

**CRIMINALIZATION OF TRADING IN INFLUENCE AS A CRIMINAL  
OF CORRUPTION IN THE RENEWAL OF INDONESIA CRIMINAL LAW****Reza Khaeru Umammi<sup>1</sup>, Pujiyono<sup>2</sup>**

<sup>1</sup>Diponegoro University  
JL. Imam Bardjo, S.H., Kampus Pleburan. Semarang, Jawa Tengah, 50241, Indonesia  
Telp./Fax: +62-895-360916002 E-mail: rezakheja@gmail.com

<sup>2</sup>Diponegoro University  
JL. Imam Bardjo, S.H., Kampus Pleburan. Semarang, Jawa Tengah, 50241, Indonesia  
Telp./Fax: +62-24-76918201 E-mail: pujiyono@live.undip.ac.id

*Submitted: Jan 12, 2022; Reviewed: Jun 02, 2022; Accepted: Jun 14, 2022*

**Abstract**

*Indonesia as a country that has declared war on corruption has not yet ratified article 18 of the UNCAC on trading in influence. The legal subject of influence trading (influence trading) of these actors can be carried out by public officials to other people, then, the actors of influence trading (influence trading) get the benefits they should not. The absence of regulation regarding the formulation of influence trafficking offenses in positive law in Indonesia causes often officials and law enforcers of bribery offenses, this can result in confusion that occurs continuously only for the perpetrators and does not simply escape without criminal sanctions, because the author aims to find out how the urgency of the law regarding the regulation of this matter. Disclosure of this, the author uses a normative juridical research by maximizing the case approach and the law's opinion. With the hope of creating written rules regarding the offense of trafficking in influence as an offense that is included in the criminal act of corruption. so with this there needs to be a criminalization of the influence of trade.*

**Keywords:** *Corruption; Criminalization; Trading in Influence*

**INTRODUCTION**

In terms of criminology, corruption is classified as a form of white-collar crime. In the implementation of the relevant law, corruption is a crime that enriches oneself or another person or an entity that directly or indirectly harms the state's finances and economy. In Indonesia, corruption is included as a criminal act, which causes lots of harm to the wel-

fare of many people. Society and state finances are the biggest examples of those who are affected by these losses. The not well-organized of the state's finances, hampered the development of all aspects of the fields that are being intensively carried out by the state for the welfare and prosperity of the nation, then tarnish the state's reputation in face of other countries

because of their crimes against their people.

Corruption is very difficult to eradicate in society. The corruption affair is has proven by the history occurred in every country. It is not only infecting public officials who abuse their authority. Corruption nowadays is also endemic to individuals. The problems and bad consequences of this messy corruption have also caused the country's economic system to get worse.

This settlement cannot be done in one or two aspects only. But it needs to be solved as the whole aspects to create a corruption-free country that possesses high ideals of honesty. This disgraceful activity is presumed to have become a part of the culture or customs of every country. As a result, people thought corruption is common and normal to be done, even though it is recognized as a crime by moral and legal.<sup>1</sup> (Nitibaskara, 2006).

The crime of corruption is deeply entrenched in the life pace of the Indonesian state. It threatens the country's economy. It also harms the environment, democratic institutions, human rights, and the rights of individuals' freedom in society. It pollutes most of the vital thing, that the pace of development is delayed. Further-

more, it is exacerbating poverty<sup>2</sup>. (Mochtar, 2009).

The crime of corruption is internationally recognized as an organized transnational crime involving many countries. The corruption matter also has weakened the government's ability in providing basic services, hampering and complicating the financial capacity of the people survival, harming the future generations of the nation's children, widening the gap between inequality and injustice, and has decreased the foreign aid and investment to the country. Some of these explanations are the bad effects of corruption crimes that occur.

This affair becomes a big scourge and a dark history for the country. Possibly, this matter will become a habit that is deeply-rooted at every level, especially if the applicable regulations do not regulate the new rules regarding one of the new modes of corruption crime, regarding that any type of crime is not stagnant and can change over time. Therefore, the new regulations and rules in national law are required to remain consistent in carrying out every content of the law.

