

UNITED NATIONS CONVENTION AGAINST CORRUPTION AS A TOOL TO OVERCOME CASES OF ENVIRONMENTAL CORRUPTION

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Abstract: *In an effort to eradicate corruption, countries including Indonesia have made efforts, one of which is by ratifying UNCAC through Law no. 7 of 2006. UNCAC is expected to complement the anti-corruption movement, which is still lacking from the regulation of the internal state regulations. This study aims to examine how UNCAC becomes a global instrument to prevent corruption and also to become a tool in overcoming specific corruption cases related to the environment. The method used in this study legal research normative. The results of the research show that the cases of corruption have a negative impact on the government and even the economy as well as on particular of environmental management of the state. The environment then becomes damaged and degraded by corrupt behavior that being driven by personal gain. Through this UNCAC instrument, it is hoped that law enforcement, both preventive and repressive in nature, will be able to overcome cases of environmental corruption that have harmed the state and society.*

Keyword: *corruption, environment, UNCAC.*

1. INTRODUCTION

The environment is one of the most important aspects of human life. Humans are undeniably dependent on their surroundings. Nonetheless, natural resource management is a necessity because humans rely on them. It is always associated with a lack of protection for environmental protection in discussions on environmental issues, that there is a lack of care to ensure the preservation of the environment. This happens in countries where there are no or few regulations, but the level of implementation is limited by non-legal factors such as acts of corruption, which weaken enforcement in the field.

As a result, claims for environmental management arise, but they are not always consistent with the original purpose. Environmental management has devolved into scavenging, benefiting only certain groups. Issues over the economy and the environment are also happened in the aggregate impact of corruption on business. The claim that corruption acts as "grease in the wheels" contributing to a country's economic development has been thoroughly debunked.¹ There is now widespread agreement that high levels of background corruption in a given country or market are detrimental to business in two mutually reinforcing ways.

The gap between economic interests and environmental damage caused by corruption.² Although the direct relationship between corruption and GDP growth is difficult to assess, corruption has significant

¹ The U4 anti-corruption, The relationship between business integrity and commercial success, <https://www.u4.no/publications/the-relationship-between-business-integrity-and-commercial-success.pdf>, accessed on June 15, 2020.

²Issues Paper On Corruption And Economic Growth,

negative effects on a number of key transmission channels, including investment (including FDI), competition, entrepreneurship, government efficiency, including government expenditures and revenues, and human capital formation. Furthermore, corruption affects other important indicators of economic development such as environmental quality, personal health and safety status, equity (income distribution), and various types of social or civic capital ("trust") - all of which have a significant impact on economic welfare and, in the case of trust, also a country's development potential.

On environment case of Indonesian,³ according to Dadang Ishardianto, Head of Public Relations and Information Section of PerumPerhutani Unit 1 Central Java, "the material loss due to tree cutting is indeed insignificant but the ecological loss is actually very large," adding that "every tree, especially large ones, has relatively high ecological value because able to accommodate water twice as large as the crown and roots." So, during the rainy season, if one tree can accommodate very large amounts of water and prevent flooding, imagine the effect of many trees on preventing the potential flooding that frequently hits the country.

In making decisions on business development and investment directions, the majority of international business organizations frequently conduct analyses of the business environment in individual countries, during which corruption is identified as one of the key factors influencing business conditions. As a result, numerous sociological and scientific studies/surveys are conducted to assess the level of corruption or its prevalence in a country, its impact on society and business, as well as the effectiveness and cost-efficiency of anti-corruption measures implemented in both the public and private sectors.

According to public opinion, corruption is the most prevalent in relations between the public⁴ and private⁵ sectors. Representatives of the public sector whose duty it is to satisfy and defend the public interest, in exchange for undue advantage (bribes) from representatives of the private sector, perform actions or make decisions that benefit the latter and harm the public interest.

