

ZICO JUNIUS FERNANDO¹, NURHAYATI MARDIN²

The Urgency of Addressing Foreign Bribery in Indonesia: A Comparative Analysis³

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Abstract

Foreign bribery involves offering something of value to a foreign official to obtain a business advantage, contributing to illicit transactions that undermine Indonesia's economic stability, social justice, and institutional integrity. This study emphasizes the urgent need for Indonesia to strengthen its anti-bribery legislation by comparing its current framework with those of the United States, the United Kingdom, Switzerland, and Poland. The United States enforces the Foreign Corrupt Practices Act (FCPA) rigorously through the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). The UK's Bribery Act 2010 provides a comprehensive framework, enforced by the Serious Fraud Office (SFO). Switzerland's stringent anti-bribery laws under the Swiss Penal Code are supported by robust international cooperation. Poland has made significant progress in combating corruption, including foreign bribery, through the efforts of its Central Anti-Corruption Bureau (CBA) and continuous improvement of its legal framework. In contrast, Indonesia's current regulations remain less rigorous. Strengthening its legal framework and enforcement mechanisms is therefore essential to effectively combat foreign bribery and safeguard national integrity.

Keywords: foreign bribery, corruption, economic stability, social justice, law enforcement, Indonesia.

¹ Zico Junius Fernando – Universitas Bengkulu (Indonesia), e-mail: zjfernando@unib.ac.id; ORCID: 0000-0001-7285-2147.

² Nurhayati Mardin – Tadulako University (Indonesia), e-mail: eche.mardin@gmail.com; ORCID: 0009-0001-1209-2307.

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ZICO JUNIUS FERNANDO, NURHAYATI MARDIN

Pilna potrzeba przeciwdziałania przekupstwu zagranicznemu w Indonezji: analiza porównawcza⁴

Abstrakt

Przekupstwo zagraniczne polega na oferowaniu zagranicznemu funkcjonariuszowi publicznemu korzyści majątkowej lub osobistej w celu uzyskania przewagi biznesowej, co przyczynia się do ogółu nielegalnych transakcji, które podważają stabilność gospodarczą, sprawiedliwość społeczną i integralność instytucjonalną Indonezji. Badanie omówione w niniejszej publikacji wskazuje na pilną potrzebę wzmocnienia przez Indonezję przepisów antykorupcyjnych poprzez porównanie rozwiązań stosowanych obecnie z systemami obowiązującymi w Stanach Zjednoczonych, Wielkiej Brytanii, Szwajcarii i Polsce. Stany Zjednoczone rygorystycznie egzekwują przepisy ustawy Foreign Corrupt Practices Act (FCPA) za pośrednictwem Departamentu Sprawiedliwości (DOJ) i Komisji Papierów Wartościowych i Giełd (SEC). Brytyjska ustawa Bribery Act 2010 ma charakter kompleksowy, a jej egzekwowaniem zajmuje się Serious Fraud Office (SFO). Egzekwowanie surowych przepisów antykorupcyjnych Szwajcarii, zapisanych w szwajcarskim kodeksie karnym, wspiera dodatkowo szeroko zakrojona współpraca z innymi krajami. Polska poczyniła znaczące postępy w zwalczaniu korupcji, w tym przekupstwa zagranicznego, a Centralne Biuro Antykorupcyjne (CBA) przewodzi prowadzonym działaniom, stale doskonaląc ramy prawne. Dla porównania: przepisy obowiązujące w Indonezji pozostają mniej rygorystyczne. Wzmocnienie ram prawnych i mechanizmów egzekwowania prawa ma zatem kluczowe znaczenie dla skutecznego zwalczania przekupstwa zagranicznego i ochrony integralności państwa.

Słowa kluczowe: przekupstwo zagraniczne, korupcja, stabilność gospodarcza, sprawiedliwość społeczna, egzekwowanie prawa, Indonezja.

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Introduction

In the current era of globalisation and free trade, business transactions frequently involve participants from various countries and multiple jurisdictions. Unfortunately, not all of these transactions adhere to legal and ethical standards.⁵ Amongst the most concerning illicit practices is foreign bribery, which has emerged as a major global issue. This study underscores the urgent need to address foreign bribery in Indonesia to mitigate its economic, social, and institutional repercussions.

Foreign bribery – a specific form of corruption – involves illicit transactions between private entities and foreign public officials. Such practices undermine economic stability, erode public trust, and compromise institutional integrity, thereby weakening the moral foundations of society.⁶ Addressing this issue is thus vital for safeguarding Indonesia’s – and, in fact, every country’s – economic and institutional resilience in an increasingly interconnected global environment.

Several high-profile international cases demonstrate the pervasive challenge posed by foreign bribery. One of the most notable of these cases involved Siemens, a German multinational corporation, which in 2008 was found to have paid over \$1.4 billion in bribes to officials in multiple countries to secure contracts. Siemens was fined \$800 million by U.S. authorities and an additional €395 million by German regulators for these violations.⁷ Another prominent case involved Walmart, which in 2019 agreed to pay \$282 million to settle charges brought by DOJ and SEC for violating the Foreign Corrupt Practices Act (FCPA). The case involved Walmart’s subsidiaries in Mexico, India, Brazil, and China, which paid bribes to obtain permits and licenses for new stores.⁸ Similarly, Petrobras, Brazil’s state-controlled oil company, was at the centre of the “Operation Car Wash” scandal, which revealed

⁵ S. Bahoo, A. Ilan, A. Paltrinieri, *Corruption in International Business: A Review and Research Agenda*, “International Business Review” 2020, 29(4), 1–24.

⁶ R. Skandiva, H. Beniharmoni, *Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi Di Indonesia*, “Integritas : Jurnal Antikorupsi” 2022, 7(2), pp. 245–462.

⁷ M.S. Abländer, *Corruption in the IT Branch – The Example of Siemens*, [in:] *The Handbook of Business and Corruption*, eds. M.S. Abländer, S. Hudson, pp. 209–236. Emerald Publishing Limited, 2017.

