

**THE URGENCY OF CORRUPTION ERADICATION COMMISSION
IN DEVELOPING ITS AUTHORITY TO HANDLE
PRIVATE-TO-PRIVATE CORRUPTION**

PUBLICATION MANUSCRIPT



UMY

**UNIVERSITAS
MUHAMMADIYAH
YOGYAKARTA**

Unggul & Islami

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20150610350

**FACULTY OF LAW
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UNIVERSITAS MUHAMMADIYAH YOGYAKARTA
2020**

THE URGENCY OF CORRUPTION ERADICATION COMMISSION IN DEVELOPING ITS AUTHORITY TO HANDLE PRIVATE-TO-PRIVATE CORRUPTION

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ABSTRACT

Nowadays, private sector corruption is getting higher and the forms of corruption are becoming more widespread. Other than that, corruption in the private sector has a serious negative impact on the country's economy and society in general. Furthermore, the issue of regulating the private-to-private corruption has emerged since 2006 when Indonesia enacted the Law Number 7 of 2006 on the Ratification of United Nation Convention Against Corruption (UNCAC). Some articles recommend state parties to criminalize private-to-private corruption. However, until now Indonesia legal instrument has not yet regulated private-to-private corruption. By using a normative legal research method, the study argues the urgency of Corruption Eradication Commission in developing its authority to handle corruption in the private sector. The research shows that the high number of private sector corruption signify that the private sector has corrupt behavior and tends to corrupt in business activities. The private-to-private corruption has also serious impacts on unfair competition, inflated cost, firm-level consequences, inefficiency economy, politic, legal and social impacts. Learning from Corrupt Practices Investigation Bureau (CPIB) Singapore and Independent Commission Against Corruption (ICAC) Hong Kong that have proved the importance to eradicate corruption in private-to-private corruption. Therefore, it may be concluded that there is an urgency of Corruption Eradication Commission (KPK) in developing its authority to handle private-to-private corruption.

Keywords: *Corruption, Corruption Eradication Commission (KPK), Private-to-Private Corruption*

I. Introduction

The Investigation Team of Tempo Magazine revealed the news that there was a collusion between pharmaceutical companies and doctors when prescribing certain medicines to patients. Based on data held by Tempo, it stated that there are at least 2,125 doctors and 151 hospitals spread across five provinces in Indonesia, namely Jakarta, Banten, West Java, East Java, and South Sulawesi.¹ Each doctor receives an average of IDR 5 million up to IDR 2.5 billion which is not always in the form of money, but also a car,² Umrah accommodation,³ and also a form of sexual gratification.⁴ It was also mentioned in the Tempo magazine investigation report that 40% of the price of medicine was used as the source to bribe doctors.⁵ The result of bribery by pharmaceutical companies to doctors is the loss of society as medical consumers. This is because the public as consumers must bear the cost of purchasing more expensive medicine.

Referring to the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Amendment to the Law number 31 of 1999 on Eradication of Corruption, actions or practices conducted by

¹ Tempo, “Eksklusif: Suap Obat, Dokter Terima Mobil Yaris hingga Camry”, <https://nasional.tempo.co/read/news/2015/11/03/173715547/eksklusif-suap-obat-dokter-terima-mobil-yaris-hingga-camry>, accessed on May 17th 2019, at 13.00

² *Ibid.*

³ Tempo, “Eksklusif: Suap Obat, Dokter Naik Haji pun Dibayari”, <https://nasional.tempo.co/read/news/2015/11/02/173715198/eksklusif-suap-obat-dokter-naik-haji-pun-dibayari>, accessed on May 17th 2019, at 13.10

⁴ Tempo, “Eksklusif, Suap Obat: Dirut RSCM Pernah Ditawari PSK”, <http://nasional.tempo.co/read/news/2015/11/02/173715076/eksklusif-suap-obat-dirut-rscm-pernah-ditawari-psk>, accessed on on May 17th 2019, at 13.30

⁵ Tempo, “Eksklusif: Terkuak, 40 Persen dari Harga Obat buat Menyuap Dokter”, <https://nasional.tempo.co/read/news/2015/11/02/078714995/eksklusif-terkuak-40-persen-dari-harga-obat-buat-menyuap-dokter/2>, accessed on May 17th 2019, at 14.00.

pharmaceutical companies to doctors cannot be categorized as corruption. This is because Article 2 to Article 24 do not mention bribery and gratification between the private sector and other private sector as a subject of corruption.

Supreme Court Regulation number 13 of 2016 on Procedures for Handling Criminal Acts by Corporations has been used as a guideline for law enforcement in handling criminal cases on corporation and/ or corporate administrators. However, the regulation is less able to reach the perpetrators of corruption in the private sector because until now one of the elements of corruption in the Law Number 31 of 1999 on Corruption Eradication is still limited to the element of “the loss of state finances”. In addition, the Constitutional Court Decision Number 25 / PUU-XIV / 2016 which related to Articles 2 and 3 of the Law number 31 of 1999 on Corruption Eradication, reinforced further about the absolute existence of the element in an act of corruption. The absolute element of corruption stated in both law above is the need for concrete state losses. Meanwhile, forms of corruption in the private sector might not involve the state financial loss. In fact, based on the data of Corruption Eradication Commission, corruption by profession/position from 2004 to September 2019, there are 287 from the private sector.

