

# Membumikan *Good Corporate Governance* & Membangun Jaring Pengaman (*Safeguards*) Investasi Asing: *Studi Kasus China*



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Lecturer Hasanuddin University, Law School



Mengapa kita Perlu Membumikan *Good Corporate Governance* (GCG) dan Membangun Jaring Pengaman Investasi Asing di Indonesia?

*REALITY CHECK*

# GLOBAL CORRUPTION BAROMETER ASIA 2020

## I N D O N E S I A

### KEY FINDINGS

01

#### Government corruption is a big problem

Nearly three out of four people think that government corruption is a big problem in their country.

02

#### Corruption is stagnating or on the rise

Thirty-eight per cent of people think corruption increased in their country in the previous 12 months, while an additional 28 per cent think it stayed the same.

03

#### Parliamentarians are seen as most corrupt

Nearly one in three people thinks parliamentarians are corrupt.

04

#### Bribery and use of personal connections are a regular occurrence

Nearly one in five citizens who accessed public services, such as health care and education, paid a bribe in the previous year. Similarly, more than one in five people used personal connections.

05

#### Anti-corruption agencies make positive contributions

More than three out of four people have heard of the anti-corruption agency in their country and 63 per cent think that the agency is doing a good job.

06

#### Sexual extortion is a major issue

Citizens from Indonesia, Thailand and Malaysia experience the highest rates of sexual extortion – or sextortion – when accessing a government service, or know someone who has.

07

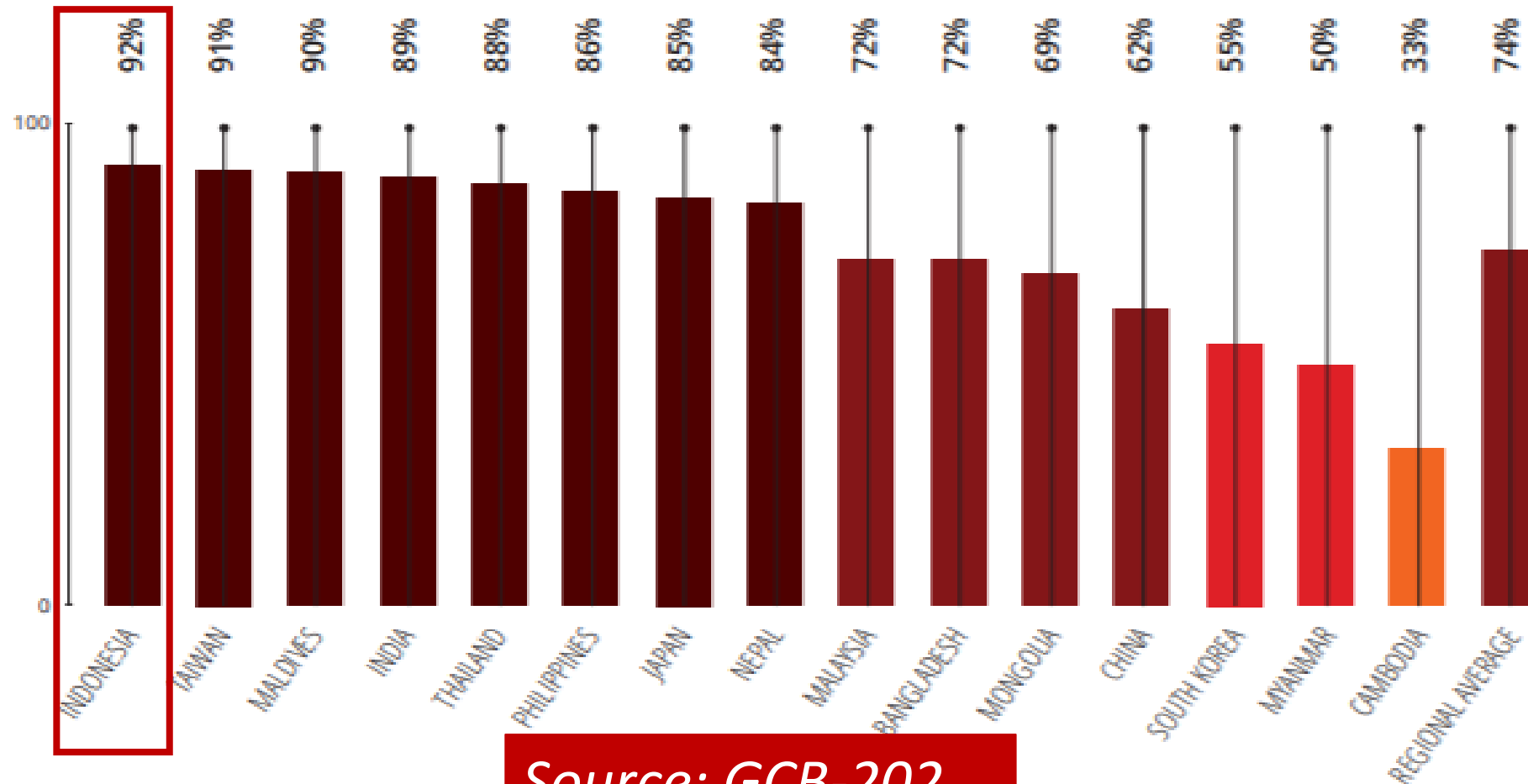
#### Political integrity is lacking, especially around elections.

Nearly one in seven citizens has been offered bribes in exchange for votes in the past five years.

08

#### Despite fears of retaliation, citizens can make a difference.

More than three out of five believe that ordinary people can make a difference in the fight against corruption.