⁸ Ch.A. Rarick, H. Williams, C. Barczyk, A. James, *Walmart de Mexico and the Foreign Corrupt Practices Act: Stepping Over the Border and Stepping Over the Line*, “Journal of Leadership, Accountability and Ethics” 2018, 5(1) (2018), pp. 43–49.

billions of dollars paid in kickbacks and bribes to executives and politicians.⁹ These cases illustrate the global nature of foreign bribery and the importance of robust anti-corruption frameworks and enforcement mechanisms.

In Indonesia, the urgency of tackling foreign bribery has become increasingly evident. As a developing nation, Indonesia remains particularly vulnerable to corrupt practices, including bribery of local officials by foreign entities.¹⁰ This vulnerability is compounded by factors like weak law enforcement, regulatory gaps, and limited public awareness of the far-reaching consequences of corruption. Foreign bribery generates substantial economic losses, undermines national integrity, and exacerbates social inequalities.¹¹ Corrupt transactions distort market competition by allowing companies to secure contracts through illicit means rather than merit or efficiency, discouraging legitimate investment and reducing market fairness. As a result, Indonesia risks deterring ethical foreign investors who may perceive corruption as an unavoidable cost of doing business.¹²

Moreover, foreign bribery erodes confidence in public institutions. When officials act under corrupt influence, public trust in governance and justice systems declines, fostering cynicism and disillusionment. Citizens begin to perceive that laws are applied selectively and that justice can be bought, which undermines the rule of law and weakens democratic governance. At the same time, corruption widens the gap between the elite and the general population, as public funds that could have supported essential services such as healthcare, education, and infrastructure are diverted for private gain. This dynamic perpetuates social inequality, fuels discontent, and erodes social cohesion.¹³ The resulting situation often benefits a small elite while disadvantaging the broader population. Public resources that could be used to improve infrastructure, education, and healthcare are diverted to illicit channels, depriving citizens of essential services.¹⁴ By analysing selected case studies and existing literature sources, the study aims to identify the primary mechanisms governing foreign bribery and the specific vulnerabilities in Indonesia's

⁹ B. Hock, E. Dávid-Barrett, *The Compliance Game: Legal Endogeneity in Anti-Bribery Settlement Negotiations*, "International Journal of Law, Crime and Justice" 2022, 71, pp. 1–10.

¹⁰ H. Karianga, Z.J. Fernando, *The Damage of the Shadow Economy: The Urgency of Addressing Foreign Bribery in Indonesia*, "Pakistan Journal of Criminology" 2024, 16(2), pp. 783–796.

¹¹ R.N. Cooper, A.E. Kimberly, *Corruption and the Global Economy*, "Foreign Affairs" 1998, 77(3).

¹² D. Lien Da-Hsiang, *Corruption and Allocation Efficiency*, "Journal of Development Economics" 1990, 33(1), pp. 153–64.

¹³ M. Ilham, *Tackling Corruption in Indonesia: Lessons Learned and Future Directions*, "Journal of Public Representative and Society Provision" 2022, 2(3), pp. 83–88.

¹⁴ Chuah Lay Lian, N.V. Loayza, B. Myers, *The Fight Against Corruption: Taming Tigers and Swatting Flies. The Fight against Corruption: Taming Tigers and Swatting Flies*, "Research & Policy" 2020, 27, pp. 1–4.

governance and economic systems.¹⁵ It will also offer policy recommendations to strengthen anti-corruption frameworks, enhance law enforcement capabilities, and increase public awareness about the importance of integrity and transparency. The ultimate goal of this research project is to contribute to the broader efforts to combat corruption in Indonesia and promote a more equitable and prosperous society.

A prominent example of foreign bribery in Indonesia is the Emirsyah Satar case. Emirsyah Satar, who served as CEO of Garuda Indonesia from 2004 to 2015, was implicated in a major bribery scandal. During his term of office, Garuda Indonesia recorded losses amounting to approximately \$373 million (around Rp.4.8 trillion), primarily connected with the acquisition of 34 new aircraft in 2014, a deal tainted by corrupt practices. The Corruption Eradication Commission (KPK) found that Emirsyah Satar had received bribes amounting totalling 46 billion rupiahs in cash and 2 million dollars worth of goods distributed across Singapore and Indonesia. These bribes were provided by the British manufacturing company Rolls-Royce through Soetikno Soedarjo, the owner of Connaught International Pte. Ltd and PT Ardyaparamita Ayuprakarsa. The payments were linked to the procurement of 50 Airbus aircraft, with Emirsyah Satar playing a key role in this process. Soetikno Soedarjo facilitated the bribery by arranging a meeting between Rolls-Royce representatives and Emirsyah Satar in Bali, which eventually led to the signing of the contract for the aircraft and engine procurement between Garuda Indonesia and Rolls-Royce. However, Rolls-Royce's corrupt practices extended beyond Indonesia. Investigations by the Serious Fraud Office (SFO) revealed that Rolls-Royce had engaged in similar corrupt practices in several other countries – including Thailand, India, Nigeria, Malaysia, China, and Russia – between 1989 and 2013.¹⁶ A 2016 investigation by The Guardian and the BBC further uncovered that Rolls-Royce had secured business contracts in 12 different countries through bribery.

This case underscores the pervasive nature of foreign bribery and highlights the challenges faced by Indonesia in combating such corrupt practices, emphasizing the need for stronger enforcement and regulatory measures.¹⁷ The transactions between Rolls-Royce and Garuda Indonesia bypassed legal oversight, revealing systemic weaknesses in compliance and enforcement. Such practices damage Indonesia's economic stability by distorting fair competition, diminishing tax revenues, and reducing public funds for infrastructure and social welfare.

¹⁵ E.R. Erbstoesser, J.H. Sturc, J.W.H. Chesley, *The FCPA and Analogous Foreign Anti-Bribery Laws-Overview, Recent Developments, and Acquisition Due Diligence*, "Capital Markets Law Journal" 2007, 2(4), pp. 381–403.

¹⁶ S.U.W. Prakasa, *Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures*, "Lentera Hukum" 2019, 6(3), pp. 409–426.

¹⁷ D. Peltier-Rivest D., *Corruption at Rolls-Royce: Can It Happen Again?*, "Journal of Financial Crime" 2021, 28(2), pp. 433–447.

