

A Comparison Between Indonesian and Malaysian Anti-Corruption Laws

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Abstract

Corruption is quite a complicated problem. It has made many countries, including Indonesia, to ratify the United Nations Convention Against Corruption (UNCAC). It is an effort to prevent and to eradicate corruption with international cooperation. Unfortunately, several studies have revealed that Indonesia is experiencing a legal vacuum on corruption because Indonesia only adopts a few points of the United Nations Convention Against Corruption in written regulations. The legal vacuum causes difficulties in the resolution of corruption cases. Compared to other countries, the Indonesia Corruption Perceptions Index is still quite high. It leads to some questions that are addressed in this study. First, why does Indonesia not adopt all articles of the United Nations Convention Against Corruption? Second, how are corruption cases in Indonesia managed after the ratification? Third, how is the comparison of the law to the Malaysia law? To answer the questions, this study used a normative method. It employed the analysis of primary and secondary data assisted using the nVivo 12 application. The study revealed that Indonesia cannot ratify all articles because Indonesia needs some adjustments to meet the required proportions before the new laws are passed. After the ratification, Indonesia seems to have better regulations and adequate existing conditions. Lastly, laws or regulations in Malaysia are more dynamic than Indonesia.

Keywords: Indonesia, Malaysia, ratification of UNCAC.

A. Introduction

Every state aims to achieve welfare and justice. The preamble of the 1945 Indonesian Constitution states that Indonesia will protect all citizens, promote general prosperity, encourage the spiritual life of its people, and maintain a world order based on freedom, lasting peace, and social justice. However, all these goals are unattainable unless corruption is eradicated. Corruption negatively impacts the

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sustainability of nations, and is exacerbated when corruption affects all communities. Corruption can also destroy people's economies. In short, corruption poses a serious threat to economic and national security stability.¹

Within the public's scope, corruption presents a greater challenge that may slow down social development and erode the people's trust to governments and law enforcers. Corruption takes on all aspects.² Indonesia has ratified the United Nations Convention Against Corruption (UNCAC), a document that could be relied upon to formulate the regulatory provisions. Indonesia decided to ratify UNCAC because (1) Indonesia is a member state of the UN; (2) Indonesia is a state of the law; (3) the corruption rate in Indonesia is quite high; and (4) the judicial system in Indonesia is not working appropriately, contrary to its function to judge and settle disputes, while courts have absolute authority towards and related to the legislation that rules the courts.³ In addition, as an attempt to withdraw the assets gained from corruption and invested overseas, Indonesia has established international collaborations to eradicate corruption. The UNCAC is legally binding, opposes corruption, and serves as the only universally applicable anti-corruption tool.⁴ Only independent states can join the United Nations. Indonesia officially joined the United Nations in 1950,⁵ leading to the recognition of Indonesian independence in the global world. Thus, Indonesia is required to ratify the UNCAC, which represents the perspective for making laws to regulate corruption eradication.

Referring to UNCAC, Indonesia has several regulations regarding corruption eradication that are currently in place, such as the Law Number 31 of 1999 on Corruption Eradication,⁶ the Law Number 20 of 2001 on the Amendment to the Law Number 31 of 1999 on Corruption Eradication,⁷ the Law Number 30 of 2002 on the Corruption Eradication Commission.⁸ All those laws aim to prevent and eradicate criminal corruption, allowing for the imposition of punishment and the eradication

¹ Sabarudin Hulu and Pujiyono, "Pertanggungjawaban Pidana Atas Tindakan Diskresi Pejabat Pemerintahan Yang Berindikasi Adanya Penyalahgunaan Wewenang," *Masalah-Masalah Hukum* 47, no. 2 (2018): 167, <https://doi.org/10.14710/mmh.47.2.2018.1671>.

² Lor Mouy Ngich and Wonhyuk Cho, "Addressing Police Corruption in Southeast Asia: Politics, Participation, and Public Management Reform," *Public Administration* 34, no. 5 (2020): 9, <https://doi.org/10.17323/1999-5431-2020-0-5-934>.

³ Ananta Prayoga Hutama Syam, "Effectiveness of Sela's Decision in Article 96 Law Number 2 of 2004 on the Resolution of Industrial Relations Disputes," *KnE Social Sciences* 2022, no. 14 (2022): 48, <https://doi.org/10.18502/kss.v7i8.10768>.

⁴ United Nations, "United Nations Convention Against Corruption," (UN Office on Drugs and Crime Website Report, 2005), <https://www.unodc.org/unodc/en/treaties/CAC/>.

⁵ United Nations, "United Nations," (United Nations Website Report, 2023), <https://www.un.org/en/>.

⁶ The Law of Republic of Indonesia Number 31 of 1999 on Corruption Eradication.

⁷ The Law of Republic of Indonesia Number 20 of 2001 on Changes in Law Number 31 of 1999 on Corruption Eradication.

⁸ The Law of Republic of Indonesia Number 30 of 2002 on the Commission for the Eradication of Criminal Acts of Corruption.

of corruption per se according to the information on the elements and characteristics in each article. Punishment refers to sentences to control people from doing any inappropriate conduct with the provision regarding this conduct formulated. Principally, sentences must be just for all parties, but dissenting sentences imposed by courts have blurred the meaning of justice, for example, in the difference in the estimated prison terms given to perpetrators of corruption.⁹

Therefore, quantitative assessment alone is not sufficient to provide a comprehensive picture of the success or failure of existing anti-corruption efforts in Indonesia. A deeper picture of new fractures can be obtained by performing appropriate qualitative assessments, such as using special references such as nVivo.¹⁰ There are signs that government policies, such as the controversial House of Representatives (*Dewan Perwakilan Rakyat-DPR*) law recall policy, do not fully support anti-corruption measures known to hinder Indonesia's democracy and hinder opportunities to combat corruption.¹¹ Indonesia is also known to have no foreign bribery regulations, which also makes it difficult for Indonesian jurisdictions to protect Indonesian companies operating abroad.¹² Sociological factors such as closeness or trust factors and feelings of indebtedness to subordinates, because they have been promoted to a good position are factors driving corruptors to commit acts of corruption.¹³ Research has shown that one of the ways in which genuine corruption can be identified is by obtaining reports by individuals or groups that show and prove that corrupt practices were involved or by making arrests. The role of collective action is important.¹⁴ Corporate corruption also needs attention. The study explains the importance of being vigilant and developing correct and appropriate fee structures, especially when perpetrators of corruption are businesses.¹⁵

⁹ Yanuaris Frans M. (et.al.), "Applying the *Straftoemettingsleiddraad* in a Corruption Case in Indonesia," *Journal of Public Administration, Finance and Law*, no. 17 (2020): 397.

