JETISH: Journal of Education Technology Information Social Sciences and Health
E-ISSN: 2964-2507 P-ISSN: 2964-819X
Vol. 5 No. 2 September 2026

The Ius Constituendum of Regulating Trading in Influence in the Anti Corruption Law

Kevin Daffa Arbi[1] Muhammad Arief Gunawan Putra Khoifu[2] Fathia Rahmadini Passa[3], Aliyah Salsabila Assanti[4]
Airlangga University, Indonesia[1,2,3,4]
Email: kevin.daffa.arbi-2021@fh.unair.ac.id[1] muhammad.arief.gunawan-2023@fh.unair.ac.id[2] fathia.rahmadini.passa-2023@fh.unair.ac.id[3] aliyah.salsabila.assanti-2023@fh.unair.ac.id[4]

Abstract
Trading in influence is a corruption offense involving the misuse of real or perceived influence to gain undue advantages. It typically includes three actors: the influence seeker, the intermediary (influence peddler), and the decision-maker. Although Article 18 of UNCAC addresses this as a non-mandatory offense, its regulation is essential for strengthening anti-corruption efforts. Indonesia, despite ratifying UNCAC through Law No. 7 of 2006, has yet to explicitly regulate this practice. This legal research employs statutory, conceptual, and case approaches to examine the gap. In practice, such cases are often prosecuted under alternative provisions that do not fully capture the offense's essence. Regulatory efforts through the Draft Penal Code and Draft Anti-Corruption Law face obstacles, including evidentiary challenges and fears of overcriminalizing lobbying. Effective regulation must clearly define key elements: the concept of influence, undue advantage, and the parties involved.
Keywords: Ius Constituendum of Regulating Trading

INTRODUCTION

As a state that upholds and adheres to the principles of law, as enshrined in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia stating that "The State of Indonesia is a state based on law" Indonesia bears a fundamental obligation to uphold legal values in all aspects of its implementation and enforcement. The principle of the rule of law mandates that all actions of both the government and society must be subject to the prevailing laws, rather than to power or particular interests. In this context, the law serves as the foundation for justice, order, and the protection of human rights. Fair and consistent law enforcement is a manifestation of the state's commitment to the principles of democracy and social justice. However, in practice, there is often a discrepancy between the ideals of the rule of law and the reality of its enforcement on the ground. One of the issues that has recently gained significant public attention and discussion is Corruption Crime (Tindak Pidana Korupsi or Tipikor). Corruption poses one of the greatest threats to the Indonesian nation due to its profoundly detrimental impact. Acts of corruption not only harm the state, but also inflict serious losses on society. Corruption can undermine the foundations of the economy, weaken the education and healthcare systems, erode social justice, and destroy public trust.[1] If left unchecked and not met with strong legal enforcement, Corruption Crime (Tindak Pidana Korupsi or Tipikor) has the potential to destroy a nation from within. It is classified as an extraordinary crime, and therefore, its eradication requires extraordinary measures as well.[2] The enforcement of laws related to Corruption Crimes (Tindak Pidana Korupsi or Tipikor) is

[1] Teguh Hari Prasetyo, "Korupsi: Ancaman Tersembunyi yang Merusak Sendi-sendi Kehidupan Bangsa dan Negara", https://www.djkn.kemenkeu.go.id/artikel/baca/16690/Korupsi- Ancaman-Tersembunyi-yang-Merusak-Sendi-sendi-Kehidupan-Bangsa-dan-Negara.html, diakses pada 6 Maret 2024.
[2] Ifrani, "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa", *Al'Adl*, Volume IX Nomor 3, Desember 2017, h. 319.

governed by Law No. 31 of 1999 on the Eradication of Corruption Crimes, as amended by Law No. 20 of 2001. While this legislation provides a comprehensive legal framework for addressing various forms of corruption, it does not specifically regulate trading in influence as a distinct form of corruption. Although this practice can be classified as corruption, the lack of explicit provisions within the Anti-Corruption Law creates challenges in law enforcement and prosecution of offenders. As a result, many cases involving individuals who exploit their influence to gain personal advantage—such as in public procurement processes or official appointments—cannot be effectively addressed under the existing regulations.

This creates a loophole, particularly for non-state actors or non-public officials, to exploit their influence for material gain or other undue advantages. According to various sources, trading in influence is a form of corruption that involves a trilateral relationship. The offense generally involves three parties, two individuals from the policymaking sphere, including a person who sells their influence (who does not necessarily have to be a public official or state actor), and a party who provides something of value in hopes of obtaining a benefit from a public official or decision maker.[3] Several countries such as France, Spain, and Hungary consider trading in influence to be a serious criminal offense. As a result, these countries have established specific laws and regulations that govern trading in influence, allowing legal action to be taken not only against public officials but also against non-public officials or non-state actors involved in corruption through this offense.

RESEARCH METHODS

The type of research used in this study is legal research. According to Peter Mahmud Marzuki, legal research is a process of discovering coherent legal truths namely, whether a legal rule aligns with legal norms, whether those norms in the form of commands or prohibitions are consistent with legal principles, and whether an individual's actions conform not only to legal rules but also to legal norms and principles.[4] This study employs three types of approaches in conducting legal research. Statute approach, conceptual approach, and case approach. These approaches are applied complementarily to provide a comprehensive and in-depth analysis of the legal issues under examination.

