ISSN: 2302-1217

JURIS GENTIUM LAW REVIEW

Volume 9, Number 2, December 2023

UNIVERSITAS GADJAH MADA

COMMUNITY OF INTERNATIONAL MOOT COURT UNIVERSITAS GADJAH MADA

JURIS GENTIUM LAW REVIEW

JOURNAL OF INTERNATIONAL LAW

Published by Community of International Moot Court twice a year

Volume 9, Number 2, December 2023

JURIS GENTIUM LAW REVIEW is an expert-reviewed and peer-edited law journal dedicated as a place for undergraduate and graduate students from any major to contribute in scientific research and writing in regards to Business Law, Public International Law, Private International Law and Comparative Studies. The Editorial Board receives any research paper and conceptual article that has never been published in any other media. The submission requirement is available at the inside back cover of this journal.

FOREWORD FROM THE PRESIDENT OF THE COMMUNITY OF INTERNATIONAL MOOT COURT FACULTY OF LAW, UNIVERSITAS GADJAH MADA

In today's rapidly changing legal landscape, the emergence of student-led legal publications is of great significance. I am excited to introduce this year's edition of the Juris Gentium Law Review (JGLR), which underscores the importance of involving student perspectives in legal discussions.

Student- initiated legal journals, like this one, breathe new life into academic conversations. They encourage innovative viewpoints and fresh approaches to legal analysis. Welcoming students from diverse academic backgrounds, these platforms provide emerging scholars with the priceless chance to wrestle with complex matters, hone their research acumen, and make substantial contributions to the ongoing dialogues within the legal and international community.

Over the years, CIMC has closely monitored JGLR's growth. Each year, the journal expands its scope, addressing new issues. With every passing year, our expectations naturally increase, reflecting our unwavering commitment to pursuing excellence consistently. We envision this platform as a lasting haven for student expression, dedicated to exploring novel global challenges a testament to our commitment to societal contribution. Our aspiration is for this initiative to endure, fostering a legacy of written contributions that will persist for years to come.

My heartfelt appreciation extends to all the authors for their insightful contributions, the previous and current Editor-in-Chiefs, Gregorius Brian Sukianto and Gabriela Eliana, and the remarkable editorial, technical, and administrative teams that have diligently refined their work behind the scenes. Together, they have crafted a platform that not only acknowledges the liveliness of legal discourse but also propels its evolution.

May this groundbreaking effort inspire future generations, motivating them to acitvely shape the legal landscape with their fresh perspectives and unwavering enthusiasm. As well as long-lasting the love and support for our big community

Putera Pratama Tambunan

President of the Community of International Moot Court
Faculty of Law, Universitas Gadjah Mada

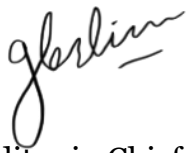
FOREWORD FROM THE EDITOR IN CHIEF JURIS GENTIUM LAW REVIEW FACULTY OF LAW, UNIVERSITAS GADJAH MADA

I am honored to announce the publication of Juris Gentium Law Review's Volume 9 Issue 2, which was prepared by JGLR Board 2023. This issue marks the end of JGLR 2023 administration. As a chief, I saw the progresses that JGLR has made, where we received more interesting manuscripts from various authors, and we also invited more expert reviewers from different countries.

This issue presents 4 articles written by author of diverse backgrounds, ranging from Indonesia, Malaysia, and Kazakhstan. This issue comprises of manuscripts focusing on climate change and UNCLOS, to comparative corruption law, comparative criminal law on money laundering, to comparative constitutional law.

Lastly, I would like to express my sincere gratitude to JGLR team for their dedication and hard-work that made Volume 9(2) possible: Muhammad Raihan, Naulita Sara, Pawestri Nindyatami, Rachelle Amadea, Rafsi Albar, Alyca Azka, Salma Kamila, and Aulia Maharani. Allow me to also take this opportunity to thank Universitas Gadjah Mada's Faculty of Law, our advisor, Mas Fajri Matahati Muhammadin, S.H., LL.M.,Ph.D. the Authors, and Executive Reviewers. This current issue would not be possible without the support and help received from them.

Gabriela Eliana



Editor in Chief of the *Juris Gentium Law Review*

Faculty of Law, Universitas Gadjah Mada

JURIS GENTIUM

LAW REVIEW

Volume 9, Number 2, December 2023

The Drowning State: Future of Indonesia's Archipelagic Baselines in the Face of Climate Change-Induced Sea Level Rise

Tiffany Linda Rosemarry[1]

Abstract

As mankind's ultimate consequence of anthropogenic era, climate change has inevitably altered every aspect of mankind structure. One of which that has devastatingly altered the regime of law of the sea comes from the sea level rise with a rate unprecedented throughout all history. Confronted with such issue, this paper will address the response of Republic of Indonesia, as the historically prominent largest archipelagic state in the world which affect their maritime boundaries through shifting archipelagic baselines. This paper intends to explain the challenges faced and any solutions that has been taken by Indonesia and several possible recommendations in handling sea level rise crisis. The paper will approach the issue through normative understanding.

Intisari

Sebagai konsekuensi utama umat manusia dari era antropogenik, perubahan iklim telah mengubah setiap aspek struktur umat manusia. Salah satu dampak buruk yang telah mengubah rezim hukum laut adalah kenaikan permukaan air laut dalam tingkat yang belum pernah terjadi sebelumnya sepanjang sejarah. Menghadapi permasalahan tersebut, tulisan ini akan membahas respon Republik Indonesia, sebagai negara kepulauan terbesar di dunia yang mempengaruhi batas maritimnya melalui pergeseran garis pangkal kepulauan. Tulisan ini bermaksud menjelaskan tantangan yang dihadapi dan solusi apa saja yang telah diambil oleh Indonesia serta beberapa kemungkinan rekomendasi dalam penanganan krisis kenaikan permukaan air laut. Makalah ini akan mendekati permasalahan ini melalui pemahaman normatif.

Keywords: *Archipelagic State Doctrine, Climate Change, Sea Level Rise, Indonesia, Straight Archipelagic Baselines, UNCLOS 1982.*

Kata Kunci: *Doktrin Negara Kepulauan, Perubahan Iklim, Kenaikan Permukaan Laut, Indonesia, Garis Dasar Kepulauan Lurus, UNCLOS 1982.*

[1] 2019 Class of the Faculty of Law (International Law Concentration), Universitas Gadjah Mada, Yogyakarta, Indonesia.

A. Introduction

The biggest life-altering challenge and calamity that humankind will face in the next decades is climate change. Climate change has inevitably transformed and will further alter all existing layers of social, economic, political, environmental, and cultural architecture of humankind. It is undoubted that without any meaningful and exponential progressive transformations within the current regimes and activities of humankind, the impacts of climate change will be even more catastrophic, permanent, and irreversible. Perceived to be one of the reasons for humankind sixth mass extinction,[2] climate change has also exponential impact in the regime of the law of the sea. One of the most inevitable impacts of climate change that is closely related to the governance of law of the sea is rising sea level. The 6th Intergovernmental Panel on Climate Change (IPCC) report found that global mean sea level has risen faster since 1900 than over any preceding century in at least the last 3000 years,[3] which is "unprecedented over the last century".[4] Warnings pertaining to sea level rise has been dated as early as the 1980s by the scientific community, however not much attention are being paid to by the mundane.[5] Similarly, discussions concerning sea level rise are not in any way a new topic in the regime of law of the sea,[6] especially in recent years, this issue has risen to be an urgent subject discussed by international law of the sea committees.[7]

Although rising sea level is particularly "existentially" threatening for countries which are on low-lying coastal region and small islands,[8] archipelagic state is also as prone to the issues of sea level rise particularly affecting the maritime boundaries and baselines which in turn may also affect maritime entitlements as well as possibly

---

[2] Word Wildlife Fund, "What is the sixth mass extinction and what can we do about it?", 15 April 2022, Available at: https://www.worldwildlife.org/stories/what-is-the-sixth-mass-extinction-and-what-can-we-do-about-it#:~:text=Unlike%20previous%20extinction%20events%20caused,energy%20use%2C%20and%20climate%20change (accessed on 13 June 2022).

[3] Intergovernmental Panel on Climate Change (IPCC), Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge: Cambridge University Press, 2021, Available at: https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf

[4] Freestone, D., and Schofield, C., "Sea Level Rise and Archipelagic States: A Preliminary Risk Assessment", *Ocean Yearbook Online*, BRILL, Volume 35, Issue 1, 2021, p. 340 (**'Freestone, D. and Schofield, C.'**)

[5] Menefee, S., ""Half Seas Over": The Impact of Sea Level Rise on International Law and Policy", *UCLA Journal of Environmental Law and Policy*, 1991, Vol. 9 Issue 2, p. 182

[6] Vidas, D., Freestone, D., McAdam, J., International Law and Sea Level Rise: 2018 Report on the International Law Association Committee Sydney Conference of International Law and Sea Level Rise, 2019. ('**ILA Sydney Conference Report 2018'**)

[7] Baselines Committee of the International Law Association (ILA) from 2008 to 2012; The Committee on International Law and Sea-level Rise of the ILA from 2012 to 2018; The International Law Commission (ILC) on Sea-level Rise in Relation to International Law from 2019.

[8] House of Lords, "UNCLOS: the law of the sea in the 21st century", International Relations and Defence Committee HL Paper 159, 2nd Report of Session 2021–22, March 2022, p. 34

threatening its archipelagic status.[9] Indonesia as the largest archipelagic state in the world is also no exception to this issue. It is noted that amongst other climate change consequences, sea level rise will in fact have the greatest impact on Indonesia and its seas, even if the rate of increase is limited to only 0.5 m in the next 100 years.[10] Depending on the region, the Indonesian sea level is increasing by the rate of 1-8 mm and even in an extreme scenario, will continue to 1.18 mm by the year of 2100.[11] In 2030, Indonesian average sea level rise is projected to be from 15 cm to 18 cm and in 2050 can be high as 25 cm to 30 cm.[12]

Now faced with the challenges of sea level rise due to climate change, this paper principally will address and expounds how Indonesia, as the largest and one of the most historically prominent archipelagic states in the world deal with the issue. In the first section, the paper will delve into the explanation on significant history and role of Indonesia in developing the archipelagic state doctrine. It will then move to the discussion on specific concerns faced by Indonesia pertaining to the UNCLOS 1982 particularly on the issue of maritime boundaries. At last, it will provide the existing ways in tackling the current issues and the way forward for Indonesia.

B. Indonesia's History and Role in The Development of Archipelagic State Doctrine

Article 46(a) of UNCLOS 1982 defined archipelagic State as "a State constituted wholly by one or more archipelagos and may include other islands." To which further in paragraph (b) of the same article, "archipelago" is defined as "a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such."

At the heart of the archipelagic state doctrine discussion is the Republic of Indonesia as the biggest archipelagic state in the world[13] with over with over 18.800 islands,[14]

---

[9] See Freestone, D., and Schofield, C. , pp. 340-341

[10] Vantier, L., Wilkinson, C., Lawrence, D., and D. Souter, "Indonesian Seas", GIWA Regional Assessment 57. United Nations Environment Programme (UNEP), 2005, University of Kalmar, Kalmar, Sweden, p. 58

[11] Thao, N., "Sea-Level Rise and the Law of the Sea in the Western Pacific Region." *Journal of East Asia and International Law*. Vol 13, No. 1, 2020, p.128. **('Thao, N.')**

[12] Ministry of National Development Planning, Indonesia Climate Change Sectoral Roadmap (ICCSR) Scientific Basis: Analysis and Projection of Sea Level Rise and Extreme Weather Event, March 2010, p. 30. Available at: https://perpustakaan.bappenas.go.id/e-library/file_upload/koleksi/migrasi-data-publikasi/file/Policy_Paper/analysis-and-projection-of-sea-level-rise-and-extreme-weathe__20110217130224__1.pdf

[13] Cribb and Ford, Indonesia beyond the Water's Edge: Managing and Archipelagic State, Singapore: Institute of Southeast Asian Studies (ISEAS) Publishing, 2009, p.1. (**'Cribb and Ford'**)

[14] *Ibid.*

and 108.000 km of coastline extended across its territory.[15] To which within the 100 km vicinity of such coastline is home for around 98.4% of Indonesia's population.[16] Indonesia have declared and formalised its status as an archipelagic state under the notion of Wawasan Nusantara (archipelagic outlook),[17] and through the existing national laws and regulations as stipulated in Article 25A of the 1945 Constitution and as affirmed in various other laws such as Law No. 6 of 1996 on Indonesian Waters, Law No. 32 of 2014 on Seas, Government Regulation Number 38 of 2002 as amended by Government Regulation Number 37 of 2008 concerning Lists The Geographical Coordinates of the Indonesian Archipelago Baseline Points and others. The ratification and promulgation of the United Nations Conventions on the Law of the Sea 1982 (UNCLOS 1982) under Law No. 17 of 1985 has also further validated Indonesia's status and recognition as an archipelagic state. Nevertheless, the recognition of such archipelagic status in the past was not as smooth sailing.

Dutch Colonialisation Era

Indonesia has came a long way in establishing its archipelagic status. Historically, as a formerly colonized state, Indonesia's jurisdiction over territorial waters are limited. The 300-years ruling of the Dutch has left significant impact on Indonesia territory particularly by successfully dividing the existing reigns of major empires controlling Indonesia in the past[18] and turned it into a single conquest entity under their ruling.[19] As the passage way for shipments and merchants during that time, the Indonesian waters are of distinct and crucial value by the Europeans particularly the Netherlands.[20]

Under the Dutch East Indies ruling, the Indonesian waters territory is governed under the Teritoriale Zeeën en Maritieme Kringen Ordonantie 1939 or the Dutch East Indies Ordinance 1939 which provided that Indonesia should follow the 3 nautical mile limit and the territory is divided through oceans in between, entailing that Indonesia's territory is a single united entity.[21] Many seas such as the Sunda, Java, Celebes, and

---

[15] R. Mardhiah, The Impact of Sea Level Rise on Indonesia's Maritime Zones, Presentation at the Roundtable on Sea-level Rise and the Law of the Sea with Members of the International Law Commission (Nov. 14-15, 2019).
[16] See Thao, N., p.128.
[17] Sebastian, L., Supriyanto, R., Arsana, I. M. A., "Beyond the Archipelagic Outlook: The Law of the Sea, Maritime Security and the Great Powers" in Indonesia's Ascent Power, Leadership, and the Regional Order edited by Roberts, C., Habir, A., et al., *Critical Studies of the Asia Pacific Series*, January, 2015, pp. 308 – 331.

[18] Santos, Fedelyn A., "Beating the deadline: Archipelagic state compliance under UNCLOS article 47" (2008). World Maritime University Dissertations. 165. p. 44 (**'Santos, Fedelyn A.'**)
[19] Vickers, A., "History of Modern Indonesia", New York, Cambridge University Press, 2005 at p.2.
[20] Lauder, M. R.M.T. and Lauder, A., Maritime Indonesia and the Archipelagic Outlook Some reflections from a multidisciplinary perspective on old port cities in Java, Wacana Vol. 17 No. 1 (2016): p. 104.
[21] Arsana, I Made Andi, "Challenges and Opportunities in the Delimitation of Indonesia's Maritime Boundaries: A Legal and Technical Approach,", Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security, University of Wollongong, pp.107-110. (**'Arsana, I Made Andi'**)

Banda seas which are supposedly to be under the geographical scope of Indonesia were considered to be outside of the Indonesian jurisdiction under the law of the Dutch Indies and their practices. [22] Even in the following years after Indonesia's independence on 17 August 1945, Indonesia still applied the Dutch East Indies Ordinance 1939.