The broader implications of the case of Emirsyah Satar and Rolls-Royce extend beyond individual wrongdoing. It illustrates how foreign bribery obstructs national development, hampers economic growth, and fosters social inequality.¹⁸ Corruption of this kind tarnishes Indonesia's international reputation and diminishes public confidence in both government institutions and the private sector.¹⁹

To address these challenges, the Indonesian government must ensure that all business transactions – both domestic and international – are conducted with transparency and full accountability. Effective and consistent law enforcement is crucial to reducing the incidence of foreign bribery.²⁰ Also, what is equally important is public education on the harmful effects of corruption, enabling citizens to recognise its economic and moral costs and to participate actively in prevention efforts. Combating foreign bribery requires collaboration among government institutions, the private sector, and civil society.

Indonesia can also benefit from examining the approaches adopted by the United States, the United Kingdom, Switzerland, and Poland, which have developed advanced anti-bribery systems supported by clear legislation and strong enforcement. By learning from these experiences, Indonesia can strengthen its own legal and institutional frameworks to promote transparency, uphold the rule of law, and foster a fair and corruption-free business environment.

The overarching aim of this research is to analyse the impact of foreign bribery on Indonesia's socio-economic and institutional systems and to formulate strategic policy recommendations for prevention and enforcement. Through comprehensive analysis and cross-sectoral collaboration, Indonesia can build a more equitable, transparent, and prosperous society – consistent with the values of Pancasila and the principles of good governance.

Research Method

The present study, resulting in the paper entitled “The Urgency of Addressing Foreign Bribery in Indonesia: A Comparative Analysis,” employs a normative juridical approach, also referred to as library-based research.²¹ This method involves

¹⁸ A. López Claros, *Removing Impediments to Sustainable Economic Development: The Case of Corruption*, “Journal of International Commerce, Economics and Policy” 2015, 6(1), pp. 1–49.

¹⁹ S.C. Mijares, *The Global Fight Against Foreign Bribery: Is Canada a Leader or a Laggard?*, “Western Journal of Legal Studies” 2015, 5(4), pp. 1–24.

²⁰ J.M. Karpoff, D. Scott Lee, G.S. Martin, *Foreign Bribery: Incentives and Enforcement*, “SSRN Electronic Journal” 2017, pp. 1–71.

²¹ A. Akhmad, Z.J. Fernando, P. Teeraphan, *Unmasking Illicit Enrichment: A Comparative Analysis of Wealth Acquisition Under Indonesian, Thailand and Islamic Law*, “Journal of Indonesian Legal Studies” 2023, 8(2), pp. 899–934.

the systematic collection and analysis of primary, secondary, and tertiary legal resources through a comprehensive review of legislation, books, official documents, papers, and other relevant sources.²² The research project integrates statutory, conceptual, comparative, and historical approaches to offer a thorough understanding of the legal and institutional complexities surrounding foreign bribery.²³ Methodologically, the study is both descriptive and prescriptive: it first seeks to describe and explain existing conditions objectively and then formulates evidence-based recommendations for reform.²⁴ All collected materials are examined qualitatively through content analysis, enabling the identification, categorisation, and interpretation of legal norms and practices relevant to foreign bribery. This analytical process ensures that the study's findings are comprehensive, systematic, and reliable.

The primary objective of this study is to examine and elucidate the phenomenon of foreign bribery and its links to the shadow economy in Indonesia, while proposing practical and normative solutions to address these issues. The study is grounded in established legal principles and supported by a wide range of academic and institutional literature. Its broader purpose is to contribute to ongoing efforts to eradicate foreign bribery and improve economic governance in Indonesia.

To strengthen Indonesia's anti-bribery regime, the study adopts a comparative analytical framework, examining the approaches of the United States, the United Kingdom, Switzerland, and Poland. The benchmarks can be summarised as follows:

- ❑ In the United States, the Foreign Corrupt Practices Act (FCPA) is rigorously enforced through active investigations and prosecutions by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC).
- ❑ The United Kingdom's Bribery Act 2010 provides a comprehensive frame of reference that criminalises both the giving and receiving of bribes and holds companies liable for failing to prevent bribery, with the Serious Fraud Office (SFO) being the entity responsible for enforcement.
- ❑ Switzerland's stringent anti-bribery laws, codified in the Swiss Penal Code, criminalise the bribery of foreign officials and are supported by robust enforcement mechanisms and international cooperation.

²² Z.J. Fernando *et al.*, *Preventing Bribery in the Private Sector Through Legal Reform Based on Pancasila*, "Cogent Social Sciences" 2022, 8(1), pp. 1–14.

²³ S. Candra, Z.J. Fernando, *Anti-Corruption Village: A Solution to Preventing Crime of Corruption and Good Governance in Village*, "Fiat Justitia: Jurnal Ilmu Hukum" 2024, 18(1), pp. 49–66.

²⁴ M.S. Endriana, A.S. Yusriadi, Z.J. Fernando, *Green Financial Crime: Expose About Financial Crime In The Environment And Renewable Energy World*, IOP Conference Series: Earth and Environmental Science 1270, 2023, 1, pp. 1–9.

- ❑ Poland has made significant progress in combating corruption – including foreign bribery – through the efforts of the Central Anti-Corruption Bureau (CBA), which focuses on investigation, prevention, legal reform, and cooperation with international organisations to enhance transparency and accountability.

In contrast, Indonesia's existing regulatory and enforcement mechanisms remain comparatively less rigorous. This study argues that strengthening Indonesia's legal framework and enforcement capacity is essential to effectively combating foreign bribery and safeguarding the country's economic, social, and institutional integrity. By adopting best practices from the aforementioned countries, Indonesia can enhance its anti-corruption efforts, promote transparency, and foster a fairer and more accountable economic environment.

The Urgent Need for Regulating and Addressing Foreign Bribery in Indonesia

The United Nations Convention against Corruption (UNCAC) is a landmark international treaty aimed at combating corruption worldwide. It establishes a comprehensive framework of standards, obligations, and rules for its member states, emphasising prevention, law enforcement, international cooperation, and asset recovery as key pillars in the global fight against corruption.²⁵ A total of 140 countries signed the convention, while 169 countries have since ratified it – an impressive demonstration of global solidarity that transcends geographical, cultural, and political boundaries. From major powers such as the United States, China, and Russia, to smaller nations like Tuvalu and Nauru, the widespread adoption of UNCAC reflects the universal recognition of integrity and transparency as cornerstones of effective governance.²⁶

UNCAC serves not only as a treaty, but also as a benchmark for national policy development, guiding states in crafting domestic laws and institutional frameworks for prevention, enforcement, and international cooperation. While some states had robust anti-corruption systems prior to ratification, participation in UNCAC reinforces the principle that corruption is a global challenge requiring collective action.