Corruption is an important factor that gives trouble to the country's econom-

<sup>1</sup> Nitibaskara, Ronny Rahman. (2006). *Enforce the Law Use the Law*. Jakarta: Kompas Publisher, p.19

<sup>2</sup> Akil Mochtar, M. (2009). *The Reversal of the Proof Burden of the Criminal Acts of Corruption*. Jakarta: Sekretariat Mahkamah Konstitusi, p. 16

ic system that causes material losses. Wherefore, this crime abuses the country's benefit as the act of authority and power's abuse. It is also being the main obstacle in poverty alleviation and development (Santosa, 2015). Corruption creates complicated problems and gives a substantial negative impact. This also can affect the stagnancy of the state and society's capacity and quality of life.

One of the remarkable massive efforts has made is established a new legal institution for Corruption Eradication Commission named Komisi Pemberantasan Korupsi (KPK). Besides the KPK, it needs to rectify the regulations to get rid of the chance for corruption to be grown and widely spread. The implementation of the Criminal Procedure Code's rules (KUHAP) as the settlement of the corruption affair is considered insufficient. The rules that have been implemented for more than a decade also do not solve this problem well. Even the regulations that have been applied do not reach 0.1% of the settlement of corruption crimes<sup>3</sup> (Ali, 2016).

The word corruption comes from the Latin '*corruption*' or '*corrupts*'. Furthermore, it is stated that '*corruption*' also

comes from the word '*corrumpere*' which is an older Latin word. Many of these Latin languages have been transferred to European languages, such as English (*corruption/corrupt*), French (*corruption*), and Dutch (*corruptive/corruptie*) (Andrea, 1983). Indonesia got the word corruption from the Netherlands. We also need to be brave to acknowledge that many of the Dutch languages are now finally used in Indonesian and one of them is 'korupsi' which can be interpreted as; rotteness, depravity, dishonesty, evil, abuse, filth, can be bribed.

The term of corruption in the Indonesian word according to the General Indonesian Dictionary: Corruption is a bad act such as embezzlement of money, accepting bribes, and so on.<sup>4</sup> (Poerwadinata, 2011).

The Central War Authority Regulation of the Army Chief of Staff on April 16, 1958, is a regulation in Indonesian legislation that explained the term of corruption is happened to the residents of the naval area according to the Decree of the Chief of the Naval Staff. The regulation contains the first corruption legislation in Indonesia.

<sup>3</sup> Ali, Mahrus. (2016). *The law of Corruption Criminal*. Yogyakarta: UII Press, p. 5

<sup>4</sup> Poerwadinata. (2011). *Corruption: The Concept, The Criminal Act, and The Eradication*. Jakarta: PT. Raja Grafindo, p. 60

Influence trading was first regulated and ratified in the United Nations Convention against Corruption (UNCAC) in the United Nations Convention, which hereby expressly opposes corruption and has been ratified at the Diplomatic Conference in Merida, Mexico in December 2003 and signed by each participating country. Indonesia took part in signature and then the convention is ratified into Law Number 7 of 2006 on 19 September 2006. In December 2012, about 165 countries had ratified this convention into their national laws.<sup>5</sup> (Susilo, Sugiri, Novianto, 2021). Unfortunately until recent time, the Indonesian state has not updated the Corruption Eradication Law appropriately and equivalently to the UNCAC.

Some cases occurred regarding the influence of trade involving a former DPD RI Chairman Irman Gusman related to the bribery of imported sugar. Irman Gusman used his influence or authority to do inappropriate things and aimed to benefit himself and others. In this case, there was controversy regarding the legal response that claimed the case befell Irman Gusman cannot be prosecuted because there is no regulation regarding trading in influence. First, how the concept of trading influ-

ence? And second, how the urgency of criminalizing influential trade in the renewal of Indonesian criminal law?

## **METHOD**

The research method chosen to be used as a reference for this research is in the form of juridical-normative research supported by a statutory, conceptual, and analytical approach to solving the problem formulation that has been made. In this study, it is examined in the form of an analytical perspective framework quoted from various previous reference sources and in the form of data sources in this study consisting of primary legal materials, secondary legal materials used to continue in the form of analyzing the overall data against legislation, literature, data, as well as several related documents. As well as in tertiary legal materials to explain and assist in analyzing primary and secondary legal materials.