UNCLOS 1958 and UNCLOS 1960

Only prior to the formulation of first UNCLOS concluded in 1958, Indonesia finally declared its status as an archipelagic state through a unilateral declaration called the Djuanda Declaration on 13 December 1957, which are named after the Prime Minister at that time, Djuanda Kartawidjaja.[23] The Djuanda Declaration 1957 stated that "... all waters surrounding, between and connecting the islands constituting the Indonesian State...are integral parts of the territory of the Indonesian State and, therefore, parts of the internal or national waters which are under the exclusive sovereignty of the Indonesian State". Such a declaration, although initially not formally recognized, has had a prominent impact on the archipelagic state doctrine and become a fundamental proof of the archipelagic state sovereignty in the international community.

Equipped with that, in the first meetings of UNCLOS 1958, Indonesia further pioneered and raised the discussion on archipelagic state, particularly by proposing to utilise the application of straight baselines to archipelagos.[24] Another discussion of archipelagic state doctrine only briefly raised up during the discussion of traditional waters with many delegations being concerned with how archipelagic state would justify the archipelagic state to grab the territory of high seas and territorial seas as internal waters. [25] Unfortunately, there has not been any thorough and formal recognition of the archipelagic state status in the first series of United Nations Conferences of the Law of the Sea in 1956 – 1958.[26] The same goes with the discussion of UNCLOS 1960 which did not yield any fruitful and meaningful validation of the archipelagic state doctrine. As a result, in the first and second UNCLOS meetings, Indonesia's archipelagic status in the international league is yet to be validated.

This however, does not stop Indonesia in crystalising and validating its status within the national regime. On 20 February 1960, following the Djuanda Declaration 1957,

---

[22] Draper, J., "The Indonesian Archipelagic State Doctrine and Law of the Sea: "Territorial Grab" or Justifiable Necessity?", *International Lawyer Journal*, Vol. 11, No. 11, August 1977, p. 145. ('**Draper, J.**')

[23] See Arsana, I Made Andi, p. 49

[24] Satya N. Nandan and Shabtai Rosenne, United Nations Convention on the Law of the Sea 1982 : A Commentary, Center for Oceans Law and Policy, University of Virginia School of Law, Martinus Nijhoff Publishers, Vol. II, 1993, p. 400. (**'Satya N. Nandan and Shabtai Rosenne'**)

[25] R. R. Churchill and A. V. Lowe, "2nd Edition of The Law of the Sea", Oxford: Machester University Press, 1988, p. 99. **('R. R. Churchill and A. V. Lowe'**)

[26] Ram Prakash Anand, International Law and the Developing Countries: Confrontation or Cooperation, Boston: Martinus Nijhoff Publishers, 1987 at p. 206.

through the enactment Law No. 4 of 1960 concerning Indonesian Waters, Indonesia further reaffirmed its archipelagic status and extended its territory up to 12 nautical miles measured from baselines and extending of over 8000 nautical miles in its entirety.[27]

UNCLOS 1982

The discussion concerning archipelagic state only begun again during the formulation of the third UNCLOS particularly during the United Nations Seabed Committee Sessions.[28] Here, Indonesia's contribution to the development of archipelagic state doctrine cannot be underestimated.[29] Although initially confronted and rejected by many maritime states which mostly concerned with the violations of their passage rights,[30] Indonesia along with the second largest archipelagic state, the Philippines, and other newly independent countries in the pacific such as the Fiji did not stop to pursue for the codification and recognition of archipelagic status legitimacy internationally.[31]

Several notable contributions Indonesia has made in the archipelagic state doctrine includes firstly, in 1973-1974 Caracas sessions of the UN Seabed Committee, Indonesia has come up with numerous draft articles proposals in terms of defining archipelagic baselines, mathematically making calculable and objective limitations on the expanse of baselines, and creating direct communications for neighbouring countries.[32] Later in the Geneva Session, points are made by the Indonesian delegate on archipelagic waters sovereignty which includes deeply indented coastlines, the regime of bays, and fisheries rights in archipelagic waters.[33] Other points are also brought up in terms of navigation through archipelagic waters such as suspension of innocent passage rights for security reasons, categorization (normal commercial and non-commercial) for foreign vessels which affect their passage, traffic separation schemes, including for vessels bringing nuclear weapons or are nuclear-powered.[34] Furthermore, Indonesia also introduces the notion of compensation for any damage, loss, direct or indirect for any accidents or activities contradictory to the draft articles.[35]

Following various pursuits and proposals by Indonesia and other archipelagic states, at the end the UNCLOS 1982 adopted the basic position of Indonesia and other proposing archipelagic states. The archipelagic state doctrine is then formally included and regulated under Part IV, Article 46 to 54 of the UNCLOS 1982. It is safe to conclude

[27] See Freestone, D., and Schofield, C, pp. 356-357
[28] See Satya N. Nandan and Shabtai Rosenne, p. 401.
[29] See Draper, J., p. 143.
[30] See R. R. Churchill and A. V. Lowe, p. 99
[31] See Satya N. Nandan and Shabtai Rosenne, pp. 403-404.
[32] See Draper, J., pp. 152 - 154
[33] *Ibid.*, pp. 154 - 156
[34] *Ibid.*, pp. 156 - 157
[35] *Ibid.,* p. 157-158

that Indonesia has become a pioneer and made significant contributions together with the integral roles of other archipelagic states in the archipelagic state doctrine.

C. Indonesia's Archipelagic State in the face of Climate Change and Sea Level Rise

Although success concerning Indonesia's recognition and role in the archipelagic state doctrine has been achieved in the past, Indonesia is now faced with a new form of challenge in the law of the sea regime in the present era. Back in 1970s, the discussion of UNCLOS never touched upon the issue of sea level rise and climate change.[36] This raises a question of whether Indonesia, as a historically prominent and leading archipelagic state, would still be able to maintain its reign in pioneering adaption within their regulations in accordance to the changing condition of the sea particularly with sea level rise caused by climate change.

Shifting Baselines: Deterritorialization and Reduce Maritime Zones

The first implication of sea level rise to the Indonesian archipelagic state are related to inward shift of the straight archipelagic baselines due to sea level rise. On 11 March 2009, Indonesia has completed and deposited the list of coordinates of its archipelagic basepoints to the United Nations.[37] It is noted that the maritime boundaries of Indonesia is currently made up of 192 baseline segments, of which 160 are straight archipelagic baselines and 32 are normal baseline segments.[38] However, in the face of sea level rise, these baselines designation are threatened.

The UNCLOS 1982 recognizes various types of baselines such as normal baselines,[39] straight baselines[40] but specific to archipelagic states, the term straight archipelagic baselines are used, which under Article 47 of UNCLOS 1982 set out as follows:

> 1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands

---

[36] Busch, S., Law of the Sea Responses to Sea-Level Rise and Threatened Maritime Entitlements: Applying an Exception Rule to Manage an Exceptional Situation. In E. Johansen, S. Busch, & I. Jakobsen (Eds.), The Law of the Sea and Climate Change: Solutions and Constraints, Cambridge: Cambridge University Press, 2020, pp. 315 – 316.

[37] Deposit of a list of geographical coordinates of points of the Indonesian Archipelagic Baselines based on the Government Regulation of the Republic of Indonesia Number 38 of 2002 as amended by the Government Regulation of the Republic of Indonesia Number 37 of 2008, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/idn_mzn67_2009.pdf https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/IDN.htm

[38] US Department of State Bureau of Oceans and International Environmental and Scientific Affairs, Indonesia: Archipelagic and other Maritime Claims and Boundaries, 141 Limits of the Sea (2014), *available at* https://2009-2017.state.gov/documents/organization/231912.pdf.

[39] United Nations Convention on the Law of the Sea 1982, Article 5. (**'UNCLOS 1982'**)

[40] See UNCLOS 1982, Article 7.

and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.

7. For the purpose of computing the ratio of water to land under paragraph l, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

When confronted by sea level rise, the main issue of the UNCLOS 1982 comes from the lack of adaptability or the rigidness of the straight archipelagic baselines measurement which could disadvantaged the archipelagic state in terms of their maritime boundaries. Article 31 of Vienna Convention on the Law of Treaties 1969 stipulated that an interpretation of a treaty in a should be approached in good faith and in a manner that is consistent to the context and in the light of its object and purpose. The same approach should also be introduced when it comes to interpreting or in the face of the unprecedented challenge of climate change and sea level rise in the regime of law of the sea.

Here, a special attention must be particularly given to Article 47 paragraph 1 of the UNCLOS 1982 that becomes the decisive factors to draw archipelagic baselines.[41] Baselines itself are the low-water line along the coast[42] whereby such a low-water line is further defined as the intersection of the plane of low water with the shore or the line along a coast, or beach, to which the sea recedes at low water.[43] Even though not explicitly stated within UNCLOS, it is presumed by scholars and further supported in state practice that baselines are considered to ambulatory in nature, that means it is susceptible or adaptive of the changes within the sea level.[44] Therefore, the rise in the sea level means that these ambulatory baselines will also be shifted landward which reduces the maritime zones claims of the State in question such as their territorial sea, Exclusive Economic Zone, continental shelf and others.

Furthermore, as the regime of the law of the sea believes in the principle of the land dominates the sea which entails that "it is the configuration of the land, whether a continuous line of land or consisting of broken island fringes, that may bring areas of sea within the territory of a State."[45] This means that the sovereignty over sea only comes if there are land territory in the first place. [46]

Implementing such principle here, this means that in the long run, with significant increase of the sea level, the further inward shift of the baselines to the land will not only cause receding territory, but also undoubtedly threaten the sovereignty of a State. Having elaborated that, in the face of shifting baselines due to sea level rise, Indonesia therefore will be faced with the issue of reduction of territory not only in land but also its archipelagic waters and maritime zones. This will for instance, changes the maritime zones of Indonesia allowing for extension high seas while reducing the Exclusive Economic Zone which can impacted Indonesia's national interests.

Vulnerable Baselines: Designation of New Archipelagic Baselines and Threat to Archipelagic Status Claim

Another issue of sea level rise which may affect the Indonesian archipelagic is the sinking of small low elevation islands which becomes the basepoints for many archipelagic state to draw its baselines from. Referring to Article 47(1) and (4) of UNCLOS 1982, the archipelagic islands are joined through series of basepoints which

---

[41] See Santos, Fedelyn A., p. 27.
[42] UNCLOS 1982, Article 5
[43] United Nations Division for Ocean Affairs and the Law of the (UNDOALOS), Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea (United Nations Publication, 1989), p. 24.
[44] Strauss, Michael J. "The Future of Baselines as the Sea Level Rises: Guidance from Climate Change Law." *The Journal of Territorial and Maritime Studies*, vol. 6, no. 2, 2019, pp. 30-31.
[45] ICJ, Fisheries Case (United Kingdom v. Norway), Judgment of 18 December 1951, ICJ Reports 1951, para. 116.
[46] Ja, Bing, The Principle of the Domination of the Land over the Sea: A Historical Perspective on the Adaptability of the Law of the Sea to New Challenges, Germany Yearbook of International Law 57, 2014, pp. 1 - 32

may lie on various natural or man-made features such as the outermost islands, drying reefs or on low-tide elevations within the distance not exceeding the breadth of territorial sea from nearest islands or also measured from the distance surmounted by existing lighthouses or other similar installations.[47] However, it is to be noted that some basepoints features are more susceptible to rising sea level than others.

It is acknowledged that basepoints on low-tide elevations as utilized by Dominican Republic and Trinidad and Tobago are the most at risk whereby such low-tide elevation will just be submerged by the rise of sea-level.[48] As for placement of basepoints on the fringing drying reef, although used by many archipelagic state,[49] the main threat here lies in the resistance of such reefs to the changes within its environment. It is undoubted that the accelerated sea-level rise exacerbated by the acidification and deoxygenation of the ocean and extreme weather has caused the reefs to be impaired and lose their resilience. In such account, the continuous effects of such occurrences would cause rapid erosions and evidently, the destruction and disappearance of such coral reefs.[50]

Another basepoints feature used to draw archipelagic state baselines is by plotting it on outermost islands. As most of Indonesia's archipelagic basepoints lies in islands,[51] Indonesia is definitely well-acquainted with and are currently facing this issue. Now in the face of sea level rise, a special attention has to be paid particularly to basepoints which are placed on small and low-elevation islands. In this case, the significant increase of sea level can ultimately result in engulfing or the full submersion of such islands leading to loss of the basepoints. An example of this previously occurred in the Nipah Island whereby sea level rise has caused such small, low-elevation island to be submerged, and threatened one of the most strategic archipelagic basepoints of Indonesia.[52]

Having addressed that, referring to Article 47(1) of the UNCLOS 1982, the drawing of archipelagic baselines should be should also adhere to a mathematical calculation of water-to-land ratio of 1:1 and 9:1. Indonesia currently possesses a water area of 3,081,756 square kilometres and land area of 1,904,569 square kilometres, making

---

[47] UNCLOS 1982, Article 47(1) - (4); United Nations, Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea (New York: UN Office for Ocean Affairs and the Law of the Sea, 1989), p. 37. **('UN Office for Ocean Affairs and the Law of the Sea'**)

[48] See Freestone, D., and Schofield, C, pp. 377 and 381

[49] Beazley, P. B. "Reefs and the 1982 Convention on the Law of the Sea," *International Journal of Estuarine and Coastal Law*, 6(4), 1991, pp. 281–312.

[50] See Freestone, D. and Schofield, C, p. 374 - 376

[51] Government Regulation Number 38 of 2002 as amended by Government Regulation Number 37 of 2008 concerning Lists The Geographical Coordinates of the Indonesian Archipelago Baseline Points and others.

[52] Sakharina, I. K., et. al., "Sinking or not? An Indonesian Approach to Prevent the Rise of Sea Levels Due to Global Warming", YIJUN Institute of International Law 2022, ASEAN International Law, p. 654. (**'Sakharina I. K., et. al'**)

their water-to-land area ratio 1.61:1.[53] However, this will soon change as by 2050, an estimation of around 1500 Indonesian islands would have sunk due to rising sea levels, and as further supported by Witoelar, former Minister of Life and Environment Affairs, Indonesia would lose around 2000 islands by 2030 if sea levels continue to rise.[54]

The submersion of these islands means that there would be removal of the existing basepoints making up Indonesia's archipelagic state territory. Accordingly, there are two main challenges invoke: (1) causing the base points to be further apart from one another which may not be permitted under UNCLOS[55] and (2) resulting in the necessary water-to-land ratio requirement to no longer be met to which such changes may not only affect maritime zone claims but might also compromise the State's ability to maintain its claim to archipelagic status.[56] Although with over 18000 islands, Indonesia is unlikely to lose its archipelagic status, but it does have to prepare in bringing about new designation or archipelagic basepoints to still be in compliance with the UNCLOS.

D. The Way Forward in Tackling Climate Change Induced Sea Level Rise

In the submission to the United Nations General Assembly (UNGA) in 2017, Indonesia stresses the importance of supporting not only small islands and archipelagic states but most importantly the developing states when faced with climate change. These measures include by employing thorough collection of relevant scientific data, awareness raising, fostering climate resilient sustainable development of oceans and seas, development of ocean-based mitigation measures and adaptation policies and strategies, as well as capacity-building, partnership, and financing mechanism.[57] These efforts are conducted as means of mitigation, adaptation and even restoration to the challenges faced in rising sea level.