¹⁰ Hendi Yogi Prabowo, "Reinvigorating the Human Instrument: An Exploratory Study on the Potential Use of CAQDAS in Qualitative Evaluation of Corruption Prevention in Indonesia," *Journal of Financial Crime* 27, no. 2 (2020): 505, <https://doi.org/10.1108/JFC-01-2019-0004>.

¹¹ Muhammad Bahrul Ulum and Moch. Marsa Taufiqurrohman, "Examining Recall of the House Member: How Does It Impact on Eradicating Corruption in Indonesia?" *Lentera Hukum* 7, no. 1 (2020): 114, <https://doi.org/10.19184/ejrh.v7i1.14434>.

¹² Razananda Skandiva and Beniharmoni Harefa, "Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi di Indonesia," *Integritas : Jurnal Antikorupsi* 7, no. 2 (2022): 245, <https://doi.org/10.32697/integritas.v7i2.826>.

¹³ I Ketut Seregig, "Motives of Criminal Acts of Corruption in Indonesia (Study of Decision Number: 52/Pid.Sus-TPK/2016/PN.Tjk)," *Biomass Chem Eng* 3, no. 2 (2018): 228, <https://jurnal.uns.ac.id/yustisia/article/viewFile/21834/16970>.

¹⁴ Ilham Nurhidayat and Bevaola Kusumasari, "Why Would Whistleblowers Dare to Reveal Wrongdoings?: An Ethical Challenge and Dilemma for Organisations," *International Journal of Law and Management* 61, no. 3–4 (2019): 505, <https://doi.org/10.1108/IJLMA-11-2018-0253>.

¹⁵ Toni Hendrato (et.al.), "Criminal Regulation Urgency and Liability Regulation of State-Owned Enterprises for Losses in Controlling Business Decisions," *Journal of Public Administration, Finance and Law*, no. 18 (2020): 263.

Even if all general electoral measures require the support of all political decision makers, especially in maintaining and applying political and legal ethics to combat corruption.¹⁶ Subsequent investigations found that corruption cases were on the rise sometime before the COVID-19 Pandemic. This has led to lower public compliance with non-pharmaceutical interventions, exacerbating the situation during the pandemic.¹⁷ Other studies say that the impact of accounting practices on corruption among districts in Indonesia has shown that using better accounting methods can reduce corruption, but when accommodating the endogeneity of accounting practices, the adoption of reforms has no effect on corruption.¹⁸

Indonesia also still needs a better justice system when it comes to corruption, collusion, and nepotism. This is important because, in that way, corruption, collusion, and nepotism practices can be handled properly.¹⁹ In other studies, in order to reduce the number or percentage of cases of corruption, it is important to prioritize strengthening legal institutions such as a strong, accountable, and independent justice system, a strict but also impartial public administration, and transparent laws with predictive enforcement.²⁰ Other studies have concluded that the existing (traditional) confiscation of goods resulting from corruption is no longer efficient, so a stronger instrument is needed.²¹ It has been proven that it is true that corruption can basically be stopped with trust and moral teaching from an early age, where all of this is needed as inner and outer self-control.²² Digitalized payments are believed to be able to reduce the level of corruption in a country. It causes more countries continue to socialize digitalized payments.²³ The latest research discusses

¹⁶ B. Bahrudin and H. Hidayatullah, "PKPU Policy Number 20 of 2018 Concerning the Prohibition of Former Corruptors as Legislative Candidates in the 2019 General Election," *KnE Social Sciences*, no. 20 (2021): 13, <https://doi.org/10.18502/kss.v5i7.9315>.

¹⁷ Vincenzo Alfano (et.al.), "Death Takes No Bribes: Impact of Perceived Corruption on the Effectiveness of Non-Pharmaceutical Interventions at Combating COVID-19," *Social Science and Medicine* 301 (2022): 1, <https://doi.org/10.1016/j.socscimed.2022.114958>.

¹⁸ Blane D. Lewis and Adrianus Hendrawan, "The Impact of Public Sector Accounting Reform on Corruption: Causal Evidence from Subnational Indonesia," *Public Administration and Development* 40, no. 5 (2020): 245, <https://doi.org/10.1002/pad.1896>.

¹⁹ Blane D. Lewis and Adrianus Hendrawan.

²⁰ Shrabani Saha and Kunal Sen, "Do Economic and Political Crises Lead to Corruption? The Role of Institutions," *Economic Modelling* 124 (2023): 1, <https://doi.org/https://doi.org/10.1016/j.econmod.2023.106307>.

²¹ Tommaso Trinchera, "Confiscation and Asset Recovery: Better Tools To Fight Bribery and Corruption Crime," *Criminal Law Forum* 31, no. 1 (2020): 49, <https://doi.org/10.1007/s10609-020-09382-1>.

²² Waled Younes E. Alazzabi, Hasri Mustafa, and Ahmed Razman Abdul Latiff, "Corruption and Control From The Perspective of Islam," *Journal of Financial Crime* 27, no. 2 (2020): 355, <https://doi.org/10.1108/JFC-02-2019-0020>.

²³ Tenace Kwaku Setor, P. K. Senyo, and Atta Addo, "Do Digital Payment Transactions Reduce Corruption? Evidence from Developing Countries," *Telematics and Informatics* 60, no. 101577 (2021): 1, <https://doi.org/10.1016/j.tele.2021.101577>.

the need for research that specializes in the division of corruption according to type.²⁴

It is known that the problems mentioned above are not only faced by Indonesia but also globally. Several countries have been facing problems in their development due to the issues caused by the high corruption rate worldwide. Sudan is one of the states with the highest corruption rate, reaching 180 as recorded in the Corruption Perceptions Index 2022 (CPI 2022), followed by Syria with a score of 13/100 and a rank of 178/180, and Indonesia with a score of 34 and a rank of 110/180. Hong Kong scored 76/100 and ranked 12/180; Singapore scored 83/100 and ranked 5/180; and Malaysia scored 47/100 and ranked 61/180. Indonesia should gain a better rank in the time to come by dealing with corruption more holistically, i.e., not only dealing with figures but also considering the prosperity of the people and their state.²⁵

Indonesia is aware that tackling corruption must go beyond the public sector and touch the private sector. Indonesia has taken several steps to prevent and eradicate corruption, but corruption continues to grow in quantity and quality.²⁶ Referring to previous studies, Indonesia did not adopt some points from the UNCAC. However, are there other important points that Indonesia did not adopt, and what are Indonesia's reasons for doing so? The Corruption Perception Index Report for 2021-2022 also proves that several other countries, especially Malaysia, have a better level than Indonesia. Other things that affect the conditions may help Indonesia to get a better ranking again in the future. By paying attention to these problems, this study was conducted to answer some questions. First, why does Indonesia not adopt all articles of the United Nations Convention Against Corruption? This study emphasized the differences and similarities that exist in various legal systems.²⁷ With normative-legal methods, the study required library research that involved reading and studying both primary and secondary materials.²⁸ NVivo 12 Plus software was used to organize or process the findings to yield better research results. Below is the flowchart of the data-collection process:

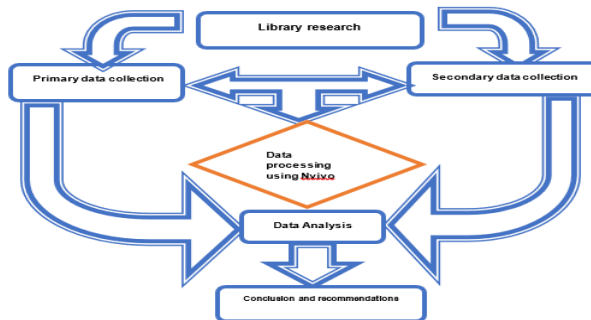
²⁴ Gian Marco Moisé, "Corruption in The Oil Sector: A Systematic Review and Critique of the Literature," *Extractive Industries and Society* 7, no. 1 (2020): 217, <https://doi.org/10.1016/j.exis.2020.01.002>.

²⁵ Transparency International, "Corruption Perceptions Index," accessed on May 7, 2023, <https://www.transparency.org/>.

²⁶ Putri Maha Dewi, "Upaya Pemberantasan Korupsi di Indonesia," (Proceeding Paper Seminar UNSA, 2014): 87.

²⁷ Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi Tesis Serta Disertasi* (Bandung: Alfabeta, 2017), 85.

²⁸ Jonaedi Efendi, *Metode Penelitian Hukum Normatif dan Empiris* (Depok: Prenada Media, 2016), 304.

Diagram 1.1 Type of Data Collection

Library research was conducted to collect primary and secondary data. All the data were processed using nVivo to yield clearer findings based on data grouping or existing findings. By conducting research using library research, the research carried out can have better data, information, and opinions from various good, up-to-date sources.²⁹

B. Corruption and UNCAC Definition and History

Corruption is akin to mental illness, representing people's greediness. Joe Hurstfield, a historian investigating governmental matters and the society of the United Kingdom (UK) back in the 16th century, found an abnormality in the concept of corruption. Several experts back in the day also discussed bribery cases, which were deemed to have their own history as a moral concept planted into the moral tradition of society, while corruption is not always uniform and keeps transforming.³⁰ From ancient times to modern times, corruption seems to have been ingrained in every society, not only in Indonesia but in almost all countries in the world. In today's contemporary world, corruption has become a strong issue.³¹

In its history, corruption itself had a different designation long before the word corruption was mentioned; such actions were also known as moral or spiritual damage.³² Corruption is difficult to trace or solve, not only because of the ever-evolving crime mode but also because corruptors are getting better at hiding the results of their corruption. One of their efforts is money laundering and bad

²⁹ Thomas Mann, *The Oxford Guide to: Library Research 4th Edition* (United Kingdom: Oxford University Press, 2015), 19.

³⁰ Musnar Indra Daulay and Linda F Saleh, *Pendidikan Antikorupsi (Model Pemberantasan Korupsi) 1st Edition* (Bandung: CV. Media Sains Indonesia, 2022), 211.

³¹ Carlo Alberto Brioschi, *Corruption A Short History* (Washington, D. C: The Brookings Institution, 2017), 268.

³² Buchan, Bruce and Lisa Hill, "An Intellectual History of Political Corruption," in *Political Corruption & Governance 1st Edition*, Dan Hough and Paul M. Heywood (ed.) (United Kingdom: Palgrave Macmillan, 2014), 170.

governance or regulations that always have loopholes, making it difficult for corruptors to catch this in several countries.³³ According to historical data, the problem of corruption continues to occur, especially among the government or those in power. Those who hold certain positions tend to have a higher potential for corruption. Corruption does not only occur because of external problems; internal problems also cause it.³⁴ The following is corruption in the history of the author, listed in table form:

Table 1.1 The Timeline of Corrupt Behavior

No.	Period	Corrupt Behavior
1.	Pre-Independence	<ul style="list-style-type: none"> - The Kingdom The habit of perpetual corruption that the people gave "tribute" to the king. A person can become king because of his heredity, not his ability. - Colonialism In the book <i>History of Java</i> by Thomas Stamford Raffles (Governor General of the British who ruled Java Island from 1811–1816), the interesting thing in the book is the discussion about the character of the Javanese population. Another interesting thing is that some nobles like to accumulate wealth, take care of relatives (courtiers), and generally prefer to get or seek the attention of their employer. As a result, royal courtiers prefer to make faces or behave opportunistically.
2.	Post-Independence	<ul style="list-style-type: none"> - Old Order Government officials are asked to fill out forms regarding their assets. - New Order State-owned companies such as Bulog and Pertamina are suspected by the people of being hotbeds of corruption. - Reform All elements of government have been infected with the corruption virus.

1. The Definition of Corruption

Syed Husein Alatas once argued that corruption is jointly committed; it involves the community, is done secretly, is restricted, is compulsory, and is intended to give financial benefits or protection from legal justification. Corruption is often

³³ Sandeep Bhalla, *Corruption in India: History, Law & Politics 1st ed.* (India: lawmystery.in, 2020), 6.

³⁴ Judivan J Vieira, *Encyclopedia Corruption in The World, Book 1: Corruption a Historical Perspective* (Bloomington: AuthorHouse 04, 2018), 8.

intentionally committed by those in power and with authority, in public authority, or society.³⁵

Traditionally, corruption is defined as the unfair conduct of a public official for personal gain.³⁶ Principally, corruption and economic growth are closely related, and a lot of research has proven that corruption leads to significant losses in both public and private investment. State losses are getting higher due to corruption that affects economic stability.³⁷ Corruption is committed jointly or independently; it takes place in social relationships between the top management and subordinates. In other words, corruption is a serious crime happening in political and legal scopes that calls for all party's efforts, and the eradication needs evaluations of impacts, programs, and processes.³⁸ Simply because a corruption, collusion, and nepotism-free state is necessary.³⁹

2. United Nations Convention Against Corruption (UNCAC)

The United Nations Convention Against Corruption, or UNCAC, is an international, legally binding, and multilateral convention against corruption. This convention stems from UNODC, commonly known as the United Nations Office on Drugs and Crime, which elaborates on the adoption of policies to transform attitudes in the form of corruption regulation.⁴⁰ UNCAC aims to ease the prevention and eradication of corruption and make it more efficient and effective. In order to allow this approach to function as expected, collaboration between states needs to be reinforced, considering that the assets gained from corruption are often invested overseas and are supported by conventional bank confidentiality.⁴¹

Recalling that corruption can extend to the international level, Indonesia ratified UNCAC into the Law Number 7 of 2006 in 2006. However, Indonesia only ratified parts of the articles on corruption set forth in the convention. Unfortunately, foreign

³⁵ Musnar Indra Daulay and Linda F Saleh, *Pendidikan Antikorupsi (Model Pemberantasan Korupsi) 1st Edition*.