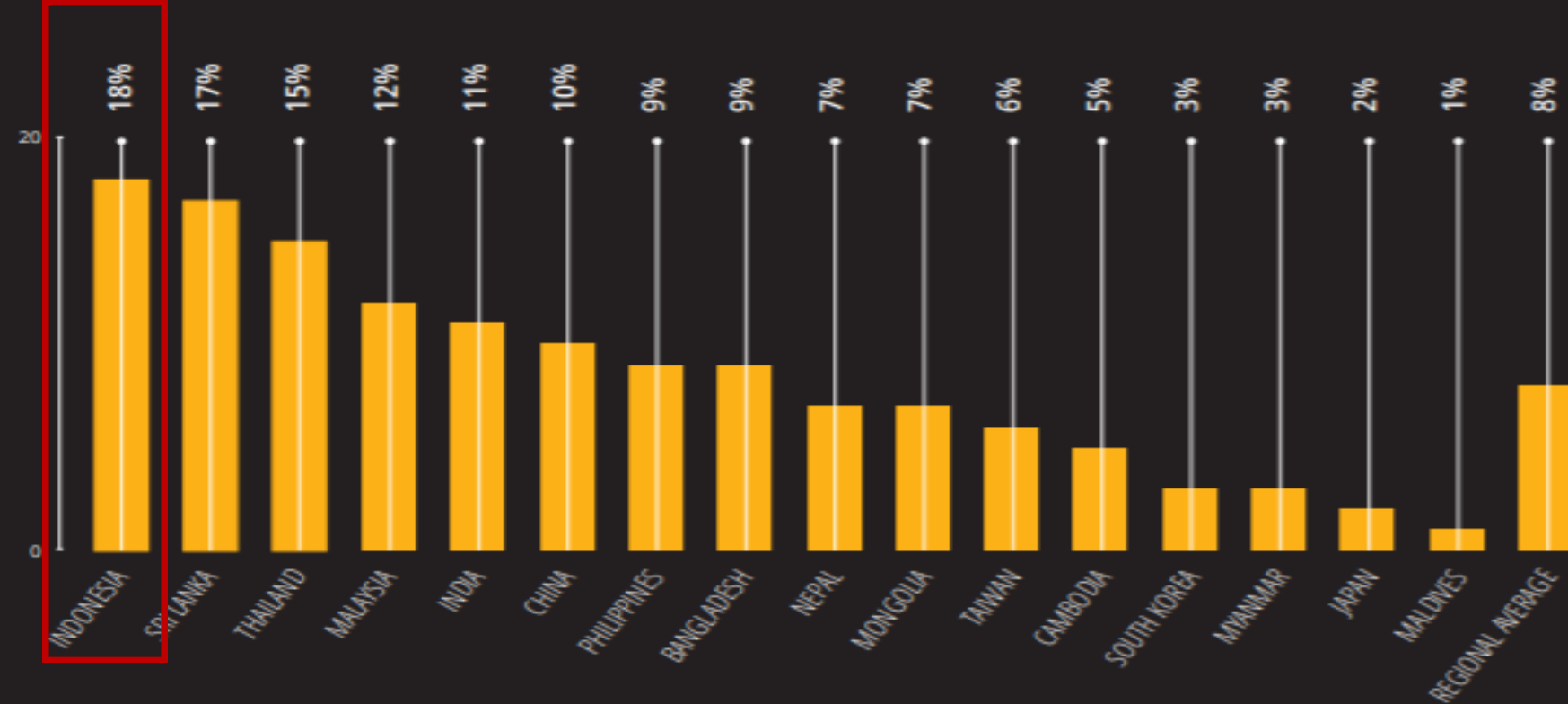
Source: GCB-202

## Government Corruption

Percentage of people **who think CORRUPTION in Government is a Big PROBLEM**

## SEXTORTION RATES BY COUNTRY

Percentage of citizens who experience sextortion or know someone who has.<sup>35</sup>

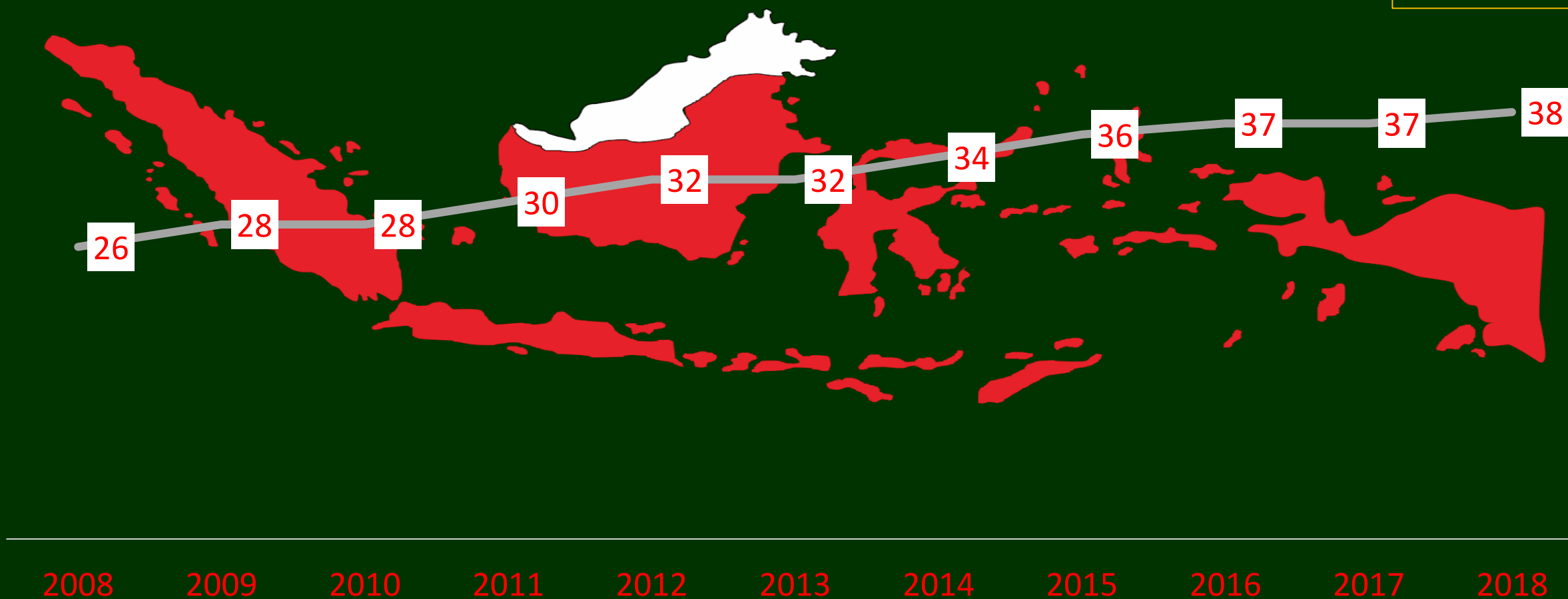


This is SAD 😞

Source: GCB-2020

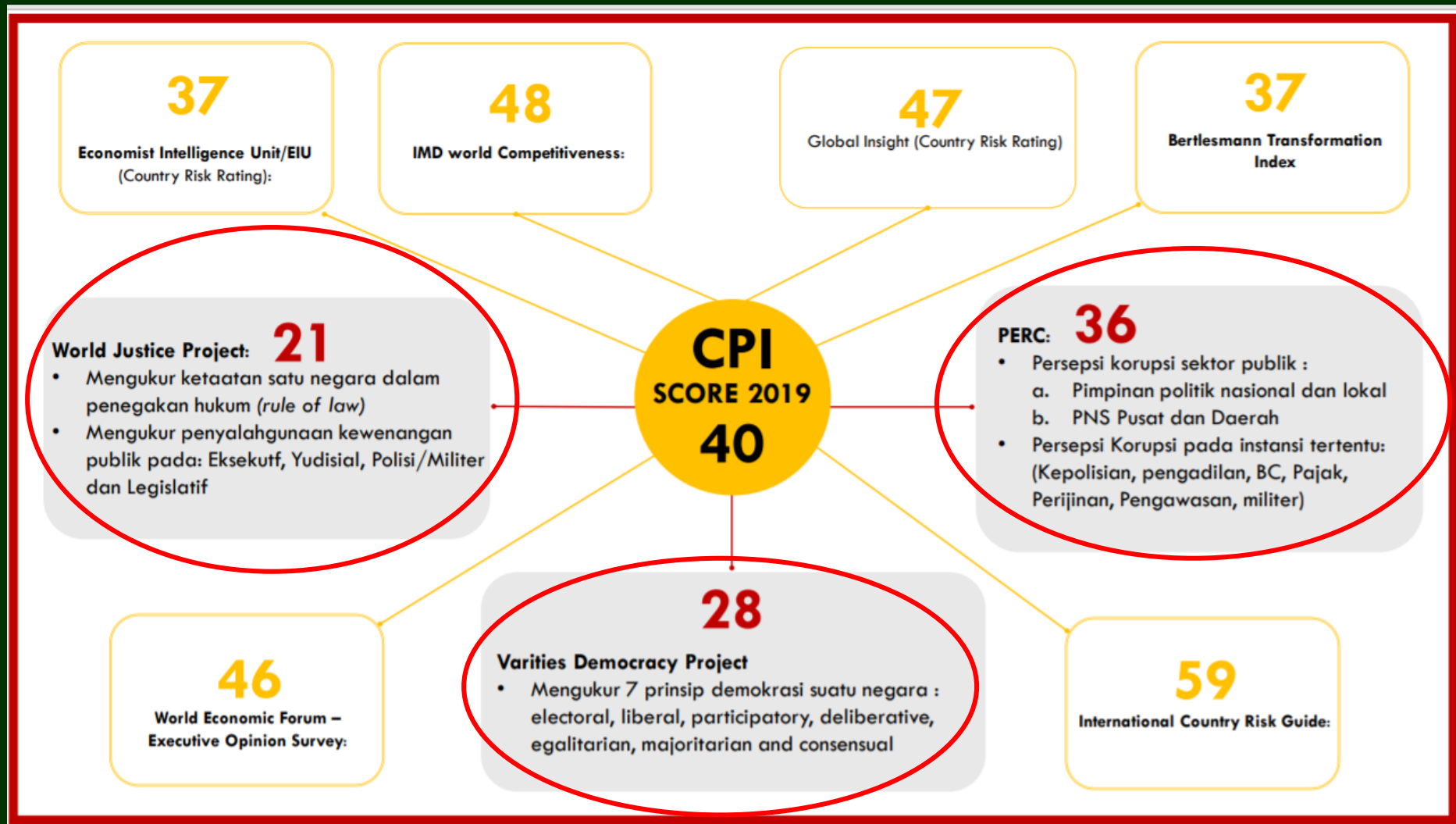
# TREN CPI INDONESIA DALAM 1 DEKADE

**2019**  
**40**





Siapa yang MENJADI “Jangkar Pemberat” ?