Practical Measures: Natural and Man-made Solutions

To start with, in better preparing for the sea level rise, Indonesia has utilized and prioritized monitoring and mapping measures to track the increase of sea level particularly in the densely populated coastal region using approximately 53 tide gauge

---

[53] Limits in the Seas No.141 Indonesia Archipelagic and Other Maritime Claims and Boundaries Office of Ocean and Polar Affairs Bureau of Oceans and International Environmental and Scientific Affairs U.S. Department of State, September 15, 2014 pp. 2-3. Available at: https://www.state.gov/wp-content/uploads/2020/02/LIS-141.pdf

[54] See Sakharina, I. K., et. al., p. 655.

[55] UNCLOS 1982, Article 47(2).

[56] See ILA Sydney Conference Report 2018, p. 10

[57] View of the Republic of Indonesia on the Effect of Climate Change on Oceans, UNGA 2017, available at: https://www.un.org/depts/los/general_assembly/contributions_2017/Indonesia.pdf, p. 1

stations distributed across the archipelago and planning on the adaptation policies.[58] This monitoring hopefully would collect more data and statistics on the most prone region of sea level rise that should be on top of the government's agenda list.

Indonesia has also adapt to the rising sea level through introduction of practical solutions such as man-made constructions including dike equipped with polder system and also natural solutions such as rehabilitation in an effort to increase soil surface and reduce wave energy destruction so that the rate of erosion can be reduced and sylvofishery method.[59] In the following years, the implementation of technology such as detached breakwater, water gate and tidal barriers, floodwalls system, reclamation and others are also used by Indonesia to prevent the sea level rise.[60] One of the implementation of this man-made solutions occurs during the submersion of one of archipelagic state basepoints, Pulau Nipah. The government reacted quickly and was able to conduct extensive reclamation which elevates the small island of Nipah above sea level, thus not affecting the plotting of the baselines. Although these measures deem to reduce the impacts of sea level rise, the measures are quick-fix and temporary in nature and they are rather simply to just buy some time for Indonesia.

Legal Measures: To Amend or Not to Amend UNCLOS 1982?

Indonesia is also lacking national legal adaptability and governance in the issue of sea level rise,[61] therefore it relies on the international legal instruments. The International Law Association Committee on International Law and Sea Level Rise (ILA Committee) has actually considered several proposals to better adapt with the baseline issue particularly through utilising adaptive interpretive approach namely by considering to maintain the baselines despite subsequent changes in the coastline or by maintaining the existing outer limits of all maritime zones despite changes brought about by sea

[58]Ministry of Environment of Republic Indonesia, Indonesia First National Communication on Climate Change Convention, United Nations Framework Convention on Climate Change, 2007, available at https://unfccc.int/resource/docs/natc/indonc1.pdf, pp. 420-421.

[59] Ministry of Environment of Republic Indonesia, Indonesia Second National Communication on Climate Change Convention, United Nations Framework Convention on Climate Change, 2012, available at https://unfccc.int/files/national_reports/non-annex_i_natcom/submitted_natcom/application/pdf/indonesia_snc.pdf p. 444.

[60] Ministry of Environment of Republic Indonesia, Indonesia Third National Communication on Climate Change Convention, United Nations Framework Convention on Climate Change, 2017, available at https://unfccc.int/sites/default/files/resource/8360571_Indonesia-NC3-2-Third%20National%20Communication%20-%20Indonesia%20-%20editorial%20refinement%2013022018.pdf p. 202

[61] Laely Nurhidayah, Sea Level Rise (SLR): Adaptations Option that Government Need to Take to Stop Jakarta and Other Coastal Cities from Sinking, *National research and Innovation Agency,* November 18, 2021, https://pmb.brin.go.id/sea-level-rise-slr-adaptations-option-that-government-need-to-take-to-stop-jakarta-and-other-coastal-cities-from-sinking/ accessed 17 June 2022.

level rise.[62] However, up to now there has not been any decided consensus on employing either of the two interpretative approaches.[63]

Considering this, one way to address this is through the treaty-based mechanism of amendments. The Vienna Convention on Law of Treaties 1969 (VCLT) only provides the most basic procedures and general rule for the amendments of treaties whereby it necessitates that "a treaty should be amended by agreement between the parties."[64] However, State parties are open to detail the procedures and provided further elaboration on its amendments as agreed within the treaty.[65]

UNCLOS 1982 Amendments Procedure

The UNCLOS 1982 itself provides two main types of amendments which are general amendment procedure and simplified amendment procedure.[66] Article 312 of UNCLOS 1982 sets out the regulation for general amendment procedure. In this procedure, a State Party may propose specific amendments to the Convention, other than those relating to activities in the Area, after a period of ten years has passed since the date of entry into force of this Convention by written communication addressed to the Secretary-General of the United Nations and request the calling of a conference to consider such proposed amendments. The Secretary-General will call the for the amendments conference if, within 12 months of the communication's distribution date, at least 50% of the States Parties respond favorably to the request.[67] Furthermore, unless otherwise determined by the conference, the decision-making process applicable at the amendment conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea. There should be no vote on any amendments until all efforts at consensus have been made by the conference to come to agreement on them through consensus.[68]

Another amendment procedure of UNCLOS is through the simplified measure regulated under Article 313 of the UNCLOS 1982. The main difference of this simplified procedure with the former procedure is the fact that no reconvening of the conference is required which makes this procedure exponentially more practical and cost effective.[69] In this procedure, a State Party can propose the amendments directly

---

[62] Davor Vidas, David Freestone, Jane McAdam, *International Law and Sea Level Rise: 2018 Report on the International Law Association Committee Sydney Conference of International Law and Sea Level Rise*, International Law Association, 2019, p. 14.
[63] Frances Anggadi, "Establishment, Notification, and Maintenance: The Package of State Practice at the Heart of the Pacific Islands Forum Declaration on Preserving Maritime Zones," *Ocean Development & International Law*, 53:1, 2022, pp. 19-36.
[64] Vienna Convention on the Law of Treaties 1969, Article 39.
[65] Vienna Convention on the Law of Treaties 1969, Article 40(1).
[66] United Nations Convention on the Law of the Sea 1982, Article 312 and 313.
[67] United Nations Convention on the Law of the Sea 1982, Article 312(1)
[68] United Nations Convention on the Law of the Sea 1982, Article 312(2).
[69] Rozemarijn J. Roland Holst, *Change in the Law of the Sea Context, Mechanisms and Practice*, (Leiden, The Netherlands: Brill Nijhoff, 2022), p. 109.

to the Secretary-General of the United Nations to which all the notifications and communications will be done accordingly by the Secretary-General. Then, if, 12 months from the date of the circulation of the communication, no State Party has objected to the proposed amendment or to the proposal for its adoption by the simplified procedure, the proposed amendment shall be considered adopted. [70] However, should one of the State Party object to the amendment proposal or by the method of simplified procedure, then the amendment should be automatically considered as rejected.[71]

Following the adoption of the amendments whether by general or simplified procedures, the entry into force of such adoption is subjected to signature, ratification and accession by the Parties which should be done within 12 months of the adoption date.[72] The entry into force of such amendments will be invoked thirty days after the deposit of instruments of acceptance by two thirds of the States Parties or sixty States, whichever is greater.[73]

'For' or 'Against' Amendments

Although allowing for amendments procedures, up until now amendments has never been used to revise UNCLOS.[74] In the first place, the most common reason for the reluctance of conducting UNCLOS amendments is relating to the issues of impracticality and complicated procedures which are thought to be cumbersome to be useful.[75] For instance, an issue is raised under the general amendment procedure where a convene of new conference is required, this method may very much be time consuming and not cost-effective.[76] Another problem would be on its adoption and entry into force in which the proposed amendments are only binding only States who sign, ratifies or acceded them,[77] this may later on cause division within the UNCLOS implementation.[78] Furthermore, other reasons for not utilizing amendments lies in the existence of other mechanisms such for instance through using rules of reference to provide additional framework, Meetings of the Parties to collectively decide on specific mostly procedural changes, implementation agreements which extends and provides clearer guide on the treaty, even to utilization of other international

[70] United Nations Convention on the Law of the Sea 1982, Article 313(3).
[71] United Nations Convention on the Law of the Sea 1982, Article 313(2).
[72] United Nations Convention on the Law of the Sea 1982, Article 315
[73] United Nations Convention on the Law of the Sea 1982, Article 316.
[74] Rozemarijn J. Roland Holst, *Change in the Law of the Sea Context, Mechanisms and Practice*, (Leiden, The Netherlands: Brill Nijhoff, 2022), p. 104
[75] House of Lords, "UNCLOS: the law of the sea in the 21st century", International Relations and Defence Committee HL Paper 159, 2nd Report of Session 2021–22, March 2022, p. 20
[76] Rozemarijn J. Roland Holst, *Change in the Law of the Sea Context, Mechanisms and Practice*, (Leiden, The Netherlands: Brill Nijhoff, 2022), p. 109
[77] Chris Whomersley. "How to Amend UNCLOS and Why It Has Never Been Done", *The Korean Journal of International and Comparative Law*, 9(1), 2021, p. 74.
[78] House of Lords, "UNCLOS: the law of the sea in the 21st century", International Relations and Defence Committee HL Paper 159, 2nd Report of Session 2021–22, March 2022, p. 20

organizations through their activities.[79] Overall, there has been a tendency by the international community to reject utilizing amendments as a method of change.[80]

It is without a doubt that amendments are in fact challenging and impractical as amendments entails various complicated procedural requirements. Nevertheless, this does not directly and solely mean that amendments procedures are not an option at all. One of the main reasons for amendments is the ability to achieve the highest standard of legal certainty, stability, and security as required by most treaty. Although other legal measures such as using Meetings of Parties, and implementation agreements can be used, the former solution can only be focused on procedural matter while the latter solution is only supplementary.[81] In its implementation in the long run, having too many varieties of solutions with differing level of bindingness, rights, and obligations will invoke a degree of legal uncertainty. This would be especially detrimental especially in the issues of baselines in the face of sea level rise, where legal certainty and stability are particularly needed.[82]

As for the issue of impracticality, the UNCLOS amendment procedure itself has allowed for submissions of numerous proposals of various provisions of the UNCLOS which can be discussed at the same time.[83] In comparison to having to conduct numerous different Meetings of Parties, negotiations for implementation agreements which can also cumulatively take up more time, amendments can rather be a one-solution for all which can address various issues within the treaty directly involving all State Parties. Furthermore, in any case, where conducting a new conference is impractical, UNCLOS 1982 also provides for a simplified amendments procedure, where no reconvening of a conference is required.[84]

Furthermore, it has been argued that amendments may risk undoing the balance of interests of the treaty,[85] particularly going against the "consensus package deal" of the treaty[86] where it entails that 'all the main parts of the Convention should be looked upon as an entity, as a single negotiated package, where the laws of give and take presumably had struck a reasonable balance between participating states considered

[79] Chris Whomersley. "How to Amend UNCLOS and Why It Has Never Been Done", *The Korean Journal of International and Comparative Law*, 9(1), 2021, pp. 72-83.
[80] Vladyslav Lanovoy and Sally O'Donnell, "Climate Change and Sea-Level Rise: Is the UN Convention on the Law of the Sea Up to the Task?," *International Community Law Review*, 23(4), 2021, (forthcoming).
[81] Chris Whomersley. "How to Amend UNCLOS and Why It Has Never Been Done", *The Korean Journal of International and Comparative Law*, 9(1), 2021, p. 74.
[82] Davor Vidas, David Freestone, Jane McAdam, *International Law and Sea Level Rise: 2018 Report on the International Law Association Committee Sydney Conference of International Law and Sea Level Rise*, International Law Association, 2019.
[83] United Nations Convention on the Law of the Sea 1982, Article 312.
[84] United Nations Convention on the Law of the Sea 1982, Article 313.
[85] House of Lords, "UNCLOS: the law of the sea in the 21st century", International Relations and Defence Committee HL Paper 159, 2nd Report of Session 2021–22, March 2022, p. 20.
[86] Rozemarijn J. Roland Holst, *Change in the Law of the Sea Context, Mechanisms and Practice*, (Leiden, The Netherlands: Brill Nijhoff, 2022), p. 5

as a whole.'[87] On the contrary, here its argued that amendments could be a better way to change the provisions of the treaty, as it relies on the process of consensus whereby even if only one State Party rejects the amendments, then the proposed amendments will not be adopted.[88] Therefore, not only that amendments provides for a more comprehensive and inclusive solutions to the issue of sea level rise but it would also be decided based on consensus and considers all States' proposals which can be for the interests of all States particularly by small, developing States which are most vulnerable to sea level rise such as in the Pacific,[89] therefore, also ensuring universal participation.[90]

E. Conclusion

As elaborated within this journal, if there is one thing to conclude is the fact that Indonesia is not prepared in facing the new challenge of sea level rise. It should be expected that Indonesia as the historically prominent, pioneer of the archipelagic state doctrine and as the largest archipelagic state in the world should have stepped up and be able to lead the adaptation to the new challenges coming from sea level rise. However, up to now, only technical measures has been employed by Indonesia, and as stated within this journal there has not been any concrete legal measures employed by the Indonesian government in the face of sea level rise as a result of climate change. Moving forward there should perhaps be a more comprehensive and serious measures conducted by the Indonesian government in tackling sea level rise. Slowly but surely, sea level rise is creeping and a consequence of climate change that is unavoidable.

In formulating these solutions, it is also crucial to take into account the Preamble of UNCLOS 1982 particularly paragraph 1 and 7 which respectively stated the following:

> Prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,
>
> Believing that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly

[87] J Evensen, 'Keynote Address' in BH Oxman and AW Koers (eds), the 1982 Law of the Sea Convention: Proceedings Law of the Sea Institute Seventeenth Annual Conference (Law of the Sea Institute) xxvii.
[88] United Nations Convention on the Law of the Sea 1982, Article 312(2) and 313(3).
[89] Nguyen Thao, "Sea-Level Rise and the Law of the Sea in the Western Pacific Region." *Journal of East Asia and International Law*. 13(1), 2020, p.128
[90] Rozemarijn J. Roland Holst, *Change in the Law of the Sea Context, Mechanisms and Practice*, (Leiden, The Netherlands: Brill Nijhoff, 2022), 2022, p. 5

> relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter,

In the arduous challenge of sea level rise, member states should in mutually cooperating and work together in creating progressive development of the law of the sea which should be within the purpose of advancing all peoples of the world. There should be a shift in the mindset of the member states and the international law committee to find the future ideal laws, governance and solutions in tackling the issue. In the future, it is hoped that Indonesia as the leading archipelagic state able to create breakthroughs and innovations whether in practical or legal measures to face the rising sea level which can be followed by other archipelagic state, formulating a *de lege feranda* in the archipelagic state governance in the face of sea level rise.