²⁵ N.A. Umari, D. Lukitasari, I. Ismunarno, *Urgency of Regulation Reform of Bribery Offence at Private Sector in Indonesia*, "IJCLS (Indonesian Journal of Criminal Law Studies" 2019, 4(2), pp. 147–154.

²⁶ H. Herlambang, Z.J. Fernando, H. Rahmasari, *Kejahatan Memperkaya Diri Sendiri Secara Melawan Hukum (Illicit Enrichment) dan Aparatur Sipil Negara: Sebuah Kajian Kritis*, "Jurnal RechtsVinding: Media Pembinaan Hukum Nasional" 2022, 11(2), pp. 247–264.

Foreign bribery is specifically addressed in Article 16 of UNCAC, adopted by the UN General Assembly in 2003. It obliges state parties to criminalise both the giving and receiving of bribes in international business transactions, thereby tackling corruption from the perspective of both supply and demand. In addition, the convention outlines measures to prevent and combat corruption by promoting transparency, fostering international cooperation, and facilitating asset recovery.²⁷

Article 16. Bribery of foreign public officials and officials of public international organisations:

1. "Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

The dual focus of Article 16 – on both active (offering) and passive (receiving) bribery – demonstrates UNCAC's commitment to establishing a universally consistent legal standard for addressing corruption in international commerce. By doing so, it recognises that bribery not only distorts market dynamics and undermines fair competition but also erodes trust in public institutions and weakens the rule of law. From a theoretical standpoint, the criminalisation of foreign bribery can be understood through the lens of deterrence theory and the principle of legal certainty. Deterrence theory posits that the threat of punishment discourages individuals and corporations from engaging in corruption. Clear and enforceable legislation thus raises the perceived cost of bribery above its potential benefits, aligning with rational choice theory, which views behaviour as a function of cost –

²⁷ M. Joutsen, *The United Nations Convention Against Corruption*, 2011. Available from: <https://api.semantic scholar.org/CorpusID:151101631>

benefit calculations. This approach aligns with the equally important aspect of legal certainty, a cornerstone of the rule of law, which requires that laws be clear, publicised, and stable. By explicitly defining and criminalising foreign bribery, Article 16 promotes predictability and accountability, ensuring that individuals and entities understand the legal consequences of corrupt conduct.

In philosophical terms, UNCAC's provisions also reflect Immanuel Kant's categorical imperative, which calls for universal moral principles guiding human action. From this perspective, the criminalisation of bribery embodies the moral imperative that corruption – being inherently unjust and exploitative – must not be tolerated under any circumstances. This moral universality provides the ethical foundation for UNCAC's global applicability and underscores the duty of states to uphold integrity and justice in international relations.

Article 16's holistic approach is further strengthened by UNCAC's broader measures promoting transparency, international cooperation, and asset recovery. Together, these provisions seek to dismantle the systemic structures that enable corruption. The emphasis on asset recovery is particularly significant: it acknowledges that corruption not only involves illicit exchanges but also results in the unjust enrichment of individuals at the expense of society. By facilitating the repatriation of stolen assets, UNCAC advances distributive justice, restoring misappropriated resources and promoting equity and social welfare. Viewed through these theoretical and philosophical frameworks, Article 16 exemplifies the multifaceted nature of UNCAC's approach – combining deterrence, legal precision, and moral universality to strengthen global anti-corruption efforts. The convention's provisions on cooperation and asset recovery further reinforce this integrative model, underscoring the collective responsibility of states to uphold justice and integrity in international business and governance.²⁸

As a State Party to UNCAC, Indonesia plays a pivotal role in the global effort to combat corruption. The country ratified UNCAC in 2003 through Law No. 7 of 2006, thereby committing to implement legislative, administrative, and institutional measures aimed at preventing and eradicating corruption, promoting transparency and international cooperation, and facilitating asset recovery.²⁹ Despite this formal commitment, Indonesia continues to face significant challenges in fully incorporating and enforcing the provisions of Article 16. Mandatory provisions require immediate and strict compliance, while non-mandatory provisions allow for some

²⁸ J.-P. Brun, L. Gray, C. Scott, K. Stephenson, *Asset Recovery Handbook: A Guide for Practitioners. Stolen Asset Recovery Initiative*, 2011. Available from: <http://elibrary.worldbank.org/doi/book/10.1596/978-0-8213-8634-7%5Cnpapers3://publication/doi/10.1596/978-0-8213-8634-7>

²⁹ E.O.S. Hiariej, *United Nations Convention Against Corruption Dalam Sistem Hukum Indonesia*, "Jurnal Mimbar Hukum" 2019, 31(1), pp. 113–124.

discretion and flexibility in implementation – based on the local contexts and existing legal frameworks of the state parties. The specific challenge for Indonesia lies in aligning its domestic legislation with UNCAC's stringent requirements and standards – particularly regarding the criminalisation of bribery involving foreign public officials.

Although Indonesia has established a range of anti-corruption laws and institutions, such as the Corruption Eradication Commission (KPK) these efforts primarily target domestic corruption. The absence of comprehensive legislation addressing transnational bribery highlights a gap in Indonesia's legal framework and impedes full compliance with its UNCAC obligations. Effective enforcement of foreign bribery laws also depends on strong mechanisms for international cooperation, including mutual legal assistance, extradition agreements, and joint investigations. Indonesia's current capacity in these areas requires enhancement to manage the complexities of transnational corruption effectively. Strengthening the technical and institutional capabilities of law enforcement agencies is essential to ensure the effective detection, investigation, and prosecution of foreign bribery cases. In addition to legal and institutional limitations, socio-political factors also shape Indonesia's ability to implement UNCAC provisions. Corruption remains deeply embedded in several sectors, and entrenched interests often resist reforms that threaten their influence. Increasing public awareness of the harmful consequences of corruption, including foreign bribery, is therefore critical to cultivating a culture of integrity and accountability. Addressing these challenges demands a multifaceted strategy that integrates legal reform, institutional capacity-building, and societal engagement. Indonesia must not only strengthen its legislative and enforcement mechanisms but also promote transparency, corporate ethics, and good governance. Public education campaigns, corporate compliance initiatives, and the active participation of civil society organisations are indispensable components of a comprehensive anti-bribery policy.