PROFESSION	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	TOTAL
DPR and DPRD	10	103	20	23	19	9	8	16	5	27	8	7	2	0	0	0	257
The Head of Institution / Ministry	2	1	0	2	3	9	4	1	0	2	1	1	0	1	1	0	28
The Ambassador	0	0	0	0	0	0	0	0	0	1	0	1	2	0	0	0	4
Commissioner	0	0	0	0	0	0	0	0	0	0	0	1	1	2	3	0	7
The Governor	1	2	1	1	3	3	2	0	0	1	2	1	1	2	0	1	21
Mayor/Regent	14	30	13	9	4	12	3	3	3	4	5	6	6	3	0	0	115
Echelon I / II / III	14	24	43	10	7	2	7	8	15	12	14	22	10	15	9	2	213
The Judge	0	5	3	1	3	2	3	2	2	1	0	0	0	0	0	0	22
The prosecutor	3	0	1	3	0	0	0	0	2	0	0	1	0	0	0	0	10
The Police	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
The Advocate	1	4	0	1	2	0	0	0	0	1	0	0	0	0	2	0	12
The Private Sector	49	56	28	28	18	16	24	16	10	8	11	12	3	5	4	1	287
The Others	32	31	13	21	3	8	8	2	1	8	4	3	2	1	4	0	141
Corporation	1	4	1	0	0	0	0	0	0	0	0	0	0	0	0	0	6
TOTAL NUMBER	127	260	123	99	62	61	60	49	38	65	45	55	27	29	23	4	1125

Table. 1.1

Source: Komisi Pemberantasan Korupsi⁶

From the data above, corruption of the private sector is the highest of others. It indicates that the private sector has corrupt behavior and tends to corrupt. In addition, corruption in the private sector has a negative impact⁷ and also infected all aspects of people's lives in the pharmaceutical, health, banking, finance, agricultural, fishery.⁸ The impact of private sector corruption on the company is the raising of additional costs for bribery or for building a corrupt network, paying bribes for other competitors for the opportunity to get a contract. These costs are consequently transmitted to consumers through higher prices or lower quality products and services. At the country level, corruption impedes investment, erodes competition,

⁶ Komisi Pemberantasan Korupsi, "Statistik", <https://www.kpk.go.id/id/publikasi/penanganan-perkara>, accessed on October 1st 2019, at 08.00.

⁷ Nika A. Antonikova, 2015, "Private Sector Corruption in International Trade: The Need For Heightened Reporting and A Private Right of Action in The Foreign Corrupt Practices Act", *Brigham Young University International Law & Management Review*, Vol. 11 No. 1, p. 93.

⁸ Deborah Haroon dan Finn Heinrich, 2011, *Bribe Payers Index 2011*, Berlin, Transparency International, p. 19.

negatively affects the quality of public services, undermines citizen trust in state institutions, exacerbates inequality, and ultimately jeopardizes political stability.⁹

The harm of corruption to economic development and its efficiency, the social, political and ethical consequences, make private-to-public corruption has been widely studied. Private-to-private corruption on the contrary has been relatively neglected and only recently has started to receive the attention. In the state where corruption is perceived to be a major issue, the very concept of corruption has been increasingly instrumentalized for political needs.¹⁰

Globally, the issue of corruption in the private sector has been very common and has long been a concern, especially in developed countries. Corruption cases that involve large companies have shown that corruption in the private sector is common, widespread and even seems to be a part of company strategy because well-designed from the process of budget planning. Therefore, Anti-Corruption Agency (ACA) in various countries have the authority to investigate and prosecute corruption both public and private sectors, such as Corrupt Practices Investigation Bureau (CPIB)

⁹ Deutsche Gesellschaft Fur Internationale Zusammenarbeit, “The Private Sector Corruption”, <https://www.giz.de/fachexpertise/downloads/gtz2008-en-privatesector.pdf>, accessed on May 21st 2019, at 07.00.

¹⁰ Gjalte de Graaf, Pieter Wagenaar and Michel Hoenderboom, 2010, *Constructing Corruption, The Good Cause*, Verlag Barbara Budrich, Germany, p. 101.

Singapore,¹¹ Independent Commission Against Corruption (ICAC) Hong Kong,¹² and so on.

The urgency of regulating the eradication of corruption in the private sector has emerged since 2006 when Indonesia enacted Law Number 7 of 2006 concerning the Ratification of United Nation Convention Against Corruption (UNCAC). Some articles in UNCAC recommend state parties to take steps to deal with corruption in the private sector. However, until now, recommendations from UNCAC have not been realized as a product of legislation. Based on above problems, it is interesting to conduct a research on the Urgency of Corruption Eradication Commission in Handling the Corruption in Private Sectors.