BIBLIOGRAPHY

Books

Busch, S. (2020). Law of the Sea Responses to Sea-Level Rise and Threatened Maritime Entitlements: Applying an Exception Rule to Manage an Exceptional Situation. In E. Johansen, S. Busch, & I. Jakobsen (Eds.), The Law of the Sea and Climate Change: Solutions and Constraints (pp. 309-335). Cambridge: Cambridge University Press. doi:10.1017/9781108907118.014

Cribb and Ford, Indonesia beyond the Water's Edge: Managing and Archipelagic State, Singapore: Institute of Southeast Asian Studies (ISEAS) Publishing, 2009, p.1.

Freestone, D., and Schofield, C., "Sea Level Rise and Archipelagic States: A Preliminary Risk Assessment", Ocean Yearbook Online, BRILL, Volume 35, Issue 1, 2021, p. 340

House of Lords, "UNCLOS: the law of the sea in the 21st century", International Relations and Defence Committee HL Paper 159, 2nd Report of Session 2021–22, March 2022, p. 34

Ja, Bing, The Principle of the Domination of the Land over the Sea: A Historical Perspective on the Adaptability of the Law of the Sea to New Challenges, Germany Yearbook of International Law 57, 2014, pp. 1 – 32

R. R. Churchill and A. V. Lowe, "2nd Edition of The Law of the Sea", Oxford: Manchester University Press, 1988, p. 99.

Ram Prakash Anand, International Law and the Developing Countries: Confrontation or Cooperation, Boston: Martinus Nijhoff Publishers, 1987 at p. 206.

Sebastian, L., Supriyanto, R., Arsana, I. M. A., "Beyond the Archipelagic Outlook: The Law of the Sea, Maritime Security and the Great Powers" in Indonesia's Ascent

Power, Leadership, and the Regional Order edited by Roberts, C., Habir, A., et al., Critical Studies of the Asia Pacific Series, January, 2015, pp. 308 – 331.

Vickers, A., "History of Modern Indonesia", New York, Cambridge University Press, 2005 at p.2.

Vidas, D., Freestone, D., McAdam, J., International Law and Sea Level Rise: 2018 Report on the International Law Association Committee Sydney Conference of International Law and Sea Level Rise, 2019.

Vantier, L., Wilkinson, C., Lawrence, D., and D. Souter, "Indonesian Seas", GIWA Regional Assessment 57. United Nations Environment Programme (UNEP), 2005, University of Kalmar, Kalmar, Sweden, p. 58

Journal Articles

Arsana, I Made Andi, "Challenges and Opportunities in the Delimitation of Indonesia's Maritime Boundaries: A Legal and Technical Approach,", Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security, University of Wollongong, pp.107-110.

Beazley, P. B. "Reefs and the 1982 Convention on the Law of the Sea," International Journal of Estuarine and Coastal Law, 6(4), 1991, pp. 281–312.

Draper, J., "The Indonesian Archipelagic State Doctrine and Law of the Sea: "Territorial Grab" or Justifiable Necessity?", International Lawyer Journal, Vol. 11, No. 11, August 1977, p. 145.

Frances Anggadi (2022) Establishment, Notification, and Maintenance: The Package of State Practice at the Heart of the Pacific Islands Forum Declaration on Preserving Maritime Zones, Ocean Development & International Law, 53:1, 19-36, DOI: 10.1080/00908320.2022.2033143.

Lauder, M. R.M.T. and Lauder, A., Maritime Indonesia and the Archipelagic Outlook Some reflections from a multidisciplinary perspective on old port cities in Java, Wacana Vol. 17 No. 1 (2016): p. 104.

Menefee, S., “Half Seas Over": The Impact of Sea Level Rise on International Law and Policy”, UCLA Journal of Environmental Law and Policy, 1991, Vol. 9 Issue 2, p. 182.

R. Mardhiah, The Impact of Sea Level Rise on Indonesia’s Maritime Zones, Presentation at the Roundtable on Sea-level Rise and the Law of the Sea with Members of the International Law Commission (Nov. 14-15, 2019).

Sakharina, I. K., et. al., “Sinking or not? An Indonesian Approach to Prevent the Rise of Sea Levels Due to Global Warming”, YIJUN Institute of International Law 2022, ASEAN International Law, p. 654.

Santos, Fedelyn A., "Beating the deadline: Archipelagic state compliance under UNCLOS article 47" (2008). World Maritime University Dissertations. 165. p. 44.

Satya N. Nandan and Shabtai Rosenne, United Nations Convention on the Law of the Sea 1982 : A Commentary, Center for Oceans Law and Policy, University of Virginia School of Law, Martinus Nijhoff Publishers, Vol. II, 1993, p. 400.

Strauss, Michael J. “The Future of Baselines as the Sea Level Rises: Guidance from Climate Change Law.” The Journal of Territorial and Maritime Studies, vol. 6, no. 2, 2019, pp. 30-31.

Thao, N., “Sea-Level Rise and the Law of the Sea in the Western Pacific Region.” Journal of East Asia and International Law. Vol 13, No. 1, 2020, p.128.

Case Law

International Court of Justice, Fisheries Case (United Kingdom v. Norway), Judgment of 18 December 1951, ICJ Reports 1951.

Legislations

United Nations Convention on the Law of the Sea 1982

Government Regulation Number 38 of 2002 as amended by Government Regulation Number 37 of 2008 concerning Lists The Geographical Coordinates of the Indonesian Archipelago Baseline Points and others.

Miscellaneous

United Nations Division for Ocean Affairs and the Law of the (UNDOALOS), Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea (United Nations Publication, 1989).

Deposit of a list of geographical coordinates of points of the Indonesian Archipelagic Baselines based on the Government Regulation of the Republic of Indonesia Number 38 of 2002 as amended by the Government Regulation of the Republic of Indonesia Number 37 of 2008, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/idn_mzn67_2009.pdf https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/IDN.htm

Intergovernmental Panel on Climate Change (IPCC), Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge: Cambridge University Press, 2021, Available at: https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf

US Department of State Bureau of Oceans and International Environmental and Scientific Affairs, Indonesia: Archipelagic and other Maritime Claims and Boundaries, 141 Limits of the Sea (2014), available at https://2009-2017.state.gov/documents/organization/231912.pdf.

Limits in the Seas No.141 Indonesia Archipelagic and Other Maritime Claims and Boundaries Office of Ocean and Polar Affairs Bureau of Oceans and International Environmental and Scientific Affairs U.S. Department of State, September 15, 2014 pp. 2-3. Available at: https://www.state.gov/wp-content/uploads/2020/02/LIS-141.pdf

Ministry of National Development Planning, Indonesia Climate Change Sectoral Roadmap (ICCSR) Scientific Basis: Analysis and Projection of Sea Level Rise and Extreme Weather Event, March 2010, p. 30. Available at: https://perpustakaan.bappenas.go.id/e-library/file_upload/koleksi/migrasi-data-publikasi/file/Policy_Paper/analysis-and-projection-of-sea-level-rise-and-extreme-weathe__20110217130224__1.pdf

View of the Republic of Indonesia on the Effect of Climate Change on Oceans, UNGA 2017, available at: https://www.un.org/depts/los/general_assembly/contributions_2017/Indonesia.pdf, p. 1

Ministry of Environment of Republic Indonesia, Indonesia First National Communication on Climate Change Convention, United Nations Framework Convention on Climate Change, 2007, available at https://unfccc.int/resource/docs/natc/indonc1.pdf, pp. 420-421.

Ministry of Environment of Republic Indonesia, Indonesia Second National Communication on Climate Change Convention, United Nations Framework Convention on Climate Change, 2012, available at https://unfccc.int/files/national_reports/non-annex_i_natcom/submitted_natcom/application/pdf/indonesia_snc.pdf p. 444.

Ministry of Environment of Republic Indonesia, Indonesia Third National Communication on Climate Change Convention, United Nations Framework

Convention on Climate Change, 2017, available at https://unfccc.int/sites/default/files/resource/8360571_Indonesia-NC3-2-Third%20National%20Communication%20-%20Indonesia%20-%20editorial%20refinement%2013022018.pdf p. 202

WEBSITE

Word Wildlife Fund, "What is the sixth mass extinction and what can we do about it?", 15 April 2022, Available at: https://www.worldwildlife.org/stories/what-is-the-sixth-mass-extinction-and-what-can-we-do-about-it#:~:text=Unlike%20previous%20extinction%20events%20caused,energy%20use%2C%20and%20climate%20change (accessed on 13 June 2022).

Combating Administrative Corruption: A Comparative Study of Frameworks in New Zealand and Singapore"

Mahdi Abolfazly[1]

Abstract

The purpose of this study is to provide a comparative analysis of New Zealand's and Singapore's frameworks for combating administrative corruption. The administrative corruption combating frameworks of these two countries have similarities in some points, such as zero tolerance against administrative corruption, existing effective laws, strong law enforcement, and independent judiciaries. Although New Zealand has been experiencing a corruption-free society since it was colonised by hunters and whalers (which started in the 1700s) from America, Australia, and Europe (mostly from Great Britain), Singapore began to combat corruption after being separated from Malaysia in 1965. Moreover, New Zealand places more emphasis on international anti-corruption laws, while Singapore relies intensively on domestic anti-administrative corruption laws. In addition, New Zealand has the Serious Fraud Office (SFO), and Singapore has established the Corrupt Practises Investigation Bureau (CPIB) to investigate cases related to corruption.

Intisari

Tujuan dari penelitian ini adalah untuk memberikan analisis perbandingan kerangka kerja Selandia Baru dan Singapura dalam memerangi korupsi administratif. Kerangka kerja pemberantasan korupsi administratif di kedua negara ini memiliki kesamaan dalam beberapa hal, seperti tidak ada toleransi terhadap korupsi administratif, undang-undang yang efektif, penegakan hukum yang kuat, dan sistem peradilan yang independen. Meskipun Selandia Baru telah mengalami masyarakat bebas korupsi sejak dijajah oleh para pemburu dan pemburu paus (yang dimulai pada tahun 1700-an) dari Amerika, Australia, dan Eropa (kebanyakan dari Inggris), Singapura mulai memberantas korupsi setelah terpisah dari Malaysia. pada tahun 1965. Selain itu, Selandia Baru lebih menekankan undang-undang antikorupsi internasional, sementara Singapura sangat bergantung pada undang-undang anti-korupsi administratif dalam negeri. Selain itu, Selandia Baru memiliki Serious Fraud Office (SFO), dan Singapura telah membentuk Biro Investigasi Praktik Korupsi (CPIB)

[1] Universiti Teknologi MARA (UiTM) Shah Alam, Selangor, Malaysia

untuk menyelidiki kasus-kasus terkait korupsi.

Keywords: *Administrative Corruption, New Zealand, Singapore, Comparative analysis, Anti-Corruption frameworks*

Kata Kunci: *Korupsi Administratif, Selandia Baru, Singapura, Analisis komparatif, Kerangka Anti-Korupsi*

A. Introduction

Administrative corruption is widespread globally; according to the World Economic Forum, it costs developing countries more than $1 trillion every year.[2] Corruption is the abuse of entrusted power for personal gain for family relations and interests.[3] When the word corruption is used, the first image that directly springs to mind is an economic phenomenon, though it is not limited only to business and economics; power is included in political and social content as well. It is because the abuse of entrusted power is the main characteristic of corruption. Corruption types vary, including bribery, embezzlement, influence-pending, graft, and extortion. Corruption may occur everywhere. However, corruption differs in its form, scope, and how each society and culture combats it. Based on its clandestine nature, it is often difficult to quantify. In those countries where officials have excessive influence over policymaking and economic management decisions, the chance for administrative corruption is widespread. Thus, corruption is the abuse of power by public servants and officials where there is not enough dominance of the law, which weakens transparency.

Administrative corruption has existed for a long time in human societies. Some countries managed to eradicate it in their societies. New Zealand has consistently maintained its top or near-top ranking on the corruption perceptions index (CPI) over the past two decades, which understandably informs its commentary on corruption in the country. In the late 19th century, social and political egalitarianism in New Zealand began under the liberal governments of John Ballance and Richard Seddon. The majority of New Zealanders are of European, mostly British descent; they are called Pakekas,[4] a Maori term for white people. Many of them are from Presbyterian Scotland, who brought with them a strong Calvinist ethos, including values of thrift, hard work, and social unity, which were central to New Zealand's development with an export economy based on the primary industry that served Great Britain's consumers. Furthermore, New Zealand, as an island, was largely isolated from corruption influences internationally. Social responsibility was highly valued in such a small society, with most people being conscious of engaging in any form of behaviour that, if exposed to public scrutiny, would result in a loss of individual or family reputation. Since the raucous, violent, and drunken beginning in the early 19th century, when sealers and whalers engaged with Maori communities in the north of the country, no organised crime has built up in the country. Even low-level tipping was rarely seen as socially acceptable in New Zealand, and the police were among the most

[2] Sean Fleming, "Corruption costs developing countries $1.26 trillion every year-yet half of EMEA think it's acceptable" (paper presented at the World Economic Forum, 2019).
[3] Ibrahim, Shihata, 20.
[4] Richard Walter, Chris Jacomb, and Sreymony Bowron-Muth, "Colonisation, mobility and exchange in New Zealand prehistory," *Antiquity* 84, no. 324 (2010).

corruption-free constabularies in the world. [5] According to Transparency International's recent corruption perceptions index, New Zealand ranked first, equal to Denmark, out of 176 countries and nations.[6]

Comparably, Singapore has consistently been ranked as the least corrupt nation among Asian countries in the last two decades. It was ranked 7th among 176 nations on the recent Transparency International Corruption Perceptions Index (CPI).[7] This ranking gives credence to the widespread perception that this country is also one of the most corruption-free economies in the world. Nonetheless, Singapore had a high corruption index prior to self-government in 1959; at the time of separating from Malaysia, corruption was rampant in Singapore because of numerous factors, such as inadequate laws, insufficient professional manpower in the anticorruption agency, a big disparity in pay between the public and private sectors, a lack of commitment among law enforcement officials, etc. The entire socio-economic climate made it suited for corruption to take root, and it needed political will to exterminate the scourge of administrative corruption in the country. Since Lee Kuan Yew, the first prime minister of Singapore, and his team formed the government, there has been a sustained effort to develop a society and culture that avoid any types of corruption, especially administrative corruption. The society of Singapore expects the government to not condone social lubricants. This atmosphere of anti-administrative corruption demands robust prosecution and deterrent sentences for corrupt public servants. Recent prosecution examples include the sentencing of Peter Lim, former Chief of the Civil Defence Force of Singapore, who accepted bribes from a constrictor in return for advancing the business interests of that company. He was sentenced to six months imprisonment in June 2013, and more recently, a former customs officer was charged with corruptly accepting S$3,350 in bribes in exchange for processing fraudulent goods and services and was sentenced in February 2015 to five years imprisonment. The four pillars of Singapore's administrative corruption framework stem from the strong foundation of the political will to wipe out corruption wherever it may occur, effective laws, an independent judiciary, strong enforcement, and respective public services.[8]

Hence, this study aims to highlight how Singapore and New Zealand have reduced their administrative corruption rates and compare their approaches in light of the United Nations Code of Conduct. and recommend their frameworks for combating

---

[5] Robert Gregory and Daniel Zirker, "Historical corruption in a 'non-corrupt' society: Aotearoa New Zealand," *Public Administration and Policy* 25, no. 2 (2022), https://doi.org/10.1108/PAP-01-2022-0008, https://doi.org/10.1108/PAP-01-2022-0008.

[6] Robert Gregory, "Governmental corruption and social change in New Zealand: using scenarios, 1950–2020," *Asian Journal of Political Science* 14, no. 2 (2006).