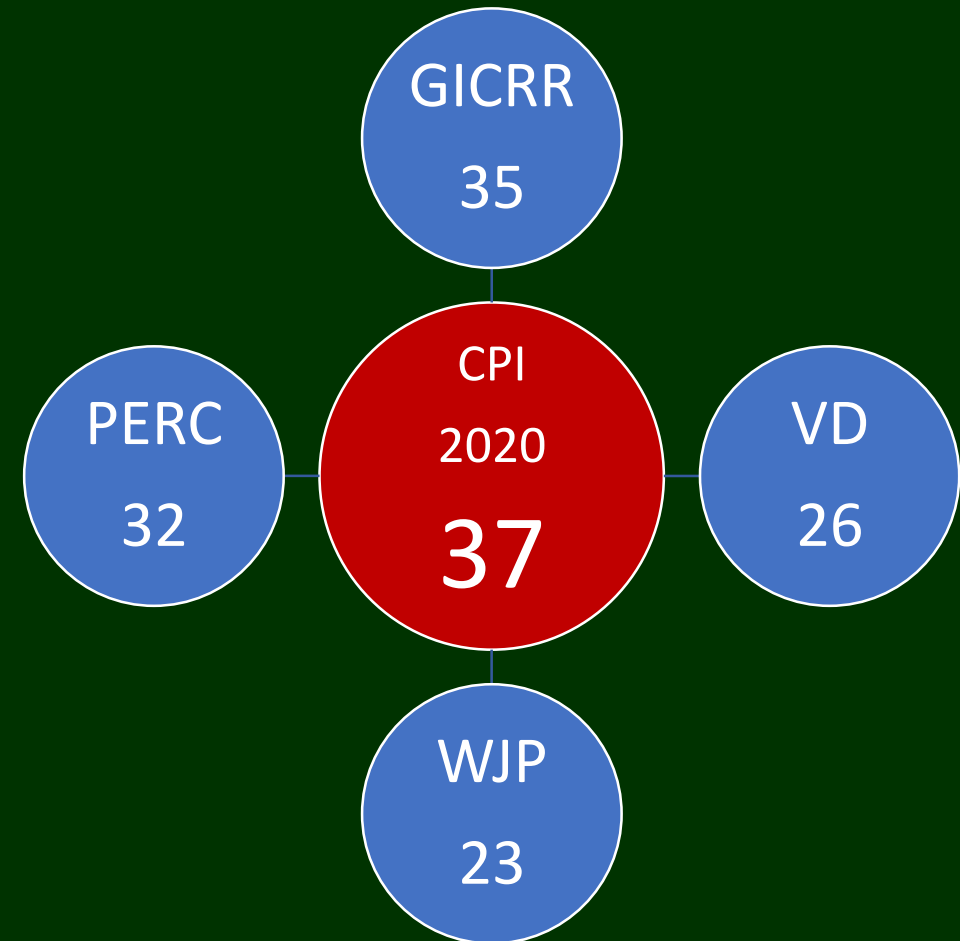


Unfortunately INDONESIA is Still CORRUPT Country



# Empat 'JANGKAR UTAMA' 2020

- PRS International Country Risk Guide 50
- IMD World Competitiveness Yearbook 43
- **Global Insight Country Risk Ratings 35**
- World Economic Forum EOS 46
- Bertelsmann Foundation Transform Index 37
- Economic Intelligence Unit Country Ratings 37
- PERC Asia Risk Guide 32
- **Varieties of Democracy 26**
- **World Justice Project – Rule of Law Index 23**





PKS-Demokrat-GERINDRA-PDIP-Golkar  
PPP-Nasdem-PAN-PKB-Hanura:  
-semua TERWAKILI-