RESEARCH RESULT AND DISCUSSION

Trading In Influence As A Form Of Corruption Under The United Nations Convention Against Corruption (UNCAC)

The Concept of Corruption Crime According to the Anti Corruption Law

From a terminological perspective, the term corruption originates from the Latin word "corruptio", which means damage or decay, and is also used to refer to a rotten condition or immoral act.[5] Corruption is a disease of power that can be found in various countries, both in developing and developed nations. Like a virus, corrupt practices have the potential to grow and spread rapidly if not addressed promptly. Without effective countermeasures, corruption will continue to take root and threaten a country's stability and prosperity as if attacking the very "host" in which it thrives. Etymologically, corruption refers to acts of deviation or misappropriation committed for personal or others' interests, and is commonly associated with something rotten, evil, or damaging.[6] Corrupt practices cause significant harm to individuals,

[3] Nur Alam Bulu & Wahyu Mustajab, "Interpretasi Kasus Korupsi Jenis Trading in Influence Berdasarkan Perspektif Hukum Pidana Indonesia", *Jurnal Kewarganegaraan*, Vol. 6 No. 2 September 2022, h. 3.
[4] Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, Prenadamedia Group, Jakarta, 2023, h. 47.
[5] Septa Candra, "Tindak Pidana Korupsi : Upaya Pencegahan dan Pemberantasan", dalam Agustinus Pohan, Topo Santoso dan Martin Moerings (Ed.), *Hukum Pidana Dalam Perspektif*, Pustaka Larasan, Denpasar, 2012, h. 105.
[6] Evi Hartanti, *Tindak Pidana Korupsi*, Sinar Grafika, Jakarta, 2014, h. 9.

corporations, as well as public and state interests. As a crime with far-reaching impacts, corruption not only results in financial losses but also erodes public trust in the government and damages the integrity of state institutions. Corruption harms state finances because the benefits gained from such acts originate from the misappropriation or improper use of public funds. Funds allocated for public interest are misused, leading to losses to the state budget and violating the principles of accountability and transparency in the management of public finances. Corruption is classified as a white-collar crime, which refers to offenses committed by individuals or groups who hold high-ranking positions or authority within an organization or institution. Unlike conventional crimes that often involve violence or threats, white-collar crimes are typically carried out in a more discreet manner and without physical force. These crimes rely on manipulation, deception, or abuse of power to gain profit. From a criminological perspective, white-collar crime can stem from occupational crime and corporate crime. Occupational crime refers to violations committed by individuals in connection with their professional roles for personal gain, while corporate crime involves offenses committed by corporations or their employees for the benefit of the corporation.[7] The current Anti-Corruption Law (Tindak Pidana Korupsi or Tipikor) in Indonesia has become more comprehensive and complex compared to previous regulations. Nevertheless, the forms of corruption in practice have grown increasingly massive and dynamic, thereby demanding continuous legal reform. This indicates an urgent need to revise and update the legal framework for corruption crimes in Indonesia in order to address the evolving nature of corruption and align with international standards. Legal reform in this area would enable the legal system to be more responsive to new and emerging modes of corruption, thereby strengthening sanction provisions and clarifying the definition of corruption. Such improvements are essential to enhance the effectiveness of law enforcement efforts.

The Concept of Trading in Influence

Article 18 of the United Nations Convention Against Corruption (UNCAC) states "The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person". That definition is not far from the concept of political corruption, which Artidjo Alkostar defines as the illicit pursuit or abuse of a public office.[8] In this context, it is stated that the subjects of this type of corruption are individuals or entities holding political positions who engage in unlawful acts. Such conduct generates legal, political, economic, human rights, and moral consequences. Through these acts, the perpetrator intends to benefit themselves, others, or certain entities by abusing the authority, opportunities, and resources available to them due to their political office or position. Political corruption is an act committed by political elites or state officials that has significant impacts on the political and economic conditions of a country.[9] Conceptually, the act of trading in influence is indeed difficult to understand and equally challenging to clearly define in form. Citing Michael Johnston, a researcher at Cambridge University, who stated that "The scope of Influence Market corruption is difficult to specify," this illustrates the inherent ambiguity of the concept. This is also the reason why, according to the Association of Accredited Public Policy Advocates to the European Union (AAELP), several countries are reluctant to

[7] osias Simon Runturambi, "Sisi Kriminologi Pembalakan Hutan Ilegal: Suatu Telaah Awal", *Jurnal Kriminologi Indonesia*, Vol. 3 No. 1, 2003, h. 16.
[8] Artidjo Alkostar, *Korupsi Politik di Negara Modern*, Yogyakarta: FH UII Press, 2008, h. 17.
[9] *Ibid.*

criminalize this offense.[10] The AAELP statement underscores one of the fundamental challenges in criminalizing trading in influence, namely the inherently elusive nature of this form of corruption. Unlike bribery, which typically involves a direct and tangible exchange between the giver and the recipient, trading in influence operates in a grey area where corrupt acts do not always have a clear or physical manifestation. This process usually entails the exploitation of influence whether actual or merely perceived—to sway the decisions of another party. It is this very nature that makes trading in influence not only difficult to prove, but also often implicit and complex in its operation.