[7] Emigdio Alfaro, "Understanding the Corruption Perceptions Index," in *Modern Indices for International Economic Diplomacy* (Springer, 2022).

[8] Nicholas Lim Kah Hwee, "SINGAPORE'S EXPERIENCE IN THE FIGHT AGAINST CORRUPTION," (2019).

administrative corruption to those nations that are still struggling with high corruption rates. Providing administrative corruption combating approaches is significantly contributing to bringing transparency and experiencing a free-corruption environment, and this study uses the library-based method to provide a clear and efficient framework for combating corruption.

B. Administrative Corruption in New Zealand

New Zealand is corruption-free due to Its long-term geographical isolation, its close legal and cultural affinity with Britain, its egalitarian socio-economic and cultural traditions, and its unique regulatory civil service, which largely explain its success in preventing corruption. However, international influences, including the absence of a single anti-corruption agency and changing values, may affect New Zealand's record of success like any other political unit in the world. And New Zealand uses approaches to combating administrative corruption to fill this gap.[9]

New Zealand has approved several essential international anti-administrative corruption convention treaties, such as the United Nations Convention Against Corruption 2003 (UNCAC), the Organisation for Economic Co-operation and Development's "Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), and the Asia Pacific Economic Cooperation's (APEC) Santiago Commitment to Fight Corruption and Ensure Transparency".[10] New Zealand is a signatory to each of the above-mentioned anti-corruption laws. New Zealand has strengthened its domestic anti-administrative corruption frameworks by enacting the "Organised Crime and Anti-Corruption Legislation Bill (the Organised Crime Bill).[11]

Moreover, in order to maintain a corruption-free country, New Zealand has strengthened anti-corruption laws, and anti-corruption agency SFO[12]. SFO is committed to proactively detecting, investigating, and prosecuting both public and private sector corruption. Alongside UNCAC, the OECD Anti-Bribery Convention, and the APEC Santiago Commitment, New Zealand enforces any other foreign anti-corruption acts, particularly for those New Zealanders who operate abroad and need to be aware of the overlapping acts that may apply to their business. In addition, New Zealanders, individuals, and international corporations operating in New Zealand or

---

[9] Daniel Zirker, "Success in combating corruption in New Zealand," *Asian Education and Development Studies* 6, no. 3 (2017), https://doi.org/10.1108/AEDS-03-2017-0024, https://doi.org/10.1108/AEDS-03-2017-0024.

[10] Martin T Biegelman and Daniel R Biegelman, *Foreign Corrupt Practices Act compliance guidebook: protecting your organization from bribery and corruption* (John Wiley & Sons, 2010).

[11] A Adams, 4.

[12] Sally Ramage, *Fraud and the Serious Fraud Office: Fraud Law: Book Two* (iUniverse, 2005).

related to New Zealand should familiarise themselves with the United Kingdom Bribery Act 2010 ("U.K. Bribery Act). As the United Kingdom and New Zealand are bound together culturally and legally, New Zealand is also a constitutional monarchy with The King as Sovereign[13]. Furthermore, these laws and acts are effective because of New Zealand's long-free society and zero tolerance for corruption. Due to the enactment and practise of several types of anti-administrative corruption laws, the strengthening of the SFO, and zero tolerance for corruption, New Zealand earned a reputation as one of the least corrupt political units in the world. Following the enactment of effective anti-corruption laws, New Zealand applies and enforces the laws, and all New Zealanders have duties that directly contribute to making and enforcing New Zealand law. Also, permanent residents over the age of eighteen have the same duties as citizens, whereas in most Asian countries, even citizens do not have direct contributions to law enforcement but are made through related channels.[14]

Moreover, one of the crucial factors in combating corruption in New Zealand is the existence of the SFO. It is a highly specialised government department whose mission it is to disrupt and prevent serious fraud through investigation and prosecution. The New Zealand SFO was established in 1989 in response to corruption arising out of the 1980s financial crisis, specifically the share market crash of 1987. In the short period of about one year, the total amount of money involved in corporate fraud in New Zealand increased dramatically from NZ$10–15 million before 1988 to NZ$50–70 million in 1989, which is a NZ$55–60 million increase in only one year. Consequently, the New Zealand Department of Justice proposed establishing a specialist institution and legal mechanism for the investigation of serious fraud. Hence, the SFO has been one of the essential factors in combating administrative corruption in New Zealand since 1989. The next factor that contributed to preventing administrative corruption in New Zealand was society's zero tolerance for corruption. Not only the government but also society avoids administrative corruption in this country. New Zealand has been experiencing a free-corruption atmosphere since a long time ago.

According to Charles H. Lipson, there is a direct connection between the country's egalitarianism and the absence of corruption in the bureaucratic routine of New Zealand’s government. In fact, the honesty and integrity of society workers, either in the public or private sectors, can keep a country at the top of the CPI; otherwise, even stricter laws and more time in prison would not stop the spreading of corruption as regarded in other nations. Lipson noted the generally high standard of personal integrity prevailing among New Zealand’s civil servants and observed in its civil service a commendable absence of graft and a strict code of honesty.[15]

---

[13] Daniel Zirker, "Success in combating corruption in New Zealand," *Asian Education and Development Studies* (2017).

[14] Steve Matthewman, "'Look no further than the exterior': Corruption in New Zealand," *International Journal for Crime, Justice and Social Democracy* 6, no. 4 (2017).

[15] Gregory and Zirker, "Historical corruption in a ‘non-corrupt’ society: Aotearoa New Zealand."

He related this to job security, strict accounting and audit requirements, and an inner check reflecting public servants. Most of the characters mentioned in the New Zealand government's public servants seem to be absent in most Asian countries public servants. According to Charles H. Lipson, there is a direct connection between the country's egalitarianism and the absence of corruption in the bureaucratic routine of New Zealand's government. He noted the generally high standard of personal integrity prevailing among New Zealand's civil servants and observed in its civil service a commendable absence of graft and a strict code of honesty. It has a strong culture of integrity, and our institutions remain largely free from systemic corruption. Lipson related this to job security, strict accounting and audit requirements, and an inner check for public servants. Most of the characteristics mentioned for the New Zealand government's public servants seem to be absent in most Asian bureaucracies. Therefore, the below figure illustrates the four pillars of combating administrative corruption in New Zealand, and the output is a "free corruption nation or country.

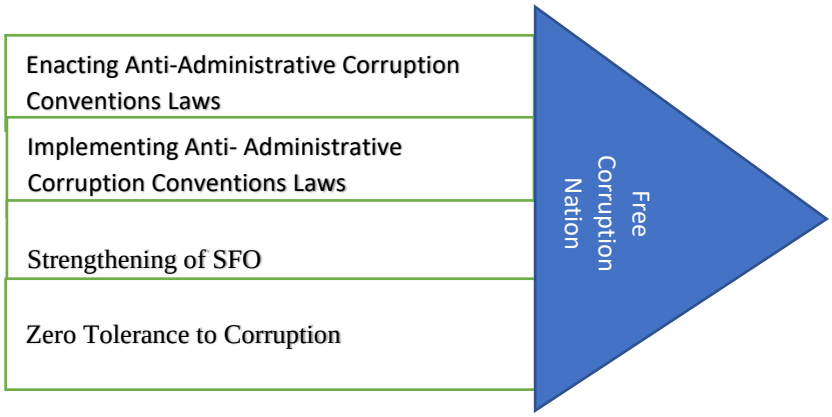


Figure1 illustrates combating administrative corruption framework in New Zealand.

C. Administrative Corruption in Singapore

Since Singapore separated from the Federation of Malaya and obtained self-government in 1959, combating corruption has been at the top of the government's agenda. Since the British took over the region, corruption has been prevalent; administrative corruption was not a seizable offence; the prevention of corruption office was short-staffed; and the power of the anti-corruption bureau was insufficient. Moreover, the public officers were poorly paid, and the population was less educated, but they did have enough awareness of their rights to often get things done through bribery.[16] It was crucial to control corruption for Singapore's national survival as a

[16] Nancy McHenry Fletcher, "The separation of Singapore from Malaysia," (1969).

small city-state. And it was vital in order to create a conducive climate and a level playing field to promote economic growth. At that time, it was a competitive advantage to lure foreign businesses to invest in Singapore. Combating corruption has become the main strategic goal of the Singaporean government. Fluently conducting government affairs had to be substantiated on a national basis; there were obvious rules to follow. It provides the confidence and predictability for the citizens to rely on the government to discharge its duties without bias. There had to be no atmosphere to tolerate those who hoped for windfalls from powerful friends or from lubricating contacts in high positions.

In order to succeed, Singapore had to operate on a meritocratic principle, where the public could see that rewards were tied to the efforts that they carried out and not through corrupt means. There was much reform required; the law was strengthened, rigorous enforcement took place, and the government administration was improved.[17] All these efforts provided the impetus for Singapore's transformation from a corrupted city state to its present state, where its citizens enjoy a good reputation internationally. The culture and resolve to vigorously prevent corruption were echoed by the government in early 1960, when the parliament declared that "take all possible steps to see that legislative and administrative approaches are taken to reduce the opportunities of corruption to make its detection easier and to deter and punish grievously those who are susceptible to corruption and who engage in it shamelessly. Strong anti-corruption prevention was heard continuously, including in a 1979 statement by Prime Minister Lee Kuan Yew, which illustrated the need for a corruption-free Singapore: "... Singapore can survive only if the ministers and senior officers are incorruptible and efficient... I will not let standards drop...I expect all Ministers, all MPs, and all public officers to set good examples for others to follow".[18] This has been the same position until now. The will of the government, independent adjudication, strong enforcement, and effective laws are pillars of the anti-corruption framework in Singapore that are present to stamp out corruption.

One of the pillars that has contributed to gaining a corruption-free reputation in Singapore is effective legislation. Singapore relies on two key legislations to fight corruption: the Corruption, Drug Trafficking, and Other Serious Crimes Act 1992 (CDSCA) and the Preventing Corruption Act 1960 (PCA).[19] The CDSCA is used to confiscate illegally obtained gains from corrupt offenders. The PCA has a wide scope and is applied to people who give and receive bribes in both the private and public sectors. Singapore experiences a corruption-free atmosphere because of its strict and

[17] Natalie Oswin and Brenda SA Yeoh, "Introduction: mobile city Singapore," *Mobilities* 5, no. 2 (2010).
[18] Koh Teck Hin, "Corruption control in Singapore," *Tokyo: United Nations Asia and Far East Institute for the Prevention of Crimes and the Treatment of Offenders* (2013).
[19] Jon S. T. Quah, "Lee Kuan Yew's role in minimising corruption in Singapore," *Public Administration and Policy* 25, no. 2 (2022), https://doi.org/10.1108/PAP-04-2022-0037, https://doi.org/10.1108/PAP-04-2022-0037.

effective laws, zero tolerance against corruption in society's way of life, and intensive law enforcement. Although every country may have sufficient laws, whether with a low or high CPI.

Stabilising and maintaining an independent judicial system is another factor that helped Singapore become a corruption-free nation. An independent judiciary provides insulation from political interference in Singapore. The chief justice is selected by the president on advice from the prime minister, and the council of presidential advisers, district judges, and magistrates are appointed by the president with advice from the chief justice. Also, in Singapore's constitution, various provisions guarantee the independence of the Supreme Court judiciary. The judiciary recognises the seriousness of corruption and adopts a stance of deterrence by meting out strict fines and imprisonment towards corrupt offenders to meet its objectives and promote transparency in order to strengthen the rule of law.[20] The way that the chief of justice is appointed in Singapore illustrates control of power, with the president and presidential advisers implementing their duties without bias, and the president's administration also examining the prime minister's advice.

Enforcement is another factor in Singapore that contributes to combating corruption. In Singapore, the CPIB is the only responsible agency for fighting corruption. This agency operates under the prime minister's administration and reports directly to the prime minister, which enables CPIB to operate independently. According to findings, through more than 65 years of corruption, combating a dissuasive stance has always been practised, guaranteeing that there are no covered corrupt practises and that corruption is fought without fear or favour by the responsible agency.[21] The CPIB operates swiftly and vigorously to enforce the tough anti-corruption acts impartially for both public and private sector corruption. The investigation process is done through the coordination of various government agencies and private organisations with the CPIB to gather evidence and obtain information.

Public administration is another feature of the corruption-fighting framework in Singapore. The public affairs and private services are guided by a code of conduct in Singapore that determines the high standards of behaviour expected of public officers based on principles of incorruptibility, integrity, and transparency.[22] Exercising meritocracy in the public service, along with regular reviews of administrative regulations and processes to improve efficiency, also reduces the intention and opportunities for corruption. Moreover, based on the Singaporean code of conduct,

[20] Paul J Teo, "Adjudication: Singapore perspective," *Journal of Professional Issues in Engineering Education and Practice* 134, no. 2 (2008).
[21] Jon ST Quah, "Singapore's Corrupt Practices Investigation Bureau: four suggestions for enhancing its effectiveness," *Asian Education and Development Studies* (2015).
[22] David B Resnik and Adil E Shamoo, "The Singapore statement on research integrity," *Accountability in research* 18, no. 2 (2011).

public servants should always act with integrity and full responsibility, improve their competence, and act with professionalism. When the People's Action Party (PAP) was elected into government in 1959, it was determined to set out to build an incorruptible and meritocratic government and take crucial and comprehensive action to stamp out corruption at all levels of Singapore's society. As a result of the government's unwavering political commitment and leadership, a culture of zero tolerance against corruption has rooted itself in the Singaporean way of life.

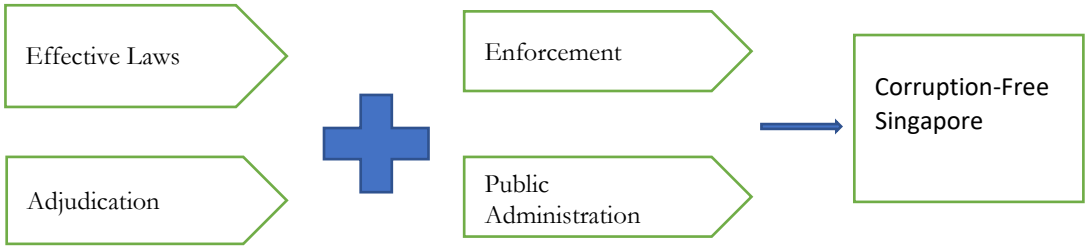


Figure 2 denotes Corruption Combating Framework in Singapore

D. Discussion

Both New Zealand and Singapore have been rated the least corrupt nations in recent years. In the 2022 CPI, New Zealand earned the second highest score of 87 out of 100 possible among 180 countries, and Singapore ranked as the 5th least corrupt nation and earned 83 out of 100 possible in the same year as New Zealand.[23]

New Zealand approved several essential international anti-administrative corruption conventions and treaties, including the UNCAC, OECD, APEC, and Santiago Commitment to Fight Corruption and Ensure Transparency. Also, this country is a signatory to each of the mentioned treaties. Moreover, New Zealand adopted the United Kingdom's bribery law as they have strong ties in their politics and economies, making this law applicable abroad to individuals and corporations who are connected to New Zealand corporations.[24] Alongside the international laws on combating corruption and UK bribery law, New Zealand has strengthened its domestic anti-administrative corruption frameworks by enacting the "Organised Crime and Anti-Corruption Legislation Bill (the Organised Crime Bill). Furthermore, the success story of New Zealand in preventing administrative corruption is the result of a practical framework with its main key points: enacting and implementing anti-administrative corruption conventions, including the United Nations Convention Against Corruption, October 31, 2003, and the United Nations Code of Conduct; establishing and strengthening of SFO and developing a culture of zero tolerance against corruption.