³⁶ Fernando Feitosa, "Theoretically, Yes, But Also Empirically? How the Corruption-Turnout Link is Marginally Explained by Civic Duty To Vote." *Electoral Studies* 66 (2020): 1, <https://doi.org/10.1016/j.electstud.2020.102162>.

³⁷ Anisah Alfada, "The Destructive Effect of Corruption on Economic Growth in Indonesia: A Threshold Model," *Heliyon* 5, no. 10 (2019):1, <https://doi.org/10.1016/j.heliyon.2019.e02649>.

³⁸ Hendi Yogi Prabowo, "Reinvigorating the Human Instrument: An Exploratory Study on the Potential Use of CAQDAS in Qualitative Evaluation of Corruption Prevention in Indonesia," *Journal of Financial Crime* 27, no. 2 (2020): 505, <https://doi.org/10.1108/JFC-01-2019-0004>.

³⁹ B. Bahrudin and H. Hidayatullah, "PKPU Policy Number 20 of 2018 Concerning the Prohibition of Former Corruptors as Legislative Candidates in the 2019 General Election."

⁴⁰ Razananda Skandiva and Beniharmoni Harefa, "Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi di Indonesia."

⁴¹ Paku Utama, "Terobosan UNCAC Dalam Pengembalian Aset Korupsi Melalui Kerjasama Internasional," accessed on May 10, 2023, <https://www.hukumonline.com/berita/baca/hol19356/terobosan-uncacdalam-pengembalian-aset-korupsi-melalui-kerjasama-internasional/>.

bribery is one of the articles Indonesia chose not to adopt into its national law.⁴² UNCAC categorizes corruption as an international crime, which means it also applies universal principles in criminal law, i.e., the requirements of having criminal charges framed against and sentences imposed on corruptors. The ratification of an international convention complies with the general principle of international law, *Pacta Sunt Servanda*, meaning that the parties are bound by the convention, which includes justice and good faith principles to be transposed into national law.

C. Corruption and the Correlation With UNCAC

Corruption has existed since the beginning of human history. Changes continue to be made, but in fact, history so far still records that corruption continues and exists. Most corruption occurs first in poor countries. Although this is not entirely the cause of poor countries, corruption is one of the causes.⁴³ According to UNCAC, corruption can be categorized as an international crime; thus, international law also regulates corruption. There have been attempts to eradicate and prevent corruption because corruption has slowed down the sustainable development of a state.⁴⁴ The growing corruption cases in several countries, like Indonesia, make people more aware that corruption is destructive to economic development, although there have not been many studies highlighting where this threshold lies.⁴⁵

In recent years, the regulatory provisions on corruption in some countries, especially Indonesia, have been enforced despite the increasing corruption trend. Others, like Hong Kong and Singapore are positioned above Indonesia. The latest data reported that Indonesia will score 34 out of 100 and rank 110 out of 180 in Southeast Asia in 2021–2022.⁴⁶

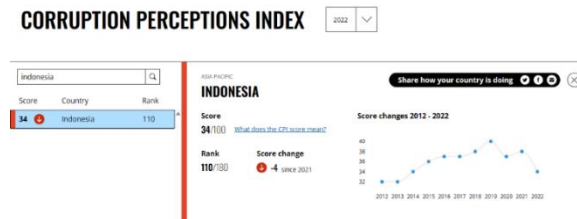
⁴² The Law of Republic of Indonesia Number 7 of 2006 on Ratification of the United Nations Convention Against Corruption.

⁴³ Corina Joseph (et.al), "A Comparative Study of Anti-Corruption Practice Disclosure among Malaysian and Indonesian Corporate Social Responsibility (CSR) Best Practice Companies," *Journal of Cleaner Production* 112 (2016): 2, <https://doi.org/10.1016/j.jclepro.2015.10.091>.

⁴⁴ Corina Joseph (et.al.), "Realising Sustainable Development Goals via Online Integrity Framework Disclosure: Evidence from Malaysian and Indonesian Local Authorities," *Journal of Cleaner Production* 215 (2019): 112, <https://doi.org/10.1016/j.jclepro.2019.01.057>.

⁴⁵ Anisah Alfada, "The Destructive Effect of Corruption on Economic Growth in Indonesia: A Threshold Model."

⁴⁶ Transparency International, "Corruption Perceptions Index."

Table 1.2 Corruption Perceptions Index.⁴⁷

Despite insignificant progress in tackling corruption, Indonesia has taken a few measures to prevent criminal corruption, for instance, by issuing some laws and establishing international collaborations with several countries to tackle corruption problems. These measures are preferred because corruption varies and happens worldwide.⁴⁸ Indonesia has taken corruption seriously despite all the obstacles to its eradication. The impeding factors come from both internal and external aspects. Indonesia has been stigmatized by some political elites simply because public officials do not show any feeling of regret after they commit corruption.⁴⁹ Corruption is committed independently or jointly, and common corruption cases happen between leaders and subordinates.⁵⁰ Corruption takes place in both the public and private sectors and regularly involves money laundering to erase the corruption trace.⁵¹ Corruption may arise from abuse of authority intended for personal gain or interest.⁵² These days, corruption is often caused by trading in influence in political circles. Issues regarding corruption are complex, and corruption is deemed to be an extraordinary crime.⁵³

Corruption has had both small and large-scale impacts. Corruption ruins all sectors and the development of the nation. Corruption has negative impacts in all

⁴⁷ Transparency International, "Corruption Perceptions Index: 2022," accessed on June 13, 2023, <https://www.transparency.org/en/cpi/2022>.

⁴⁸ Marie Dela Rama and Chris Rowley, *The Changing Face of Corruption in the Asia Pacific: Current Perspectives and Future Challenges* (Netherlands: Elsevier Ltd, 2017), 57.

⁴⁹ Juneman Abraham (et.al.), "Prediction of Guilt and Shame Proneness Based on Disruption to Psychological Contract: A New Light for Corruption Prevention," *Heliyon* 6, no. 6 (2020): 1, <https://doi.org/10.1016/j.heliyon.2020.e04275>.

⁵⁰ I Ketut Seregig, "Motives of Criminal Acts of Corruption in Indonesia (Study of Decision Number: 52/Pid.Sus-TPK/2016/PN.Tjk)."