2. RESULTS AND DISCUSSION

2.1. Anti Corruption and the Environment

The environmental impact of corruption includes a decrease in environmental quality. The consequences of this natural destruction are extremely negative, particularly in terms of the quality of the environment itself. Illegal logging alone has resulted in state losses of up to 30-42 trillion rupiah per year. The destruction of tropical rainforests reduces not only the supply of oxygen for the region, but also the supply of oxygen for the entire planet. Reduced air quality will, of course, reduce the quality of human health for those who breathe it. Water pollution has also reduced the quality of

<https://www.oecd.org/g20/topics/anti-corruption/Issue-Paper-Corruption-and-Economic-Growth.pdf>, accessed on June 17, 2020.

³ MAPPI, Kerugian Ekologis Akibat Tindakan Pidana Korupsi di Sektor Lingkungan Hidup Di Ashar Wicaksana, http://mappihui.org/wp-content/uploads/2015/10/Kerugian-ekologis_DAW.pdf, accessed on June 20, 2020.

⁴ Public sector shall mean the entirety of state and municipal bodies and institutions, which perform the functions of public administration and are financed by the resources of the State budget and municipal budgets.

⁵ Private sector shall mean the entirety of private legal entities (including state and municipal enterprises as well as public limited companies), the purpose of which is to satisfy private interests (mostly — to earn money / profit) and the activities of which in terms of their compliance with the requirements laid down in legal acts are to a greater or a lesser extent monitored by the representatives of the public sector.

human life. Not to mention the environmental devastation. Not to mention that this environmental damage will cause man-made disasters such as floods, flash floods, soil damage, drought, water scarcity, and decreased water and air quality, as well as high pollution in river and sea waters that can be poisonous.

One of the reasons for the environmental corruption case is that entrepreneurs and/or investors must pay various fees in order for their business activities to be licensed and run. Furthermore, it was discovered that greed over natural resource management arises from the assumption that these natural resources are still very broad and large, and that taking or destroying them in the business process will have no effect. Corruption also has an impact on government policy, causing environmental damage, benefiting large corporations, and marginalizing indigenous peoples who have lived in the area for generations.⁶

When the environment continued being harmed,⁷ the most severe consequences will occur in the tropical regions where temperatures will rise beyond the normal range for which human and natural ecosystems have adapted. This will cause extensive damage, and the sea level will rise 15-20% more than the global average.

Tackling corruption should be a top priority for the government as it affects the country's economic and financial well-being.⁸ Combating corruption requires a joint effort from both the government and the general public, both domestically and globally. Preventing corrupt practices is crucial as they obstruct the development of a nation, impede the attainment of national objectives, waste national resources, endanger the social order, harm the reputation of a clean and credible government, and harm the environment.

According to a realistic analysis of law, the challenges in addressing the threats to the long-term well-being and survival of humanity and many other species seem insurmountable.⁹ The reason for this is due to three main misalignments. Firstly, there is a significant discrepancy in power and vulnerability when considering the time factor. Climate change and resource depletion could have catastrophic impacts on billions of future individuals who are currently unborn or just children and therefore unable to influence the regulations put in place to protect them. On the other hand, those who have the ability to shape these regulations are mature adults who are unlikely to experience the full impact of the problem in their remaining lifetime.

Corruption is defined as the use of positions of trust for personal gain. This definition, which includes three key elements of corruption, is adopted by Transparency International:¹⁰

1. Public and Private Sectors: Corruption can occur in both the public and private sectors, including media and civil society actors, and can involve individuals, companies, organizations, and political parties.

⁶Desfita, Sri, Wulan Sari, YusmariniYusmarini, Usman Pato, and GrażynaBudryn. "Characteristics of forest honey from several areas in Riau Province, Indonesia." *Canrea Journal: Food Technology, Nutritions, and Culinary Journal* (2022): 232-242.

⁷ Stephen Humphreys, Climate justice: the claim of the past, *Journal of Human Rights and the Environment*, Vol. 5 Special Issue, 2014, p. 135,

⁸Nelson, Febby Mutiara. "In Search of a Deferred Prosecution Agreement Model for Effective Anti-Corruption Framework in Indonesia." *Hasanuddin Law Review* 8, no. 2 (2022): 122-138.