[23] Kaunain Rahman, "Transparency International Anti-Corruption Helpdesk Answer," (2022).
[24] Zirker, "Success in combating corruption in New Zealand."

Singapore also enjoys an earned reputation for a high level of transparency and a free of corruption environment. Based on the previous discussion, Singapore earned a reputation as a free nation due to its practical framework for combating administrative corruption with its four key pillars: adjudication, enforcement, public administration, and political will and leadership.[25] In addition, Swift operates against corruption, and there is no covered corrupt practise. Singapore also investigates the public and private sectors for corruption.

To compare these two countries for combating administrative corruption, Singapore, unlike New Zealand, relies more on its demonstrative anti-corruption laws. Singapore adopted Will Political Practise, which was established in Singapore by its prime minister, Lee Kuan Yew, after electing PAP into government in 1959.[26] This party declared to build an incorruptible and meritocratic government and took comprehensive and decisive action to eradicate corruption from all departments of Singapore's government. As a consequence of the government's steady political commitment and leadership, a culture of zero tolerance against corruption was rooted in the Singaporean way of life. The next differences between these two countries are their frameworks' elements: New Zealand enacted anti-administrative conventions and laws and focuses on them the same as domestic anti-administrative corruption laws, while Singapore relies significantly on the Corruption, Drug Trafficking, and Other Serious Crimes Act (CDSCA) and Preventing Corruption Act (PCA); however, New Zealand also has an Organised Crime Bill law. Not only that, New Zealand has established the Serious Fraud Office to fight corruption, and CPIB is the only responsible agency for fighting corruption in this country. There are similarities in the way of combating administrative corruption in Singapore and New Zealand, such as the culture of zero tolerance to corruption and swift operating against corruption, and finally, these two countries earned the reputation of being the least corrupt nations.

E. Conclusion and Recommendation

Both New Zealand and Singapore adopted political will that allows officials and senior officers to carry out their duties in the absence of their private interests and political interference. New Zealand has been experiencing zero tolerance against corruption since Europeans (Pekahas) migrated from Scotland. The only issue was land claims from Mori, who claimed that the British took their lands based on the Treaty of Waitangi, giving Britain control over New Zealand. The English and Maori translations of the treaty differed; the English version gave Great Britain complete control, while the Maori version gave Britain "government." Disagreement over who owned the land

[25] Gianna Gayle Herrera Amul and Tikki Pang, "Progress in tobacco control in Singapore: lessons and challenges in the implementation of the framework convention on tobacco control," *Asia & The Pacific Policy Studies* 5, no. 1 (2018).
[26] Hin, "Corruption control in Singapore."

helped cause the Law Wars, which lasted from 1845 to 1847 and from 1860 to 1872.[27] Britain began governing based on the Waitangi betrayal; in spite of this, there is no organised crime in New Zealand.

Combating administrative corruption requires a specific framework in every society based on its culture, level of education, level of current transparency and responsibility, and the rule of law. This study discussed the two least corrupt nations, New Zealand and Singapore. Initially, New Zealand's framework for combating administrative corruption was a combination of approving the United Nations Code of Conduct and the United Nations Convention Against Corruption 2003, the OECD, and the APEC Santiago Commitment to Fight Corruption and Ensure Transparency.[28] Singapore's framework for combating administrative corruption is a combination of effective laws, such as the Preventing Corruption Act 1960 and the Corruption, Drug Trafficking, and Other Serious Crimes Act 1992, strengthening law enforcement, adjudication, public administration, and political will, which drive Singapore in a free corruption direction. In addition, this study provides a clear explanation of the frameworks, which are: creating political will between the government prime ministers, ministers, and high-ranking officials; making and developing a culture of zero tolerance against corruption at any cost; establishing an independent judicial system; and effective law enforcement, which is recommended to those nations that still struggle with high administrative corruption. In conjunction with the scope of this study, studying why administrative corruption is widespread is highly recommended for further research.

[27] Claudia Orange, *The treaty of Waitangi* (Bridget Williams Books, 2015).
[28] Richard Woodward, "The organisation for economic cooperation and development: Global monitor," *New political economy* 9, no. 1 (2004).

BIBLIOGRAPHY

Books

Biegelman, Martin T., and Daniel R. Biegelman. Foreign Corrupt Practices Act compliance guidebook: protecting your organization from bribery and corruption. John Wiley & Sons, 2010.

Orange, Claudia. *The Treaty of Waitangi.* Bridget Williams Books, 2015.

Ramage, Sally. *Fraud and the Serious Fraud Office: Fraud Law: Book Two*. iUniverse, 2005.

Journal Articles

Alfaro, Emigdio. "Understanding the Corruption Perceptions Index." In Modern Indices for International Economic Diplomacy, pp. 233-270. Cham: Springer International Publishing, 2022.

Amul, Gianna Gayle Herrera, and Tikki Pang. "Progress in tobacco control in Singapore: lessons and challenges in the implementation of the framework convention on tobacco control." *Asia & The Pacific Policy Studies* 5, no. 1 (2018): 102-121.

Fletcher, Nancy McHenry. "The Separation of Singapore from Malaysia." (1969).

Gregory, Robert. "Governmental Corruption and Social Change in New Zealand: Using Scenarios, 1950–2020." *Asian Journal of Political Science* 14, no. 2 (2006): 117-39.

Gregory, Robert, and Daniel Zirker. "Historical Corruption in a 'Non-Corrupt' Society: Aotearoa New Zealand." *Public Administration and Policy* 25, no. 2 (2022): 150-162.

Matthewman, Steve. "'Look No Further Than the Exterior': Corruption in New Zealand." *International Journal for Crime, Justice and Social Democracy* 6, no. 4 (2017): 71-85.

Oswin, Natalie, and Brenda SA Yeoh. "Introduction: Mobile City Singapore." *Mobilities* 5, no. 2 (2010): 167-75.

Quah, Jon ST. "Lee Kuan Yew's role in minimising corruption in Singapore." *Public Administration and Policy* 25, no. 2 (2022): 163-175.

Quah, Jon ST. "Singapore's Corrupt Practices Investigation Bureau: four suggestions for enhancing its effectiveness." *Asian Education and Development Studies* 4, no. 1 (2015): 76-100.

Resnik, David B, and Adil E Shamoo. "The Singapore Statement on Research Integrity." *Accountability in research* 18, no. 2 (2011): 71-75.

Teo, Paul J. "Adjudication: Singapore Perspective." *Journal of Professional Issues in Engineering Education and Practice* 134, no. 2 (2008): 224-30.

Walter, Richard, Chris Jacomb, and Sreymony Bowron-Muth. "Colonisation, Mobility and Exchange in New Zealand Prehistory." *Antiquity* 84, no. 324 (2010): 497-513.

Woodward, Richard. "The Organisation for Economic Cooperation and Development: Global Monitor." *New political economy* 9, no. 1 (2004): 113-27.

Zirker, Daniel. "Success in Combating Corruption in New Zealand." *Asian Education and Development Studies* 6, no. 3 (2017): 238-48.

Miscellaneous

Fleming, Sean. "Corruption costs developing countries $1.26 trillion every year-yet half of EMEA think it's acceptable." In World Economic Forum, vol. 9. 2019.

Hin, Koh Teck. "Corruption Control in Singapore." *Tokyo: United Nations Asia and Far East Institute for the Prevention of Crimes and the Treatment of Offenders* (2013).

Hwee, Nicholas Lim Kah. "Singapore's Experience in the Fight against Corruption." 2019.

Rahman, Kaunain. "Transparency International Anti-Corruption Helpdesk Answer: Information disclosure by anticorruption agencies in select jurisdictions: Botswana, Canada,Hong Kong, Jamaica, Malaysia, New Zealand, Nigeria, Singapore and the United Kingdom." (2022).

Counteraction to The Laundering of Funds Produced by Crime in The XXI Century: Lessons Learned for Kazakhstan

Ermek Sokurova,[1] Alisher Kadyrbekov[2]

Abstract

In this article, the authors, based on the practice of Kazakhstan, consider the principles and mechanisms for counteracting the legalization of proceeds from crime. A criminological vision of the prospects in the field of combating crimes related to the legalization of proceeds from crime is formulated. The author's criminological concepts "criminal entrepreneur" and "unscrupulous official" are given. It also provides schemes for laundering money obtained by criminal means in the private sphere and with the participation of government officials. The authors of the article proposed working methods for investigating crimes committed using blockchain technologies, based on expert opinions in the field of investigating crimes in the cryptocurrency market.

Intisari

Dalam artikel ini, penulis, berdasarkan praktik di Kazakhstan, mempertimbangkan prinsip dan mekanisme menangkal legalisasi hasil kejahatan. Visi kriminologis tentang prospek di bidang pemberantasan kejahatan yang berkaitan dengan legalisasi hasil kejahatan dirumuskan. Konsep kriminologi penulis "pengusaha kriminal" dan "pejabat yang tidak bermoral" diberikan. Ini juga menyediakan skema pencucian uang yang diperoleh dengan cara kriminal di ruang privat dan dengan partisipasi pejabat pemerintah. Penulis artikel mengusulkan metode kerja untuk menyelidiki kejahatan yang dilakukan dengan menggunakan teknologi blockchain, berdasarkan pendapat ahli di bidang penyelidikan kejahatan di pasar cryptocurrency.

Keywords: *Shadow economy, counteraction to the legalization of illegally obtained funds, Kazakhstan, criminal law, criminology, money laundering.*

Kata Kunci: E*konomi bayangan, perlawanan terhadap legalisasi dana yang diperoleh secara ilegal, Kazakhstan, hukum pidana, kriminologi, pencucian uang.*

[1] Candidate of Judicial Science, Teaching Professor, Maqsut Narikbayev University (KAZGUU) Astana. Kazakhstan

[2] Master of Law, Teaching Assistant, Maqsut Narikbayev University (KAZGUU), Astana. Kazakhstan.

A. Introduction

Today, in the 21st century, the issue of compliance with legislation in terms of taxation and ensuring the transparency of economic processes is more acute than ever. As a rule, for a constitutional state, a characteristic feature of the fight against crime is the development and implementation of its own strategy and plan to combat crime.[3] In the Republic of Kazakhstan, this legal document-program is the concept of the criminal policy of Kazakhstan until 2030.[4] It is an important tool for fighting crime and ensuring law and order in the country. In the context of ensuring the transparency of economic processes, it is of particular importance, as modern technologies and digital assets create new challenges for legal systems.

Since with the advent of digital assets, cryptocurrencies and blockchain technology, the shadow economy is acquiring new tools to hide income. In particular, we are interested in income and funds that are obtained by criminal means with their subsequent legalization. Since criminal elements can use the anonymity and decentralization of cryptocurrencies to commit financial crimes such as money laundering, terrorist financing and tax evasion.[5] In the context of combating such crimes and ensuring financial transparency, the concept of criminal policy of Kazakhstan until 2030 offers a comprehensive strategy and plan for combating crime.[6] It includes various measures and mechanisms aimed at preventing and suppressing financial crimes, as well as tax offenses.

Due to the emergence of new technologies, criminal law also does not stand still and pursues the goal of ensuring the strict execution of the principle of inevitability of punishment, i.e. The restoration of social justice, as an ordinary and stable state of civil society[7]. One of the main goals of the concept of criminal policy in Kazakhstan is to create an effective system for preventing and combating crimes in the shadow economy.[8] To achieve this goal, it is planned to strengthen the role of law enforcement agencies. It also provides for the improvement of legislation in the field of taxation and financial activities, adaptation to new challenges related to digital assets and

[3] Decree of the President of the Republic of Kazakhstan, February 26, 2021, No. 522, "On approval of the Concept for the development of public administration in the Republic of Kazakhstan until 2030," accessed June 4, 2023, https://adilet.zan.kz/rus/docs/U2100000522.
[4] Decree of the President of the Republic of Kazakhstan, February 26, 2021, No. 522, "On approval of the Concept for the development of public administration in the Republic of Kazakhstan until 2030," accessed June 4, 2023, https://adilet.zan.kz/rus/docs/U2100000522.
[5] Decree of the President of the Republic of Kazakhstan, February 26, 2021, No. 522, "On approval of the Concept for the development of public administration in the Republic of Kazakhstan until 2030," accessed June 4, 2023, https://adilet.zan.kz/rus/docs/U2100000522.
[6] Decree of the President of the Republic of Kazakhstan, February 26, 2021, No. 522, "On approval of the Concept for the development of public administration in the Republic of Kazakhstan until 2030," accessed June 4, 2023, https://adilet.zan.kz/rus/docs/U2100000522.
[7] Ramazan Nurtaev, "Current Issues of Observance of Criminal Law Principles." Accessed June 4, 2023.
[8] Decree of the President of the Republic of Kazakhstan, February 26, 2021, No. 522, "On approval of the Concept for the development of public administration in the Republic of Kazakhstan until 2030," accessed June 4, 2023, https://adilet.zan.kz/rus/docs/U2100000522.

cryptocurrencies, which is indirectly seen in paragraph 2.6 of the Criminal Policy of Kazakhstan until 2030, which refers to the quasi-public sector:

> *"...The informational secrecy of the quasi-public sector remains. There is no publicly available data on the structures of companies, financial performance, dividends paid and other aspects of the activities of legal entities with state participation. The current classification of state property does not reflect the commercial or non-commercial purpose of creating entities of the quasi-public sector, which leads to a lack of consistency in determining the organizational and legal forms of such organizations. In this regard, it is necessary to continue further reforming this area, which will create conditions for the formation of an effective, compact and transparent quasi-public sector with its division depending on the specifics of the activities of organizations".*[9]

The concept of the criminal policy of Kazakhstan until 2030 reflects the state's desire for a fair and transparent economic development, where taxation is carried out in accordance with the law, and criminal actions in the economic sphere are subject to strict suppression, in the spirit of the principle of the inevitability of punishment.

B. Shadow, Informal, and Illegal or Criminal Economy

Speaking about the shadow economy, it is necessary to understand that the "shadow economy (or shadow sector)" refers to the segment of the economy that operates outside the official platforms and markets, evading legislative regulation and tax obligations. In this sector, the same economic and market activities are undertaken, such as production, exchange of goods and services, but they are not registered and subject to state control and often pursue criminal goals. The shadow economy can include a variety of activities, including informal work, unpaid work, illegal trade, smuggling, money laundering, tax evasion, and other illegal activities. It is characterized by illegality and lack of transparency in financial transactions.

The main reasons for the emergence of the shadow economy include distrust of state institutions, complex bureaucratic procedures, high tax rates, lack of social security, corruption and insufficient legal protection. Quite often, the shadow economy thrives in countries with a low level of development and an ineffective system of control. The shadow economy has negative consequences for the economy and society. It reduces government revenues, disrupts competition and creates inequality. In addition, it weakens the social protection of workers, since activities that do not comply with the norms and laws often do not provide social benefits and legal guarantees.