## Paying bribes in Indonesia:

A survey of business corruption



AUTHORS: Paul Kenny  
and Eve  
Warburton

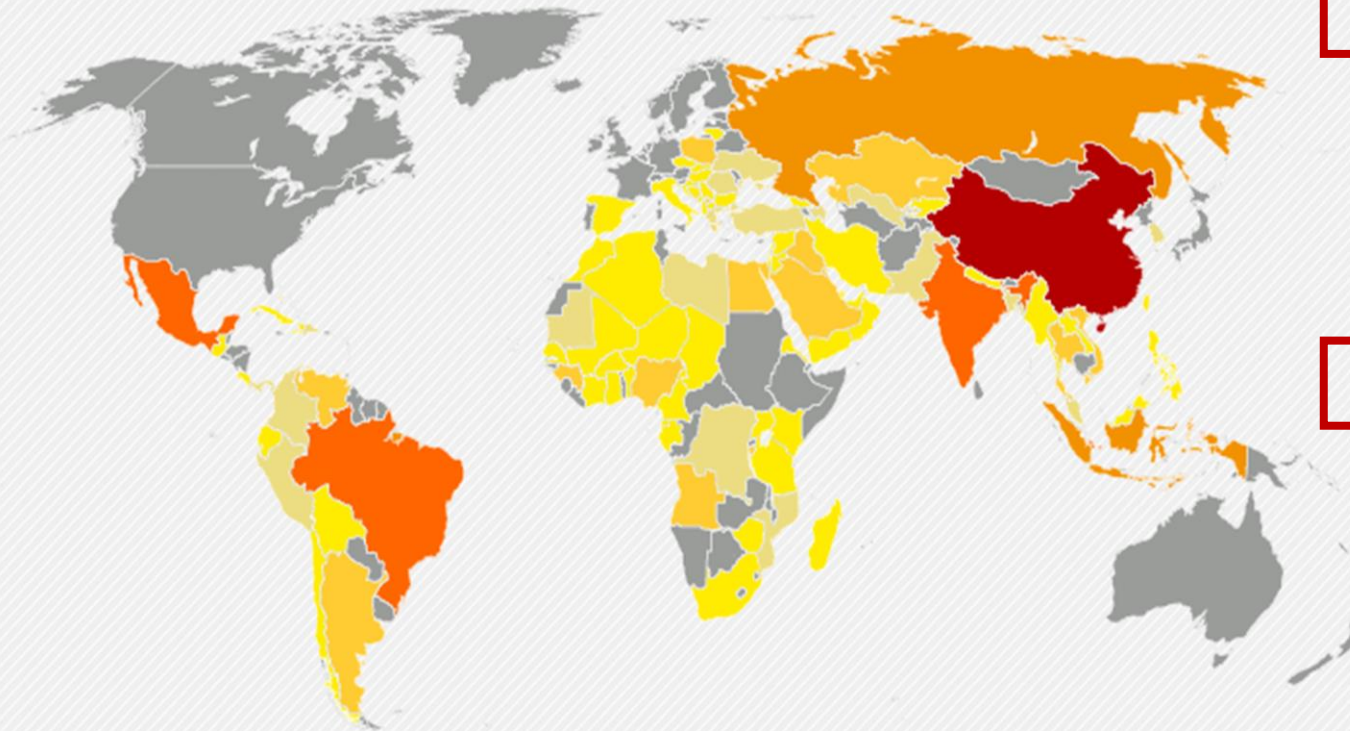
PUBLISHED BY

# When BRIBE is Common Practice

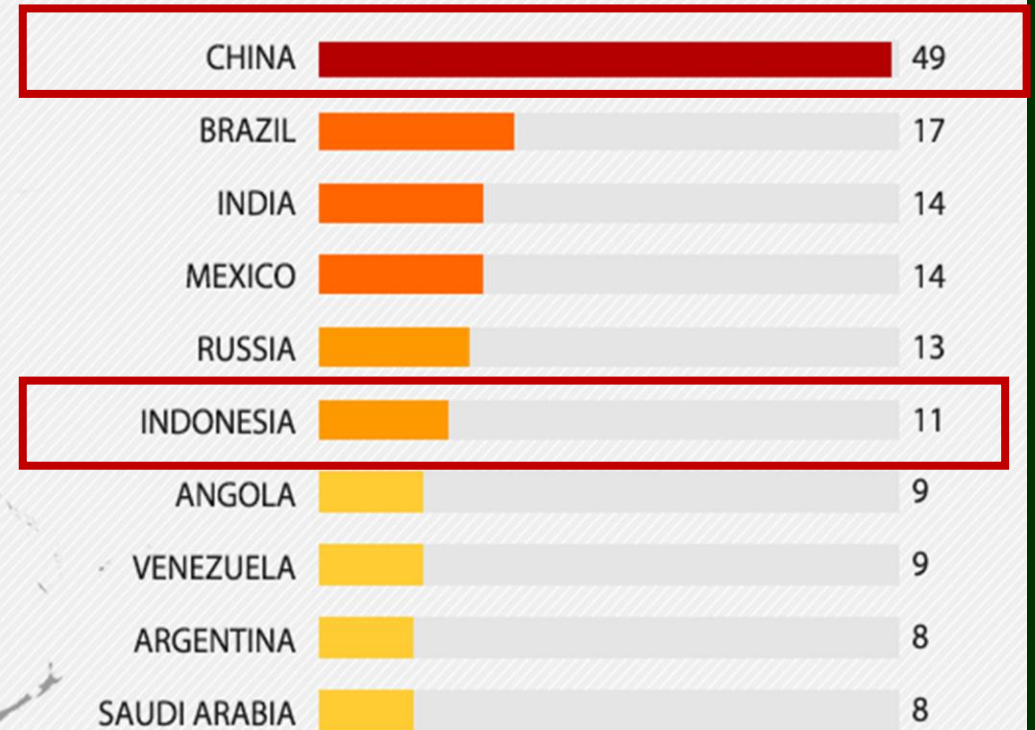
**Table 1 Percentages of Firms Experiencing  
Corruption by Sector:**

	Asked for bribe	Paid bribe	Bribery present in sector	Pay over 2.5 % in bribes	Alter financial reports
	(1)	(2)	(3)	(4)	(5)
<b>Agriculture</b>	28.9	26.7	30.0	7.8	8.9
<b>Extraction</b>	47.9	42.7	53.1	5.2	15.6
<b>Manufacturing</b>	32.7	27.6	36.7	5.1	8.2
<b>Construction</b>	49.5	44.2	51.6	11.6	16.8
<b>Trade</b>	25.0	23.0	25.0	2.0	5.0
<b>Logistics</b>	31.3	30.3	31.3	7.1	12.1
<b>Finance</b>	17.0	16.0	22.3	1.1	2.1
<b>Total</b>	<b>33.2</b>	<b>30.1</b>	<b>35.7</b>	<b>5.7</b>	<b>9.8</b>

## LOCATION OF IMPROPER PAYMENTS, 2011 - 2020\*



\* DATA IS CURRENT THROUGH SEPTEMBER 30, 2020.

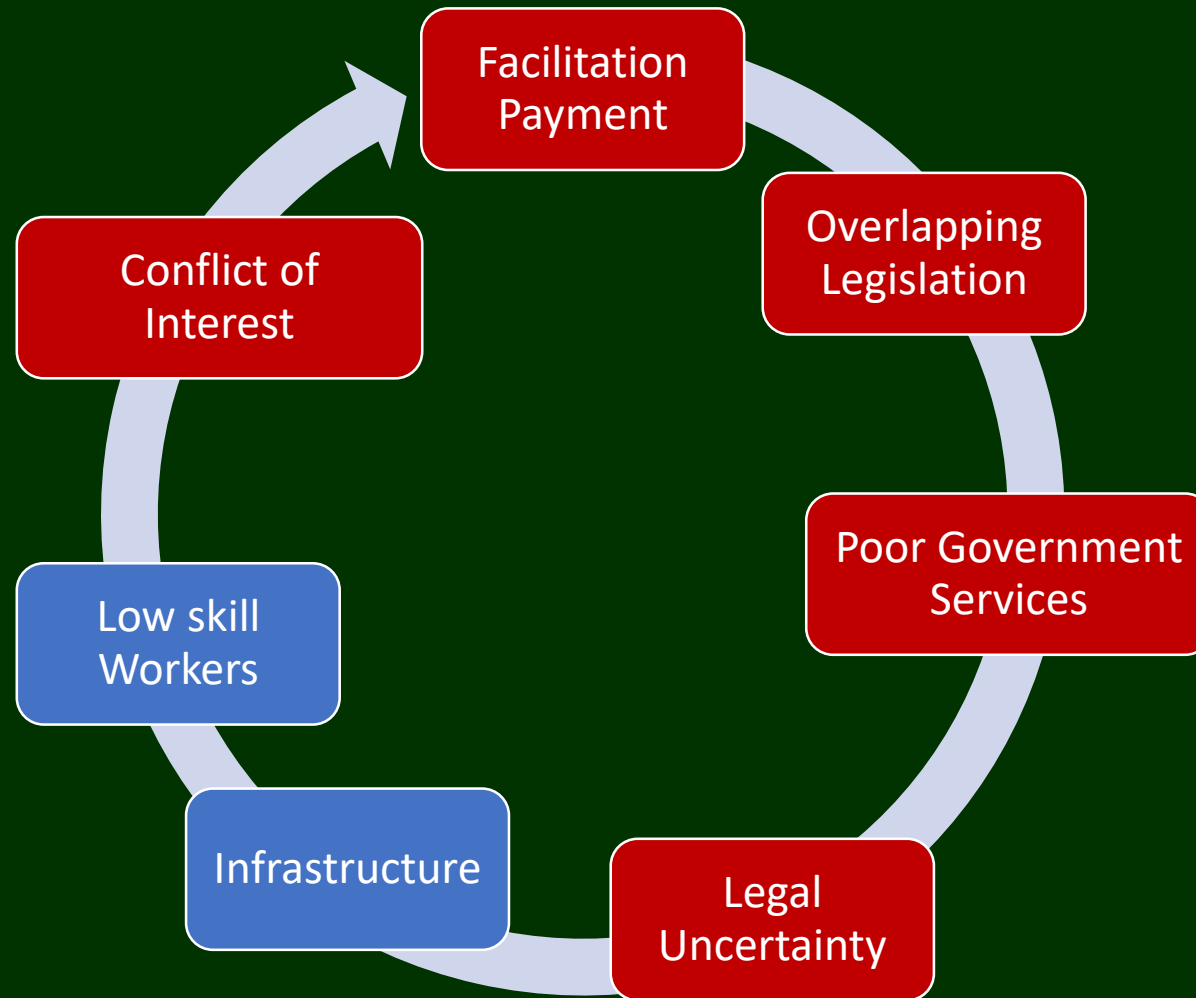


“US-FOREIGN CORRUPT PRACTICES ACT”

Source: <http://fcpa.stanford.edu/>



# Indonesia Common INVESTMENT Problems





Who Can INVEST in Such Troubled Water?