⁹ Brad Jessup, Kim Rubenstein *Connecting International Law with Public Law*, Environmental Discourses in Public and International Law-Cambridge University Press, 2012.

¹⁰ U4, What is corruption? <https://www.u4.no/topics/anti-corruption-basics/basics>, accessed on June 1, 2020.

2. Misuse of Power: Corruption entails the misuse of power in a government institution or a private organization.
3. Benefit: Both parties involved in corruption benefit, either through financial gain or some other advantage.

The international community recognizes that corruption is a serious crime that can extend across borders and impact a country in multiple ways through the involvement of perpetrators, the transfer of funds, and its consequences.

In response, the global movement has prompted countries to launch anti-corruption initiatives and draft anti-corruption plans. Several attempts to eradicate corruption, particularly in regards to environmental corruption, have been established such as international law commitment can be seen like OAS Convention, the OECD Anti-Bribery Convention, the UN Convention against Transnational Organized Crime, and the United Nations Convention against Corruption (UNCAC). The effectiveness of these laws must be evaluated not only on their substance, but also on how they are carried out in practice by individual states.

One of these is the birth of an anti-corruption convention, the United Nations Convention on Anti-Corruption [UNCAC], which countries regard as a more comprehensive anti-corruption eradication convention. The UNCAC's entry into force in 2005 provided a significant boost. Article 5 of the UNCAC requires member countries to develop an "effective and coordinated anti-corruption policy" as well as "periodically evaluate relevant legal instruments and administrative measures."

The United Nations Convention Against Corruption (UNCAC) was ratified by Indonesia through Law No. 7 of 2006. The Indonesian implementation process has been reviewed twice: *First*, conducted in 2010-2012 for UNCAC Chapter III (criminalization and law enforcement) and Chapter IV (international cooperation) with Uzbekistan, England and Northern Ireland as reviewers. *Second*, carried out in 2016-2018 for UNCAC Chapter II (prevention) and Chapter V (asset recovery) with Yemen and Ghana as reviewers. The two reviews produced 53 recommendations with 32 recommendations from the first cycle and 21 recommendations for the second cycle.

2.2. UNCAC as a global document

The United Nations Convention on Anti-Corruption is an international legal instrument that represents a global effort by nations to prevent and combat criminal acts of corruption. Chapter III UNCAC related to criminalization and law enforcement, there are 11 acts criminalized as corruption. Broadly speaking, the eleven acts are:

1. bribery of national public officials or bribery of national public officials (Article 15).
2. bribery of foreign public officials and officials of public international organizations or bribery of foreign public officials and officials from public international organizations (Article 16)
3. embezzlement, misappropriation or other diversion of property by a public official or embezzlement, diversion or transfer of wealth by other means by public officials (Article 17).
4. trading in influence or trading in influence (Article 18).
5. abuse of function or abuse of function (Article 19).
6. illicit enrichment or enrichment illegally (Article 20).
7. bribery in the private sector or bribery in the private sector (Article 21).
8. Embezzlement of property in the private sector or embezzlement of wealth in the private sector (Article 22).
9. Laundering of proceeds of crime or laundering of proceeds of crime (Article 23).
10. Concealment or concealment (Article 24).
11. Obstruction of justice or acts of obstructing the court process (Article 25).

The prevention and combating of corruption must be done in a unique way that goes beyond the prevalence of other crime countermeasures. Asset recovery is regarded as a fundamental principle in the United Nations Convention on Anti-Corruption [UNCAC] [Chapter V Article 51 UNCAC]. The UNCAC governs the prevention of unauthorized asset transfers and the return of assets, both criminal and civil. Furthermore, UNCAC requested international cooperation in recovering assets, one of which was Mutual Legal Assistance [MLA].