By adopting this integrated approach, Indonesia can enhance its compliance with UNCAC, strengthen its position in global anti-corruption efforts, and foster a more transparent, just, and accountable business environment.

Foreign Bribery, the New Criminal Code, and the Essence of Pancasila

Foreign bribery fundamentally contradicts the core principles of Pancasila, the philosophical foundation of the Indonesian state. Pancasila consists of five inter-related and interdependent principles that collectively emphasise the nation's

commitment to morality, justice, and social harmony. The first principle of Pancasila, “Belief in One Almighty God” (*Ketuhanan Yang Maha Esa*), underscores the fundamental importance of ethical behaviour and integrity in all aspects of life.³⁰ This principle calls for adherence to moral and ethical standards derived from religious teachings and the innate sense of right and wrong. Ethical behaviour is about honesty, fairness, and transparency, all of which are essential for a just and moral society. Bribery, however, is an act of dishonesty and corruption that directly contravenes these values. It involves offering or receiving something of value to influence the actions of a public official, thereby undermining the principles of fair competition and corrupting decision-making processes. By engaging in bribery, individuals and organisations compromise their integrity, participating in actions that are not only illegal, but also immoral. This erosion of integrity and ethical standards contributes to a broader culture of corruption and impunity, which is detrimental to the social fabric and governance of the nation. Therefore, foreign bribery not only violates legal norms, but also deeply undermines the ethical and moral foundation laid out by the first principle of Pancasila, highlighting the need for strict enforcement of and adherence to ethical standards to maintain societal integrity.

The second principle of Pancasila, “Just and Civilised Humanity” (*Kemanusiaan yang Adil dan Beradab*), emphasises fairness, justice, and respect for human dignity. This principle advocates equitable treatment for all individuals and entities, ensuring that everyone is treated with respect and afforded equal opportunities.³¹ Foreign bribery, however, is a significant breach of this principle. By allowing those who engage in corrupt practices to gain unfair advantages, it fosters an environment of injustice and perpetuates inequality. This undermines the very essence of fairness and respect for human dignity, as decisions and opportunities are influenced by illicit payments rather than merit and integrity. Such corruption distorts market competition and public trust, leading to societal divisions and a loss of faith in institutions. By violating the principle of Just and Civilised Humanity, foreign bribery not only damages the social fabric but also erodes the ethical foundation that supports a just and equitable society. Therefore, combating foreign bribery is essential to upholding this principle, ensuring that justice and fairness prevail and that all individuals are treated with the dignity and respect they deserve.

The third principle of Pancasila, “The Unity of Indonesia” (*Persatuan Indonesia*), underscores the critical importance of national unity and cohesion. This principle advocates the harmonious integration of diverse ethnic, cultural, and religious

³⁰ M. Shodiq, *Quranic Moral in Pancasila: Efforts to Strengthen Mental Revolution Through the First Principle of Pancasila*, “Buletin Al-Turas” 2021, 27(1), pp. 139–158.

³¹ R. Sembiring R., *Keadilan Pancasila Dalam Persepektif Teori Keadilan Aristoteles*, “Jurnal Aktual Justice” 2018, 3(2), pp. 139–155.

groups within the country, fostering a strong and unified national identity.³² Corruption – including foreign bribery – poses a serious threat to this unity by triggering social and economic disparities that fracture the nation. When foreign bribery infiltrates various sectors, it promotes a culture of favouritism and nepotism, where personal connections and illicit payments take precedence over merit and fairness. This not only causes divisions within society but also weakens the social fabric, as people lose trust in public institutions and their leaders. The presence of corruption leads to uneven distribution of resources and opportunities, exacerbating inequalities and fuelling discontent among different societal groups. These disparities may manifest themselves in various forms, such as unequal access to education, healthcare, and economic opportunities, deepening social divides and eroding national cohesion. Furthermore, the prevalence of corruption undermines the rule of law and democratic governance, as decisions influenced by bribes rather than the public good lead to ineffective and unjust policies. Upholding the principle of unity therefore requires collective action and solidarity to combat corruption and ensure that all citizens are treated equitably and with respect. Allowing corruption to flourish jeopardises this collective effort, as it erodes public trust and discourages civic engagement. To uphold the Unity of Indonesia, it is imperative to implement stringent anti-corruption measures, promote transparency and accountability, and foster a culture of integrity and fairness across all levels of society. By addressing and preventing corruption – including foreign bribery – Indonesia can strengthen its national unity and build a more cohesive, just, and prosperous nation.

The fourth principle of Pancasila, “Democracy Guided by the Inner Wisdom in the Unanimity Arising out of Deliberations Amongst Representatives” (*Kerakyatan yang Dipimpin oleh Hikmat Kebijaksanaan dalam Permusyawaratan/Perwakilan*), underscores the crucial importance of democratic processes and the rule of law. This principle highlights the need for decisions to be made through deliberative consensus among representatives, reflecting the collective will and wisdom of the people. It emphasises transparency, accountability, and fair representation in governance.³³ Foreign bribery fundamentally undermines these democratic institutions by corrupting decision-making processes through illicit means. When foreign officials or entities engage in bribery to secure favourable outcomes, they distort the democratic process and subvert the rule of law. This results in policies and decisions that serve private interests rather than the public good, eroding the integrity of democratic

³² A. Kennedy, F.X. Wartoyo, *Harmonizing Diversity: Pancasila's Role as The Cornerstone of Multi-Cultural Harmony As Legal Discours*, “Global International Journal of Innovative Research” 2024, 2(4), pp. 747–759.

