shadow economy often offer lower prices or more favorable conditions than companies operating legally because they do not have to comply with government regulations or pay taxes (Perlman & Sykes, 2017). This can undermine companies that operate legally and fairly, hinder innovation and growth, and create unhealthy and unstable markets. The negative impact of foreign bribery is even worse. Foreign bribery is a form of international corruption that involves bribing foreign officials to obtain or retain a business advantage. This practice damages the reputation and integrity of the companies involved and disrupts the national and international economies (Lewisch, 2018). Foreign bribery can hinder fair and competitive business development. Companies that use bribes to obtain contracts or licenses may harm other companies that seek to operate lawfully and ethically. (Mijares, 2015) This can stifle innovation and economic growth, as well as erode public and investor confidence in the business market.

Furthermore, foreign bribery can undermine public governance and institutional integrity. Officials who accept bribes can make decisions that favor certain companies over others, creating a corrupt and unfair system (Ivory & Soreide, 2020). This can reduce the efficiency and effectiveness of government, undermine public trust in institutions, and ultimately hinder economic growth. Strong action from the government and all stakeholders is required to overcome the negative impacts of the shadow economy and foreign bribery. These include stricter law enforcement against economic abuses, increased transparency and accountability in business and government, and public education and awareness about the importance of a lawful and fair economy (Weismann et al., 2014).

The damaging effects of the shadow economy and foreign bribery are crucial, particularly in the Indonesian context. Indonesia, as a developing country with a growing economy, urgently needs resources and investment to build infrastructure, create jobs, and improve people's living standards. If the government does not register or supervise most of this economic activity occurring in the shadows, then this potential can be lost. Foreign bribery, which is part of the shadow economy, has also damaged Indonesia's business integrity and reputation in the eyes of the world. This could discourage foreign investors' confidence and hinder investment flows into Indonesia, which could slow economic growth and development. Besides that, foreign bribery practices can

also have a negative impact on the government's efforts to fight corruption. Allowing foreign companies to purchase profits through contracts or licenses by paying bribes to public officials would convey that corruption holds value and can yield benefits. This will strengthen tolerance for corruption and undermine reform and law enforcement efforts. However, even though the challenges are great, there are still solutions. Combatting the shadow economy and foreign bribery involves taking several steps. First, international cooperation must increase law enforcement to punish companies involved in foreign bribery. Technology and administrative reforms must improve transparency and accountability in business and government. Third, educate and raise awareness among the public about the dangers of the shadow economy and the importance of business ethics and integrity. By taking these steps, we can cushion the damaging effects of the shadow economy and foreign bribery and instead build a strong, stable, and just economy that supports growth and prosperity for all in Indonesia.

Overcoming the challenges posed by the shadow economy and foreign bribery in Indonesia is indeed a formidable task, requiring sustained efforts. Transforming deeply ingrained societal norms and behaviors is a time-consuming process. Key steps include enhancing law enforcement capabilities and resources, with a focus on international collaboration to prosecute foreign bribery cases. The Indonesian government should actively engage with other nations and international organizations to identify and prosecute foreign companies involved in corrupt practices within the country. Transparency and accountability must be heightened, as must incorporating technology into government and business processes and undertaking administrative reforms to streamline procedures and foster a more business-friendly environment. Education and public awareness are vital components in the fight against the shadow economy and foreign bribery. Informing society about the risks associated with illegal economic practices, promoting business ethics, and emphasizing integrity can contribute to shaping strong social norms against corruption. Ultimately, with a steadfast commitment from the government, collaboration among stakeholders, and active community support, Indonesia can surmount these challenges, fostering a more robust, stable, and just economy for its citizens.

#### **b. The Urgency of Regulation and Handling of Foreign Bribery in Indonesia**

Bribery, especially foreign bribery, is a serious issue that devastates the Indonesian economy and governance (Shulman, 2014). To understand the urgency of handling it, we must look further at the impact of the damage caused by foreign bribery. Companies give bribes to foreign officials to obtain or retain a business advantage. They can take many forms, from cash to gifts or services. Foreign

bribery can sometimes involve large companies and generate high bribe values (Skandiva & Harefa, 2022). This practice is very detrimental to Indonesia, which has a long history of fighting corruption. Foreign bribery has various negative impacts. First, it creates an unfair business environment in which companies willing to pay bribes gain a disproportionate advantage. This creates an unhealthy market and can prevent long-term economic growth. Second, foreign bribery damages Indonesia's reputation in the eyes of the world, which can hinder foreign investment and economic development. Third, it can undermine the integrity of public institutions and create a corrupt and unjust system. Given the negative impact, dealing with foreign bribery in Indonesia is urgent. To fight foreign bribery, Indonesia needs to strengthen its legal framework and law enforcement against corruption, including foreign bribery.