⁵¹ Wayne Palmer, "Prosecuting Corporate Crime in Indonesia: Recruitment Agencies That Traffic Migrant Workers," *Asian Journal of Comparative Law* 15, no. 1 (2020): 23, <https://doi.org/10.1017/asjcl.2020.5>.

⁵² David Aled Williams and Kendra E Dupuy, "Will REDD+ Safeguards Mitigate Corruption? Qualitative Evidence from Southeast Asia," *The Journal of Development Studies* 55, no. 10 (2019): 44, <https://doi.org/10.1080/00220388.2018.1510118>.

⁵³ Muhammad Bahrul Ulum and Moch. Marsa Taufiqurrohmah, "Examining Recall of the House Member: How Does It Impact on Eradicating Corruption in Indonesia?"

sectors.⁵⁴ With the active participation of the public combined with the existence of innovative technology, people feel it is easier to supervise and report every act suspected of corruption. This condition helps prevent and supervise corruption, and a personal upgrade stimulates people to get involved in corruption eradication actively.⁵⁵ The protection and sense of security of witnesses and whistleblowers in corruption cases should also be considered.⁵⁶ The supervision given by the public is essential to minimize measures taken to tackle corruption cases, such as abuse of authority in social aid distributed amidst the pandemic, leading to unjust consequences affecting rural areas.⁵⁷ Along with the members of the public, the Corruption Eradication Commission also plays an active role in guarding the allocation and distribution of social aid funds during COVID-19 at either the central or regional levels to help prevent and eradicate corruption.⁵⁸

Malaysia ratified the UNCAC on September 28, 2008. In order to build a modern country free of corruption, since 1961, Malaya, which later developed into Malaysia, has had anti-corruption laws, all of which were updated again in accordance with UNCAC, including the first law in 1961, which was called the Prevention of Corruption Act or Deed of Prevention of *Rasuah* Number 57, then reissued Emergency Essential Powers Ordinance Number 22 of 1970, then formed the *Rasuah* Prevention Agency, abbreviated as *Badan Pencegah Rasuah* (BPR), based on the Anti-Corruption Agency Act of 1982. Many of the things that caused Indonesia to lose to Malaysia and Singapore related to the prevention and handling of corruption. Therefore, there is still a need for improvement and learning from the two countries.

The UNCAC itself is an agreement between nations formed to fight corruption by fostering cooperation between nations as well as strengthening the justice system related to corruption. UNCAC was created to do better handling related to acts of corruption; for example, when corruption cases involve other countries, with this agreement, each country can work together to handle them. The establishment and ratification of the UNCAC by UN members or all countries within the UN is a form of cooperation between countries to better fight corruption. UNCAC, also commonly called the UN Anti-Corruption Convention, is the only legally binding universal anti-corruption instrument that covers various forms of corruption, even corruption in

⁵⁴ Prakrit Silal and Debashis Saha, "Impact of National E-Participation Levels on Inclusive Human Development and Environmental Performance: The Mediating Role of Corruption Control," *Government Information Quarterly* 38, no. 4 (2021): 1, <https://doi.org/10.1016/j.giq.2021.101615>.

⁵⁵ Prakrit Silal and Debashis Saha.

⁵⁶ Ilham Nurhidayat and Bevaola Kusumasari, "Why Would Whistleblowers Dare to Reveal Wrongdoings?: An Ethical Challenge and Dilemma for Organisations."

⁵⁷ Hasanal Mulkan, "Penegakan Hukum Terhadap Tindakan Penyalahgunaan Kekuasaan Dalam Kondisi Darurat Covid-19," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 2 (2021): 685, <https://doi.org/10.33087/jiubj.v21i2.1471>.

⁵⁸ Triono and Ratnia Solihah, "Peran KPK Dalam Mengawal Pengalokasian Dana Bantuan Sosial di Masa Pandemi Covid-19," *Jurnal Teropong Aspirasi Politik Islam* 16, no. 2 (2020): 69, <https://doi.org/10.24042/tps.v16i2.7764>.

the private sector. In short, with UNCAC ratification, every country agrees to cooperate to eradicate corruption. Each point in the UNCAC explains every existing corruption case. Indonesia itself basically does not adopt all the existing points; therefore, it can still be said that Indonesia is still in a position where there is a legal vacuum at certain points in corruption.⁵⁹

As for the forms of international cooperation carried out, for example, making efforts to arrest suspects in corruption cases hiding in other countries recently carried out by Indonesia and Hong Kong. Prior to the existence of this organization, Hong Kong was known as a country with the highest levels of corruption in the world. This organization also plays an important role in preventing and combating corruption, and shockingly, Hong Kong has imposed the death penalty for corruption and other crimes. Indeed, ICAC succeeded in reducing the level of corruption in Hong Kong. Thus, Indonesia is working with ICAC Hong Kong to further discuss human resource development at the Corruption Eradication Commission to improve human resource performance and increase the commission. Indonesia is also cooperating on how to deal with corruption in the private sector and other matters. Even though, in fact, Indonesia has collaborated with ICAC regarding the substance of corruption, there has been no written provision regarding the results of this cooperation that has been issued in the form of rules or laws.

1. Regulations Regarding Criminal Corruption Following the Ratification of UNCAC in Indonesia

Corruption is considered a serious crime against humans, destructive to the state, and infectious to governments, and it requires immediate action.⁶⁰ Departing from this threatening issue, the Indonesian government has set specific laws to realize the eradication and prevention of corruption in Indonesia, consisting of the Law Number 31 of 1999 on the Corruption Eradication Commission,⁶¹ the Law Number 20 of 2001 on the Amendment to the Law Number 31 of 1999 on Corruption Eradication,⁶² and the Law Number 30 of 2002 on the Corruption Eradication Commission.⁶³

As instruments of national law, the above laws are not quite extensive, and other countries have experienced the same issues. Referring to this issue, the UN, as an official organization that provides legal protection, initiated an anti-corruption convention. A dialogue room is also required to support international collaborations

⁵⁹ Razananda Skandiva and Beniharmoni Harefa, "Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi di Indonesia."

⁶⁰ Sabrina O. Sihombing, "Youth Perceptions toward Corruption and Integrity: Indonesian Context," *Kasetsart Journal of Social Sciences* 39, no. 2 (2018): 299–304, <https://doi.org/10.1016/j.kjss.2018.03.004>.

⁶¹ The Law of Republic of Indonesia Number 31 of 1999 on Corruption Eradication.

⁶² The Law of Republic of Indonesia Number 20 of 2001 on Changes in Law Number 31 of 1999 on Corruption Eradication.

