



# **Comparative Analysis of Laws: Provisions and Sanctions For Corruption Crimes in Indonesia and Japan**

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## **ABSTRACT**

Corruption is a worldwide problem that damages nations and hinders progress: two emerging democracies, Indonesia and Colombia, face difficulties in fighting corruption. This research aims to study and compare the laws of criminal acts of corruption in Indonesia and Colombia from a normative and implementative point of view. The results show similarities and differences in corruption laws in Indonesia and Colombia. The similarities lie in the definition of corruption, the subject of the crime, and the object of the crime. The differences lie in the types of corruption, elements of criminal acts, and criminal sanctions. How corruption laws are implemented in the two countries is also different. The KPK in Indonesia and the Fiscalía General de la Nación in Colombia are specialized institutions that deal with corruption. The difference lies in how effective law enforcement is, as Indonesia still faces obstacles in eradicating corruption, whereas Colombia has made great progress.

**Keywords: Corruption, Comparative Law, Indonesia, Colombia, Law Enforcement**

## **INTRODUCTION**

Corruption is a very serious problem to eradicate. This is because it can endanger public stability and security, the country's economic growth, and damage the nation's democratic values and morality because slowly these actions seem to become a culture<sup>1</sup>. On this basis, corruption in Indonesia is classified as an extraordinary crime. The concept of extraordinary crime in Indonesia was adopted from the concept of the most serious crime in the provisions of the Rome Statute 1998. Based on the Rome Statute, acts that can be classified as the most serious crimes only include genocide, crimes against humanity, war crimes, and crimes of aggression. In fact, in the context of corruption, there is no international convention that has been ratified by Indonesia that categorizes corruption as an extraordinary crime. Furthermore,

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<sup>1</sup> Andi Hamzah, *Corruption in Indonesia: Problems and Solutions* Cet. 2 (Jakarta: Gramedia Pustaka Utama, 1993).



according to Mark A. Drumble, the concept of serious crime is a planned, systematic, and organized act that targets a large number of individuals or a certain group that has been chosen as a target for discriminatory reasons. Seeing this understanding, there are two aspects in the most serious crime, namely crime and victim.

In Indonesia, corruption crimes are classified as extraordinary crimes because they see corruption crimes that have such a wide impact are carried out systematically, and cause massive losses to the state. Former Supreme Court Judge in the Criminal Chamber, Artidjo Alkostar agreed that corruption is an extraordinary crime because corruption crimes have penetrated the executive, legislative, and judicial sectors in Indonesia. Many political power holders have been convicted of corruption that harms the country's finances. The victims of corruption crimes themselves are the people. Artidjo's statement was then emphasized in the explanation of Law No. 20 of 2001 concerning the Eradication of Corruption, which states that corruption in Indonesia that occurs systematically and widely not only harms the state's finances but also violates the social and economic rights of the community. Although corruption in Indonesia has been classified as an extraordinary crime, the phenomenon of corruption is still like a chronic disease that is difficult to cure.

The existence of the Corruption Court is very important in eradicating corruption crimes because in addition to increasing the efficiency and effectiveness of law enforcement against corruption crimes, and also remembering that at the stage of examination in court there is a process of proof according to the law by the judge to determine the guilt of the defendant so that he can be held accountable for the acts charged against him by the public prosecutor. The Corruption Court is the only court authorized to examine, adjudicate, and decide cases of corruption, by Article 5 of the Corruption Law<sup>2</sup>. With this, corruption is one of the criminal acts that cannot be separated from a state, state officials, or people who have an honorable position in society. Corruption is a crime committed by people in ties who have high intellect.

Theoretically, the existence of a systematic corruption court is expected to be able to encourage the acceleration of the eradication of corruption in a more structural manner. The existing corruption courts have brought positive changes, by providing opportunities for fair and non-discriminatory implementation<sup>3</sup>.

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<sup>2</sup> Maroni Maroni et al., "RECONSTRUCTION OF THE CORRUPTION CRIMINAL JUSTICE SYSTEM IN ORDER TO SUPPORT NATIONAL DEVELOPMENT," *Journal of Law & Development* 50, no. 4 (2020), <https://doi.org/10.21143/jhp.vol50.no4.2864>.