## **ANALYSIS AND DISCUSSION**

### **The Concept of Trading Influence**

Some provisions have not been regulated in the current law, especially in the Law on the Eradication of Criminal Acts of Corruption, such as the issue of criminalization in the private sector, bribery by the public officials (not an Indonesian cit-

<sup>5</sup> Adhi Sushilo, Sugiri, Bambang., and Novianto, Ismail, "The Criminalization of Trading in Influence as a Crime of Corruption", *Undang Jurnal Hukum*. Vol. 3. No. 1. Jul 2020. p. 1-2.

izen), obstruction of justice, and something 'strange'. or not 'familiar' as mentioned in the Article 18 concerning the influence trading.<sup>6</sup> (Hamzah, 2007), the concepts and elements contained in the influence trading are similar to bribes. It gives a broader view if it discusses more deeply. Article 18 can be explained as follows:

1. "Promising, offering or giving an advantage to a public official that is not supposed to use the influence (position/position / social status)" This explains that inside a state authority can be misused, used arbitrarily, and dishonest just for getting a profit.
2. "Directly or indirectly receipts that are carried out by the public officials or other people", this explains that not only the public official as someone who has an important role in the state order who can do the abuse of influence, but other people can also do this just for an advantage.

Constitution Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (UNCAC) explains that international legal instruments here are the UNCAC, are needed to put through the different legal systems and at the same time advance the efforts to

eradicate corruption effectively. Moreover, there are many reasons to ratify the UNCAC and implement it in Indonesia. The most important thing is to harmonize the national laws and regulations to eradicate and prevent corruption per UNCAC .

In influence trading, this offence has a wider scope than the bribery offence, as it relates to the real and direct of 'influence abuse'. At first glance, this rule is indeed similar to the elements of bribery and gratification. The goal is also the same, but if it is examined in-depth, nowadays, the articles of bribery known in the Corruption Eradication Law are difficultly implemented to those who are not the state officials (others).

*The Elements of Trading in Influence include intentions. Doer: public official, third person-public official. Undue influence. Undue advantage. Offering, promising, or giving. Solicitation or acceptance. So that the public or the person abuses his or her real or supposed influence<sup>7</sup>.*

According to the United Nations Convention Against Corruption (UNCAC), corruption is a "dangerous epidemic that has various corrosive effects on society". This problem injures the legal system, harms the state ideology based on honesty, weakens people's vitality, and

<sup>6</sup> Andi Hamzah. (1955). Criminal acts spread outside the Criminal Code with comments. Jakarta: Pradnya Paramitha, p. 32

<sup>7</sup> Waluyo, Bambang., and Harefa, Beniharmoni, "Trading in Influence of Corruption in Indonesia". Faculty of Law Universitas Pembangunan Nasional Veteran Jakarta, Trade Journal. Vol. 83. Apr 2020, p. 5-6

provides a space for organized crime to threaten the safety of many people's lives.

This adverse impact was the background for the United Nations High-Level Conference in December 2003 in Merida, Mexico<sup>8</sup>. The preparation of this convention becomes the basis that pioneered the declaration of anti-corruption movement actions at the United Nations. As the action is the United Nations Office on Drugs and Crime (UNODC). However, neither UNCAC nor the European Assembly (CoE) did not explain their statements in detail on corruption crimes. This convention only mentions several acts that fall into the category of corruption crimes. UNCAC or the CoE Convention describes corruption crimes in several forms of action such as the Trading Influence. In the rules on the element of influence trading at UNCAC, the elements can be drawn, as follows:

- a. "There is for 'every state party can consider', this phrase shows that to criminalize this act as a criminal act of corruption is referred to each country that ratifies and adopts it into their domestic laws"
- b. "Promises by public officials as well as (others)', this article describes the active form of influence trading. Meanwhile, a pub-

lic official or any other person defines the passive form of influence trading.