Foreign bribery is regulated in the United Nations Convention against Corruption (UNCAC), adopted by the UN General Assembly in 2003. This convention is the most comprehensive international instrument against corruption, including foreign bribery. Article 16 of the UNCAC specifically regulates foreign bribery, also known as the bribery of foreign public officials. This article obliges state parties to make the bribery of foreign public officials a criminal offense. UNCAC also covers other measures to prevent and combat corruption, such as transparency, international cooperation, and asset recovery. UNCAC requires state parties to take legislative and administrative steps to prevent and eradicate corruption, including foreign bribery. This can involve the application of laws and regulations, increased law enforcement, and international cooperation in prosecution and extradition. Indonesia has ratified the UNCAC through Law No. 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption (Herlambang et al, 2022).

Article 16 of the United Nations Convention against Corruption (UNCAC) 2003 focuses on the bribery of foreign public officials and officials in international public organizations. Let us consider each section in more detail. The first part of this article requires all countries parties to this convention (state parties) to adopt the necessary legislative and other measures to criminalize the bribery of foreign public officials or officials of public international organizations. This bribery may involve making a promise, offering, or giving, directly or indirectly, an improper advantage to the official or another person or entity. This advantage is given with the intention that the official acts or refrains from carrying out his official duties to obtain or retain business or other improper advantages in connection with the conduct of international business. The second part of this article requires States Parties to consider adopting legislative and other measures necessary to criminalize the requesting or receiving of improper benefits by foreign public officials or officials of public international organizations. This advantage can be

received directly or indirectly by the official or another person or entity, with the aim that the official acts or refrains from acting in carrying out his official duties. In other words, Article 16 of UNCAC 2003 covers two main aspects of cross-border bribery: giving bribes to foreign officials (paragraph 1) and requesting or receiving bribes from foreign officials (paragraph 2). Its main objective is to prevent corrupt practices that could undermine the integrity and efficiency of international markets and thus affect economic and social stability.

Article 16 UNCAC 2003 in the Indonesian context has significant implications. As a country that ratifies the UNCAC, Indonesia is committed to implementing the necessary steps to prevent and eradicate bribery, including the bribery of foreign public officials and officials in international public organizations. Indonesian law must include appropriate and effective legal sanctions for such acts. Suppose an Indonesian company or individual is found to have paid a bribe to a foreign public official to obtain or retain a business or other improper advantage. In that case, they can be tried and punished according to Indonesian law. Likewise, if a foreign public official solicits or accepts a bribe, either directly or indirectly, from an Indonesian company or individual, then such action can also be punished. Of course, law enforcement requires effective international cooperation, which is also part of Indonesia's obligations under the UNCAC. However, it is important to remember that law enforcement is only one aspect of preventing and combating bribery. Education, prevention, and increased transparency are important parts of a holistic approach to addressing this issue. Overall, Article 16 of UNCAC emphasizes that the practice of bribery, including the bribery of foreign public officials, must be considered a criminal offense and be subject to appropriate sanctions. It reflects a global commitment to fighting corruption and promoting integrity and transparency in international business. As a state party to the UNCAC, Indonesia has an important role in achieving this goal. Indonesia has ratified the UNCAC 2003 through Law No. 7 of 2006 concerning the United Nations Convention Against Corruption Ratification. Under this law, Indonesia has agreed to fight corruption in all its forms, including the bribery of foreign public officials, as specified in Article 16 of the UNCAC.

However, even though Indonesia has ratified the UNCAC, there are no specific regulations in Indonesian law explicitly regulating the bribery of foreign public officials, or what is commonly known as "foreign bribery." This means that currently, there is no clear legal mechanism in Indonesian criminal law that regulates and provides sanctions for bribery across countries. This creates legal loopholes and can limit efforts to combat corruption, particularly in the context of international business. The absence of clear rules regarding foreign bribery can allow corruptors to avoid punishment and create losses for the Indonesian



economy. In addition, the lack of regulations regarding foreign bribery can damage Indonesia's reputation in the international community. It is especially important considering that UNCAC is an international convention ratified by most countries worldwide. This deficiency might be considered Indonesia's need for more commitment to its obligations under international conventions. Thus, there need to be further efforts to formulate and implement clear and effective legal regulations regarding foreign bribery in Indonesia. This effort will be critical to strengthening efforts to eradicate corruption in Indonesia and ensuring that Indonesia fulfills its obligations as a state party to the UNCAC. There need to be further efforts to develop and implement clear and effective legal regulations regarding foreign bribery in Indonesia. This effort will be critical to strengthening efforts to eradicate corruption in Indonesia and ensuring that Indonesia fulfills its obligations as a state party to the UNCAC.

**c. Relationship between Foreign Bribery Concepts, Shadow Economy, the new Criminal Code, and Pancasila**

Pancasila, as the basis of the Indonesian state, has principles by which it inherently rejects practices such as foreign bribery (Eka Desi Natalia et al., 2021). In this context, foreign bribery has a very close relationship with the principles of Pancasila, especially the second and fifth precepts. Pancasila, as the ideological foundation of the Indonesian state, provides a moral and ethical understanding that binds all components of the nation. In foreign bribery and the shadow economy, Pancasila can be interpreted as a guide to prevent and fight these practices (Zico Junius Fernando, 2020).