In practice, trading in influence as a form of corruption primarily involves leveraging personal relationships or specific influence to sway decision-making by those in positions of authority. This form of corruption emphasizes the exploitation of trust or manipulation of the benefit provider. Often, in such situations, the benefit provider or the decision-maker may not even realize they are participating in a corrupt act. This is because there is no direct or explicit exchange between the benefit provider and the decision-maker. Instead, the entire process is carried out through intermediaries, reinforcing the illusion that no legal violation is taking place. In reality, however, the use of such relationships or influence still breaches the principles of fairness and harms the wider public, as the resulting decisions are not based on competence or established rules. Trading in influence constitutes a form of trilateral relationship in corruption. This offense typically involves three parties: the interested party (the instigators), the party possessing or peddling influence (the influence peddler), and the party being influenced or making the decision (the decision maker).[11] The roles of each are explained as follows:

1. The Instigators. The interested party refers to an individual, group, or entity that is directly or indirectly involved in, or benefits from, the practice of trading in influence. Relationships between interested parties are often based on reciprocity, wherein the person of influence or the influence peddler receives financial or non-financial rewards, while the influence recipient gains personal advantages such as political position reinforcement or economic benefits. The Organisation for Economic Co-operation and Development (OECD) describes the term instigator or briber as follows: "A briber is guilty of the offence if he/she offers, promises or gives an undue advantage to a person in order that the recipient exerts his/her influence on the decision-making of a public official." This means that "A person offering, promising, or giving an undue advantage to someone with the intent that the latter uses his or her influence over the decision-making of a public official is guilty of a criminal offence. The instigator plays a key role in initiating or directing acts of trading in influence. Although the instigator may not always be directly involved in the actual decision taken, they act as the catalyst or architect of the strategy to influence the decision for personal gain.
2. The Influence Peddler. It refers to an individual or entity who uses their position, personal relationships, or power to influence the decisions or policies of another party—typically a public official—for personal gain or the benefit of a specific group. The OECD defines an influence peddler as "An influence peddler is guilty if he/she requests, solicits, receives, or accepts an undue advantage from a person in order that he/she exerts his/her influence on the decision-making of a public official," meaning, "An influence peddler is considered guilty if they request, solicit, receive, or agree to receive an undue advantage from someone with the intent to use their influence on the decision-making of a public official."[12] This practice

[10] Nur Alam Bulu dan Wahyu Mustajab, "Interpretasi Kasus Korupsi Jenis Trading in Influence Berdasarkan Perspektif Hukum Pidana Indonesia", *Jurnal Kewarganegaraan*, Vol. 6 No. 2, 2022, h. 6.
[11] Anis Lailatul Fajriah, Ni Ketut Sari Adnyani Dan Made Sugi Hartono, "Perdagangan Pengaruh (*Trading In Influence*) Ditinjau Dari Perspektif United Nations Convention Against Corruption (Uncac)", *E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha,* Vol. 4 No. 2, 2021, h. 5.
[12] *Ibid.*

typically involves individuals who wield influence through social connections, political power, or economic ties, leveraging it to secure undue benefits—such as sway over public policy, lawmaking processes, or the awarding of government contracts. Such individuals are not always directly involved in the decision-making process; rather, they trade or offer their influence to obtain specific advantages for themselves or others. Influence peddling undermines fair and transparent decision-making, as decisions may no longer be based on the broader public interest but instead on illegitimate personal influence.
3. The Decision Maker. The decision maker refers to an individual or group possessing the authority to make important decisions within an organization, government, or institution. In the context of trading in influence, decision makers are those empowered to set policies, formulate regulations, or decide on the acceptance or rejection of certain proposals that may affect public, economic, or social interests. Decision makers may include public officials such as ministers, members of parliament, judges, or bureaucrats responsible for making administrative or legislative decisions.

Under Indonesian legislation, there are currently no specific provisions regulating trading in influence. To date, Indonesia has only signed the United Nations Convention Against Corruption (UNCAC) on December 18, 2003, and ratified it on September 19, 2006, through Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003. However, this ratification has not been fully implemented through the harmonization of national regulations, including the incorporation of provisions on trading in influence as stipulated in Article 18 of the UNCAC. The absence of such regulation indicates a legal gap that may affect the effectiveness of anti-corruption efforts in Indonesia, particularly in addressing cases involving the indirect abuse of influence. Regulation on trading in influence is crucial to tackling more complex and indirect forms of corruption, such as non-transparent political lobbying or the use of influence for personal gain. Harmonizing domestic law with the UNCAC is therefore an urgent challenge to ensure that the commitment to ratification is not merely symbolic, but also operational. From various existing literature, it can be concluded that there are several patterns in the concept of trading in influence, are:
1. Vertical Pattern. The vertical pattern of trading in influence frequently occurs due to political transactions or dealings between certain institutions and influential individuals. In this model, the influential party is someone who holds power or authority. The interested party directly approaches the person with influence to sway decision-making processes, such as government officials, regulators, or policymakers. This interaction may occur through formal or informal mechanisms, with the aim of having the influential party exercise their authority to create, amend, or implement policies that provide direct benefits to the interested party.
2. Vertical Pattern with an Influence Peddler. The vertical model of trading in influence involving an influence peddler commonly occurs within circles of power and public office. Those in close proximity to power such as family members are often among the key actors. In this model, the influence peddler is an individual or group that exploits the influence of a public official. This practice frequently appears in government procurement projects or in the placement of individuals into state office positions. The influence peddler acts as an active intermediary, connecting the interested party with the influential figure.
3. Horizontal Pattern. The vertical trading in influence model involving an influence peddler is commonly found within circles of power and public office. Those with close proximity to power such as family members often play a key role in this model. Here, the influence peddler is an individual or group that leverages the authority and influence of a public official. This model frequently occurs in procurement projects or in the placement of