“Bad – Poor – Good – INVESTORS”

**NO**

STANDARD ON  
HUMAN  
RIGHTS-  
ENVIROMENT-  
ANTI-  
CORRUPTION

**POOR**

STANDARD ON  
HUMAN  
RIGHTS-  
ENVIROMENT-  
ANTI-  
CORRUPTION

**GOOD**

STANDARD ON  
HUMAN  
RIGHTS-  
ENVIROMENT-  
ANTI-  
CORRUPTION

Safeguards/Jaring Pengaman PENTING



Mengapa Investasi China Harus DIKAWAL?



# CORRUPTION PERCEPTIONS INDEX 2020

#cpi2020



www.transparency.org

## CHINA

Rank

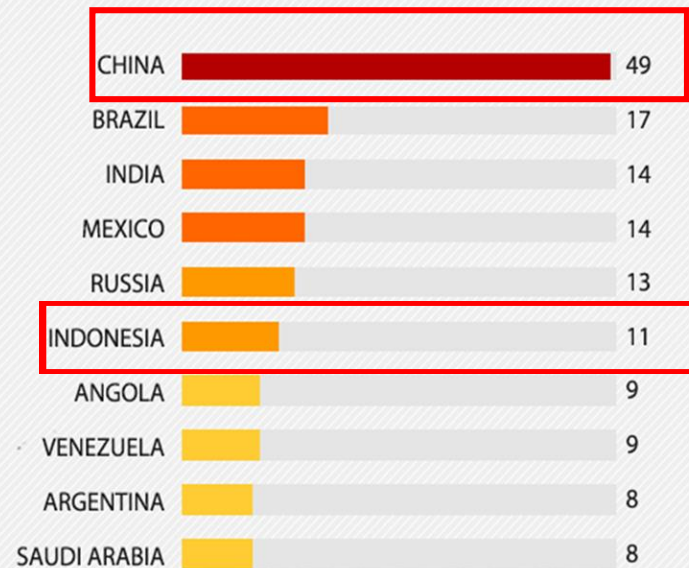
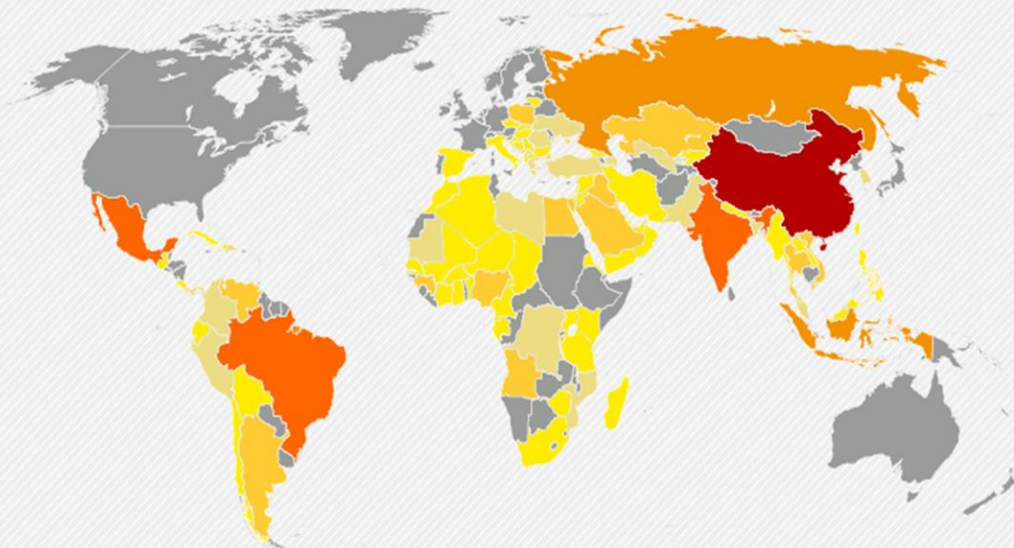
78/181

Score

42/100



## LOCATION OF IMPROPER PAYMENTS, 2011 - 2020\*



\* DATA IS CURRENT THROUGH SEPTEMBER 30, 2020.

China dan Indonesia  
Cenderung  
Sama Tingkat  
Korupsi-nya

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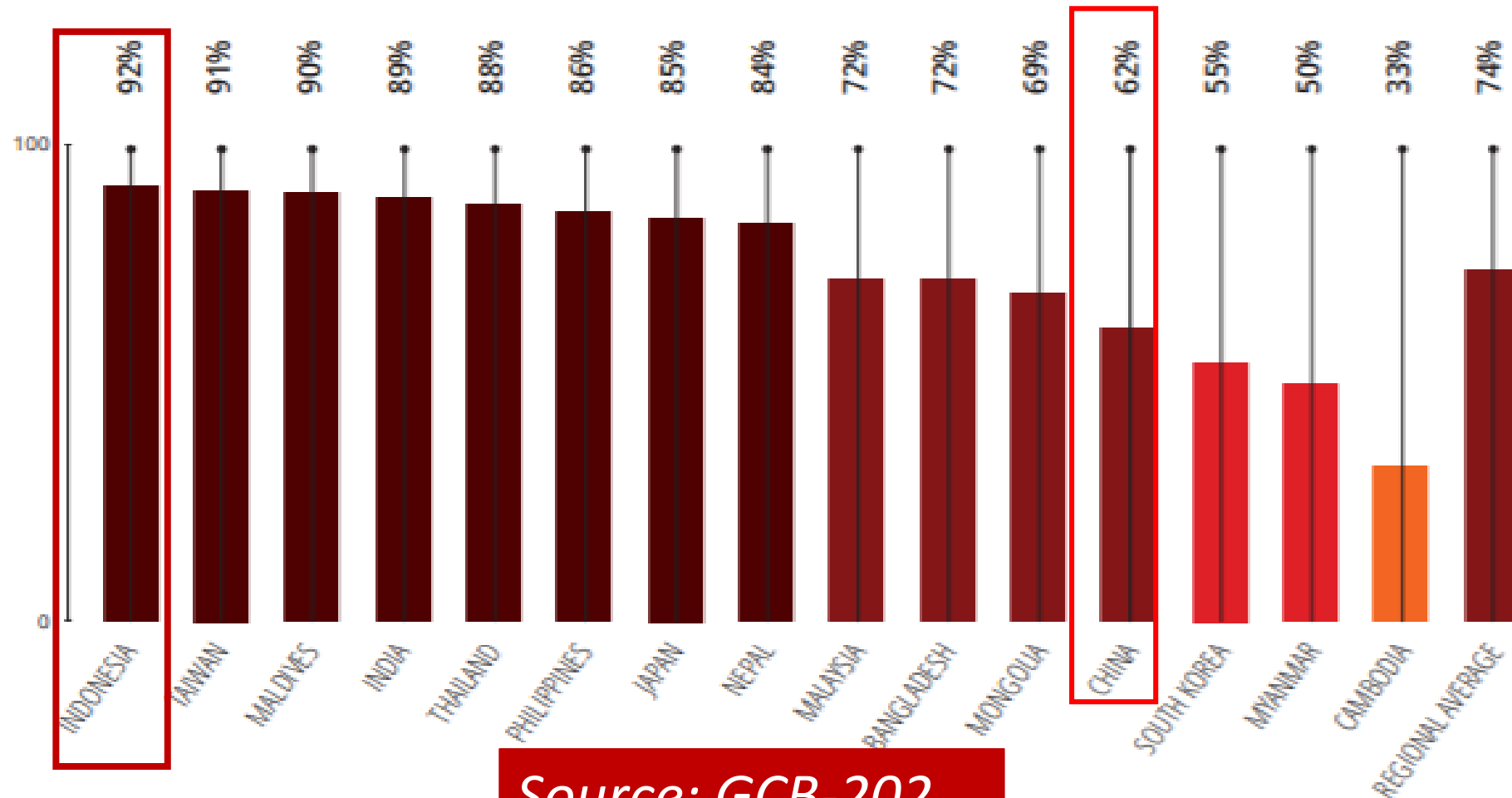
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More than three out of five believe that ordinary people can make a difference in the fight against corruption.