II. Statement of Problem

What is the urgency of Corruption Eradication Commission in developing its authority to handle corruption cases in private sector?

III. Research Method

A. Type of Research

This research is a normative legal research¹³ because this research is library research or document studies which carried out or intended only in legal written or other legal materials.¹⁴ It uses a combination of comparative and statutory approach in analysing the issue of corruption

¹¹ Corrupt Practices Investigation Bureau, www.cpiib.gov.sg, accessed on May 21st 2019, at 13.00.

¹² Independent Corruption Against Corruption, www.icac.org.hk, accessed on May 21st 2019, at 13.30.

¹³ Soerjono Soekanto and Sri Mamudji, 2007, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. PT. Raja Grafindo Persada, Jakarta, p.12.

¹⁴ Bambang Waluyo, 1996, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, p.13.

eradication commission on other countries. In this study, it uses the method of exploration method that aims to recognize or get a new view of a phenomenon which is often able to formulate the research problem more precisely or to formulate the research hypothesis.¹⁵

B. Type of Data

Source of data in this research were collected by secondary data method. It is a method of research to collect data from the library research or literature study. The secondary data consists of:

1. Primary legal materials is the related legislations, namely:
 - a. The 1945 Constitution of the Republic of Indonesia
 - b. Constitutional Court Decision Number 25/PUU-XIV/2016 regarding to the article 2 and 3 of Law number 31 of 1999 on Corruption Eradication.
 - c. The Law Number 19 of 2019 on the amendment the Law Number 30 of 2002 on Corruption Eradication Commission
 - d. The Law Number 7 of 2006 concerning the Ratification of United Nation Convention Against Corruption
 - e. The Law Number 30 of 2002 on Corruption Eradication Commission.
 - f. The Law Number 20 of 2001 on the Amendment to Law number 31 of 1999 on the Corruption Eradication
 - g. The Law Number 31 of 1999 on Corruption Eradication

¹⁵ Sukandarrumidi, 2002, *Metodologi Penelitian*, Gadjah Mada University Press, Yogyakarta, p.61.

- h. The Law Number 11 of 1980 on Bribery
 - i. Indonesia Penal Code
 - j. Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Acts by Corporations
 - k. United Nation Convention Against Corruption 2003
2. Secondary legal materials are books, journals, news, and related articles to the topic.
 3. Tertiary legal materials are data that supports the primary and secondary data such dictionary, encyclopedia, internets, etc.

C. Method of Data Collection

Method of collecting data in this research was conducted by library research by literature learning and such reading, analyzing, and deriving conclusion from related documents (charters, declarations, law books, legal journals, internets and other which related to the main problem of this research).

D. Method of Data Analysis

The method of data analysis in this research is conducted by analyzing systematically through juridical qualitative. Systematically means the research will be analyzed international laws, municipal laws and other norms that related to the Anti-Corruption Agency especially Corruption

Eradication Commission. Juridical qualitative means it would relate to the principle of law, convention, and other related regulations.¹⁶

IV. Results and Discussion

A. The Urgency of Eradicating Private-to-Private Corruption

Private-to-private corruption is a reaction of rapid economic growth. The common definition of private-to-private corruption is a manager or employee exercises a certain power or influence over the performance of a function, task, or responsibility within a private organization or corporation that is contrary to the duties and responsibilities of his position in a way that harms the company or organization in question and for his own or another person or organization benefits.¹⁷ There are three important factors in eradicating private-to-private corruption.¹⁸ First, the rapid growth and the large numbers of the private sector exceeds the public sector corruption, especially in third world countries. Second, the trend of privatization of economic activity and third, the birth and development of multinational companies. These three factors encourage corruption to be not only involves public sector (private-to-public corruption) but also private sector (private-to-private corruption). Private corruption manifests

¹⁶ Hancock, Beverly, 2002, *An Introduction to Qualitative Research*, Leicester, Trent Focus Group, p. 2

¹⁷ Antonio Argandona, 2003, "Private-to-Private Corruption", *Journals of Business Ethics*, Vol. 47 No. 3, p. 4.

¹⁸ Webb and Phillipa, 2005, "United Nation Convention Against Corruption: Global Achievement or Missed Opportunity", *Journals of International Economic Law*, Vol. 8 No. 1, p. 212-213.

in various forms that are bribery, embezzlement, collusion, trading of information, gifts and hospitality, conflict of interests.¹⁹

The actions on types of private-to-private corruption cause a serious impact on a country's economy and society in general. Particularly considering that private enterprises play an increasing role in providing public services and in controlling key sectors of the economy.²⁰ In direct economic loss, private-to-private corruption creates inefficiency of economy which detrimental for the society. It may also have a negative impact on economic development and the investment climate, distorting markets and fair competition, increasing costs as well as reducing the quality of services to the consumer.²¹ A number of studies provide the empirical evidence that corruption is commonplace within the business community, finding that the perceived likelihood of private-to-private bribery is nearly as high as bribery of public officials across all sectors.²² Based on PricewaterhouseCooper's Global Economic Crime and Fraud Survey 2018, 28 percent companies said that they had suffered from business misconduct, while 45 per cent had suffered from asset misappropriation.²³

¹⁹ Antonio Argandona, *Op. Cit.*, p.4-5.