<sup>3</sup> Sukmareni, "DIFFERENCES IN THE PROCEDURAL LAW OF CORRUPTION COURTS AND GENERAL COURTS IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM," 2023.



In terms of Japan, it is widely regarded as one of the least corrupt countries in the world. In 2022, Transparency International ranked Japan as the 18th least corrupt country out of 180 countries in its Corruption Perceptions Index. The World Justice Project's 2022 Rule of Law Index ranks Japan as the 16th least corrupt country out of 140 countries. Despite widespread public perception, corruption was one aspect of Japan's post-war economic growth. Types of behavior prevalent during the second half of the 20th century include companies attempting to win lucrative public contracts through large cash payments; companies offering insider stock information to gain influence; and officials accepting lavish entertainment in exchange for favorable treatment. Japan's economic downturn during the 1990s undermined the public's patience with such behavior, and led to various reforms, including requiring disclosure of politicians' assets, providing more transparency on political donations, and imposing stricter ethical rules on public officials<sup>4</sup>.

Both Japan and Indonesia rely heavily on bureaucracy to make policies, because the bureaucracy is technically dominant and has more experience in policymaking. People's policy, or public policy, is discussed and implemented through political procedures, but in the process, bureaucratic energy is involved. In its condition, in Indonesia a bureaucracy tends to be unable to escape according to politics. On the other hand, bureaucrats often turn to politicians to secure their positions in bureaucratic positions that are still strong in political hegemony over the bureaucracy, especially in determining positions, which can sometimes abandon the principle of professionalism. On the contrary, Japan protects and maintains a professional bureaucracy, not by maintaining positions according to department heads or government executives according to politicians<sup>5</sup>.

Under Japanese law, public prosecutors have a high burden to prove bribery. They must prove that (i) a bribing party offered a bribe and a public official received it, (ii) the purpose of the bribe was to gain an improper advantage, and (iii) the bribe was made in connection with the public official's authority. This is a very high bar because, in most cases, there is no explicit evidence to establish the intent of the bribing party and the bribed public official. Nevertheless, Japanese criminal prosecutions are well known for their high conviction rates, often based on

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<sup>4</sup> Daiske et al, Yoshida, "Bribery & Corruption Laws and Regulations 2024," Global Legal Insight, 2024, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/japan/>.

<sup>5</sup> et al Nurimani, Nissa, "A Comparison of the Political Culture of Indonesia and Japan in Building Anti-Corruption Values" 9, no. 5 (2023): 393–401.



signed confessions, and it has been estimated that 99% of indictments will result in a finding of guilt<sup>6</sup>.

In June 2018, Japan's Code of Criminal Procedure was amended to introduce a new immunity system that is similar to the plea-bargaining system in other countries. Under the system, a public prosecutor may negotiate and enter into an immunity agreement with a potential suspect or defendant (including corporate entities) under which the prosecutor agrees to drop or reduce criminal charges in exchange for evidence and testimony.

From the background that has been described above, it can be formulated what issues will be discussed. What are the provisions and sanctions for corruption crimes in Indonesia and in Japan? The purpose of this study is to provide an overview of the comparative law: provisions and sanctions for corruption crimes in Indonesia and Japan.

## **METHOD**

The research method used in this study is a normative juridical method that uses primary legal materials and secondary legal materials. This normative juridical research refers to a legal research method that focuses on the analysis of legal norms written in laws and regulations and legal concepts related to the topic of corruption crimes. This study uses a literature review approach by looking for theoretical references that are relevant to the case or problem found, which focuses on collecting, analyzing, and interpreting information from various sources. Meanwhile, the data collection method uses *Library Research*, which is data obtained from journals, books, and the Internet. Meanwhile, the data analysis method uses descriptive analysis. By describing the facts which is then followed by analysis, it is not only descriptive but also provides understanding and explanation. Meanwhile, this study focuses on a comparison of corruption laws in Indonesia and Japan.

## **RESULTS AND DISCUSSION**

### **A. Definition of Corruption in Indonesia and Japan**

Baharuddin Lopa defines corruption as a criminal act related to bribery, manipulation, and other acts as unlawful acts that harm the country's finances and economy, as well as harm the welfare and public interest. Corruption comes from the Latin words "corrupt" and "corruption" which means corruption, ugliness, depravity, dishonesty, bribery, immorality,

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<sup>6</sup> et al, Yoshida, "Bribery & Corruption Laws and Regulations 2024."

and deviation from chastity. However, according to KBBI, corruption is the misappropriation or misuse of state money (companies and so on) for personal or other people's gains<sup>7</sup>.