⁶³ The Law of Republic of Indonesia Number 30 of 2002 on the Commission for the Eradication of Criminal Acts of Corruption.

in corruption eradication. The UN understands that collaborations with other countries are necessary to eradicate and prevent corruption. Such collaborations require UNCAC's Joint Commitment, signed by all the members of the UN on December 9, 2003, in Mérida, Mexico, as an instrument to manifest their aim to tackle corruption.⁶⁴ As a state of law and an official member of the UN, Indonesia ratified UNCAC to structure the regulations on corruption eradication. However, Indonesia did not adopt the whole set of regulatory provisions from UNCAC because ratifying the convention requires the amalgamation of two legal systems, the common law and civil law, to ensure harmonization of the existing regulations.⁶⁵

In general, UNCAC highlights four principles consisting of prevention, criminalization, law enforcement, international collaboration, and asset withdrawal. Following the ratification of the UNCAC, Indonesia started to address the two sectors, recalling that the two sectors equally need attention since they are prone to corruption and the losses caused are inevitable. In relation to the prevailing circumstances in Indonesia, trading in influence needs to be given attention when dealing with corruption eradication. Basically, trading in influence is a type of corruption that occurs a lot, and it is not easy to prove it. Corruptors are entangled in the trade of influence, involved in the trade of official positions or powers they hold for personal benefits obtained unfairly.⁶⁶

The ratification of the convention has also led to the establishment of international collaborations in preventing and eradicating corruption, which is congruent with the obligations every member state must comply with, as highlighted in UNCAC. These obligations involve asset withdrawal, criminal process transfer, collaborations among law enforcers, joint inquiries, and special inquiries. However, some matters are not officially outlined in the regulations on trading in influence.⁶⁷ In addition to the regulations resulting from the ratification of UNCAC, the Indonesian government has also established the Corruption Eradication Commission under the Law Number 30 of 2002. Since its establishment, this commission has been performing its tasks despite some hindering factors coming from several parties, and corruptors have always been able to find ways to escape from the law.⁶⁸

The measures taken by the commission should come together with better regulations, while the existing regulations indicate that there are loopholes in the articles that may leave some room for corruptors. There are several findings related

⁶⁴ Abdul Manan, "Pembaharuan Hukum Dalam Tindak Pidana Korupsi Pasca Ratifikasi Konvensi Anti Korupsi Tahun 2003," *Maleo Law Journal* 2, no. 2 (2018): 197, <https://jurnal.unismuhpalu.ac.id/index.php/MLJ/article/view/774>.

⁶⁵ Abdul Manan.

⁶⁶ Abdul Manan.

⁶⁷ Abdul Manan.

⁶⁸ Saldi Isra, (et.al.), "Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia," *International Journal of Law, Crime and Justice* 51 (2017): 72. <https://doi.org/10.1016/j.ijlcrj.2017.07.001>.

to this; for example, there was a legal vacuum where this happened because Indonesia did not fully adopt the points in the UNCAC.⁶⁹ Another issue is related to dissenting court decisions over the same cases of corruption, a confusing situation in serving justice. Although corruption is common in both the public and private sectors, the regulations regarding the implementation of legal procedures against corporate corruption are not outlined in the corruption law.⁷⁰

The ratification of UNCAC did not take the whole text of the convention. Corruption cases brought before the court, for example, are still bound by the legal procedures set out in Supreme Court Regulation Number 13 of 2016 on the Procedures for Handling Corporate Crime. This regulation was then amended to Supreme Court Regulation Number 1 of 2020 on Criminal Procedures as in Article 2 and Article 3 of the Law on Corruption Eradication.⁷¹ However, all regulatory provisions should be put under the same law for a more comprehensive and better system.

In addition to the Corruption Eradication Commission established in 2004, Indonesia also set up criminal corruption courts, but their number is not parallel to the target set due to a lack of adequate human resources.⁷² Indonesia, to date, has 33 corruption courts⁷³ categorized as special courts according to the Law Number 46 of 2009 on Corruption Courts.⁷⁴ Corruption courts are run by a panel of judges, consisting of *Hakim Karier* (the judge authorized to appoint a Supreme Court judge as an active judge in a judicial body under the Supreme Court) and Ad Hoc Judges. These courts are responsible for adjudicating all corruption and money laundering cases.⁷⁵

2. Regulations on Corruption in Malaysia

In terms of the government, Malaysia adopts a parliamentary democratic system headed by a king called *Seri Paduka Baginda Yang DiPertuan Agong*, who is selected from the nine Malay Sultans for a five-year office term as head of the state and supreme government of the armed forces. Despite different government systems, both Malaysia and Indonesia are facing the same corruption issue. However, Malaysia is deemed successful in bringing the number of corruption cases down.

⁶⁹ Razananda Skandiva, "Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi di Indonesia."

⁷⁰ Toni Hendarto (et.al.) "Criminal Regulation Urgency and Liability Regulation of State-Owned Enterprises for Losses in Controlling Business Decisions," 264.

⁷¹ The Regulation of the Supreme Court of Republic of Indonesia Number 13 of 2016 on the Procedures for Handling Criminal Cases by Corporations.

⁷² Ramadhan Choky Risda, "Reviewing the Indonesian Anticorruption Court: A Cost-Effective Analysis," *Law and Development Review* 15, no. 1 (2022): 121, <https://doi.org/10.1515/ldr-2021-0107>.

⁷³ Lulu Hanifah, "MA: Hakim Ad Hoc Berada di Lima Pengadilan Khusus," accessed on June 22, 2023, <https://www.mkri.id/index.php?page=web.Berita&id=10227#>.

⁷⁴ The Law of Republic of Indonesia Number 46 of 2009 on the Corruption Court.

⁷⁵ Lulu Hanifah.

Transparency International and the Global Coalition Against Corruption reported that, based on the CPI, Malaysia scored 47/100 in Southeast Asia and ranked 61/180. These figures indicate that the Indonesia's corruption rate is higher than Malaysia's.⁷⁶ The success in slowing down the corruption rate in Malaysia owes it to the national regulations on corruption, including the Federal Constitution,⁷⁷ Malaysian Anti-Corruption Commission Act 2009 [Act 694],⁷⁸ Anti-Corruption Act 1997 [Act 575],⁷⁹ Penal Code [Act 574],⁸⁰ Criminal Procedure Code [Act 593],⁸¹ Courts of Judicature Act [Act 91],⁸² Evidence Act 1950 [Act 56],⁸³ Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613],⁸⁴ Witness Protection Act 2009 [Act 696],⁸⁵ Whistleblower Protection Act 2010 [Act 711],⁸⁶ Criminal Procedure (Rates of Payment to Witnesses) Rules 2011,⁸⁷ Appointment of Lock-Up to Be A Place of Confinement (Gazette),⁸⁸ and Malaysian Anti-Corruption (Amendment) Act 2018 [Act A1567].⁸⁹

Malaysia joined the UN under the name Malaya, and the Federation of Malaysia officially joined the UN on September 17, 1957. Malaya was renamed Malaysia on September 16, 1963, followed by the new federations of Singapore, Sabah, or North Kalimantan, and Sarawak joining the UN. Since the UN Conference has rules for its members to comply with, each state must refer to the standards set forth in the UN. It indicates that the regulations regarding corruption made in Malaysia must have ratified the UNCAC.