individuals into public office positions. The influence peddler acts as an active intermediary, connecting interested parties with those in positions of influence.

Case Study on the Practice of Trading in Influence in Indonesia

There are several cases in Indonesia that can be characterized as practices of trading in influence. To date, such practices cannot be subjected to legal sanctions due to the absence of clear legal provisions regulating this criminal act within the Indonesian legal system.

Beef Import Bribery Case Involving Defendant Ahmad Fatanah – Verdict No. 39/Pid.Sus/TPK/2013/PN.Jkt.Pst.

The defendant committed, or participated in committing, an act together with Luthfi Hasan Ishaq, a State Official or Public Officer, namely a Member of the Indonesian House of Representatives (DPR RI) for the 2009–2014 term, whose prosecution was conducted separately.[13] In the trial proceedings, it was established that Ahmad Fathanah, a trusted associate of Luthfi Hasan Ishaq, had influenced Luthfi Hasan Ishaq to, in turn, influence Suswono, who at the time served as the Minister of Agriculture and was also a cadre of the Prosperous Justice Party (Partai Keadilan Sejahtera), chaired by Luthfi Hasan Ishaq. Ahmad Fathanah sought to secure an agreement for the increase of the beef import quota for PT Indoguna Utama. In his efforts, Ahmad Fathanah arranged several meetings between representatives of PT Indoguna Utama, Luthfi Hasan Ishaq, and Suswono, so that the submitted request letter could be approved. Eventually, on January 11, they met with Suswono. At that meeting, Suswono instructed Maria Elizabeth to first conduct a public test to validate the submitted data, and also requested that Maria provide data on companies that had engaged in the practice of trading Import Approval Letters (SPI).[14] This criminal conspiracy was uncovered by the Corruption Eradication Commission (KPK) investigators. As a result, it was proven that the defendant, Luthfi Hasan Ishaq, had facilitated and conspired with co-defendant Ahmad Fathanah alias Olong, Maria Elizabeth Liman, and Elda Devianne Adiningrat to commit a corruption offense by increasing the beef import quota for PT Indoguna Utama by 5,000 tons for the second semester of 2012 and 8,000 tons for 2013, in exchange for a commission/fee of IDR 5,000 (five thousand rupiah) per kilogram, amounting to a total of IDR 40,000,000,000 (forty billion rupiah).[15] The public prosecutor's indictment states:[16]

1. Declares that the Defendant has been legally and convincingly proven guilty of committing the criminal act of corruption jointly, as stipulated and punishable under Article 12 letter a of Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) sub-paragraph 1 of the Indonesian Penal Code, as charged in the First Indictment, First Count;
2. Sentences the Defendant in the corruption case to imprisonment for 7 (seven) years and 6 (six) months, and a fine of IDR 500,000,000.00 (five hundred million rupiah), in lieu of which 6 (six) months of imprisonment shall be imposed;
3. Declares that the Defendant has been legally and convincingly proven guilty of committing a criminal act as stipulated under Article 3 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering in conjunction with Article 65 paragraph (1) of the Indonesian Penal Code, as charged in the Second Indictment, and of committing money

[13] Brigita P. Manohara, *Dagang Pengaruh*, Jakarta, 2017, h. 1741.
[14] *Ibid.*, h. 142-144.
[15] Direktorat Pemeriksaan Dan Riset, *Lapora Hasil Riset Tipologi Semester I Tahun 2014*, Jakarta, November 2014, h. 68.
[16] Putusan Pengadilan Negeri Jakarta Pusat Nomor 39/Pid.Sus/TPK/2013/PN.Jkt.Pst.

laundering of corruption proceeds jointly, as stipulated and punishable under Article 5 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering in conjunction with Article 55 paragraph (1) sub-paragraph 1 of the Indonesian Penal Code in conjunction with Article 65 paragraph (1) of the Indonesian Penal Code, as charged in the Third Indictment;

4. Sentences the Defendant in the money laundering case to imprisonment for 10 (ten) years and a fine of IDR 1,000,000,000.00 (one billion rupiah), in lieu of which 1 (one) year and 6 (six) months of imprisonment shall be imposed;
5. Orders that the period of detention already served by the Defendant shall be fully deducted from the imprisonment imposed;
6. Orders that the Defendant shall remain in detention.