---

[9] Decree of the President of the Republic of Kazakhstan, February 26, 2021, No. 522, "On approval of the Concept for the development of public administration in the Republic of Kazakhstan until 2030," accessed June 4, 2023, https://adilet.zan.kz/rus/docs/U2100000522

The fight against the shadow economy requires an integrated approach, including improving legal regulation, reducing bureaucracy, reducing the tax burden, improving control and punishment for violations. Transparency, fairness and promotion of legal economic activity are important factors in combating the shadow economy and ensuring sustainable economic development. So, according to the opinion of the professor of the National Research University "Higher School of Economics" A. Balashov and graduate student T. Imamov, the shadow economy is a complex concept that includes three components: hidden, informal and illegal economy.[10] The authors refer to the "hidden economy" as a sector of the economy that is not officially taken into account in statistics and is not subject to taxation. It is also known as the underground or latent economy.[11] The reasons for its occurrence can be very different, from the tax burden, complex bureaucratic procedures, distrust of the government, lack of social and legal guarantees, and other factors. Individuals and legal entities can go into the hidden economy primarily to evade taxes, which is an economic crime, as well as to gain access to goods and services that are limited or withdrawn from civil circulation.[12]

The "informal economy", according to the authors, is an economic activity that is not officially recorded in statistics, but remains legal and open.[13] It is also one of the components of the shadow economy, but unlike the hidden economy, the informal economy is legal and can be seen within a legal context, i.e. for the economy, these funds and incomes are visible, but legally, persons receiving such incomes and engaged in such activities are not registered. The informal economy includes various types of activities that take place outside the formal market structures and institutions, but at the household level. As an example: low-income small businesses, self-employed workers (freelancers), sellers of vegetables and agricultural products from their gardens and greenhouses on a small scale, short-term renters of apartments, cars and other property, and similar forms of economic activity that are not at a professional level.[14]

a. Informal Economy

The informal economy can arise for a variety of reasons, including inability or unsatisfactory pay levels in formal work or employment, lack of access to formal sources of income due to restrictive business conditions, or insufficient social protection. An example of such restrictions may be an insufficient level of labor qualification, minority, the presence of a criminal record, various kinds of discrimination and other reasons. Finally, the object of our study is the "illegal or criminal economy". The authors believe that this is a sector of the economy that

[10] A. Balashov and T. Imamov, "Shadow Economy: Concepts and Methods of Assessment." CyberLeninka, accessed June 4, 2023, https://cyberleninka.ru/article/n/tenevaya-ekonomika-ponyatie-i-metody-otsenki/viewer
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*

includes activities that violate applicable law, most often associated with the criminal environment.[15]

b. Illegal or Criminal Economy

The illegal or criminal economy includes various activities such as smuggling, drug trafficking, illegal trade in weapons and other goods and services prohibited by the state, cybercrime, money laundering, corruption crimes and other forms of economic activity associated with illegal activities.[16] This sector of the economy is characterized by a lack of legal regulation and control, and its activities often evade taxation and official statistics. The illegal or criminal economy can cause significant damage to society, violate the rights and security of citizens, and undermine the rule of law and economic stability.

C. The Interplay of Blockchain, Cryptocurrency, and NFT

At the moment, in the world, in parallel with the usual stock exchanges and securities markets, there are also online platforms for the sale, exchange and placement of digital assets in the form of cryptocurrency, tokens, NFTs and much more. However, unlike conventional exchanges and markets, where all financial transactions take place through auctions and bank payments for material assets and tangible property, transactions are conducted on online platforms - “transactions” for the right to possess a virtual, digitized thing, an object of the non-material world[17].

In Kazakhstan, according to the Law of the Republic of Kazakhstan "On Digital Assets", the term "digital asset" means - "property created in electronic digital form with the assignment of a digital code, including using cryptography and computer computing, registered and secured by the immutability of information based on distributed data platform technologies”. That is, in this definition, "electronic-digital form" means a thing not of the material - virtual world, but "ensuring the immutability of information based on the technology of a distributed data platform" means "blockchain" technology and cryptography in general.

Now it is necessary to define exactly what blockchain, cryptocurrency and NFT are. Blockchain is a distributed database consisting of a chain of blocks that uses cryptography to ensure the security, integrity and transparency of data.[18] In terms of cryptography, blockchain uses hash functions and encryption algorithms to create unique digital fingerprints (hashes) for each new block of data. These hashes link the blocks into a single chain and ensure that data in previous blocks cannot be changed without changing the entire chain. In addition, cryptography is used to ensure the

[15] I. Tretyakov "Criminal-legal and criminological measures to combat the legalization (laundering) of proceeds from crime." dissertation, 2012. P. 67.
[16] Friedrich Schneider, "Shadow Economies and Corruption All Over the World: What Do We Really Know?" Journal of International Affairs 70, no. 2 (2017): 111-125.
[17] V. Perov, “Qualification of crimes committed using cryptocurrency” dissertation, 2023, p. 45
[18] "Blockchain Explained" – IBM, accessed June 4, 2023, https://www.ibm.com/topics/blockchain-explained

security of transactions and the authentication of participants in the blockchain network.

According to the legal point of view, blockchain is considered as an innovative technology that can be regulated by various areas of law, such as contract law, intellectual property, personal data protection, trade law, tax law and others. Blockchain is also a source of legal disputes in the areas of ownership, regulation, use, privacy, liability and information security.

Cryptocurrency is a digital or virtual form of money based on cryptography and distributed ledgers (blockchain) that provides safe and secure transactions.[19] In terms of cryptography, cryptocurrency uses various mathematical encryption algorithms to ensure the privacy and security of transactions. It also relies on cryptographic signature principles to ensure that transactions are authentic and unforgeable. From a legal point of view, cryptocurrency and its definition may vary in different countries, according to their legislation. However, usually cryptocurrency is viewed as a digital asset or form of money that can be used to conduct transactions, regardless of geographic boundaries and without the involvement of third parties such as banks or governments.

Speaking of NFT or speaking in the language of cryptography, a non-fungible token is a digital asset based on blockchain technology that uses cryptography to ensure the uniqueness and authenticity of ownership of a digital asset in the form of a digital copy of an object, image, video, music and more.[20] In terms of cryptography, NFT uses blockchain technology to create unique and non-fungible digital tokens. Each NFT has its own unique code, which is recorded on the blockchain and confirms its authenticity and ownership. Cryptographic techniques are also used to secure and protect NFTs from being tampered with or altered. From a legal perspective, the NFT raises new questions and challenges in the areas of intellectual property, copyright, and ownership of digital assets. Legal issues may include determination of ownership, transfer of rights to digital content, liability for copyright infringement, and contractual relationships between parties. Various aspects of NFT legal regulation may differ in different jurisdictions. In other words, from the point of view of using NFT, it is a record of the ownership of one or another property using blockchain technology, as a more understandable example, it can be perceived as a register record of the ownership of a land plot, real estate or movable property.

In the modern world, crime does not stand still, especially in the financial sector. Therefore, the state, represented by law enforcement agencies, closely monitors and analyzes modern inventions and phenomena for their subsequent legal regulation. The legal regulation of economic processes in the country is designed to protect the legitimate interests of citizens and ensure the safety of business, with the

[19] "Cryptocurrency" Investopedia, accessed June 4, 2023, https://www.investopedia.com/terms/c/cryptocurrency.asp

[20] "Non-Fungible Tokens (NFTs) Explained." CoinDesk, accessed June 4, 2023, https://www.coindesk.com/learn/nft-101/what-are-nfts

establishment of guarantees and improvement of the investment climate. However, this does not mean that any transactions and financial transactions on trading floors are legal and in the legitimate interests of legal entities.

Such a phenomenon as the "legalization" of proceeds of crime has existed for a long time, but as a subject of legal regulation and criminology, it has appeared relatively recently. So one of the well-known examples of "legalization" can be the criminal activities of Al Capone, who carried out the legalization, or as it was later called "money laundering" through a network of own laundries, i.e. he recorded the proceeds of crime as income from laundry services. Thus, "dirty" money from crimes became "clean". But even in this case, the criminal remains a criminal, legalizing the funds from more serious crimes, he committed tax offenses, i.e. did not pay taxes from legal laundries, which aroused the interest of the tax authorities, which subsequently led to his capture.[21]

In modern realities, such "laundries" can be platform technologies for transactions with digital assets, namely with a blockchain-based cryptocurrency. According to research by employees and experts of the BINANCE cryptocurrency exchange (Head of LE Training at Binance - Jarek Jakubcek, senior trainer in LE training - Melanie Lefebvre), criminals often use a tool and platform like "Tornado Cash" to potentially launder funds obtained by criminal means. Since this platform, as a “mixer”, accepts cryptocurrency from platform users from their crypto wallets to its platform, mixes them and then distributes the funds back to their crypto wallets, according to the invested funds. Which is another way to complicate the procedure for tracking criminal funds. However, according to the same BINANCE experts, these actions do not completely hide the participants in such operations and they can still be tracked using platforms such as “Blockchain etexplorer”. So, using the “Blockchain etexplorer” system, you can check the fact of transfer, receipt of funds to a crypto address with the subsequent movement of these funds. Or, going even further, you can use the "Walletexplorer.com" system, which can help in establishing crypto addresses and their owners.[22] In other words, crimes in the cryptocurrency sphere are not as difficult to investigate and unpunished as it seems at first glance[23].

D. A Comparative Analysis on Regulating Proceeds of Crime

a. United Kingdom

I would also like to note the experience of the UK in the field of regulation of proceeds of crime, so according to the UK Law "On Crime Finance" the presumption of innocence, in terms of unexplained wealth in the accounts of persons who have come

[21] Kelly Phillips, "Al Capone Convicted On This Day In 1931 After Boasting, 'They Can't Collect Legal Taxes From Illegal Money'." Forbes, accessed June 4, 2023, https://www.forbes.com/sites/kellyphillipserb/2020/10/17/al-capone-convicted-on-this-day-in-1931-after-boasting-they-cant-collect-legal-taxes-from-illegal-money/?sh=74b4aa641435

[22] Jarek Jakubcek and Melanie Lefebvre, "Blockchain Compliance" Online Lecture Series. Astana Hab, May 16-17, 2023.

[23] Cryptocurrency Exchange Binance. Accessed June 4, 2023. https://www.binance.com/ru.

to the attention of tax and law enforcement agencies, is not working. Since if a person cannot legally explain the source and nature of the funds received on his account, then these funds are recognized as criminal and can be turned into state revenue. In other words, the burden of proving the "purity" of income lies with the suspected person[24].

b. United States of America

In the United States, Money Laundering refers to a complex process carried out at the local, national or international level, which involves a large number of financial intermediaries in various jurisdictions. Money laundering is necessary for criminals for two main reasons: avoiding involvement in crimes that resulted in proceeds (predicate crimes); and the ability to use these proceeds as if they were of legitimate origin. In other words, money laundering masks the criminal origin of financial assets so that they can be freely used. Thus, money laundering has 3 stages: placement, stratification and integration. At the placement stage, illegal profits, criminal funds, are introduced into the financial system. At the second stage of stratification, there is a transformation or transfer of funds in order to blur the trace of his involvement with a criminal source. And the last level, integration, where funds are returned to the legitimate economy[25].

Also, US lawmakers adopting the law “On digital taxonomy” explain their position as follows:

> *“As legislators, we must ensure that the United States continues to lead the blockchain technology. The law on digital taxonomy adds greater jurisdictional clarity for a strong digital asset market in the United States”*[26].

Considering the criminological part of the phenomenon of "legalization", we can talk about two areas of application of this criminal tool. The first is "legalization" between private individuals (individuals and legal entities) who are not affiliated with the state and who use all sorts of tools for legalizing proceeds from crime. Transactions are carried out between two or more persons, the subject of which may be various kinds of goods and services that do not actually exist in the real environment or are provided in a minimal amount. In other words, fictitious transactions and forgery of financial statements.

As for the second sphere, it occurs between private individuals and civil servants (officials) or employees of quasi-state organizations. These actions acquire a corruption color and, as a rule, use the state-administrative resource.

---

[24] UK Crime Finance Act, accessed June 4, 2023, https://www.legislation.gov.uk/ukpga/2017/22/contents.

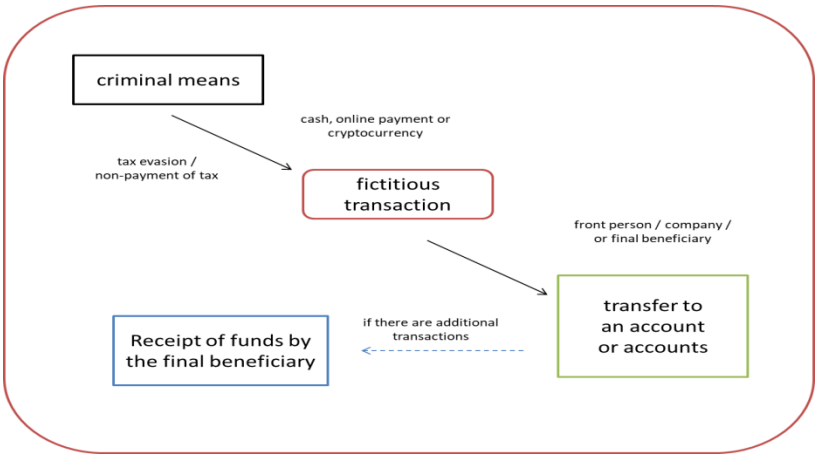
[25] "Definition of Money Laundering." In Britannica. Accessed June 4, 2023. https://www.britannica.com/topic/money-laundering#ref1199324.

[26] "US lawmakers on the new law 'On digital taxonomy.'" Freedmanclub. Accessed June 4, 2023. https://freedmanclub.com/zakonodelstvo-o-blockchain-v-usa/.

The division of schemes into two types: private individuals – private individuals" and "private individuals – civil servants (corruption)".

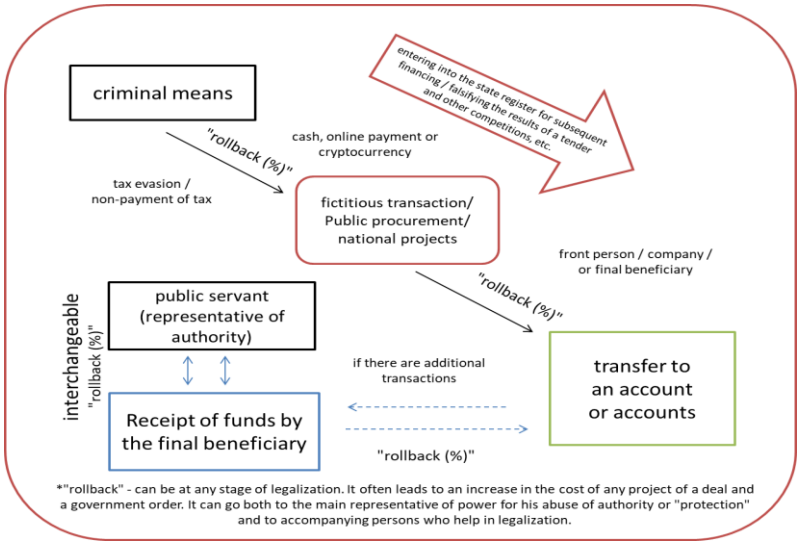
Analyzing two types of the income legalization sector, we can draw up two schemes. Scheme No. 1 shows legalization in the private sector, where only individuals and companies participate. In this scheme, the funds obtained by criminal means from the category of "dirty" and illegal ones with the help of fictitious transactions (transactions) are transferred to the category of legal ones. And already from them, at the discretion of the participants in such transactions, taxes are paid. Thus, for the state, this income is quite legal. However, such transactions, as a rule, due to the criminal greed of the persons making them themselves, take place without paying taxes, in one or several large tranches through nominees or one-day firms created for such schemes. Which is later confirmed by the tax or investigating authorities.