Meanwhile, the definition of corruption in Japan In Japan, it is not listed in a single law but is spread across various laws. In general, corruption in Japan can be defined as: *"An act committed by a public official to obtain financial or other benefits inappropriately"*. As also regulated in the Criminal Code in Japan in Chapter XXV of the Crime of Corruption.

## **B. Elements of Corruption in Indonesia and Japan**

In the definition that has been explained, in the crime of corruption there are several elements included in the crime of corruption as follows:

### **1. Intentional Acts**

Committing an act consciously and knowing that his act is contrary to the law and also having a certain purpose or intention to commit the act. This is not done due to negligence or negligence.

### **2. Unlawful Acts**

Acts that are contrary to applicable laws and regulations. This act can be in the form of an active act (acting) or passive (not doing an action that should be done) and also includes abuse of authority, abuse of position, and abuse of authority.

### **3. Acts of Enriching Yourself or Others**

The act of obtaining financial benefits or other benefits for oneself or others where such benefits can be in the form of money, goods, services, convenience, information, or other non-monetary benefits. However, the output produced is not only limited to personal profits but can also benefit groups or corporations.

### **4. Acts Harmful to the State or the State Economy**

Acts that cause losses to the state finances or the country's economy. These losses can be in the form of direct losses such as the loss of state money or indirect losses such as disruption of economic stability. However, it is not only limited to financial losses but can also be in the form of non-financial losses such as damage to public trust in the government.

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<sup>7</sup> Flora Dianti, "Forms of Corruption and Its Rules in Indonesia," Hukum Online, 2023, <https://www.hukumonline.com/klinik/a/jenis-jenis-korupsi-dan-hukumnya-di-indonesia-lt5e6247a037c3a/>.

Examples of Corruption Crimes are as follows: a) Bribery: Giving or accepting bribes to gain benefits in the process of procurement of goods and services, licensing, or appointment of positions; b) Gratuity: Giving or receiving gifts or other gifts as a sign of gratitude for the services that have been performed; c) Abuse of authority: Using authority to commit acts that are contrary to the law, such as corruption in development projects; d) Abuse of position: Using position to gain personal gain, such as corruption in the appointment of civil servants;

Corruption in Indonesia is an act that harms the state and the country's economy by enriching oneself or others through unlawful acts committed deliberately. In Japan, the elements of the crime of corruption are as follows:

1. Public Officials

Persons who have the power to act on behalf of the state also include civil servants, local government officials, members of parliament, judges, prosecutors, and other public officials.

2. Financial gain or other advantage; Profits obtained in an inappropriate way, such as:

- a) Bribe: Giving or receiving money or valuables to influence the decisions or actions of public officials.
- b) Gratuity: Giving or receiving gifts or other gifts as a sign of gratitude for the services that have been performed.
- c) Abuse of power: Using authority for personal gain, such as corruption in development projects.
- d) Misuse of information: Using confidential information for personal gain, such as corruption in stock trading.

3. Inappropriate Ways

A way that goes against the norms and ethics that apply in Japan. As well as violations of the principles of transparency, accountability, and good governance and also include abuse of power, bribery, and misuse of information.

Here are some examples of corruption crimes in Japan: a) Bribery cases related to the construction of infrastructure projects; b) Gratuity cases involving local government officials and entrepreneurs; c) Cases of abuse of power by public officials to enrich

themselves or others; d) Cases of misuse of confidential information to gain profits in stock trading.

Thus, the elements of corruption in Japan can vary depending on the law violated. Corruption in Japan is an act committed by public officials to obtain financial or other benefits inappropriately. This crime harms public trust in the government and hinders economic development. Japan has a strong legal system to prevent and eradicate corruption. This includes strict anti-corruption laws, independent law enforcement agencies, and a strong anti-corruption culture in society.