Based on the public prosecutor's indictment and the facts revealed during the trial, the Panel of Judges of the Corruption Court at the Central Jakarta District Court issued a verdict stating that:[17]

1. Declares that the defendant, Ahmad Fathanah, has not been proven legally and convincingly guilty of committing the criminal act of money laundering as stated in the Third Charge of the Indictment in this case;
2. Therefore, acquits the defendant, Ahmad Fathanah, of the Third Charge of the Indictment in this case;
3. Declares that the defendant, Ahmad Fathanah, has been proven legally and convincingly guilty of committing the criminal act of corruption jointly, as stated in the First Primary Charge, and the criminal act of money laundering as a concurrent offense, as stated in the Second Charge of the Indictment in this case;
4. Therefore, sentences the defendant, Ahmad Fathanah, to 14 (fourteen) years' imprisonment and imposes a fine of Rp 1,000,000,000 (one billion rupiah), stipulating that in the event the fine is not paid, it shall be substituted with 6 (six) months of imprisonment;
5. Orders that the defendant remain in custody;
6. Orders that the period of detention already served by the defendant be fully deducted from the sentence imposed.

His position was that of an influence peddler, acting as an intermediary between one party (with vested interests) and another (holding authority). Ahmad Fathanah had accepted a promise to influence state officials, namely Luthfi Hasan Ishaq and Suswono.[18] According to Dr. Gusrial, S.H., M.H., Chief Judge of the Central Jakarta District Court and Presiding Judge in the case of Luthfi Hasan Ishaq, in his interview with Brigita P. Manohara on December 1, 2015, he stated that Fathanah's actions constituted a clear example of the concept of trading in influence, with a role tantamount to that of a broker.[19]

Ius Constitiendum On The Regulation of Trading in Influence in the Anti Corruption Law

The Urgency of Regulating Trading in Influence as a Corruption Offense in Indonesia

Corruption is no longer limited to conventional forms such as mark ups, mark downs, bribery, gratuities, and the like. Today, a matter of serious concern is corruption that erodes the very core of the state's functions by serving the personal or group interests of certain parties, whether in the realm of business, politics, or the intersection of both. This phenomenon is often

[17] *Ibid.*
[18] Brigita P. Manohara, *Op.Cit.*, h. 151.
[19] *Ibid.*, h. 152.

referred to as state capture, where the structures and policies of the state are systematically exploited for the benefit of a select few. Therefore, comprehensive implementation of the provisions set forth in the UNCAC has become imperative. The application of UNCAC norms will not only broaden the scope of anti-corruption law enforcement but also strengthen the legal framework to prevent state capture and other, more complex forms of corruption. This is further reinforced by the provision in Article 65 paragraph (1) of the UNCAC, which states "Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention". In other words, each State Party must take the necessary measures, including legislative and administrative steps, in accordance with the fundamental principles of its domestic law, to ensure the fulfillment of its obligations under the Convention.

The legal consequence of Indonesia's ratification of the United Nations Convention Against Corruption (UNCAC) through Law Number 7 of 2006 concerning the Ratification of the UNCAC is the obligation to adopt norms deemed essential into Indonesia's positive law. With this ratification, the UNCAC has entered into force for Indonesia as a state party to the Convention. The ratification of the UNCAC by the Indonesian government also entails a binding obligation for the Indonesian nation to implement the provisions of the 2003 Convention.[20] This ratification reflects Indonesia's commitment to actively participate in the global effort to combat corruption, including preventing and prosecuting various forms of corruption, such as trading in influence. To date, as mentioned in the previous chapter, there is no regulation concerning trading in influence within Indonesia's legal system. Consequently, the crimes stipulated in the UNCAC that do not yet have an equivalent provision in Indonesia's Anti-Corruption Law serve as a complement to the overall corruption eradication framework, particularly regarding the substance of corruption itself. [21] Therefore, the ratification of the UNCAC carries the consequence for Indonesia to adopt new norms that have not yet been accommodated in national regulations, including the criminalization of trading in influence. The reasons given for the need to regulate trading in influence are::[22]

1. There must be an understanding of the object and the unlawful (some refer to as "illicit") cause related to the influence being traded, which is intended to corrupt public officials holding administrative functions or public authority.
2. The addressed subjects include the giver, the one offering, the one promising, and the one receiving the gift, receiving the promise, or receiving the offer for such unlawful cause, as well as the subject who requests to be bribed for their influence.
3. There is concern that the regulation of trading in influence could be used as a political tool to criminalize permissible political lobbying. Political lobbying itself is not clearly regulated in Indonesia; however, as long as it does not lead to a conspiracy to commit a criminal act, it should be considered permissible because there is no criminal provision prohibiting it (adage: what is not regulated is allowed). For lobbying subjects acting in their capacity as public officials, it should be construed as "reasonably suspected" to have an unlawful intent if the lobbying falls outside their scope of authority (adage: what is not regulated is not within one's authority; there is no authority without accountability, and every accountability must be both accountable and transparent). Literature studies reveal how political lobbying should ideally be regulated, even though it is not easy to implement, namely by specifying

