

# Urgency Of Trading In Influence Regulation In The Eradication Of Corruption In Indonesia

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**Abstract:** *Trading in Influence becomes very urgent because it is done with a modus operandi of corruption crimes that are always accompanied by bribes so far used bribery article or the provisions of Article 55 paragraph 1-1 of the Criminal Code (participate in conducting / medepleger) associated with the bribery clause in the event of participation. Trade influence is considered urgent because it is corruption with a form of trilateral relationship involving three parties, namely interested parties, influential parties, and influenced parties. Acts of influence trafficking as a crime of corruption become urgent because not always the subjects who commit corruption crimes are state organizers or civil servants. Some countries that apply trade influence such as Spain, France and Belgium. France, ensnaring trade influence both actively and passively, ensnared public officials and private parties*

**Key Words:** *Urgency of regulation, Trading in Influence, Criminal Corruption.*

## 1. INTRODUCTION:

Corruption in Indonesia is growing very fast and is carried out systematically. Corruption is a disease that has plagued Indonesia which is difficult to cure. We just have to wait when the Republic of Indonesia will be destroyed due to corruption. The unresolved problem of corruption in Indonesia has led to the emergence of a term culture of corruption in society. Corruption is not a culture passed down from generation to generation by predecessors, nor is it said to be a national culture that needs to be preserved, but a culture of corruption is seen as a reality where corruption is no longer eradicated. Corruption can occur anywhere and in the end, an act is seen as a natural act.

An increase of 1 (one) point in the corruption perception index does not make enforcement in eradicating corruption maximal, even though in terms of increasing position.[1] In 2019, Indonesia's CPI was at a score of 40/100 and was ranked 85th out of 180 countries surveyed. This score increased by 2 points from 2018. Whereas the struggle to fight corruption carried out by the government, the corruption eradication commission, financial and business institutions and civil society shows positive efforts, but the heavy task of reforming the system still has to be completed, namely how to break corrupt relations between state officials, public services, law enforcement, and business people.[2]

Corruption has been carried out since the Old Order, the New Order and the Reformation Order now, eradication of corruption has been attempted many times. The commitment to eradicating corruption is marked by the formation of various teams and commissions to tackle corruption. Although various legal instruments have been published, the life history of Indonesian criminal law, the term corruption was first used in the Military Authority Regulation Number Prt/PM-06/1957, so that corruption became a legal term. That these actions are detrimental to the country's finances and economy by the general public. [3] Starting from this rule until it was promulgated into the Corruption Crime Act in 2001 (Law No. 20 of 2001), but this law has not yet regulated trading in influence, only regulating bribery and gratuities. The main norms used as reference countries in the world regarding corruption as regulated in the United Nations Convention Against Corruption (UNCAC) at the United Nations convention.

Several countries in the world have implemented the crime of trading in influence, one of which is France, Spain, Belgium, and other countries that have ratified trading in influence. In France, trading in influence is regulated in the Nouveau Code Penal in 1994 in Article 435 paragraph 2 and 435 paragraph 4 which regulates trading in influence passively or actively. In France, trade in influence is divided into two, namely those carried out by public officials and individuals.[4]

Trading in influence in Spain is regulated in Article 428-430 of the Criminal Code Chapter six of the ninth paragraph. The article regulates trade in influence, both active and passive. In these Articles it only refers to passive trading of influence. There are several provisions that have not been regulated in the current Indonesian Corruption Eradication Law, namely the issue of criminalization in the private sector, bribery of foreign public officials, obstruction of justice, until now trading influence is completely new. and is not yet known in the Act on Indonesian Technical Implementation Officers.

### 1.1. CONCEPTUAL FRAMEWORK:

- Trading in influence  
Trading in influence is one of the acts of corruption according to United Nations Convention Against Corruption (UNCAC). This act is simply described as a promise, supply or gift and/or request or receipt of benefits to a public official directly or indirectly, public officials using their authority to gain administrative or public
- Corruption  
The word corruption comes from one word in Latin namely Corruption or corruptus copied to various languages. For example, taken for Dutch to "Corruptie", which was later born the word corruption in Indonesian. [5]
- Corruption Crime  
Based on the Act No. 31 of 1999 and Act No. 20 of 2001, Corruption crime can be divided into 2 aspects, namely active and passive. Active aspect mean that perpetrators of corruption enrich themselves or other or corpoation by abusing authority. The Passive aspect mean the one who ascepts the gift of doing or not doing something that is contrary to his obligations.[6]

### 1.2. THEORITICAL FRAMEWORK:

- Theory of Law Enforcement  
Law Enforcement Theory is a process to realize the desire of law-making bodies into the formulation of legislation into reality
- Theory of Criminal Policy  
The politics of criminal law (criminal policy) allows the state to be given the authority to formulate or determine an act that can be categorized as a criminal offence and use it as a repressive act against any person who violates it.[7] This is the function of criminal law that provides the basis of legitimacy for repressive actions of the state against a person or group of people who commit acts.[8]
- Theory of Legal Comparison  
The usefulness of legal comparison insertion is to provide knowledge of the similarities and differences between different fields and legal systems, and basic legal system. It will be easy to hold unification, legal certainty, and legal simplification. The result of the comparison of laws will be beneficial for the application of law in the community, especially to know the areas of law that can be verified and which areas should be regulated by law between legal systems.[9]