CHINA vs INDONESIA



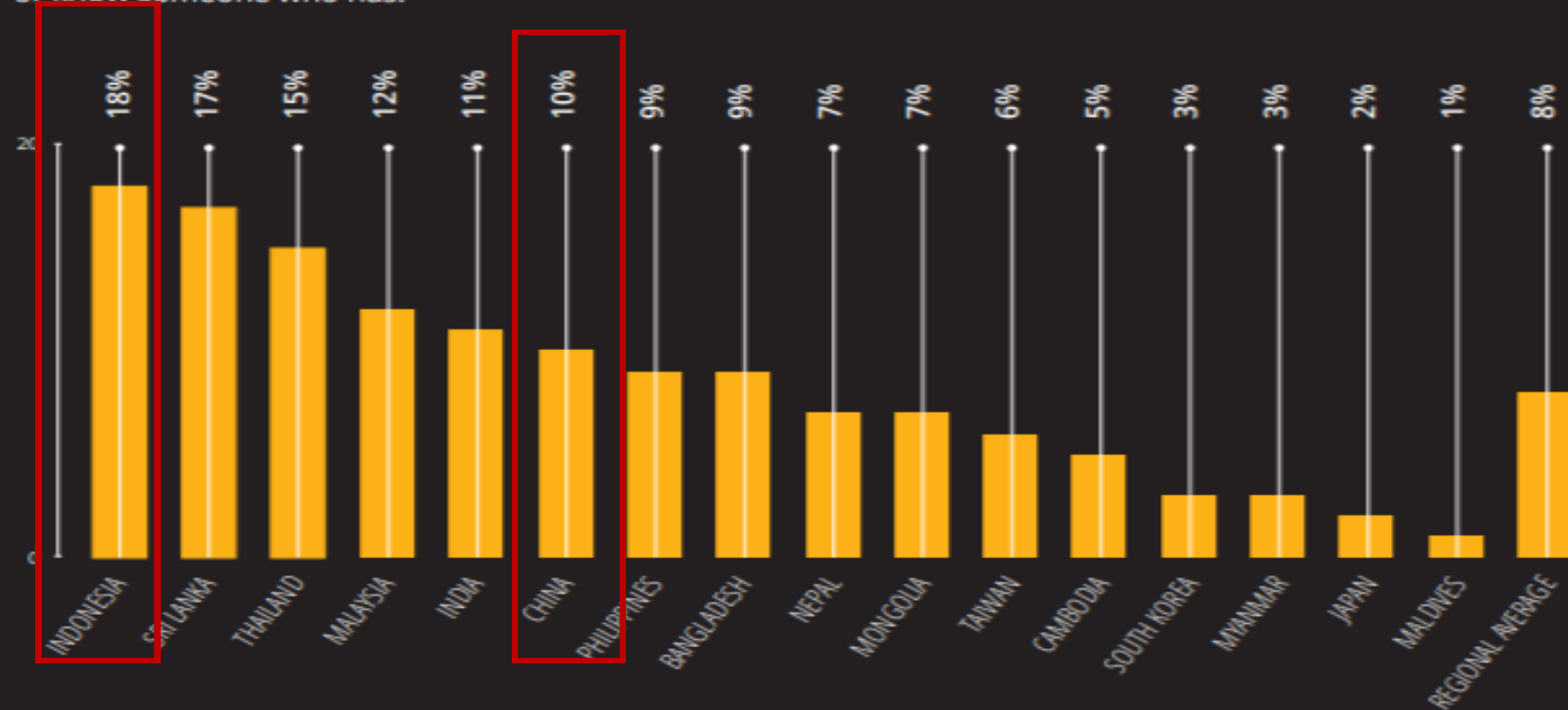
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This is SAD 😞

*Tingkat Korupsi Indonesia dan China Relatif Sama*



### Menyerap tenaga kerja



Kuartal I 2021  
311.793 orang  
Kuartal I 2020  
303.085 orang

## 10 NEGARA INVESTOR TERBESAR DI INDONESIA 2021



Badan Koordinasi Penanaman Modal (BKPM)  
melaporkan realisasi investasi pada:  
Kuartal I 2021 mencapai  
**Rp219,7 triliun**  
Naik 4,3% dibandingkan periode  
yang sama tahun 2020



Realisasi investasi asing mencapai  
**USD7,7 miliar** atau setara **Rp111,7 triliun**  
(kurs Rp14.500 per USD)  
Naik 14% dibandingkan periode  
yang sama tahun 2020

1 Singapura  
USD2,6 miliar atau Rp37,7 triliun

2 China  
USD1 miliar atau Rp14,5 triliun

3 Korea Selatan  
USD851,1 juta atau Rp12,3 triliun

4 Hong Kong  
USD822,1 juta atau Rp11,9 triliun

5 Swiss  
USD466,2 juta atau Rp6,7 triliun

6 Amerika Serikat  
USD447,1 juta atau Rp6,4 triliun

7 Jepang  
USD322,7 juta atau Rp4,6 triliun

8 Thailand  
USD228,3 juta atau Rp3,3 triliun

9 Belanda  
USD176,7 juta atau Rp2,5 triliun

10 Malaysia  
USD111 juta atau Rp1,6 triliun

China Menjadi Salah  
Satu **PEMAIN BESAR**  
Ekonomi Indonesia:  
**Total ± Rp 70 Triliun**

Home / Tren

## Makin Ekspansif, Investasi China di Indonesia Melonjak Dua Kali Lipat pada 2019

Kompas.com - 29/01/2020, 18:35 WIB

BAGIKAN:

Komentar



Iklan oleh Google

Stop lihat iklan ini

Mengapa iklan ini?

# China: Social, Environment, Human Rights, and Anti-Corruption Safeguards



- Pemerintah dan Private Sector China, masih FOKUS pada **Profit** dibanding **People & Planet**
- **Standard Anti-Corruption dan Good Corporate Governance Masih merupakan HAL BARU.**
- Investasi China TIDAK DILENGKAPI dengan SAFEGUARDS yang ketat.



# Contoh Perbandingan Safeguards

## “Multilateral Development Bank” vs “Chinese Banks”

	Laos	Multilateral Development Banks			Chinese Policy Banks	
		ABD	WB	AIIB	CHEXIM	CDB*
Compliance with host country regulations	n/a	✓	✓	✓	✓	✓
Assistance with host country standards	n/a		♥			
Land, Compensation, Resettlement:						
Community engagement; Consultations with affected communities	✓	✓	✓	✓	✓	
Disclosure of project information and social/environmental impacts & risks	✓ ♦		✓ ♣	✓		
Procedures for economic displacement	✓	✓	✓	✓		
Compensation for affected persons	✓	✓	✓	✓	✓	
Conditions for forced evictions	✓	✓	✓	✓		
Grievance mechanism	✓ ♣	✓	✓	✓		
Involuntary land resettlement and associated procedures	✓	✓	✓	✓		
Conditions for replacement locations; Resettlement assistance	✓		✓			
Collaboration with other agencies	n/a			✓		
Social and Environmental Impacts:						
Environmental and social assessment	✓	✓	✓	✓	✓	✓
Industry-specific ESS			✓			
Use of borrower's environmental and social framework	n/a	✓	✓	✓	✓	✓
Broad compliance with international environmental regulations		✓	✓	✓		
Independent monitoring and review			✓	✓		

# Antara Mitos VS Fakta

THE | DIPLOMAT  
READ THE DIPLOMAT, KNOW THE ASIA-PACIFIC

SIGN IN SUBSCRIBE

Tradition of Victim-Blaming

CHINA POWER

## China's Top Anti-Corruption Organ Declares Safeguarding Xi's Status Its Top Priority

Both the Central Commission for Discipline Inspection and the new National Supervisory Commission are first and foremost political organs.

f t in



Photo credit: DOD photo by U.S. Navy Petty Officer 1st Class Dominique A. Pineiro

ADVERTISEMENT

**CCDI** (Central Commission for Discipline Inspection) declared that the organ's top priority is to **safeguard Chinese President Xi Jinping's status** as the core of the CCP Central Committee and the whole Party.