³³ Y. Yusdiyanto, *Makna Filosofis Nilai-Nilai Sila Ke-Empat Pancasila Dalam Sistem Demokrasi Di Indonesia*, “FIAT JUSTISIA: Jurnal Ilmu Hukum” 2017, 10(2), pp. 259–272.

institutions. The impact of foreign bribery extends to eroding public trust in governmental officials and institutions. When citizens see that decisions are influenced by bribery rather than fair deliberation and representation, their faith in the democratic process diminishes. This loss of trust can lead to widespread cynicism and disengagement from civic participation, weakening the democratic framework that depends on active and informed citizen involvement. Moreover, foreign bribery disrupts the principles of accountability and transparency essential to democracy. It conceals the true motivations behind governmental actions and decisions, making it difficult for citizens to hold their representatives accountable. Without transparency, the mechanisms of checks and balances fail, leading to governance that is less responsive and less accountable to the people's needs. To uphold the fourth principle of Pancasila, it is imperative to combat foreign bribery rigorously. This requires robust anti-corruption laws, effective enforcement mechanisms, and a strong commitment to transparency and accountability in all governmental processes. By taking measures aimed at making democratic institutions free from corrupt influences, Indonesia can strengthen its democratic framework, ensuring that it genuinely reflects the will and wisdom of its people.

The fifth principle of Pancasila, "Social Justice for All the People of Indonesia" (*Keadilan Sosial bagi Seluruh Rakyat Indonesia*), advocates the equitable distribution of resources and opportunities across all sectors of society. This principle underscores the importance of creating a fair and just society in which every individual has access to opportunities to improve their quality of life, and where the benefits of economic development are shared broadly.³⁴ Foreign bribery, however, fundamentally undermines this principle by distorting economic and social justice. When foreign entities engage in bribery, they secure business advantages not based on merit or fair competition but on illicit payments. This practice allows a select few to benefit disproportionately at the expense of the broader population. Resources that could be invested towards public welfare – such as healthcare, education, and infrastructure – are instead diverted to serve private interests, often those of corrupt officials and their associates. This misallocation of resources exacerbates inequality, as public funds intended for the common good are siphoned off for limited private gain. It hinders inclusive development by creating barriers for honest businesses and entrepreneurs who cannot or will not engage in corrupt practices. This fosters an environment where corruption becomes normalised, perpetuating cycles of inequality and stifling economic growth and innovation. The principle of social justice highlights the need for policies and practices that ensure fairness and equity –

³⁴ E. Effendi, Z.J. Fernando, A. Wibisono Anditya, M.J. Arlinandes Chandra, *Trading in Influence (Indonesia): A Critical Study*, "Cogent Social Sciences" 2023, 9(1).

values which are fundamentally incompatible with corruption. To uphold this principle, it is essential to implement and enforce robust anti-corruption measures. This involves establishing clear anti-bribery legislation, rigorous enforcement by independent bodies, promoting transparency and accountability in both the public and private sectors, and cultivating a culture of integrity and ethical conduct. By addressing foreign bribery, Indonesia can work towards a more just and equitable society in which resources are allocated fairly, opportunities are accessible to all, and the benefits of economic development are shared widely. Aligning with the fifth principle of Pancasila will contribute to the nation's overall well-being and sustainable growth.³⁵

Philosophically speaking, the rejection of foreign bribery within the framework of Pancasila aligns comprehensively with Kantian ethics, which emphasise the categorical imperative – a principle that actions should be based on maxims capable of universal application. According to Immanuel Kant, moral actions are those that can be universally adopted without contradiction.³⁶ Bribery, as an act of corruption, inherently fails this test, as it involves deceit and the pursuit of unfair advantage – behaviours that cannot be universalised without leading to a breakdown of moral and social order. If bribery were universally practised, trust in institutions would collapse, resulting in widespread injustice and dysfunction. Kant's categorical imperative thus requires that individuals act according to maxims they would wish to become universal laws. Bribery, by its very nature, involves a breach of trust and integrity – actions that no rational agent would want universally applied, since they undermine the foundations of fairness and justice.

Moreover, the principles of Pancasila resonate strongly with John Rawls's theory of distributive justice, particularly his concept of "justice as fairness," which advocates the equitable distribution of resources and opportunities.³⁷ Rawls contends that social and economic inequalities are only justifiable if they benefit the least advantaged members of society. Foreign bribery clearly contravenes this principle by creating and perpetuating inequities that favour the wealthy and powerful, undermining the fair distribution of resources and opportunities. It fosters an environment in which decisions are driven by illicit gain rather than merit or public interest.

From a legal theory perspective, the rule of law is inherently opposed to bribery because it demands equality before the law and impartial processes. Bribery creates

³⁵ M. Mukhlishin, *The Concept of Corruption Prevention Using a Transcendental Approach*, "Journal of Transcendental Law" 2020, 2(2), pp. 115–128.

³⁶ Ch.M. Korsgaard, *Kant's Formula of Universal Law*, "Pacific Philosophical Quarterly" 1985, 66(1–2), pp. 24–47.

³⁷ J. Shaw, *Justice in Emmanuel Levinas and John Rawls*, "International Journal of Philosophical Studies" 2020, 28(4), p. 471.

a parallel system in which those with financial power can subvert legal norms and obtain undue advantages, eroding the integrity of legal and governmental institutions. The rule of law, as articulated by theorists such as A. V. Dicey and Joseph Raz, holds that laws – not arbitrary decisions by individuals – should govern a nation. This principle requires that everyone, including lawmakers, be subject to the law.³⁸ Bribery undermines this foundation by enabling individuals or entities to bypass legal restrictions and obligations, thereby fostering inequality and injustice. It disrupts the consistent application of law, erodes public trust, and weakens the social contract between the state and its citizens.

By embedding the principles of distributive justice and the rule of law into its anti-corruption strategies, Indonesia can better align its legal and institutional frameworks with the philosophical underpinnings of Pancasila. Ensuring that resources and opportunities are distributed equitably and that laws are applied consistently and fairly is essential for building a society that upholds justice and integrity. Combating foreign bribery is therefore not only a legal and economic necessity but also a moral and ethical imperative, vital to preserving the social fabric and promoting the nation's overall well-being and welfare.