[20] Ummi Kulsum, "Kebijakan Indonesia Meratifikasi United Nations Convention Againts Corruption (UNCAC)", *Skripsi*, Fakultas Ilmu Sosial Dan Ilmu Politik Universitas Jember, Jember, 2008, h. 42.
[21] Eddy O.S Hiariej, "United Nations Convention Against Corruption Dalam Sistem Hukum Indonesia", *Mimbar Hukum*, Vol. 31, No. 1, Februari 2019, h. 6.
[22] Taufik Rachman et al., *Menggagas Perubahan Uu Tipikor:Kajian Akademik Dandraf Usulan Perubahan*, 2019, h. 97-98.

prohibitions and ensuring a system of transparency. The first includes prohibitions on making false statements, prohibitions on giving gifts, prohibitions on what is known as "revolving door employment," and prohibitions on collecting "contingent fees." The latter emphasizes information transparency — "not prohibiting," but requiring that information or data be open and accessible to the public. Several studies highlight the thin line between lobbying and trading in influence, noting that lobbying is recognized as important in democratic countries.

4. Furthermore, the interest protected by the regulation of trading in influence is that public officials, whether national or foreign, in carrying out their administrative functions or exercising public authority, are not interfered with by undue influence or do not themselves exert undue influence over another country. However, if the act of trading in influence is discovered after a public official has exercised such undue influence from another person or public official, that public official must be able to prove before investigators in a suspected trading in influence case that the decision taken was based on the applicable laws.

Although trading in influence under the UNCAC is classified as non-mandatory, the urgency of regulating it as a criminal act of corruption in Indonesian legislation should be taken into serious consideration. This is due to the inherent nature of trading in influence, which is substantively incompatible with the principles of good governance and integrity in public service.[23] In addition, the inclusion of trading in influence provisions could strengthen Indonesia's anti-corruption efforts, particularly in addressing abuses of power that are not directly covered under existing corruption offenses. [24]Therefore, even though the UNCAC does not require its regulation, the adoption of this norm could serve as a reference point to expand the scope of anti-corruption laws, enabling a more effective response to various forms of corruption. The urgency of regulating matters stipulated under the UNCAC—such as trading in influence—is further underscored by the prevalence of such practices in Indonesia. One of the key challenges lies in the inability to directly criminalize perpetrators of trading in influence due to the absence of specific legal provisions governing this conduct in Indonesian legislation. As a result, offenders are often prosecuted under alternative provisions that are ill-suited to the nature of the offense and fail to ensure proportionality between the act committed and the sanction imposed. This situation creates injustice in law enforcement and, in some cases, allows perpetrators to evade the legal accountability they rightfully deserve.

Efforts to Formulate Regulations on Trading in Influence within the Framework of Indonesian Legislation

Barda Nawawi Arief stated that "efforts to reform criminal law are essentially part of a policy to renew the substance of the law in order to make law enforcement more effective." [25]This statement underscores that criminal law reform is not merely intended to amend existing regulations, but also to enhance the effectiveness of law enforcement in accordance with societal needs and the dynamics of contemporary developments. In the context of corruption offenses, such reform must be capable of accommodating various emerging forms of crime, including transnational crimes such as trading in influence. This is crucial to ensure that law enforcement is not only reactive but also proactive in preventing and prosecuting crimes that may harm the public interest. In Indonesia, although specific provisions on trading in influence have not yet been explicitly regulated in statutory law, there are several provisions

[23] Muhammad Taufiq, "Perdagangan Pengaruh sebagai Bentuk Korupsi dalam Perspektif UNCAC dan Implikasinya terhadap Hukum Nasional," *Jurnal Hukum dan Pembangunan*, Vol. 49, No. 2, 2020, h. 181-182.
[24] *Ibid.*
[25] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Kencana Prenada Media Group, Jakarta, 2008, h. 22.

in the Law on the Eradication of Corruption that implicitly reflect elements of this concept. While these provisions do not directly mention the term trading in influence, they essentially contain similar elements, such as the abuse of power or influence for personal gain or for the benefit of others, in violation of the principles of integrity and accountability. Nevertheless, the existence of such implicit regulations remains inadequate to comprehensively address trading in influence practices. This creates challenges in law enforcement, particularly in ensuring that all forms of influence-peddling that undermine the public interest can be identified and prosecuted proportionately.

The provision regulating trading in influence has been proposed for adoption in the Government's draft version of the Criminal Code Bill (RUU KUHP). The regulation on trading in influence can be found in Chapter XXXII, entitled Criminal Acts of Corruption. Article 691 of the Draft Criminal Code can be classified as a translation of the provision contained in the UNCAC.[26] Article 691 of the Draft Criminal Code reads as follows:

1. Any person who, with the intent to obtain a benefit from a government institution or public authority, promises or gives something, directly or indirectly, to a public official or another person, so that the public official or such other person uses their influence in relation to their position, shall be punished with imprisonment for a minimum of one (1) year and a maximum of five (5) years and/or a fine of not less than Category II and not more than Category III.
2. Any public official or other person who receives something or a promise, directly or indirectly, so that the public official or such other person uses their influence in relation to their position, shall be punished with imprisonment for a minimum of one (1) year and a maximum of nine (9) years and/or a fine of not less than Category II and not more than Category IV.