### 2. LITERATURE REVIEW:

The crime of corruption is classified as an extraordinary crime, both against the community, as well as against the nation and state. Loss of state finances and the state's economy is the result of the fact that is the basis of justification that justifies the criminalization of the influence of various forms of corrupt behavior in the criminal law policy. There are several provisions that have not been regulated in the current Indonesian Corruption Eradication Law, namely the issue of criminalization in the private sector, bribery of foreign public officials, obstruction of justice, until now trading in influence is completely new and not yet known in the Corruption Eradication Act.

### 3. METHOD:

The method used in this research is normative, that is, examining legal principles, legal systematic, legal history of legal synchronization level, and comparative law.

### 4. DISCUSSION:

Corruption can cause great damage to society. not only undermine of state organs but also reduces public confidence in integrity thus damaging the institution and democratic values, ethical values and justice and also distorts economic competition and damaging the foundation of sustainable economic development and legal supremacy.[10] Corruption grows in the shadows, mostly for the benefit of those in power. It also provides a lever through which organized crime can gain influence in public decision-making.[11] Corruption is no longer an ordinary crime but is an extraordinary crime.

Corruption in Indonesia is growing very fast and is carried out systematically. Corruption is a disease that has plagued Indonesia which is difficult to cure. The unresolved problem of corruption in Indonesia has led to the emergence of a term culture of corruption in society. Corruption is not a culture passed down from generation to generation by predecessors, nor is it said to be a national culture that needs to be preserved, but a culture of corruption is seen as a reality where corruption is no longer eradicated. Corruption can occur anywhere and in the end an act is seen as a natural act.

Based on Corruption Perception Index (CPI), an international publication issued by Transparency International which has been used as a parameter to show the level of corruption in a country. Indonesia is a country with the highest level of corruption in the world. According to the CPI of 2018, Indonesia was in the 89th position out of 180 countries. The value obtained by Indonesia is 38 on a scale of 0-100, the lower the value, the more corrupt the country is, and vice versa. When compared to 2017, Indonesia ranks 96th with a value of 37. In the history of Indonesian criminal law, the term corruption was first used in the arrangement of military rules No. Prt/PM-06/1957, so that corruption became a legal term. That the act is detrimental to the country's finances and economy by the general public.[12] Starting from this rule until it was enacted into the Corruption Crime Act in 2001, but this law has not set about bribery and gratuities. The main norms that the world's state refers to on corruption are set in United Nations Convention Against Corruption (UNCAC) at the United Nations convention.

Ratifying UNCAC is a form of Indonesia's commitment to the international community in efforts to eradicate corruption.[13] The significance of the ratification of the Convention, is to increase international cooperation, especially in tracking, freezing, Foreclosure and returning assets resulting from criminal acts of corruption placed abroad, increasing international cooperation in realizing good governance, increasing international cooperation in implementing extradition agreements, mutual legal assistance, reciprocal legal aid, inmate handover, transfer of criminal proceedings and law enforcement cooperation encouraging technical cooperation and exchange of information in the prevention and eradication of corruption under economic development cooperation and technical assistance on a bilateral, regional and regional sphere. And harmonization of national legislation in the prevention and eradication of corruption in accordance with this Convention.[14] The United Nations Convention (UN) signed the United Nations Convention Against Corruption (UNCAC) which was ratified at the Diplomatic Conference in Merida, Mexico in December 2003. This convention describes eleven forms of corruption, one of which is trading in influence as one of the one that is often debated. The action described in Article 12 and 18 of UNCAC is considered by some to have not explained in detail the limits of the concept of trading in influence.

Trading in influence is well known in Europ, The interesting thing from the publication of the Council of Europe (Coe) in 2000 trading in influence and the Illegal Financing of Political Parties, influence trading is associated with illegal political financing. This is known as a type of trilateral correlation corruption with the perpetrator, not only with a state official, but also ordinary citizens through the giving of gifts or promises. At first glance, the rules of trading in influence are similar to the purpose and elements of bribery or gratification. However, if we look more closely, the articles of bribery that we know in the Corruption Crime Act are currently difficult to touch those who are not civil servants or state administrators. The provisions regarding trading in influence are the modus operandi that has been regulated at UNCAC to tackle corruption. In Indonesia itself, this modus operandi has been widely practiced, people who are in the power environment but are not state administrators take advantage of their proximity to a ruler who has a real influence on certain strategic matters or fields. This closeness is used to control government projects, so that he benefits directly or indirectly from managing the project. [15]

Although it is not an easy job to eradicate corruption, there is no apology for not continuing to be determined to eradicate it.[16] On the one hand, corruption may be a moral issue. However, effective measures to fight it must go beyond efforts that only see it as a moral issue, which includes efforts to reform the law of society as a whole. There must be a strong political will to declare the war on corruption, which is followed by a real step (political action) with the support of consistent law enforcement.