Both the **CCDI** and NCS (**National Supervisory Commission**) — the newly established organ designed to oversee all public servants — are defined as the **CCP's political organs**. And both organs' "most fundamental mission" is to "**safeguard the leadership of the CCP Central Committee**" — *not to fight corruption.*



U4 Issue 2019:7

# China and global integrity-building: **Challenges** and prospects for engagement

By Bertram Lang  
Series editor: David Jackson

**CMI** CHR.  
MICHELSEN  
INSTITUTE

Sphere	Key players	Strategic drivers	Challenges to integrity-building	Potential for engagement
<b>Domestic anti-corruption (within China)</b>	NSC, (subnational) Discipline Inspection Commissions, People's Procuratorates	Xi's campaign to restore party legitimacy and internal discipline, extension of party control over state organs	Opaqueness of party-internal investigations, lack of judicial independence, risk of torture under 'Shuanggui'	Bilateral legal dialogues, judicial cooperation on foreign bribery <i>in</i> China, public pressure on rule-of-law
<b>International norms and governance</b>	MFA, MPS, NSC (formerly CCDI)	Operations 'Foxhunt' and 'Skynet' – pursuit of 'corrupt fugitives' and recovery of stolen assets	Weakening of human rights safeguards, difficult distinction between 'corruption' and political crimes	UNCAC and FATF review mechanisms, G20 negotiations on asset recovery, conditionality in bilateral extradition treaties
<b>State-driven infrastructure investment along the 'Belt and Road'</b>	State Council, MOFCOM, MFA, PBOC, major SOEs, CIDCA, provincial and subnational institutions	BRI: Amalgam of geopolitical, commercial, military, and 'soft power'-related objectives	Corruption risks in large-scale infrastructure programmes, lack of public tendering, support for kleptocratic regimes	'Multilateralisation' of BRI (e.g. EU-China Connectivity Platform, AIIB), African Union, civil society pressure and disclosure of corruption risks where necessary

Sphere	Key Players	Strategic Drivers	Challenges to Integrity Building	Potential for Engagement
<b>Development finance</b>	China Eximbank, CDB, Silk Road Fund, CIDCA	Mix of diplomatic and commercial interests	Improving but still weak accountability mechanisms	Joint investment projects (e.g. CDB–EBRD), multilateral engagement (e.g. AIIB), FOCAC action plan
<b>Commercial investment and private business</b>	Chinese private MNCs, SOEs, small businesses and individual entrepreneurs	Mainly business-driven investments, often long-term considerations	Relatively weak compliance and disclosure standards, lack of PRC anti-foreign bribery enforcement	Multilateral codes of conduct, trust-building and public pressure to improve compliance and CSR, training offers to MNCs
<b>Foreign aid</b>	CIDCA, MFA, MOFCOM and other agencies, philanthropic foundations and NGOs	Diplomatic: ‘South-South cooperation’, ‘win-win’ and development objectives, ‘people-to-people’ ties	Possible dilution of anti-corruption norms through ‘no-strings-attached’ policy, lack of public debate and transparency in recipient countries	Pilot projects on donor coordination, trust-building with CIDCA, cooperation between non-profit organisations, in-country and trilateral engagement in South-South fora

# Foreign Bribery: USA vs China

FCPA	China Criminal Law
<b>Jurisdiction</b> “issuers,” “domestic concerns,” or some US territorial nexus	PRC citizens, companies organized under PRC law (including domestic companies, JVs, representative offices, and wholly foreign-owned enterprises), or some PRC territorial nexus
<b>Intent Requirement</b> Corrupt offer/transfer directly or indirectly to obtain/retain/direct business or obtain improper advantage	“ <b>seek illegitimate commercial benefit</b> ” (not defined, but similar language has been interpreted elsewhere to mean seeking some benefit in breach of laws, regulations, or rules, or providing assistance or facilitation in breach of laws, regulations, rules, or industry code)
<b>Thing of Value</b> “anything of value”	“ <b>property</b> ” (not defined, but most likely interpretation, based on comparable definitions elsewhere, is tangible items of monetizable value)
<b>Covered Recipients</b> “foreign official,” “foreign political party or official thereof,” “candidate for foreign political office” (terms are defined broadly and have been interpreted by regulators even more broadly)	“foreign public official” or “official of an international organization” (not defined, but may follow definition in the <a href="#">UN Convention Against Corruption</a> , Article 2)
<div>Eric Carlson: <a href="https://fcpablog.com/2011/3/10/letter-from-beijing/">https://fcpablog.com/2011/3/10/letter-from-beijing/</a></div>	

# Larangan Menyuap Pejabat Publik Asing TIDAK DITEGAKAN

## It's Time for China to Show Its Foreign Bribery Law is Not a Paper Tiger

In May 2011, China criminalized the bribery of foreign public officials. More specifically, the 8<sup>th</sup> Amendment to China's Criminal Law, among other things, added Article 164(2), which prohibits both natural persons and units (i.e. companies and other organizations)

**Not a single enforcement action** has been brought (or at least publicized) under Article 164(2). Even after President Xi Jinping launched in 2013 the most extensive anti-graft campaign China has ever seen, **there have been no foreign anti-bribery enforcement actions.**

# Penghargaan atas HAM, Masih DIPERTANYAKAN



## Civil society calls for rights safeguards in EU-China investment deal

A joint appeal has been made to the European Institutions calling for the inclusion of enforceable human rights clauses in the EU-China Comprehensive Agreement on Investment

### Topics

European Union | China economy | Investment

A **coalition of 36 civil society organisations** (CSOs) has launched a joint appeal to the European Institutions calling for the inclusion of enforceable human rights clauses in the **EU-China Comprehensive Agreement on Investment** (CAI).

In view of the upcoming Plenary session of the European Parliament, the **CSOs in the letter expressed "grave concern" at the omission of a human rights clause** from the discussion about the agreement and its final text, the World Uyghur Congress (WUC) said in a statement.