²⁰ Organization for Economic Cooperation Development, 2013, *Anti-corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges 2009-2013*, Paris, OECD Publishing, p. 156.

²¹ Martini M., 2014, *Regulating Private-to-Private Corruption*, Germany, Transparency International, p. 3.

²² Jenkins Matthew, 2018, *The Relationship between Business Integrity and Commercial Success*, Norway, U4 Anti-Corruption Resource Centre, p. 4-9.

²³ PricewaterhouseCoopers, 2018, *Pulling Fraud Out of the Shadows*, Global Economic Crime and Fraud Survey, p. 8.

Private-to-private sector corruption creates high cost of production in a not only financial (economic costs, inefficiency, fines, etc.), but also legal (accusations, suits and penalties), social (loss of reputation, creation of an atmosphere favoring corruption, etc.), and ethical (deterioration of the quality of the organization's people and of its rules and culture).²⁴ Based on the description above, the impact of private-to-private corruption consists of following:

1. Unfair competition

Private to private bribery harms private sector and public at large engendered by its anti-competitive effects. Private bribery provides the briber with an unfair competitive advantage by eliminating form of consideration products or services offered by the bribing company's competitors in the usual course of business. The unfair competition felt through the entire supply chain, distorting markets and competition, increasing costs to firms.

2. Inflated Cost

The anti-competitive effects of private-to-private corruption might harm consumers in large scale through high prices and poor quality goods and services.²⁵

3. Firm-level Consequences

Private-to-private sector corruption may have negative effects for the firm itself. It reduced employee morale, reduced productivity, loss of

²⁴ Antonio Argandona, *Op. Cit.*, p. 17.

²⁵ *Ibid.*

shareholder and investor confidence, damaged reputation, business relations, and related loss of business, as well as the cost associated with investigation and remediation of the issues. Conversely, in many contexts, “higher levels of firm integrity correspond with stronger commercial performance”.

4. Inefficiency Economy

With impacts such as unfair competition, inflated cost, and firm-level consequences, private-to-private sector corruption automatically impact to inefficiency economy.

5. Politic, Legal, and Social Impacts

Considering the private sector plays a role in providing public services and key sectors of the economy. Private-to-private corruption damages fair competition, affects the quality of public services, damages public trust in both public and private entities, aggravate inequality, ultimately threaten political stability, obstructing democracy and the rule of law. Moreover, legally, private-to-private corruption brings on accusations, suits and penalties. While socially, it impacts loss of reputation, property, employment, wealth, creation of an atmosphere of favoring corruption, and deterioration of the quality of the organization’s people and of its rules and culture (ethical).

The serious impacts of private-to-private corruption, international bodies may play an important role in filling the gap of eradicating private-to-private corruption. Some already actively encourage other countries to

criminalize corrupt behavior within the private sector through legal mechanism. The Article 12, 21, and 22 of the UNCAC encourages state parties to take measures, criminalize commercial bribery and embezzlement but does not require.

There is Anti-Bribery Convention by Organization for Economic Co-operation and Development (OECD) which focuses on the prohibition of illegal payments by companies to foreign public officials in foreign countries. But then, there is a pressure from the International Chamber of Commerce (ICC). The realization of the pressure by ICC stated in a Memorandum on further provisions to be adopted to prevent and prohibit Private-to-Private Corruption Bribery in International Business Transactions with the aim to purpose and recommend state parties and enterprises take measures to against private-to-private corruption.²⁶

Combating private-to-private corruption requires not only international instrument to play a role but also regional instrument. In Europe, exist the Criminal Law Convention on Corruption (CLCC), which is overseen by the Council of Europe's Group of States Against Corruption (GRECO). Furthermore, the European Union Council has adopted a Framework Decision (2003/568/JHA) on Combating Corruption in the Private Sector, which provides that member states must criminalize both active and passive bribery in the private sector.

²⁶ International Chamber of Commerce (ICC), 2016, *Memorandum to the OECD: further Provisions to be adopted to Prevent and Prohibit Private-to-Private Corruption*, Paris, International Chamber of Commerce, p. 1.

Another regional convention is the African Union Convention on Preventing and Combating Corruption that was entered into force on July 11th 2003. The parties of this convention undertake to criminalize bribery in the private sector. Unlike Europe, Africa and the Americas, the Asia-Pacific does not have a region-wide inter-governmental system.