## **5. ANALYSIS:**

### **5.1. The Urgency Of Influential Trade Regulation In Indonesia:**

Trading in influence is a promise or giving or receiving to anyone either directly or indirectly with the intention that that person abuses his influence on a public official in order to obtain an undue advantage from the actions of a public official for the interests of third parties. The Association of Accredited Public Poly Advocates to the European Union explains, trading influence as a situation when a person uses influence over public officials in the decision-making process for the benefit of third parties in exchange for loyalty, money or other material benefits. The phrase use of positions means that influence is exerted by the authorities, while the use of political influence on behalf of a person means that the act is done using the path of closeness with the authorities.[17]

Indonesia Corruption Watch (ICW) classifies the act of trading influence into three patterns: vertical, vertical with broker, and horizontal. Vertical patterns do not meet trilateral relationship elements because in reality intermediaries or brokers do not have any influence in decision making. In Horizontal patterns, interested parties and parties with influence to be active parties, while public officials are those affected by, this means decision-making by public officials is based on one person's influence for the benefit of other parties. The negative impact of corruption was the background for the United Nations High Level Conference from 9 to 11 December 2013 in Merida, Mexico. This trial resulted in the agreement of all countries and regional organizations on economic integration to sign and ratify the United Nations Convention against corruption. The 133 countries agreed to this Convention, including

Indonesia, which became the first legally binding anti-corruption instrument. The Convention is held in connection with the ratification of UNCAC by the Government of Indonesia through Law No. 7 of 2006 concerning ratification of the United Nations Convention on Ratification of UNCAC Convention Against Corruption. Based based on the UNCAC implementation review, Indonesia needs to improve its anti-corruption law and adopt 4 types of corruption as a follow-up, there is trading in influence, bribery in the private sector, foreign bribery, and Illicit Enrichment. The importance of influence trading arrangements for Indonesia is so that law enforcement in the Eradication of Corruption Crimes can ensnare perpetrators with legal formulations that are in accordance with the crimes committed so that there is no ambiguity in the application of the law.

## 5.2. Implementation of trade in Influence Arrangements in Several Countries:

The 2003 UNCAC, Convention against Corruption, which Indonesia participated in, is an anti-corruption convention that includes provisions for criminalization, obligations for preventive measures in the public and private sectors, international cooperation in investigation and law enforcement, as well as technical assistance measures regarding the return of assets.

- **France:**

France is a civil law country that applies the concept of trading in influence in the formulation of its laws. Since 1994, France has had the Nouveau Code Penal (NCP) which regulates active and passive influence trading. Based on the scope of authority of the perpetrator, influence trading is divided into 2 forms, namely: first, influence trading occurs in the government area, and the second is when the actor and his client are private parties.

- **Belgia**

Belgium ratified provisions aligned with UNCAC into The Criminal Law Convention on Corruption (ETS 173) on March 23, 2004 which was authorized on July 1, 2004. in Belgium there are several changes to the legislation focusing on three improvements, namely bribes in the private sector , trading in influence and in its jurisdiction

## 6. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The urgency of trading arrangements as a criminal act of corruption in Indonesia which is an act of trading in influence as a form of corruption. Trading influence as a trilateral relationship because it involve three parties, namely the interested, the influential and the affected party. The importance of trading in influence is so that the law enforcement can ensnare perpetrators with the appropriate law so that there is no ambiguity in the application of the law.
- Comparison of trading in influence with several country, as in France has been regulated in Nouveau Code Penal 1994 which regulates both passive and active. And in Spain that provides three different versions of trading in influence, which criminalize public officials who take gratification to obtain certain special treatment from public authority. Whereas in Indonesia the regulation of trading in influence is contained in article 691 of Criminal Code Bill, the subjects that can be criminalized are the givers and the beneficiaries and since the Criminal Code Bill has not been passed, so to ensnare the perpetrators used other articles in the or Law on the Eradication of Corruption or the Criminal Code.

## 7. SUGGESTIONS:

The suggestions given by researchers are as follows:

- It is hoped that the house of representative and the government will renew the corruption law in line with UNCAC. Therefore, it is important to criminalize trading in influence rules into the Corruption Crime Act. So that in the future, if there is an trading in influence, it will be immediately processed with a definite law and there is no doubt.
- It is hoped that the Indonesian government will adopt UNCAC into Indonesia's current anti-corruption law. Because some countries have adopted rules that are in accordance with UNCAC and have implemented them. Learning from these countries, Indonesia should have harmonized and implemented it so that in the future similar cases can be handled appropriately.

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