Malaysia refers to the Federal Constitution and the regulation of the anti-corruption commission, including the judiciary systems, specific regulations regarding evidence, money laundering, anti-terrorism, and the reports of activities that violate the law. Malaysia also has specific regulations to protect witnesses and whistleblowers in corruption cases and other matters.

In addition to the above regulations, Malaysia also established the Malaysian Anti-Corruption Commission (MACC) in 1967. This commission is intended to support the investigation and prevention of all forms of corruption, including abuse of

⁷⁶ Transparency International, "Corruption Perceptions Index."

⁷⁷ The Federal Constitution, The Commissioner of Law Revision Malaysia, 2010.

⁷⁸ Laws of Malaysia Act 694 on Malaysian Anti-Corruption Commission Act 2009.

⁷⁹ Laws of Malaysia Act 575 on Anti-Corruption Act 1997.

⁸⁰ Laws of Malaysia Act 574 on Penal Code.

⁸¹ Laws of Malaysia Act 575 on Anti-Corruption Act 1997.

⁸² Laws of Malaysia Act 91 on Courts of Judicature Act 1964.

⁸³ Warta Kerajaan Persekutuan Federal Government Gazette, Attorney General's Chambers of Malaysia, 2011.

⁸⁴ Laws of Malaysia Act 575 on Anti-Corruption Act 1997.

⁸⁵ Laws of Malaysia Act 696 on Witness Protection Act 2009.

⁸⁶ Laws of Malaysia Act 711 on Whistleblower Protection Act 2010.

⁸⁷ Warta Kerajaan Persekutuan Federal Government Gazette.

⁸⁸ Warta Kerajaan Persekutuan Federal Government Gazette.

⁸⁹ Laws of Malaysia Act A1567 on Malaysian Anti-Corruption Commission (Amendment) Act 2018.

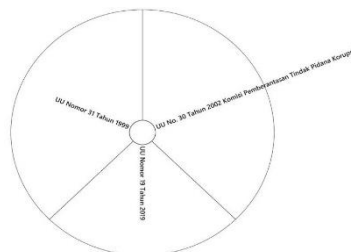
authority. The jurisdictions of the MACC involve⁹⁰ receiving complaints on corruption and misuse of official positions, investigating, and providing consultation services and counseling to help improve the system that can eliminate the chance of corruption. The MACC is intended to educate and gather support from members of the public in fighting corruption. The MACC is also commonly known as *Suruhanjaya Pencegahan Rasuah* (SPRM). Earlier, the anti-corruption commission of Malaysia was known as the Anti-Corruption Agency (ACA) and was tasked with investigating and prosecuting corruption charges prevailing in the public and private sectors. Indonesia, however, has not set the regulation regarding corruption in writing, while Malaysia has. Every regulation enforced in Malaysia is more organized compared to those in Indonesia. Proper regulations will allow law enforcers to easily refer to specific regulations they use to deal with corruption cases.

D. The Ratification of UNCAC in Indonesia and Malaysia

The ratification of UNCAC by Indonesia indicates that Indonesia recognizes the convention and shows its enthusiasm for eradicating corruption. As mentioned earlier, not all articles in UNCAC were adopted by Indonesia since the articles should be studied and adjusted to suit local conditions. This approach similarly applies to other states that have ratified the convention. The question highlighted is why Indonesia decided to change or add to the existing regulatory substances regarding corruption eradication. It can be a common measure, considering the lacunae in the existing regulatory provisions and the need for amendments, as opposed to God-made laws. Laws grow parallel to the growing civilization, and amendments to laws are inevitable to suit the current development.

In other words, criminal corruption also has some points that call for attention. The following diagram shows regulatory amendments before and after the Convention's ratification:

Diagram 1.2 Analysis of the Adoption of UNCAC, UNCAC Law Number 7 of 2006.⁹¹



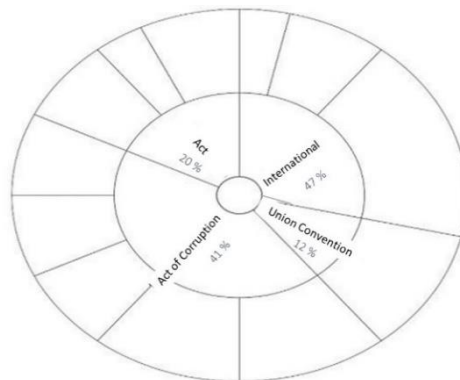
⁹⁰ SPRM, "Official Portal Malaysian Anti-Corruption Commission," accessed on May 1, 2023, <https://www.spr.gov.my>.

⁹¹ Hierarchy Chart NVivo 12 Plus.

The diagram above shows that the regulations on the current corruption cases have adopted the regulations stated in the UNCAC. This regulation is used accordingly to initiate international relations in dealing with the cases concerned. The Law Number 7 of 2006 on the Ratification of the United Nations Convention Against Corruption (UNCAC) combines the pre-existing corruption eradication law with some points set forth in UNCAC. International regulations on corruption ratified by law refer to the UN Convention from an international aspect.

This is in line with the principle of *lex superior derogate legi inferiori*, which means that regulations of a lower degree (hierarchically) may not conflict with regulations above them (higher). The protocol countries, in this case Indonesia and Malaysia, are the organizers of the UNCAC mandate. The diagram above shows the interconnection between the Laws on the Eradication of Corruption Crimes in Indonesia. However, each law does not stand alone, but regulations that have appeared before serve as a reference. Then the Act that appeared later became the implementation.

Diagram 1.3 Corporate Corruption in the Law Number 31 of 1999.⁹²

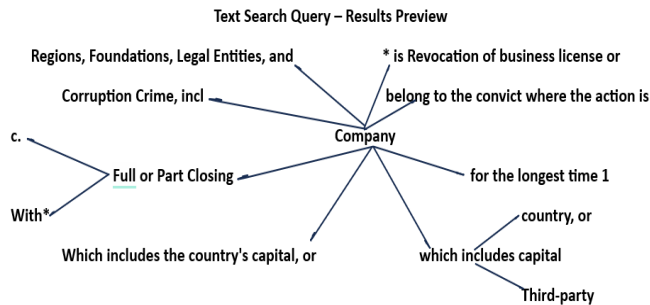


Corruption in the private sector is regulated by the Law Number 31 of 1999. This law elaborates that a company owned by a person who is a defendant in a corruption case must be closed within a certain period. This certainly affects other companies investing in the state capital, and the third parties will be on the verge of charges or permit revocation. In more detail, the law on eradicating corruption in Indonesia also underlines corrupt practices in the private sector. Sometimes cases of corruption in the private sector have intersections with State-Owned Enterprises, companies that are wholly owned and managed by the Indonesian government. Abuse of authority is also the reason for holding private sector corruption articles. For example,

⁹² Feature World Tree NVivo 12 Plus.