### C. Types and Penalties of Corruption Crimes in Indonesia and Japan

Corruption is regulated in 13 articles in Law 31/1999 and its amendments which were later formulated into 30 types of corruption crimes. The thirty types are simplified into 7 types of corruption crimes, namely

#### 1. State Financial Losses

The pure definition of harming state finances is an act committed by a person, Civil Servant ("PNS"), and state administrators who violate the law, abuse the authority, opportunities, or means available to them because of their position or position by committing a criminal act of corruption<sup>8</sup>. The type of corruption related to state financial losses is regulated in Articles 2 and 3 of Law 31/1999 jo. Constitutional Court Decision No. 25/PUU-XIV/2016 (pp. 116 – 117). The elements of corruption that result in state losses in the two articles are:

Pasal 2 UU 31/1999 jo. Putusan MK No. 25/PUU-XIV/2016	Pasal 2 UU 31/1999 jo. Putusan MK No. 25/PUU-XIV/2016
<ol style="list-style-type: none"><li>1. Everyone;</li><li>2. Enriching oneself, another person, or a corporation;</li><li>3. By unlawful means;</li><li>4. Harm the state finances or the country's economy.</li></ol>	<ol style="list-style-type: none"><li>1. Everyone;</li><li>2. to benefit oneself or another person or a corporation;</li><li>3. Abuse authority, opportunity or means;</li><li>4. What he has because of his position or position;</li><li>5. Harm the country's finances or the country's economy</li></ol>

<sup>8</sup> Ismail, "JURIDICAL STUDY OF THE CRIME OF CORRUPTION Ismail," *Legalite : Journal of Islamic Legislation and Criminal Law II* (2018): 1–20, <https://doi.org/https://doi.org/10.32505/legalite.v2iII>.



## 2. Bribery:

Bribery is an act carried out by service users who actively give or promise something to civil servants or state administrators to make their affairs faster, even though they violate procedures. Bribery occurs when there is a transaction or agreement between two parties.

Bribery can occur to civil servants, judges, and advocates, and can be carried out between employees or employees and outside parties. Bribes between employees are carried out to facilitate promotions or positions. Meanwhile, bribery with outside parties is carried out when private parties give bribes to government employees to be won in the tender process.<sup>9</sup>

Corruption related to bribery is regulated in several articles of Law 31 of 1999 and its amendments, namely:

- a) Article 5 of Law 20/2001;
- b) Article 6 of Law 20/2001;
- c) Article 11 of Law 20/2001;
- d) Article 12 letters a, b, c, and d of Law 20/2001;
- e) Article 13 of Law 31/1999.

## 3. Extortion:

Extortion is an act in which a service officer actively offers services or asks for rewards from service users to speed up their services, even though they violate procedures. Extortion has an element of promise or aims to want something from the gift. Extortion is regulated in Article 12 letters e, f, and g of Law No. 20 of 2001

## 4. Embezzlement in the Office

Embezzlement in the office is the act of deliberately embezzling money or securities, falsifying books or lists specifically for administrative examination, tearing and destroying evidence of bribery to protect the bribe giver, and others. Meanwhile, provisions related to embezzlement in office are regulated in Article 8 of Law 20/2001, Article 9 of Law 20/2001, and Article 10 letters a, b, and c of Law 20/2001. Examples of embezzlement in office regulated in Article 8 of Law 20/2001 have the following elements:

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<sup>9</sup> Ismail.



1. Civil servants or persons other than civil servants who are assigned to carry out a public office continuously or temporarily;
2. Deliberately;
3. Embezzle or allow others to take or allow others to embezzle or assist in committing the act;
4. Money or securities;
5. Which is saved because of his position.

Then, people who violate Article 8 of Law 20/2001 have the potential to be sentenced to a minimum of 3 years in prison a maximum of 15 years, and a fine of at least Rp150 million and a maximum of Rp750 million.

5. Cheating

Fraudulent acts are carried out deliberately for personal interests that can endanger others. Based on Article 7 paragraph (1) of Law 20/2001, a person who commits fraudulent acts is threatened with imprisonment for a minimum of 2 years and a maximum of 7 years and/or a fine of at least Rp100 million and a maximum of Rp350 million. Based on the article, the following are examples of fraudulent acts:

1. Wholesalers, building experts at the time of making buildings, or sellers of building materials who at the time of handing over building materials, commit fraudulent acts that can endanger the safety of people or goods or the safety of the state in a state of war;
2. every person who is in charge of supervising the construction or delivery of building materials, deliberately allows the above fraudulent acts;

6. Conflict of Interest in the Procurement of Goods and Services:

Based on Article 12 letter i of Law No. 20 of 2001, it is when a civil servant or state administrator, directly or indirectly, deliberately participates in wholesale, procurement, or rental even though he is assigned to manage or supervise it. The perpetrators who commit this act can be sentenced to life imprisonment or a minimum of 4 years and a maximum of 20 years in prison and a minimum fine of IDR 200 million and a maximum of IDR 1 billion.