The Asia-Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency Working Group coordinates the implementation of the Santiago Commitment to Fight Corruption and Ensure Transparency and the APEC Course of Action on Fighting Corruption.²⁷ Under these frameworks, APEC leaders commit to develop effective actions to fight all forms of bribery (includes private bribery), adopt and encourage measures to prevent corruption in the private sector. Not only that, but also supports the recommendations of the APEC Business Advisory Council to operate their business affairs with highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

In Indonesia, corruption is formulated into thirty forms of corruption that are regulated in Chapter II of the Law Number 31 of 1999 *juncto* Law Number 20 of 2001 on Corruption Eradication. The thirty forms of corruption can basically be classified as follows:

²⁷ Asia-Pacific Economic Cooperation, 2018, *Anti-Corruption and Transparency Experts' Working Group (ACTWG): Endorsed Plan for 2018*, Papua New Guinea, ACTWG Chair, p. 3.

1. Corruption of State Finance Loss

Against the law to enrich themselves and could harm the state finances; and abusing authority to benefit themselves and could harm the state finances.

2. Bribery

Bribing public servants; give gifts to employees because of their position; public servants accept bribes; public servants receive gifts related to his position; bribing a judge; bribing advocates; judges and advocates accept bribes; the judge accepts bribes; and advocates accept bribes.

3. Embezzlement in Office

Civil servants embezzle money or allow embezzlement; civil servants falsified books for administrative examination; civil servants damage evidence; public servants allow others to destroy evidence; and civil servants help others destroy evidence.

4. Extortion

Public servants blackmail and civil servants blackmail other civil servants.

5. Cheat Action

The contractor commits fraud; the project supervisor allows fraudulent acts; the partner of the Indonesian Armed Forces or the Police of the Republic of Indonesia is cheating; supervisory partners of the Indonesian Armed Forces or the Police of the Republic of

Indonesia allow fraudulent acts; recipients of the goods of the Indonesian Armed Forces or the Police of the Republic of Indonesia allow fraudulent acts; and civil servants seize state land to the detriment of others.

6. Gratification

Civil Servants receive gratuities and do not report to the Corruption Eradication Commission.

By the forms of corruption mentioned above, there are no provisions that regulate private to private to be the subject of corruption prosecution. Therefore, criminal acts of corruption committed by non-state officials or non-public servants (private-to-private corruption) cannot be qualified as acts of corruption in the law of corruption eradication. Considering the provisions of article 1 of the Penal Code (KUHP) and the principle of legality (*nullum delictum noella poena sine praevia lege poenali*), private-to-private corruption cannot be punished by the law of corruption eradication. Corruption is as stipulated by the law of corruption eradication. Thus, private-to-private corruption is not corruption in Indonesia positive law.

Even though the law of corruption eradication does not regulate corruption in the private-to-private sector, Indonesia already had bribery arrangements in the private sector where this crime is a form of corruption regulated in the law of corruption eradication. The provisions can be seen in the Law Number 11 of 1980 on Bribery, Article 2 regulates active

bribery, and article 3 regulates passive bribery where there are no elements of public officials in both articles. This is clearly different from the bribery provisions in the law of corruption eradication, which based on the historical development of the Law of corruption eradication originated from the Penal Code (KUHP).²⁸ Therefore, both the law of corruption eradication and criminal code has no regulating private-to-private corruption. In fact, it is unfortunate that now it seems that the provisions are 'forgotten' and (perhaps) never be used.²⁹ Although, the provisions have never been revoked, many writings and discourse raised by such as academics, anti-corruption observers, and law enforcement in Indonesia as though all agreed that Indonesia does not have any legal instruments that may punish bribery in the private to private sector.

Many bribery cases in the private sector occur in community. The Tempo magazine November 2, 2015 edition of the investigation report titled "Footprint of Doctor's Prescription Bribery". The report is a report about the alleged bribery case by PT Interbat with doctors in various hospitals, both private and government.³⁰ In this investigation report, it was stated that there were bribes from pharmaceutical companies to doctors.³¹ A total of 2,125 doctors were also suspected of taking bribes of

²⁸ Marbum, Andreas Nathaniel, 2017, Suap di Sektor Privat: Dapatkah Dijerat, *Jurnal Integritas*, Vol. 3 No. 1, p.80.

²⁹ *Ibid*, p.81.

³⁰ Tempo, "Eksklusif: Suap Obat, Dokter Terima Mobil Yaris hingga Camry", <https://nasional.tempo.co/read/news/2015/11/03/173715547/eksklusif-suap-obat-dokter-terima-mobil-yaris-hingga-camry>, accessed on May 17th 2019 at 20.00.

³¹ Tempo, "Eksklusif: Suap Obat, Dokter Naik Haji pun Dibayari", <https://nasional.tempo.co/read/news/2015/11/02/173715198/eksklusif-suap-obat-dokter-naik-haji-pun-dibayari>, accessed on May 17th 2019 at 23.00.

up to IDR 131 billion. Tempo revealed the investigation report along with photos of the slip of the money given by the pharmaceutical company to the doctors.³² However, it seems that no one believes that these doctors and pharmaceutical companies can be charged with the provisions of the Bribery Act.