It is also stated in environmental discourses in public and international law that massive inequality and poor enforcement have long been hallmarks of international law, and we find that international law faces more serious obstacles to justice than domestic law in democratic national jurisdictions. All three corrosive phenomena are well-known in the international arena. Significant resources are expended on cosmetic efforts to demonstrate that existing legal arrangements are morally good or at least well intentioned, as paradigmatically exemplified by myriad efforts to justify as 'pro-poor' legal arrangements that actually benefit powerful states and their corporations.

With the existence of mandatory offenses from UNCAC, it is hoped that investors and/or investors will not hesitate to provide guarantees if they are investing or doing business and are concerned that illegal levies will be protected under the UNCAC agreement.

Corruption-related acts committed by the representatives of the public and private sectors are usually divided into systemic (grand) corruptio¹¹ had been characterised as:

- a. This type of corruption harms the political and economic systems in both material and moral ways.
- b. This level of corruption is distinguished by larger bribe amounts, and there are frequently long-term mutually beneficial corruption relationships between bribers (typically business representatives) and bribe takers.
- c. Systemic (grand) corruption not only undermines citizens' trust in the state's governance, promotes disrespect for the rule of law, and ruins the concept of a democratic state governed by the rule of law, but it also causes massive economic losses. Economic losses manifest as a loss of state budget revenue, a decrease in investment, slow economic growth, or market competition distortion.

George Serafeim finds that the most serious issue with corporate bribery is not its impact on a company's reputation or the regulatory headaches it causes.¹² Bribery's most significant impact, however, is its negative impact on employee morale. Bribery is a sad, quantitative fact that it has become a Darwinian business tool. According to a Transparency International report released in July 2013, more than one in every four people paid a bribe in the previous year, based on a survey of 114,000 people in 107 countries. The World Bank estimates that bribes amount to \$1 trillion per year.

In addition, placing options from the start is very important in choosing partner investors, in the form of:¹³

¹¹ Helmi, Helmi, Fauzi Syam, Nopyandri Nopyandri, and Akbar Kurnia Putra. "Evaluation of the Regulation Changes on Environment and Forestry in Indonesia." *Hasanuddin Law Review* 6, no. 1 (2020): 100-108.

¹² Systemic (grand) corruption, which refers to cases, when business entities offer bribes to the higher-level civil servants or politicians in order to gain favourable decisions or state orders for their business. Carmen Nobel, *The Real Cost of Bribery*, Harvard Business School, 2013.

¹³ Howard, Cory. "The applicability of the BSA/AML regulatory regime to indirect lending business models." *Transactions: Tenn. J. Bus. L.* 19 (2017): 45; Roy, Vincent, Dominique Desjardins, Camille Fertel, and Claudiane Ouellet-Plamondon. "Methodology for conducting third-party risk-based due diligence in the construction and civil engineering industry." *Journal of Legal Affairs and Dispute Resolution in Engineering and*



Third-party due diligence would report a global due diligence data set that has been risk-rated, curated, benchmarked, and evaluated so that capital owners can feel secure in their investments while also avoiding problems, particularly in cases of environmental corruption.

3. CONCLUSION

Long-term ecological losses will result from corruption in the environmental sector. These losses may not be felt right now, but imagine how many losses humans will suffer if the environment on this planet, particularly in our country, continues to deteriorate. Alternatives to anti-corruption enforcement, such as using ethical aspects of business as a guide, are complementary and soft in nature, but can serve as guardian parameters in efforts to prevent corruption cases. Investors can also look at Transparency International's Corruption Perceptions Index, TRACE Matrix (Corruption Threat Assessment Index), Eurobarometer Sociological Survey Businesses' Attitudes Towards Corruption in the EU, Control Risk Company's International Business Attitudes to Corruption Survey. Corruption perpetrators, particularly those in the environmental sector, will be concerned with the presence of UNCAC. This is due to the selection of mandatory offenses under which investors can report bribery of foreign public officials and officials of public international organizations when investing their capital.

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Construction 14, no. 4 (2022): 03722002; See also: World Economic Forum, Good Practice Guidelines on Conducting Third-Party Due Diligence, 2013.

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