Scheme No. 1 - legalization in the private sector.



Scheme No. 2 shows legalization involving state elements and officials, where the private sector and state representatives participate. Exactly the same actions take place here as in scheme No. 1, however, the procedure is complicated by the presence in it of representatives of the authorities (the state) who are interested in personal enrichment as a result of an illegal transaction. So, when a new element appears, from a simple legalization of funds obtained by criminal means, actions take the form of a corruption scheme. Where, with the support of officials or in their criminal interests, transactions, competitions (tenders) are made for financing from the state treasury or for obtaining other material / non-material benefits. Each step may additionally involve new persons with state functions and who receive so-called "kickbacks" for their complicity - interest from transactions or other benefits. These kickbacks often lead to a rise in the cost of government projects and other government orders.

Scheme No. 2 - legalization with the participation of state representatives.



Based on the foregoing, we come to the conclusion that an ordinary individual laundering funds obtained by criminal means acts in order to use such funds at a completely legal level, covering them under the guise of ordinary transactions, using all sorts of ways of legal money and material circulation and such a person can be conditionally called a "criminal businessman". As a rule, he enjoys authority in business circles, has a higher education (economic, legal, etc.) or experience in the field of trade. Violates the law exclusively through financial institutions, under the guise of legal activities.

Speaking of a person participating in scheme No. 2, this is the same criminal individual who is in the public service or in a state company, is endowed with power, has access to sources of financing (budget) or knows such a person with whom he is in trust relationships. Basically, he does not show his presence in official documents and transactions, he participates in them through nominees (relatives, close friends, subordinates), who are in various ways dependent on this official. In addition to such criminal schemes, he may commit corruption crimes such as abuse of authority, forgery, giving/receiving bribes, and brokering bribes. All this characterizes the so-called "not clean official".

With the advent of blockchain technology, the legalization of proceeds from crime has received a new tool for laundering. Everything happens through uncontrolled, decentralized platforms, mining pools, cryptocurrency exchanges and crypto exchanges. The legislation of most countries of the world does not regulate them in any way, but only tries to take measures to regulate them.

c. Kazakhstan

Currently, in Kazakhstan, the adopted law on "digital assets" defines: entities - miners, mining pools and cryptocurrency exchanges; their location - the territory of Kazakhstan - for servers and databases, the Astana International Financial Center for registering companies and cryptocurrency exchanges as platforms for transactions in cryptocurrencies. Kazakhstan also determined that such activities are registered and licensed by the authorized body, which is the Ministry of Digital Development and

Aerospace Industry of the Republic of Kazakhstan; The validity period of the license for making such transactions is defined as three years with a tax duty of 2000 monthly calculation indices at the moment (2023 1 MCI = 3450 tenge), this amount is 6.9 million tenge, or at the rate of 1 US dollar - 449.19 tenge this amount is 15,360.98 US dollars. However, Kazakhstan has just begun the path of regulation of this sphere. Of interest are Europe and the United States, which, in addition to legislative regulation and the definition of "digital assets", impose a tax on profits from such transactions.

Thus, in the European Union, this category of transactions is not regulated at the EU level, but transferred to the regulation of the member states, since in 2015 the Court of Justice of the European Union (CJEU) ruled that transactions with Bitcoin are exempt from consumption tax in accordance with the section on actions with currencies and legal tender coins and these transactions should be regulated by EU member states, since tax control is the prerogative and sovereignty of the state. So, for example, for Germany, the tax can be up to 45% of income, and in France this figure can reach 30-34%. In the US, however, cryptocurrencies and other digital financial instruments have been equated with property, all transactions with cryptocurrencies are subject to the same tax as transactions with property in the corridor from 0 to 20% as capital gains and from 10 to 37% as income tax.[27]

If we talk about the implementation of norms that contribute to counteracting the legalization of funds obtained by criminal means, following the example of Kazakhstan, we see that the country's participation in international treaties such as: the Convention on Mutual Administrative Assistance in Tax Matters (Strasbourg Convention of 1988), the CIS Treaty) crime proceeds and financing of terrorism of 2007, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of 1990 and other international documents - proves Kazakhstan's commitment to guaranteeing the financial security of investors and ordinary citizens, which also contributes to the development of the country in the direction combating crime in the field of blockchain, which does not contradict international obligations.

Thus, Article 3 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, which refers to investigative measures and interim measures, states that “Each Party shall take legislative and other necessary measures that enable it to identify and search for property subject to confiscation in accordance with Article 2, paragraph 1, and prevent any transactions with such property, its transfer or disposal”[28] - from which it follows that the measures taken to investigate crimes in the digital space are not a violation of human rights, but rather are aimed at protection of his legitimate rights and interests.

---

[27] "Taxation of Operations with Cryptocurrency in the World - Guide 2022." International Wealth, accessed June 4, 2023, https://internationalwealth.info/cryptocurrency/nalogooblozhenie-operacij-s-kriptovaljutoj-v-mire-gajd/

[28] Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (Strasbourg, November 8, 1990), accessed June 4, 2023, https://adilet.zan.kz/rus/docs/Z1100000431.

With regard to taxes subject to verification and payment, according to Article 2 of the Convention on Mutual Administrative Assistance in Tax Matters of June 01, 2011 (Council of Europe), where a list of taxes is given, especially “taxes on income or profits”, “taxes on capital gains , which are established separately from the tax on income and profits" and "taxes on net assets", which will allow checking the authenticity of transactions and the legality of income and assets received on a person's account[29].

There is also the opinion of some scientists, in particular Abay Abylaiuly, in his article “Analysis of foreign legislation: the UK Criminal Finance Law on additional implementation and accession to Article 20 of the 2003 Convention against Corruption, where the author proposes to criminalize “illicit enrichment” and implement international legal obligation[30].

The mechanisms for the legalization of proceeds from crime are also spelled out in Article 12 of the CIS Treaty "On Combating the Legalization (Laundering) of Criminal Proceeds and the Financing of Terrorism", where the following acts are recognized as criminally punishable:

(a) the conversion of property, as well as any dealings with it, if such property is known to be the proceeds of crime, carried out for the purpose of concealing or concealing the criminal source of this property or for the purpose of assisting any person involved in the commission of the underlying crime, in order to so that it can evade responsibility for its actions;
(b) concealment or concealment of the true nature, source, location, method of disposal, movement of property or rights to it, or its ownership, if it is known that such property is the proceeds of crime;
(c) the acquisition, possession or use of property, if such property is known to be the proceeds of crime;
(d) complicity in the commission of any of the crimes recognized as such in accordance with this article, as well as an attempt to commit such a crime or preparation to commit such a crime;
(e) financing of terrorism[31].

E. Conclusion

Based on the foregoing, a completely logical question arises of regulating and determining ways to resolve the issues and problems that have arisen with

[29] Convention on Mutual Administrative Assistance in Tax Matters, June 1, 2011, accessed June 4, 2023, https://adilet.zan.kz/rus/docs/P1300001268
[30] Abai Abylaiuly, "Analysis of Foreign Legislation: The Criminal Finances Act of the United Kingdom." Nauchno-pravovoy zhurnal "Vestnik Instituta zakonodatel'stva i pravovoy informatsii Respubliki Kazakhstan" 1, no. 50 (2018). Accessed June 4, 2023. https://vestnik.zqai.kz/index.php/vestnik/article/view/646.
[31] Agreement of the Commonwealth of Independent States on Countering the Legalization (Money Laundering) of Criminal Proceeds and Financing of Terrorism, accessed June 4, 2023, https://adilet.zan.kz/rus/docs/Z1100000422.

cryptocurrency and activities in the field using blockchain technologies. We think, based on the nature of transactions, namely their main goal is to make a profit in the form of income, it is necessary to introduce a parallel declaration of not only income, but also expenses, since this will allow the tax authorities to see whether this or that transaction was reflected in the declarations of the parties to the transaction, they paid the corresponding tax, and for law enforcement agencies these declarations will become a tool to verify the legality of such transactions.

In our opinion, further development is needed of investigation plans in terms of determining the range of questions from the investigator to an expert in the field of cryptocurrencies and tracking transactions on cryptocurrency exchanges, as an example of questions: “how many transactions or chains of transactions were made connecting a certain crypto wallet / crypto address?”, “does a certain crypto wallet / crypto address belong to that or to another person or company?”, “Is the transaction legal?”, “Is this digital asset secured by this or that property/rights?”, “Does the presence of a large number of crypto wallets/crypto addresses in one person indicate its illegal activities and fictitious transactions? ”, “were certain crypto wallets/crypto addresses involved in certain transactions?” and a number of others establishing the nature of transactions and the relationship between the funds obtained by criminal means with the final result in the form of legal property or funds.

We think that it is necessary training of professional personnel, namely IT specialists, who would have sufficient experience to work on cryptocurrency exchanges and marketplaces, able to see the vulnerabilities of such sites, eliminate them and transfer the necessary information to authorized and law enforcement agencies. Also, the introduction of hours "Blockchain Compliance" and "Cybersecurity" as the main disciplines into the training program of the specialties "Law Enforcement" or "Investigative Forensics" as the main disciplines, in parallel with the basic disciplines as "Theory of State and Law", "Criminal Law", "Criminal Procedural Law ”, “Criminology” and “Criminalistics”[32].

All this will make it possible to train personnel for the effective investigation of crimes in cyberspace. Speaking about the investigation, it is also necessary to emphasize the establishment of jurisdiction, as the United States and the European Union did, when it comes to investigating cases related to crimes related to cryptocurrency and blockchain technology. In Kazakhstan, such jurisdiction may be assigned to the competent authorities represented by the Financial Monitoring Agency of the Republic of Kazakhstan and the Ministry of Digital Development and Aerospace Industry of the Republic of Kazakhstan. Where control over the activities of cryptocurrency exchanges will be carried out by the Ministry, and the investigation and restoration of violated legislation is assigned as the exclusive competence of the Financial Monitoring Agency.

[32] "Catalog of Educational Programs of the Maqsut Narikbayev University (KAZGUU)." Accessed June 4, 2023. https://kazguu.tecre.kz/ru/educational-programs.

Jurisdiction can also be established through international agreements between countries and regional cryptocurrency exchanges as a tool for establishing transparency and returning digital assets. That will pursue the goal of facilitating the search for illegally exported funds abroad and the establishment of the ultimate beneficiaries. Since the very specificity of blockchain technology makes it easy to track transactions and digital assets created on its basis. We believe that the above solutions to regulating modern challenges in combating money laundering are promising and effective, which will reduce the number of such criminal offenses in the future and this will make economic legal relations safer.

BIBLIOGRAPHY

Books

Schneider, Friedrich, and Friedrich Schneider. "Shadow Economies and Corruption All Over the World: What Do We Really Know?." Chapters (2008): 122-187..

Legislations

Decree of the President of the Republic of Kazakhstan, February 26, 2021, No. 522, "On approval of the Concept for the development of public administration in the Republic of Kazakhstan until 2030", accessed June 4, 2023, https://adilet.zan.kz/rus/docs/U2100000522.

Law of the Republic of Kazakhstan "On Digital Assets" dated February 06, 2023 accessed June 4, 2023, https://online.zakon.kz/Document/?doc_id=38779038

Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (Strasbourg, November 8, 1990), accessed June 4, 2023, https://adilet.zan.kz/rus/docs/Z1100000431.

Convention on Mutual Administrative Assistance in Tax Matters, June 1, 2011, accessed June 4, 2023, https://adilet.zan.kz/rus/docs/P1300001268.

Agreement of the Commonwealth of Independent States on Countering the Legalization (Money Laundering) of Criminal Proceeds and Financing of Terrorism, accessed June 4, 2023, https://adilet.zan.kz/rus/docs/Z1100000422.

UK Crime Finance Act, accessed June 4, 2023, https://www.legislation.gov.uk/ukpga/2017/22/contents.

Dissertation

I. Tretyakov "Criminal-legal and criminological measures to combat the legalization (laundering) of proceeds from crime." dissertation, 2012. P. 67

V. Perov, “Qualification of crimes committed using cryptocurrency” dissertation, 2023. P.4.

Miscellaneous

A. Balashov and T. Imamov, "Shadow Economy: Concepts and Methods of Assessment." CyberLeninka, accessed June 4, 2023, https://cyberleninka.ru/article/n/tenevaya-ekonomika-ponyatie-i-metody-otsenki/viewer

"Blockchain Explained" – IBM, accessed June 4, 2023, https://www.ibm.com/topics/blockchain-explained.

"Cryptocurrency" Investopedia, accessed June 4, 2023, https://www.investopedia.com/terms/c/cryptocurrency.asp.

"Non-Fungible Tokens (NFTs) Explained." CoinDesk, accessed June 4, 2023, https://www.coindesk.com/learn/nft-101/what-are-nfts.

Kelly Phillips, "Al Capone Convicted On This Day In 1931 After Boasting, 'They Can't Collect Legal Taxes From Illegal Money'." Forbes, accessed June 4, 2023, https://www.forbes.com/sites/kellyphillipserb/2020/10/17/al-capone-convicted-on-this-day-in-1931-after-boasting-they-cant-collect-legal-taxes-from-illegal-money/?sh=74b4aa641435.

Jarek Jakubcek and Melanie Lefebvre, "Blockchain Compliance" Online Lecture Series. Astana Hab, May 16-17, 2023.

"Taxation of Operations with Cryptocurrency in the World - Guide 2022." International Wealth, accessed June 4, 2023, https://internationalwealth.info/cryptocurrency/nalogooblozhenie-operacij-s-kriptovaljutoj-v-mire-gajd/.

Abai Abylaiuly, "Analysis of Foreign Legislation: The Criminal Finances Act of the United Kingdom." Nauchno-pravovoy zhurnal "Vestnik Instituta zakonodatel'stva i pravovoy informatsii Respubliki Kazakhstan" 1, no. 50 (2018). Accessed June 4, 2023. https://vestnik.zqai.kz/index.php/vestnik/article/view/646.

"Definition of Money Laundering." In Britannica. Accessed June 4, 2023. https://www.britannica.com/topic/money-laundering#ref1199324.

"Catalog of Educational Programs of the Maqsut Narikbayev University (KAZGUU)." Accessed June 4, 2023. https://kazguu.tecre.kz/ru/educational-programs.

Ramazan Nurtaev, "Current Issues of Observance of Criminal Law Principles." Accessed June 4, 2023. https://cyberleninka.ru/article/n/aktualnye-problemy-soblyudeniya-printsipov-ugolovnogo-prava/viewer.

Cryptocurrency Exchange Binance. Accessed June 4, 2023. https://www.binance.com/ru

"US lawmakers on the new law 'On digital taxonomy.'" Freedmanclub. Accessed June 4, 2023. https://freedmanclub.com/zakonodelstvo-o-blockchain-v-usa/.

JURIS GENTIUM LAW REVIEW , *Vol. 9(2), December 2023*

RETRACTED: Principle of Separation of Powers in The XXI Century States: Constitutional Approach

Alisher Kadyrbekov

Retraction notice to "Principle of Separation of Powers in The XXI Century States: Constitutional Approach"
[J.G.L.R., 9(2), 59-79]

This article has been retracted by the author.