7. Gratuities:

Based on Article 12B paragraph (1) of Law 20/2001, every gratuity to a civil servant or state administrator is considered to be a bribe, if it is related to his position and contrary to his obligations or duties, with the following provisions:

1. The value is IDR 10 million or more, then the proof that the gratuity is not a bribe is carried out by the recipient of the gratuity;
2. whose value is less than Rp10 million, then the proof that the gratuity is a bribe is proven by the public prosecutor.

If civil servants or state administrators receive gratuities that are considered bribes as mentioned above, they will be subject to life imprisonment or a maximum of 20 years in prison with a fine of at least IDR 200 million and a maximum of IDR 1 billion.

Efforts to increase the eradication of corruption crimes are manifested in the renewal of legal substance related to corruption and its structure by forming a special institution tasked with eradicating corruption. The Indonesian government has established a special commission tasked with preventing and eradicating corruption, namely the Corruption Eradication Commission (KPK). Then a corruption court was also formed whose existence is very important in the eradication of corruption crimes to increase the efficiency and effectiveness of law enforcement against corruption crimes<sup>10</sup>.

The handling of corruption crimes committed by the KPK through the Corruption Crimes Court (Tipikor) has been regulated in Law Number 46 of 2009 concerning corruption courts. The corruption court is a special court after reform which is expected to become an independent, quality, fair, and modern court model.

Meanwhile, in Japan in general, the types of corruption crimes in Japan can be categorized into several groups, namely:

1. Bribery (Waikyō)

Giving or receiving money or valuables to influence the decisions or actions of public officials. It is one of the most common types of corruption in Japan.

2. Yūgyōō of Reiwa

Giving or receiving gifts or other gifts as a sign of gratitude for the services that have been performed. Although gratuities are not always illegal, they can be considered a form of corruption if they are carried out with improper intentions.

3. Abuse of Power (Kanryō no Ranryō) such as:

Using authority for personal gain, such as corruption in development projects. It is one of the most serious types of corruption in Japan.

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<sup>10</sup> Maroni et al., "RECONSTRUCTION OF THE CORRUPTION CRIMINAL JUSTICE SYSTEM IN ORDER TO SUPPORT NATIONAL DEVELOPMENT."



4. Misuse of Information (Kanryō no Naibu Jōhō no Ranryō)

Using confidential information for personal gain, such as corruption in stock trading.

It is a type of corruption that is increasingly rampant in the digital era.

5. Acts Against Information Disclosure (Jōhō Kōkai no Giteki Hōi)

Committing acts that obstruct public access to public information, which is a type of corruption that has only emerged in recent years.

## CONCLUSION

This study has analyzed a comparison of corruption laws in Indonesia and Japan, focusing on applicable provisions and sanctions. The results of the analysis show that there are significant similarities and differences between the two legal systems. The similarity lies in the definition of corruption, the subject of the crime, and the object of the crime. The difference lies in the types of corruption crimes, the elements of criminal acts, and criminal sanctions. Despite their differences, the two countries have shown a strong commitment to fighting corruption. Japan has an effective and accountable criminal justice system, while Indonesia has an independent and courageous KPK. However, to achieve the ideal eradication of corruption, the two countries still face many problems. Japan must continue to improve transparency and accountability in the public sector, while Indonesia still faces a strong culture of corruption.

Efforts to eradicate corruption in Indonesia and Japan require continued cooperation from various parties, including the government, law enforcement, civil society, and the private sector. Strengthening regulations, strict law enforcement and massive public education are the main keys to realizing the common goal of building a future free from corruption. A comparison of corruption laws in Indonesia and Japan provides valuable insights into different strategies and methods for combating corruption. By understanding the similarities and differences between the two legal systems, Indonesia is expected to continue to learn and develop a better anti-corruption system.



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