This behavior is sometimes seen as normal and tolerated or even legalized by corporations, such as the behavior of gratuities by pharmaceutical companies for doctors as an incentive for prescribing drugs. It should also be noted that the cases of bribery in the private sector have not only occurred recently. Construction of bribery cases in the private sector has occurred since a long time ago. It can be seen from the existence of the Law Number 11 of 1980 on Bribery. This shows that the law enforcement of private-to-private bribery in Indonesia is still far from feasible. Law enforcement authorities seem to forget about law enforcement in eradicating bribes in the private-to-private sector. Based on the data of KPK, corruption by profession/position from 2004 to September 2019, there are 287 from the private sector and it makes private sector is the highest of others.³³ It indicates that private sector have corrupt behavior and tends to corrupt in business activities. This corrupt behavior can certainly occur in the private-to-private sector as well. .

Furthermore, the corruption risks of private sector issued by the Global

³² Tempo, “Eksklusif: Terkuak, 40 Persen dari Harga Obat buat Menyuaup Dokter”, <https://nasional.tempo.co/read/news/2015/11/02/078714995/eksklusif-terkuak-40-persen-dari-harga-obat-buat-menyuaup-dokter/2>, accessed on May 17th 2019, at 20.00.

³³ Komisi Pemberantasan Korupsi, “Statistik”, <https://www.kpk.go.id/id/publikasi/penanganan-perkara>, accessed on November 1st 2019, at 20.00.

Corruption Report 2009 which illustrates the risk of corruption that is spread in every business activity.

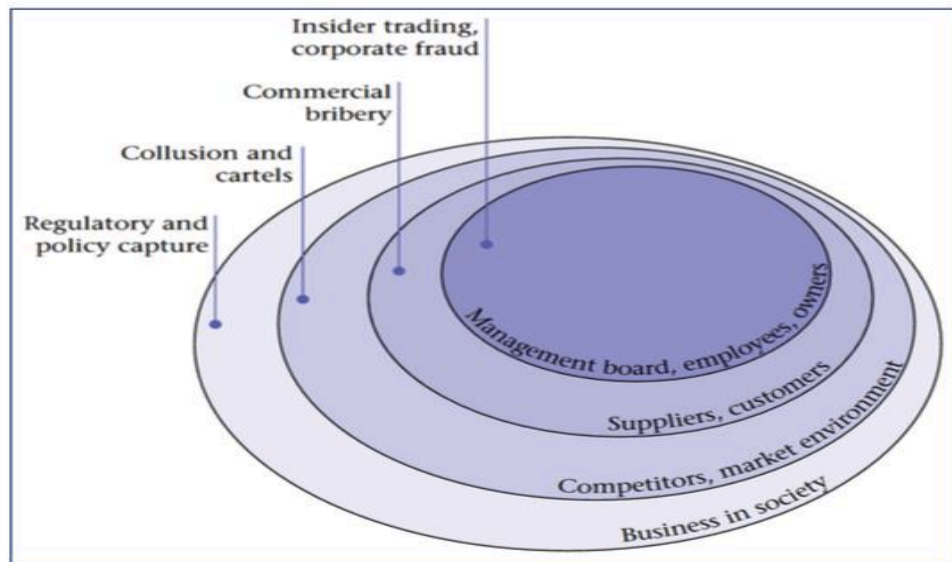


Figure 4.1

Source: Transparency International³⁴

The urgency of the corruption eradication in the private sector has emerged since 2006 when Indonesia issued the Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption (UNCAC). Some articles in the UNCAC on the release to state parties to take steps indoors in the private sector and analyze each country to commit private-to-private corruption as a crime, but at present, the results of UNCAC have not been realized as a product of legislation.

It seems strange, corruption in the private sector is conceptually, theoretically, and practically included as a category of corruption but private-to-private sector corruption in Indonesia cannot be said as an act of

³⁴ Transparency International, 2009, *Global Corruption Report 2009 Corruption and the Private Sector*, Cambridge University Press, London, p. 8.

corruption because it is not included as a category of corruption in Indonesia based on the Law of Corruption Eradication. Thus, this indicates that the legal policy on corruption in the private-to-private sector in Indonesia is currently not yet placed as part of fighting corruption.

B. Comparison of Anti-Corruption Agencies

The report of Transparency International on the Corruption Perception Index in 2018, Indonesia ranked 89th from 180 countries with a score of 38 (0 very corrupt and 100 very clean).³⁵ The Political and Economic Risk Consultancy (PERC)'s 2018 Report on Corruption in Asia, Indonesia ranked 14th position out of 16 countries with 7.57 points.³⁶ This position makes Indonesia one of the most corrupt countries in the world.