However, in terms of substance and politics, the regulations in the Draft Criminal Code (RUU KUHP) have several weaknesses, are:[27]

1. The provisions on trading in influence in Article 691 paragraphs (1) and (2) of the Draft Criminal Code (RUU KUHP) tend to reflect a bilateral relationship pattern in corruption. This is indicated by the fact that only the parties who can be prosecuted for trading in influence are the giver, as stated in Article 691 paragraph (1), and the receiver, as stated in paragraph (2). However, the provisions on trading in influence, especially those contained in the Council of Europe (CoE) documents, demonstrate trading in influence as a form of trilateral relationship. If Article 691 paragraphs (1) and (2) are applied, the positions of intermediaries or brokers cannot yet be prosecuted.
2. The effort to revise the Criminal Code has been ongoing for a very long time. Despite changes in regimes, the process has never been completed. This poses a particular obstacle when attempting to include trading in influence in the Draft Criminal Code, as there is still no certainty about when it will be finalized. This is certainly risky given the increasing prevalence of trading in influence carried out by circles of power.

Until now, the Draft Criminal Code (RUU KUHP) has not been enacted, so to prosecute individuals whose actions can be categorized as trading in influence, law enforcers construct charges using other articles in the Corruption Eradication Law or the existing Criminal Code (KUHP).[28] To address this issue, law enforcers often have to formulate charges by applying

[26] Shinta Agustina, *Trading in Influence: Peluang dan Tantangan Penerapannya di Indonesia*, Jakarta, 2013, h. 4.
[27] Donal Fariz et al., *Op.Cit.*, h. 42-43.
[28] Brigita P. Manohara, *Op.Cit.*, h. 70.

other provisions within the Corruption Eradication Law or the Criminal Code in force. Although this approach can provide a legal basis, it often fails to fully capture the complexity and unique characteristics of trading in influence practices, thereby creating a potential imbalance between the acts committed and the penalties imposed. The provisions concerning trading in influence are not only included in the Draft Criminal Code (RUU KUHP) but have also been formulated in the Draft Law on the Eradication of Corruption Crimes, which is currently being discussed in Commission III of the Indonesian House of Representatives (DPR RI). The inclusion of these provisions in the Draft Law on Corruption Eradication also reflects the importance of harmonizing Indonesian legislation with international standards as regulated in UNCAC. Accordingly, it is expected that this regulation will strengthen the national legal framework in preventing and combating various forms of abuse of power that undermine government integrity and public trust. To regulate trading in influence within Indonesia's Corruption Eradication Law, it is crucial to explicitly criminalize this practice to close legal gaps that allow it to persist. The regulation should clearly define who can influence public officials or decision-makers, including both formal and informal relationships, and outline criminal liability for those offering or receiving benefits to sway decisions. Adequate evidentiary provisions are also needed to enable effective law enforcement without undue proof difficulties, ensuring comprehensive and systematic handling of corruption cases involving trading in influence.

CONCLUSION

Trading in influence is a complex and covert form of corruption involving the misuse of influence to gain undue advantage. It typically involves three parties: the interested giver, the intermediary with influence, and the decision-maker. While not always a direct exchange like bribery, trading in influence undermines governmental integrity. Internationally, it is classified as a corruption offense under Article 18 of UNCAC, ratified by Indonesia in Law No. 7 of 2006. However, there is currently no explicit national law criminalizing this practice, highlighting the need for legal reform to address hidden yet damaging corruption forms. Although UNCAC's regulation of trading in influence is non-mandatory, its adoption is crucial for strengthening corruption prevention and enforcement in Indonesia, especially against emerging abuses of power. The absence of specific rules often forces prosecutors to rely on alternative corruption statutes, which may not fully capture the offense's nature. Efforts to regulate trading in influence through the Criminal Code and Corruption Eradication Bill face challenges such as limited legal subjects, evidentiary difficulties, and concerns over criminalizing legitimate political lobbying. Proposed regulations should clearly define elements such as actual or presumed influence, undue benefits, and legal subjects including givers, receivers, and intermediaries.

BIBLIOGRAPHY

"Memahami Perdagangan Pengaruh, Salah Satu Jenis Korupsi yang Banyak Terjadi", https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230210- memahami-perdagangan-pengaruh-salah-satu-jenis-korupsi-yang-banyak- terjadi, diakses pada 6 Maret 2024

"Pengertian Pengaruh Menurut Para Ahli", https://dilihatya.com/2236/pengertian- pengaruh-menurut-para-ahli, diakses pada 10 Desember 2024.

"Trisula Strategi Pemberantasan Korupsi KPK untuk Visi Indonesia Bebas dari Korupsi", https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20220511- trisula-strategi-pemberantasan-korupsi-kpk-untuk-visi-indonesia-bebas- dari-korupsi, diakses pada 6 Maret 2024.

Agustina, Shinta, Trading in Influence: Peluang dan Tantangan Penerapannya di Indonesia, Jakarta, 2013.