- c. "There is 'directly or indirectly. If it is correlated with the element of influence trading, this is a matter about the level of the intentionality of an act which to prove the existence of 'influence abusement' does not have to be real but the act has been considered as 'influence abusement'"
- d. "The legal subject in trading influence is not only public officials but other people who have or not have a connection or relationship with the public official. 'Public official or other people', refers to the extent of liability to the perpetrator. This also includes other people such as brokers"
- e. "Undue advantage... this phrase is telling about an undue advantage. The advantage referred to here is something that can be calculated and has a value such as money. And, the phrase 'undue' is quite broad in scope. So far, it cannot be explained perfectly because it is intangible"
- f. "*Mens rea* means that there is a correlation between the perpetrators who get benefit from using their authority improperly or illegally"

In the UNCAC background paper, there are at least six effects of corruption

(Paper Declaration, 1997) *United Nations Convention Against Corruption* in the Indonesian legal system, Departement of Criminal acts which are the background

<sup>8</sup> Brigita P Manohara. (2017). *Dagang Pengaruh (Trading In Influence) di Indonesia*. Depok: Rajawali Pers, p.11.

for the internationalization of corruption crimes. First, corruption is seen as damage to democracy. Second, corruption is considered to undermine the rule of law. Third, corruption can interfere the sustainable development. Fourth, corruption is considered to harm the market. Fifth, corruption can damage the quality of life. Sixth or last, corruption is considered a violation of human rights.<sup>9</sup>

There are similarities between the concept of influence trading and bribery, but according to Article 18 UNCAC, this matter (public officials) are paddler influencers, so it can be concluded as active or passive bribery because they have abused their influence.

As an unlawful act (PMH), trading in influence has a close relation to bribery. Of course, it is possible that the article on gratification can also be used to ensnare the traders in influence. Unfortunately, the two articles (bribery and gratification) can only ensnare those who directly or indirectly give a promise or gift to public officials, state administrators, judges, advocates, and law enforcement. If this does not give a loss to the state as the impact, then can use Article 2 jo. Article 55, or Article 3 of the Corruption Law which is

also linked to Article 55 of the Criminal Code to ensnare traders in trading in influence. However, if the impact does not cause harm to the state, it can be charged with articles regarding bribery and gratuities.

There are several forms of provisions regarding influence trading. This includes the patterns of trading in influence, from the existing literature, it can be concluded that there are several patterns of trading in influence as follows:

a. Vertical Pattern

Influence trading in the form of a vertical pattern often occurs due to political transactions or an influential institution. In the vertical influence trading model, the influential party is the party that has power or authority. The influence possessed is used to provide incentives to certain individuals or groups.

b. Horizontal Pattern

In this model, clients or stakeholders with brokers are active parties, meanwhile, the authority of public officials is the affected party. The stage of the occurrence of this pattern is when a client hands over money to an influential party who is

<sup>9</sup> Hiariej, Eddy O.S., United Nations Convention Against Corruption in the Indonesian legal system, Departement of Criminal acts, *Mimbar Hukum*, p.13

not a state administrator. If the client directly hands over the money to a public official, then the bribe article can be charged immediately. This horizontal model often occurs in political parties that have a network of executive power.

### **The Urgency of Criminalizing Influential Trade in the Renewal of Indonesia Criminal Law**

Article 18 of the United Nations Convention Against Corruption (UNCAC) rules regarding influence trading have not been accommodated in the Law on the Eradication of Corruption Crimes. However, there are several articles in the Corruption Eradication Law (UU PTPK) related to the elements and concepts of trading in influence.

After the explanation of the concepts and elements in Article 18 of UNCAC, it is clear that trading in influence is included in criminal acts of corruption.

Especially in the crime of corruption which in Article 18, it is important to be ratified into the Law on the Eradication of Criminal Acts of Corruption and carry out reforms to the criminal law that influence trade is included in the corruption crime, so that there is no legal vacuum.

The trial is seen as *Tatbestandausdehnungsgrund* (the basis/reason for extending the criminality of the act). It is an attempt to commit a criminal act and the action is done in a complete unit. But, it's also a perfect offense only in a specific or special form. So, it is a separate offense (*delictum sui generis*), (Ridwan, 2018) in influence trading, it is also an independent offense in which without any further actions and no other acts this offense can be said to be a criminal act if the influence trading element has been fulfilled. The trade in influence offense is wider in scope because it states that the legal subjects who can fulfill it are public officials and others. This clearly emphasizes that anyone who primarily has authority over the public can be called to be a trader in influence.