Even though foreign bribery is contrary to Pancasila, in Indonesia's new Criminal Code (KUHP), no rules explicitly regulate foreign bribery. This shows the existence of legal loopholes and challenges to integrating Pancasila principles into criminal law, especially in dealing with transnational corruption issues such as foreign bribery. This issue needs attention and action from the authorities to ensure that Indonesian criminal law reflects and protects the values contained in Pancasila. Even in the new Criminal Code, no articles directly regulate foreign bribery in the series of rules contained in Law Number 1 of 2023 concerning the Criminal Code. These regulations focus more on corruption, bribery of domestic officials, and money laundering. However, some elements of these rules can apply in the context of foreign bribery if the act causes harm to the state's finances or the country's economy or if the proceeds from foreign bribery are used in money laundering crimes.

Articles 603 and 604 of the Criminal Code, for example, stipulate penalties for someone who enriches themselves, another person, or a company that harms

state finances or the state economy. It is important to note that these rules do not specifically address foreign bribery practices. Although these rules focus on actions that harm state finances or the state economy, they do not explicitly account for foreign bribery.

Articles 605 and 606 of the Criminal Code also regulate the crime of bribery against public officials; however, they are more oriented towards domestic public officials (civil servants or state administrators) and do not specifically address bribery against foreign public officials. These articles establish sanctions for people who give or promise something to civil servants or state administrators to enable or stop actions in their position that are contrary to their obligations. In the context of money laundering, Article 607 of the Criminal Code regulates this crime; however, it does not explicitly focus on foreign bribery. Although this article covers a wide range of activities that seek to conceal or disguise the origin of assets resulting from criminal acts, including corruption and bribery, its provisions do not specifically refer to foreign bribery. Article 608 of the Criminal Code states that the provisions in Article 607 paragraph (1) letter c of the Criminal Code (which regulates the receipt or use of assets originating from criminal acts) do not apply to parties who carry out reporting obligations as regulated in the Law on Prevention and Eradication of the Crime of Money Laundering. Although it regulates money laundering, this article does not specifically address foreign bribery in that context.

To address the problem of foreign bribery and the shadow economy in Indonesia, the following are some recommendations:

1. Formulate a Specific Legislature  
Indonesia must formulate and pass laws or regulations specifically targeting and defining foreign bribery by the standards set out in Article 16 of the UNCAC 2003. With specific laws or regulations, it will be easier for law enforcement authorities to prosecute and punish perpetrators of foreign bribery.
2. Increasing law enforcement capacity  
Increasing the capacity of law enforcement to identify, investigate, and prosecute foreign bribery cases is also important. Adequate training and resource provision for law enforcement, along with increased cooperation with international law enforcement, can achieve this goal.
3. Promote Transparency and Accountability  
Indonesia must promote transparency and accountability in the public and private sectors. Stricter law enforcement against corruption, increased transparency in public procurement processes, and

encouragement of companies to adopt ethical and transparent business practices can achieve this goal.

4. Playing an Active Role in International Cooperation

Since foreign bribery often involves cross-border actors and jurisdictions, Indonesia must play an active role in international cooperation to combat this crime. This cooperation can include exchanging information, mutual legal assistance, and coordinated law enforcement efforts.

5. Education and community engagement

Building public awareness about the dangers of foreign bribery and corruption. Public education and awareness campaigns can help create a culture of intolerance toward corruption and emphasize the importance of integrity and ethics in business and public life.

Through these steps, Indonesia can reduce the negative effects of the shadow economy and foreign bribery, support economic stability and growth, and strengthen integrity and accountability in the public and private sectors.

### **Conclusions**

Foreign bribery is a global problem that has a significant negative economic, social, and political impact. Although UNCAC 2003 has provided an international framework for handling this problem, Indonesia still needs to fully utilize it, especially in formulating laws targeting and defining foreign bribery. The concept of foreign bribery contradicts the values emphasized in Pancasila, especially in the principle of social justice for all Indonesian people. This practice also contributes to the rise of the shadow economy, which undermines the integrity of the economic and political system, promotes inequality, and hinders growth and sustainable development. Therefore, urgent, and continuous action must be taken to overcome this problem. Indonesia needs to formulate laws or regulations that specifically target foreign bribery, increase law enforcement capacity, promote transparency and accountability, play an active role in international cooperation, and conduct public education about the dangers of corruption. By taking these steps, Indonesia can strengthen its legal system, protect the economy from the negative effects of the shadow economy, and promote a more ethical and responsible business culture. This will assist in achieving sustainable development goals and ensure social justice for all Indonesians. Specifically, Indonesia must make foreign bribery a criminal offense in national laws, with adequate, effective, and preventative criminal sanctions. This can be realized through amendments or additions to the Corruption Eradication Law and other related regulations. In

addition, it is also important to strengthen cooperation between relevant agencies in handling foreign bribery cases, including with law enforcement in other countries.

Furthermore, prevention efforts also need to be increased, including implementing education and training for public officials and corporate employees regarding foreign bribery's risks and negative impacts. In addition, companies should also be encouraged to implement an effective anti-corruption program, which includes procedures for prevention, detection, and response to foreign bribery.

### Disclosure Statement

No potential conflict of interest was reported by the author(s)

### Funding

This research received no external funding.

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