One of the obstacles of Indonesia in combating corruption is the limitation on the use KPK as a political tool to eradicate corruption. It can be seen by limitation of KPK's authority in handling cases of private-to-private corruption. In fact, corruption in the private-to-private sector is conceptually, theoretically, and practically included as a category of corruption. Therefore, UNCAC and several states regulate private-to-private corruption.

Corrupt Practices Investigation Bureau (CPIB) Singapore has established effective anti-corruption from a country that rampant corruption becomes one of the least corrupt countries in the world. In

³⁵ Transparency International, <https://www.transparency.org/country/IDN>, accessed on May 20th 2019, at 09.00.

³⁶ Asian Intelligence, 2018, *An Independent Fortnightly Report on Asian Business and Politics*, Hong Kong, Political and Economic Risk Consultancy Ltd., p. 1.

2018, the Transparency International (TI) Corruption Perceptions Index (CPI) has ranked Singapore 3rd out of 180 countries with a score of 85 and the least corrupt Asian country.³⁷ The strategy of Singapore consists of four pillars of corruption control such effective laws, independent judiciary, effective enforcement, and responsive public service which are supported by strong political will.³⁸

The political will of corruption eradication in Singapore can be seen by the effort of Singapore to eradicate corruption is not limited to public sector. Since 1970s CPIB had taken action against corruption in the private sector. In this regard, Singapore is a pioneer. Singapore determined to build an incorruptible and meritocratic government, and took decisive and comprehensive action to stamp out corruption from all levels of society in Singapore. As a result of the commitment and leadership of political government, a culture of zero tolerance against corruption has become ingrained into the Singaporean psyche and way of life.

The legal framework that covers private-to-private corruption in Singapore is the provision of Sections 5 and 6 of the Prevention of Corruption Act (PCA). The Section 5 and 6 of the PCA contains the general prohibition against corruption, makes it an offence to give and receive bribes. In fact, private sector individuals constituted the majority of individuals prosecuted in Court. In 2018, 112 individuals were charged in

³⁷ Transparency International, 2018, *Corruption Perceptions Index 2018*, Germany, Transparency International Secretariat, p. 4.

³⁸ Corrupt Practices Investigation Bureau, "About Corruption", <https://www.cpi.gov.sg/about-corruption/corruption-control-framework>, accessed on November 3rd 2019, at 17.00.

Court for offences investigated by the CPIB. Of these, 96% were private sector individuals.

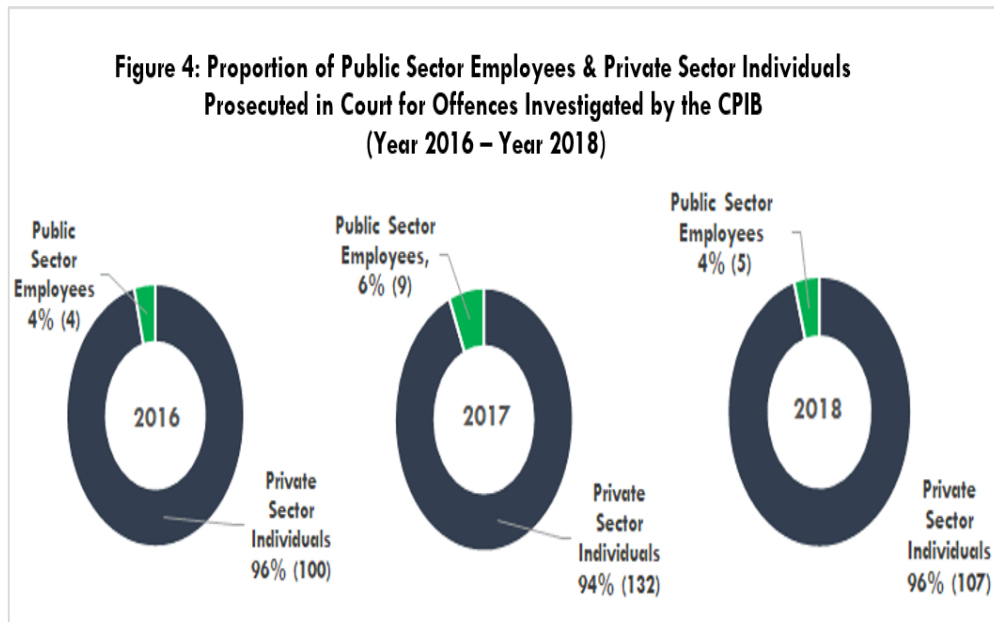


Figure 4.2

Source: Corrupt Practices Investigation Bureau³⁹

In addition, Independent Commission Against Corruption (ICAC) Hong Kong is also one of the earliest jurisdictions to criminalize private sector corruption. With the three pronged strategy consists of three separate departments:⁴⁰ the Operations Department (law enforcement) to investigate corruption both public and private sector: the Corruption Prevention Department (prevention) to examine the systems and the Community Relations Department (education) to educate the public against the evil of corruption and to enlist their support and partnership in fighting corruption.