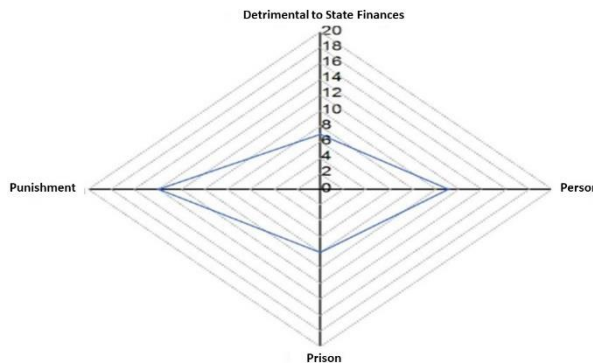
someone from the Indonesian government who has a private company, involves his company in the affairs of state projects. At first glance, this is fine, but automatically, it will add to its own benefits and has the potential to harm state finances.

Diagram 1.4 The Criminal Aspects of Losses in The Regulatory Provisions in Indonesia.⁹³



The above diagram shows a model of corruption taking place in a company. The law implies that parties causing loss to the state will be sentenced to imprisonment, and this provision asserts that companies are subject to the legal sanctions.

Diagram 1.5 Analysis of Assets, Finance, State Loss, and Transactions in Law.⁹⁴

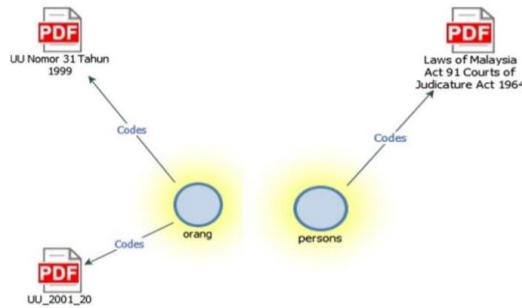


The following diagram shows that coding was performed with the keywords ‘*kekayaan* (wealth), *keuangan* (finance), *merugikan negara* (making state loss), and *transaksi*’ (transaction) mentioned in the Law Number 31 of 1999, the Law Number 19 of 2019, and the Law Number 30 of 2002. The Law Number 30 of 2002 ratified the most points.

⁹³ Feature Matrix Coding. NVivo 12 Plus.

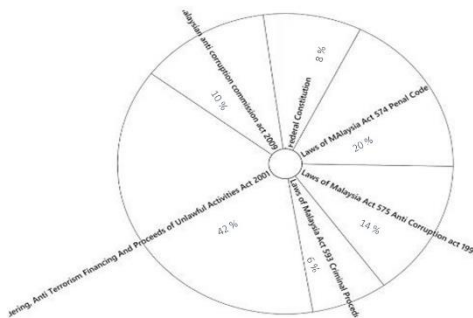
⁹⁴ Hierarchy Chart NVivo. 12 Plus.

Diagram 1.6 Analysis of The Comparison of Nodes Person⁹⁵



In the regulations regarding criminal corruption in Indonesia, a personal role was mostly ratified in the Law Number 20 of 2021 and Law Number 31 of 1999. Malaysia added this point only to the Courts of Judicature Act 1964 [Act 91], among other related regulations in Malaysia. In other words, Indonesia tends to be more dynamic in revising the law than Malaysia.

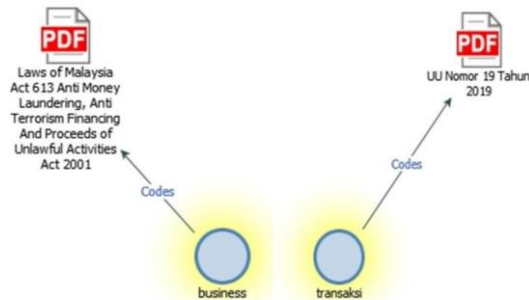
Diagram 1.7 Transactional Business in Indonesian Law versus Malaysia.⁹⁶



In the following findings, the prevention and handling of criminal corruption cases in businesses or transactions in Indonesia are slow when it comes to responses. Indonesia began regulating this type of corruption case in 2019, while Malaysia ratified this matter far before 2001. This presents a particular challenge for the people and the government in Indonesia in resolving corruption cases related to businesses and transactions.

⁹⁵ Feature Comparison Diagrams NVivo 12 Plus.

⁹⁶ Feature Comparison Diagrams NVivo 12 Plus.

Diagram 1.8 Regulation on Corruption in Private Sectors in Malaysia.⁹⁷

The above table is based on data processing and a comparison of Indonesian and Malaysian regulations. Malaysia's regulations are much more dynamic than Indonesia's in dealing with private-sector corruption. The above data was extracted from coding by NVivo 12 Plus using the keywords 'business,' 'orders,' 'real estate,' and 'government' to facilitate data attribution. These keywords also led to verification of six existing regulated products or legislation, including the Anti-Money Laundering, Anti-Terrorist Financing, and Prevention of Illegal Proceeds Act of 2001 [Act Number 613].

E. Conclusion

Indonesia is a full member of the United Nations and has ratified the UNCAC. However, Indonesia cannot immediately adopt all articles of the UNCAC. The step should consider the state's needs and the existing regulations. Next, the anti-corruption regulations in Indonesia, following the ratification of the UNCAC, will focus on building international cooperation with other countries and combating corruption among citizens and increasing corruption within the country.

Malaysia's Anti-Corruption Laws are more active than Indonesia's because Indonesia's Anti-Corruption Laws does not cover some corruption issues. Thus, Indonesian law enforcement agencies have problems in the enforcement of existing regulations. Corruption crimes are becoming more complex and diverse. Thus, it demands solutions that are not limited to verbal regulations. Governments should take steps to enact clear and written laws on corruption in both the private and public sectors to fulfill the people's needs. In this case, it would be a good idea to reconsider what points should be included in the existing regulations and put them

⁹⁷ Hierarchy Chart NVivo 12 Plus.

in writing. Finally, the Indonesian law is different from the Malaysian law on combating and preventing corruption since the latter actually turned out to be more complex and better structured than the previous, particularly with respect to the protection of witnesses and journalists, as well as the handling of private-sector corruption cases.

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