The concept of influence trading is contrary to bribery. According to the concept of influence trading, those who receive benefits are those who use their authority to gain profits.

1. The definition of bribery according to the Law of the Republic of Indonesia Number 11 of 1980 concerning Bribery:

“Anyone who gives or promises something to someone with the intention of persuading that person to do something or not to do something in his duties, which is contrary to his



authority or obligation concerning the public interest” (Penalty of up to 5 years).

2. The definition of bribery in Article 209 Paragraph (1) of the Criminal Code (KUHP):

“Whoever gives or promises something to a civil servant with the intention of driving him to do or not to do something with his position that is contrary to his obligations”

(Imprisonment for a maximum of 2 years and 8 months).

The definition of bribery above is not as broad as the description of influence trading. Therefore, influence trading cannot be associated with the bribery article. The element of influence trading clearly cannot be pursued to use the bribery article. Is because the elements in article 18 UNCAC are not aligned with the bribery article and no one can be accused and put on trial in which the rules have not been legally regulated. As the result, there is a legal vacuum. This also explains that Indonesia adheres to the principle of legality which means that an action cannot be said as a crime if there are no rules that regulate it.

The anti-corruption group (Group of states Against Corruption, GRECO) summarizes the comparison between influence trading and bribery into the evaluation as follows:

“The difference between influence trading and bribery is that influence trading does not require an element of 'act or refraining from act' by public officials. An undue beneficiary assists an undue advantage by exerting or proposing to exert improper influence over a third person who may perform (or refrain from performing) the requested action.”

From this explanation, the purpose of influence trading is not an 'act or restraint' but rather an 'undue advantage' which, not only officials can receive, but 'others' as well.

Based on trading in influence, the perpetrators of this crime are not always carried out by 'public officials or state administrators', but also those who have access and power to public authorities. Then, the perpetrators of trading in influence (trading in influence) get benefits that they should not receive. Usually, the benefits can be assessed and calculated (eg: money).

Indonesia has not ratified Article 18 of UNCAC regarding the trading of this influence for its positive law to the Law on the Eradication of Criminal Acts of Corruption. Meanwhile, UNCAC has been legitimated and ratified by each member of the United Nations as a criminal act of corruption and considered as a criminal

act of corruption that can involve countries and have a 'remarkable' impact. This is parallel to how severe and critical the damage caused by the crime of terrorism in each country that experiences it, and does not use any excuses to justify such acts. Indonesia only ratified the Convention into Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003)', ratifying the convention into its domestic regulations, this shows the seriousness and the great commitment of Indonesia regarding the firm stance of eradicating corruption.

The concept of trading in influence must be made in separate provisions to make the form of trading in influence itself can be clearly classified and identified, and becomes an absolute rule because it has validated as the law, which then for anyone who violates it will get criminal sanctions. If this provision has been drafted and ratified in the Criminal Code, especially in the Law on the Eradication of Criminal Acts of Corruption, it can make it easier for law enforcers to ensnare the perpetrators of trading in influence, because it can be said that not all law enforcers understand and recognize the concept of influence trading.

In the latest legislation, making improvements and updates to the Corruption Eradication Act is the primary case to harmonize with UNCAC, because many other provisions have not been regulated in the Corruption Eradication Act, and it is critical enough to be immediately formed and regulated into the law, that is influence trading.

The provisions regarding the trading in influence have also been formulated into the Corruption Eradication Bill which is being discussed at Commission III of the DPR RI. The provisions on trading in influence in the Corruption Eradication Bill included in Article 3 can be mean as; public employees, foreign public employees, employees of international organizations which in this case only discuss public officials exclude the 'others' who do the abusement of power, authority, influence with the aim of enriching and benefiting themselves, others and corporations.

The position of UNCAC is still as the commitment of Indonesia to adopt it in national law and as a sign of agreement to fight corruption until the lowest level. However, until recent times, the regulation regarding trading in influence is still not legal and has not been applied in the Criminal Law or even the Law on the Eradication of Criminal Acts of Corrup-

tion. No matter how is the amount of something as long as it can be calculated, or any nominal money that is profited by the abuse of power is counted as a crime, corruption is always corruption, nothing can omit this crime before the law.