³⁹ Corrupt Practices Investigation Bureau, “Statistics of Corruption” <https://www.cpi.gov.sg/singapore-remains-one-least-corrupt-countries-world>, accessed on November 3rd 2019, at 20.00.

⁴⁰ Independent Commission Against Corruption, “About”, <https://www.icac.org.hk/en/about/struct/index.html>, accessed on November 2nd 2019, at 20.00.

The ICAC places equal emphasis on public and private sector corruption. The rationale is that there should not be double standards in society. Private sector corruption can cause as much damage to society as like public sector. Effective enforcement against private sector corruption can be seen as a safeguard for foreign investment and ensures Hong Kong maintains a level playing field in its business environment. As the result, in 2019, Hong Kong sustains its status as the world's freest economy⁴¹ and consistently remained in the band of the top 20 economies with very low levels of corruption in the world. There are three pillars of anti-corruption strategies in private sector namely legislation, regulatory requirements, and Support and services rendered by the ICAC.

The Prevention of Bribery Ordinance (POBO) is the main anti-corruption legislation in Hong Kong where Section 9 is designed for the private sectors that corrupt transactions with agents. In fact, cases of private sector corruption out number the public sector cases.

⁴¹ The Heritage Foundation, 2019, *Index of Economic Freedom 2019*, Washington D.C., The Heritage Foundation Secretariat, p. 1.

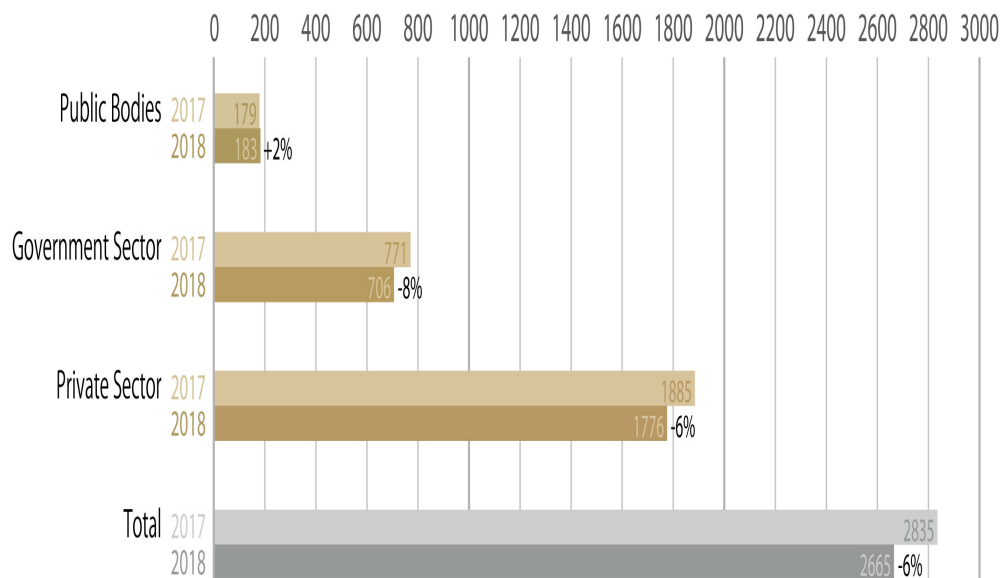


Figure 4.3

Source: Independent Commission Against Corruption⁴²

Based on the success of both anti-corruption agencies in combating corruption especially in the field of private-to-private corruption. Indonesia needs to regulate private-to-private corruption and develop the authority of KPK in handling corruption cases in private-to-private sector.

V. Conclusion and Recommendation

A. Conclusion

Based on the research, it may be concluded that there are several arguments on the urgency of Corruption Eradication Commission (KPK) in developing its authority to handle corruption in private sector. Firstly, the high number of corruption involving the private sector show the private sector has corrupt behavior and tends to corrupt in business

⁴² Independent Commission Against Corruption, “Corruption Figures”, <https://www.icac.org.hk/en/rc/figures/data/index.html>, accessed on November 2nd 2019, at 21.00.

activities. Secondly, private-to-private corruption has serious negative impacts on the country's economy and society in general such as unfair competition, inflated cost, firm-level consequences, inefficiency economy, politic, legal, and social impacts. Lastly, learning from the anti-corruption agencies of Corrupt Practices Investigation Bureau (CPIB) Singapore and Independent Commission Against Corruption (ICAC) Hong Kong that have proved the importance to eradicate corruption in private-to-private corruption.

B. Recommendation

From the conclusion on this research, the suggestion is the Government and House of Representatives (DPR) need to revise the Law Number 20 of 2001 concerning the amendment of Law Number 31 of 1999 on Corruption Eradication to regulate the form and subject of corruption in the private sector and the Law Number 19 of 2019 concerning the amendment of Law Number 30 of 2002 on the Corruption Eradication Commission to develop the authority of the KPK in handling corruption in the private sector.

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