**APAKAH KITA PERNAH MELIHAT "KLAUSULA HAM" PERJANJIAN INVESTASI CHINA-INDONESIA?**

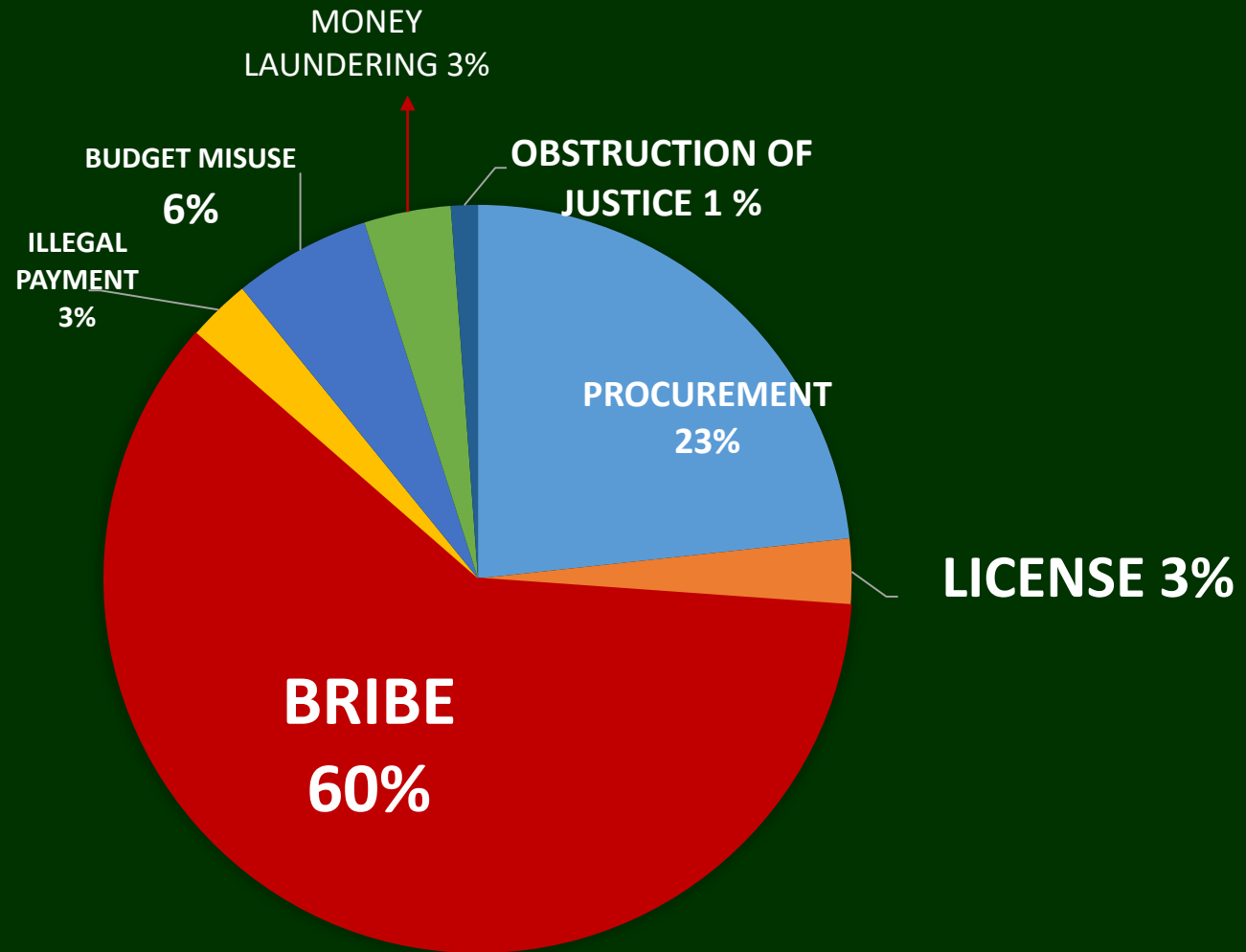




# Rekomendasi Buat Dunia Usaha

STOP BRIBING

# How to INVEST with INTEGRITY ?



*NOTE: KPK Case Profile*



# Hati-Hati dengan *Corporate Criminal Liability*



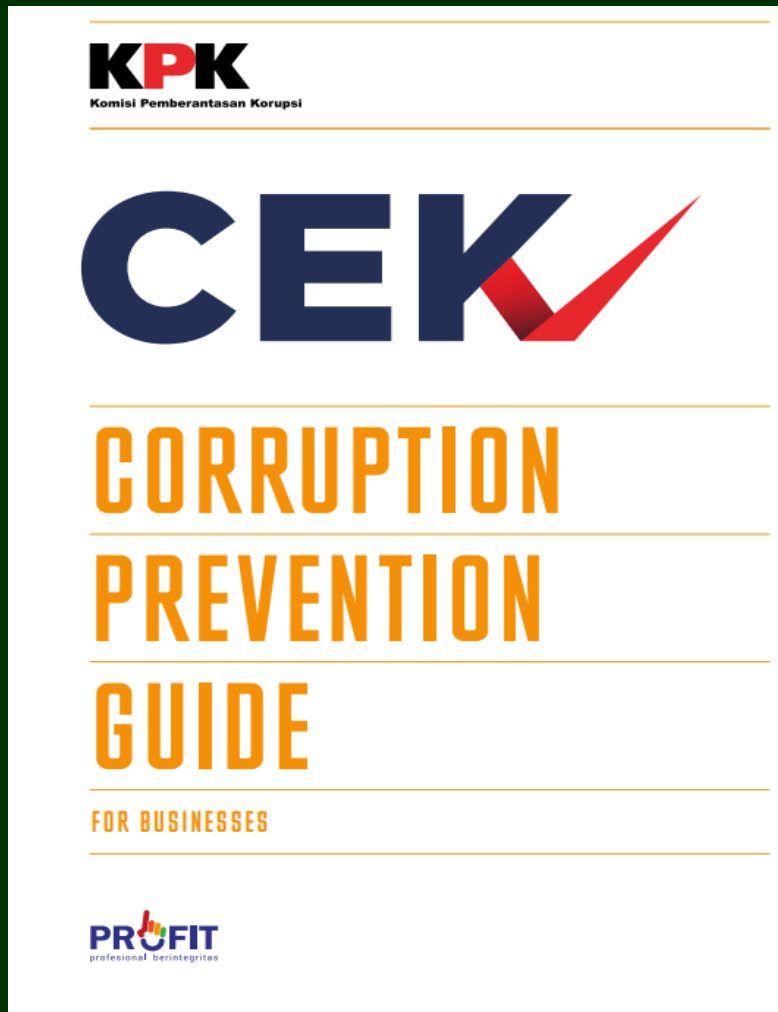
PT Putra  
Ramadhan  
(Tradha)



PT  
PALMA  
SATU



# Equip Your Company





Just FOLLOW  
the CIRCLE

and

Say NO  
to BRIBE

## 1. KOMITMEN

Deklarasi Anti-Korupsi; Penyediaan SDM, infrastruktur, finansial; Kebijakan tertulis dari Pimpinan Puncak; Kode Etik; Pengawasan upaya pencegahan oleh Fungsi Pelaksana

Panduan Pencegahan Korupsi  
untuk Dunia Usaha  
Berdasarkan PERMA No.13/2016

## 4. EVALUASI

Pengecekan kembali tahapan yang telah dilakukan, dari perencanaan hingga pelaksanaan.

## 2. PERENCANAAN

**Pahami Aturan Perundangan**  
Pemidanaan Korporasi;  
**Identifikasi area risiko korupsi**  
yang dapat berdampak  
bagi korporasi

## 3. PELAKSANAAN

Klausul anti korupsi; Uji tuntas; Pengaturan praktik pemberian; Kontribusi & Donasi politik; Penyediaan layanan pengaduan; COI; Pengendalian transaksi keuangan; Komunikasi; Pelatihan



## 5. PERBAIKAN

Fungsi korektif/perbaikan ;  
Pemberian Sanksi dan  
Penghargaan

## 6. RESPON

Aksi Kolektif Antikorupsi;  
Laporkan Indikasi Tindak Pidana  
Korupsi



## THREE ELEMENTS OF SUCCESS

- *Protecting ENVIROMENT*
- *Honoring HUMAN RIGHTS*
- *Practicing ANTI-CORRUPTION*

GOOD INVESTOR is the WINNER

# TUGAS MULIA PEMERINTAH & CSO



- *Memastikan semua perjanjian investasi Asing (khususnya China) dilengkapi dengan KLAUSULA SAFEGUARDS (lingkungan, sosial, HAM, anti-korupsi/good corporate governance)*
- *HINDARI SUAP, Conflict of Interest, Memperdagangkan Pengaruh dalam mengurus investasi.*
- *Memastikan semua investasi TAAT pada hukum nasional & standar internasional.*
- *Melakukan pengawasan dengan ketat dan menegakan hukum nasional dengan TEGAS apabila ada pelanggaran*
- *Mementingkan investasi “BERSIH” dibanding Investasi yang merusak alam.*
- *CSO tidak **BOLEH LELAH** untuk mengingatkan Pemerintah dan Dunia Usaha untuk memperbaiki Corporate Governance di Indonesia.*





*....terima kasih/Thank You....*

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