Despite foreign bribery being fundamentally at odds with the principles of Pancasila, Indonesia's new Criminal Code (KUHP) does not explicitly address this issue. This omission highlights a significant legal gap and the challenge of fully integrating Pancasila's principles into the country's criminal law, especially regarding transnational corruption. Urgent attention from lawmakers is required to ensure that Indonesia's criminal legislation reflects and upholds Pancasila's values.

The new Criminal Code, promulgated under Law No. 1 of 2023, focuses primarily on corruption, domestic bribery, and money laundering. It contains no specific provisions directly addressing foreign bribery. However, certain existing articles may apply indirectly when such acts cause financial harm to the state or the national economy, or when the proceeds of foreign bribery are laundered. This situation underscores the need for comprehensive legal reforms to explicitly criminalise foreign bribery and ensure that all forms of corruption are covered. Doing so would allow Indonesia to better protect its economic interests, uphold the rule of law, and reinforce the ethical standards embodied in Pancasila.

Articles 603 and 604 of the Criminal Code, for instance, prescribe penalties for individuals who enrich themselves, others, or corporations in ways that harm state finances or the national economy. While these provisions do not explicitly address foreign bribery, they may apply when such conduct results in financial damage to

³⁸ R. Skandiva, H. Beniharmoni, *Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi Di Indonesia*, "Integritas: Jurnal Antikorupsi" 2022, 7(2), pp. 245–262.

the state. Articles 605 and 606 address bribery involving public officials, but these provisions focus primarily on domestic civil servants or state administrators rather than on foreign officials. These articles penalise individuals who offer or promise benefits to influence official actions contrary to their duties. Article 607 concerns money laundering and may be relevant when the proceeds of foreign bribery are laundered, encompassing efforts to conceal or disguise the origin of assets derived from crimes such as corruption and bribery. Article 608 clarifies that the provisions of Article 607(1)(c) – dealing with the receipt or use of assets obtained from criminal acts – do not apply to individuals who meet their reporting obligations under the Law on the Prevention and Eradication of Money Laundering.

This lack of explicit regulation on foreign bribery in the Criminal Code creates potential loopholes through which perpetrators may evade punishment. Without clear legal provisions specifically targeting foreign bribery, effective prosecution remains difficult. This gap highlights the need for targeted reforms to explicitly criminalise foreign bribery and ensure comprehensive coverage of all corruption-related offences, thereby safeguarding state finances and strengthening the ethical and legal foundations of the Indonesian state.

Foreign Bribery: A Comparative Study of the United States, United Kingdom, Switzerland, and Poland

Foreign bribery is a significant global challenge, necessitating robust legal frameworks to prevent and prosecute any acts and instances thereof. Different countries have developed various approaches to combat foreign bribery, reflecting their legal traditions and enforcement priorities. This comparative study examines the approaches adopted by the United States, the United Kingdom, Switzerland, and Poland, highlighting their respective strengths and challenges in addressing foreign bribery.

The United States enforces the Foreign Corrupt Practices Act (FCPA), established in 1977 and among the most comprehensive anti-bribery statutes globally. The FCPA criminalises the bribery of foreign officials to obtain or retain business and mandates that companies maintain accurate books and records. It applies to publicly traded companies and their officers, directors, employees, shareholders, and agents, which can include third-party agents, consultants, distributors, and joint-venture partners.³⁹ The FCPA consists of two main components: the anti-bribery provisions and the accounting provisions. The anti-bribery provisions make it

³⁹ E. Acorn, *Law and Politics in FCPA Prosecutions of Foreign Corporations*, "Revista Direito GV" 2021, 17(2), pp. 1–10.

illegal to offer, pay, promise to pay, or authorise the payment of money or anything of value to foreign officials for the purpose of obtaining or retaining business. The accounting provisions require issuers to keep accurate books and records and maintain an adequate system of internal controls to ensure that financial transactions are executed and assets are properly accounted for. Enforcement is primarily handled by the Department of Justice (DOJ) for criminal matters and the Securities and Exchange Commission (SEC) for civil actions. Both agencies have pursued rigorous enforcement, which has resulted in significant penalties and extensive cooperation with international law-enforcement bodies.⁴⁰ Notable cases include Siemens and Walmart: Siemens paid over \$1.6 billion in combined fines to U.S. and German authorities for engaging in widespread bribery across multiple countries,⁴¹ while Walmart agreed to pay \$282 million to settle FCPA charges involving the operations of the company's subsidiaries in Mexico, India, Brazil, and China. Enforcement frequently involves disgorgement, prejudgment interest, and substantial civil penalties,⁴² and companies may be required to implement compliance measures subject to independent monitoring.

The United Kingdom's Bribery Act 2010 is considered one of the most stringent anti-corruption laws worldwide. It criminalises bribery of both domestic and foreign public officials and introduces a corporate offence of failure to prevent bribery. This comprehensive framework applies to any company or person with a business presence in the UK and has extraterritorial reach, covering bribery committed anywhere in the world.⁴³ The Act defines five key offences: active bribery (offering, promising, or giving an advantage to induce improper performance), passive bribery (requesting, agreeing to receive, or accepting an advantage for improper performance), bribery of foreign public officials, consent or connivance by senior officers, and failure of a commercial organisation to prevent bribery by associated persons. The Serious Fraud Office (SFO) is the primary enforcement agency and operates independently of the British government, ensuring impartial investigations and prosecutions.⁴⁴ The SFO has successfully pursued several high-profile

⁴⁰ J. Holtmeier, *Cross-Border Corruption Enforcement: A Case for Measured Coordination Among Multiple Enforcement Authorities*, "Fordham Law Review" 2015, 84.

⁴¹ A. Wrage, A.M. Richardson, Ch.J. Scarboro, R.A. Muoio, T.L. Price, D. Hansberry, R.I. Dodge, *Siemens AG – Violations of the Foreign Corrupt Practices Act*, "International Legal Materials" 2009, 48, pp. 232–249.

⁴² N. Bose, *Walmart to Pay \$282 Million to Settle Seven-Year Global Corruption Probe*, Reuters, 2019. Available from: <https://www.reuters.com/article/business/walmart-to-pay-282-million-to-settle-seven-year-global-corruption-probe-idUSKCN1TL271/>

⁴³ B.W. Bean, E.H. MacGuidwin, *Unscrewing the Inscrutable: The UK Bribery Act 2010*, "Indiana International and Comparative Law Review" 2013, 23, pp. 63–110.