Philosophically, the action of TI is a corrupt behavior that deviates from ethics and morality (moral corruption) because it aims to obtain an undue advantage by exploiting or abuse the influence either because of public office position or influence arising from political relations, kinship, friendship or other relationships. This action is actually growing and thrive in Indonesia, especially in politics, which cannot be separated from the history of the Indonesian nation which relies on the power of the "patrimonial bureaucracy" and the feudal system, the pattern of patron-client *relationships* (Rohcayanto, 2018).

## CONCLUSION

Trading in influence (Trading in influence) is one form of corruption that has been ratified by the International Convention Against Corruption, the United Nations Convention approved and contributed to ratify the convention to eradicate corruption. Trading in influence with criminal acts of corruption has a close re-

lationship where the nature of trading in influence triggers the cause of the emergence of corruption so that it causes abuse of power based on the influence exerted. The formulation of trading in influence in Indonesian criminal law that needs to be considered is an explanation of the qualifications of those who are considered to have influence that can influence public officials or state administrators or individuals based on their authority and accountability for those who have carried out trading in influence actions, both in active and passive forms.

The regulation regarding influence trading is the responsibility of Indonesia as a participating country that has participated in ratifying UNCAC must carry out an update on the criminal law regarding influence trading to be revised and adopt the rule into the "Corruption Eradication Law" in accordance with the objectives, and make this rule applies to national law. Influence trading cases in Indonesia often occur, criminal law and the law on eradicating corruption are considered important to criminalize influence trading as a criminal act of corruption, so that Indonesia has a strong and legitimate legal basis to ensnare the perpetrators of influence trafficking, as well as a firm step Indonesia as

a democratic country with a high ideology of prosperity and public welfare.

## BIBLIOGRAPHY

Akil Mochtar, M. (2009). *The Reversal of the Proof Burden of the Criminal Acts of Corruption*. Jakarta: Sekretariat Mahkamah Konstitusi.

Ali, Mahrus. (2016). *The law of Corruption Criminal*. Yogyakarta: UII Press.

Andrea, Fockema. (1983). *The Dictionary of Law*. Bandung: Bina Cipta.

*Background Paper Declaration of 8 International Conference Against Corruption* in Lima, Peru. Sept 1997.

Hamzah, Andi. (1955). *Criminal acts spread outside the Criminal Code with comments*. Jakarta: Pradnya Paramitha.

Hiariej, Eddy O.S.,. *United Nations Convention Against Corruption in the Indonesian legal system*, Departement of Criminal acts, *Mimbar Hukum*.

Vol. 31. No. 1. Feb 2019. Pp. 113-114.

Manohara, Brigita P. (2017). *Dagang Pengaruh (Trading In Influence) di Indonesia*. Depok: Rajawali Pers.

Nitibaskara, Ronny Rahman. (2006). *Enforce the Law Use the Law*. Jakarta: Kompas Publisher.

Poerwadinata. (2011). *Corruption: The Concept, The Criminal Act, and The Eradication*. Jakarta: PT. Raja Grafindo.

Ridwan, "Formulation Policy of Criminal Law against the Corruption", *Kanun Journal of Legal Studies*. Vol. 60. No. 15. Ags 2013. Pp. 202.

Rohcahyanto, Fitroh., "Trading In Influence as a Criminal Acts", *Doctoral Program Faculty of Law Airlangga University*, 2018.

Santosa, Iman Prayitno. (2015). *The Accountability for Criminal Acts of Corruption*. Bandung: PT. Alumni.

Susilo, Adhi., Sugiri, Bambang., and Novianto, Ismail, "The Criminalization of Trading in Influence as a Crime of Corruption", *Undang Jurnal Hukum*. Vol. 3. No. 1. Jul 2020. Pp. 1-2.

Waluyo, Bambang., and Harefa, Beniharmoni, "Trading in Influence of Corruption in Indonesia". *Faculty of Law Universitas Pembangunan Nasional Veteran Jakarta, Trade Journal*. Vol. 83. Apr 2020. Pp. 5-6.

\*\*\*