⁴⁴ M. Koehler, *A Conversation with Richard Alderman – Director of the United Kingdom Serious Fraud Office*, "SSRN Electronic Journal" 2010, pp. 1–17.

cases, including matters involving Rolls-Royce and GlaxoSmithKline. The Act encourages corporate self-reporting, though without guaranteeing immunity. Its extraterritorial scope and stringent penalties foster adequate procedures within companies and serve as a strong deterrent against corrupt practices, reinforcing a culture of integrity and transparency in international business.

Switzerland's approach to foreign bribery is anchored in its Penal Code, which criminalises bribery of foreign public officials and places a strong emphasis on international cooperation and mutual legal assistance. Swiss authorities have taken proactive steps to freeze and repatriate illicit assets in high-profile cases involving foreign officials, underscoring Switzerland's commitment to financial transparency and its role in global anti-corruption efforts. The Penal Code's Articles 322septies and 322octies specifically criminalise the offering, promising, or giving of undue advantages to foreign public officials in connection with their official duties, as well as the acceptance of such advantages.⁴⁵ These provisions align with international standards, including the OECD Anti-Bribery Convention, which Switzerland has ratified. Swiss law also embeds corporate liability and mandates robust internal controls, ethics, and compliance programmes.⁴⁶ The Swiss government collaborates closely with international partners, and FINMA plays a pivotal role in ensuring that financial institutions comply with anti-money-laundering rules, preventing misuse of the financial system for corrupt purposes. Switzerland's robust legal framework, proactive enforcement, and emphasis on cooperation have significantly strengthened its effectiveness in combating foreign bribery.

Poland has made notable progress in combating corruption – including foreign bribery – through the work of the Central Anti-Corruption Bureau (CBA).⁴⁷ Established in 2006, the CBA detects, prevents, and investigates corruption-related crimes, particularly within state and local government,⁴⁸ conducting covert operations, using advanced surveillance techniques, and cooperating closely with other law-enforcement bodies under prosecutorial supervision. Poland has ratified both the OECD Anti-Bribery Convention and the United Nations Convention against Corruption (UNCAC), and Articles 228 and 229 of the Polish Penal Code criminalise bribery – including offering, promising, or giving any unauthorised benefits

⁴⁵ A. Lachat-Heritier, *Commercial Bribes: The Swiss Answer*, "University of Pennsylvania Journal of International Law" 1983, 5, pp. 79. Available from: <https://api.semanticscholar.org/CorpusID:154476470>

⁴⁶ Th.M. Apke, *Impact of OECD Convention Anti-Bribery Provisions on International Companies*, "Managerial Auditing Journal" 2001, 16(2), pp. 58–63.

⁴⁷ A. Krajewska, G. Makowski, *Corruption, Anti-Corruption and Human Rights: The Case of Poland's Integrity System*, "Crime, Law and Social Change" 2017, 68(3), pp. 325–339.

⁴⁸ G. Ociecek, *Combating Corruption Crime in Poland: Selected Legal Aspects, With Particular Reference to the Role of the Central Anticorruption Bureau*, "Law, Identity and Values" 2023, 3(1), pp. 203–218.

to public officials. These provisions extend to both domestic and foreign public officials, although consistent enforcement has faced challenges.

Indonesia can derive several key lessons from the approaches adopted by the United States, the United Kingdom, Switzerland, and Poland in combating foreign bribery. Looking at the United States, what appears crucial is the importance of a comprehensive statutory framework – such as the Foreign Corrupt Practices Act (FCPA) – aimed at criminalising foreign bribery alongside stringent accounting controls, enforced by dedicated agencies (DOJ/SEC) with significant penalties and strong international cooperation. The United Kingdom offers valuable insights into the value of extraterritorial reach, corporate liability for failure to prevent, and an independent, empowered enforcer (SFO), alongside the importance of expectation that companies implement adequate procedures. The case of Switzerland highlights the centrality of international cooperation, proactive asset recovery, and financial-sector supervision to track and recoup illicit funds. Poland underscores the role of specialised anti-corruption agencies, alignment with international standards, and the need – often emphasised by the OECD – for judicial and prosecutorial independence and effective whistleblower protections to support enforcement. Adapting these elements to Indonesia’s legal and institutional context could strengthen its anti-bribery framework and foster a more transparent and accountable economic environment.

Conclusion

Addressing foreign bribery in Indonesia is imperative for preserving economic stability, institutional integrity, and social justice in the country. The adverse impacts of foreign bribery – such as economic inefficiencies, weakened governance, and exacerbated social inequalities – necessitate a robust anti-corruption framework. By drawing on the experiences of the United States, the United Kingdom, Switzerland, and Poland, Indonesia can significantly strengthen its efforts against corruption. The United States’ Foreign Corrupt Practices Act (FCPA) embodies a comprehensive legal framework coupled with rigorous enforcement by agencies like the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), which has proven effective in deterring and penalising corrupt practices through substantial fines and international cooperation. Similarly, the UK’s Bribery Act 2010, with its extraterritorial provisions and corporate accountability measures enforced by the Serious Fraud Office (SFO), underscores the importance of holding companies liable for preventing bribery, thereby fostering a culture of compliance and ethical business conduct globally. Switzerland’s focus on international cooperation

and financial transparency, grounded in its Penal Code and supported by proactive asset recovery efforts, highlights the necessity of cross-border collaboration in combating transnational bribery. Meanwhile, Poland's Central Anti-Corruption Bureau (CBA) comes forward as an example of the effectiveness of specialised anti-corruption agencies in detecting and preventing corruption, even though enforcement-related challenges persist.

To effectively combat foreign bribery, Indonesia should adopt stringent legal frameworks similar to those found in the FCPA and the Bribery Act, enhance its law-enforcement capabilities, promote transparency and accountability, and ensure the independence of its judiciary and prosecutorial bodies. Furthermore, fostering international cooperation and public education in the area of the detrimental effects of corruption is vital. These measures, aligned with the principles of Pancasila, will not only help Indonesia tackle foreign bribery, but also promote a more transparent, fair, and equitable business environment, contributing to overall national development and integrity.

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