Alkostar, Artidjo, Korupsi Politik di Negara Modern, Yogyakarta: FH UII Press, 2008.
Arief, Barda Nawawi, Bunga Rampai Kebijakan Hukum Pidana, Kencana Prenada Media Group, Jakarta, 2008.
Badan Pusat Statistik, Indeks Perilaku Anti Korupsi (IPAK) 2024, Jakarta, 2024.
Badan Pusat Statistik, Statistik Kriminal 2023 Volume 14 2023, Jakarta, 2023.
Bulu, Nur Alam dan Wahyu Mustajab, "Interpretasi Kasus Korupsi Jenis Trading in Influence Berdasarkan Perspektif Hukum Pidana Indonesia", Jurnal Kewarganegaraan, Vol. 6 No. 2 September 2022.
Candra, Septa, "Tindak Pidana Korupsi : Upaya Pencegahan dan Pemberantasan", dalam Agustinus Pohan, Topo Santoso dan Martin Moerings (Ed.), Hukum Pidana Dalam Perspektif, Pustaka Larasan, Denpasar, 2012.
Danil, Elwi, Korupsi, Konsep, Tindak Pidana, dan Pemberantasannya, Rajawali Pers, Jakarta, 2012.
Direktorat Pemeriksaan Dan Riset, Lapora Hasil Riset Tipologi Semester I Tahun 2014, Jakarta, November 2014.
Fadhil, Muhammad, Taufik Rachman dan Ahsan Yunus, "Konstruksi Hukum Perdagangan Pengaruh (Trading in Influence) dalam Tindak Pidana Korupsi", Amanna Gappa, Vol. 30 No. 1, 2022.
Fajriah, Anis Lailatul, Ni Ketut Sari Adnyani Dan Made Sugi Hartono, "Perdagangan Pengaruh (Trading In Influence) Ditinjau Dari Perspektif United Nations Convention Against Corruption (Uncac)", E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha, Vol. 4 No. 2, 2021.
Fariz, Donal et al., Trading in Influence Dalam Hukum nasional, Jakarta, 2014.
Hanum, Zubaedah, "Jadi Kejahatan Luar Biasa, Ini 30 Jenis Korupsi yang Harus Diketahui", https://mediaindonesia.com/politik-dan- hukum/577868/jadikejahatan-luar-biasa-ini-30-jenis-korupsi-yang-harus- diketahui, diakses pada 6 Maret 2024
Hartanti, Evi, Tindak Pidana Korupsi, Sinar Grafika, Jakarta, 2014.
Hiariej, Eddy O.S, "United Nations Convention Against Corruption Dalam Sistem Hukum Indonesia", Mimbar Hukum, Vol. 31, No. 1, Februari 2019.
Ifrani, "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa", Al'Adl, Volume IX Nomor 3, Desember 2017.
Komisi Pemberantasan Korupsi, Memahami Untuk Membasmi, Jakarta Agustus 2006.
Kristiadi, J, "Bersatu Melawan Perdagangan Pengaruh", Harian Kompas Edisi 24 (online), November 2015.
Kulsum, Ummi, "Kebijakan Indonesia Meratifikasi United Nations Convention Againts Corruption (UNCAC)", Skripsi, Fakultas Ilmu Sosial Dan Ilmu Politik Universitas Jember, Jember, 2008.
Kusumaatmadja, Mochtar, Pengantar Hukum Internasional, Bina Cipta, Bandung, 1976.
Manohara, Brigita P., Dagang Pengaruh, Rajawali Pers, Jakarta, 2017.
Marzuki, Peter Mahmud, Penelitian Hukum: Edisi Revisi, Prenadamedia Group, Jakarta, 2023.
Pohan, Agustinus, Topo Santoso dan Martin Moerings (Ed.), Hukum Pidana Dalam Perspektif, Pustaka Larasan, Denpasar, 2012.
Prasetyo, Teguh Hari, "Korupsi: Ancaman Tersembunyi yang Merusak Sendi-sendi Kehidupan Bangsa dan Negara", https://www.djkn.kemenkeu.go.id/artikel/baca/16690/Korupsi-Ancaman- Tersembunyi-yang-Merusak-Sendi-sendi-Kehidupan-Bangsa-dan-Negara.html, diakses pada 6 Maret 2024.

Pusat Edukasi Antikorupsi, "Mengenal Pengertian Korupsi dan Antikorupsi", https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20220411-mengenal- pengertian-korupsi-dan-antikorupsi, diakses 6 Maret 2024

Rachman, Taufik et al., Menggagas Perubahan UU Tipikor:Kajian Akademik Dan draf Usulan Perubahan, 2019.

Rohcahyanto, Fitroh, "Memperdagangkan Pengaruh Sebagai Tindak Pidana Korupsi", Disertasi, Universitas Airlangga, Surabaya, 2018.

Runturambi, Josias Simon, "Sisi Kriminologi Pembalakan Hutan Ilegal: Suatu Telaah Awal", Jurnal Kriminologi Indonesia, Vol. 3 No. 1, 2003.

Slingerland, Willeke, Trading in Influence: Corruption Revisited, EGPA Study Group on Ethics and Integrity of Governance, 2010.

Syarif, Laode M. dan Didik E. Purwoleksono (Ed.), Hukum Anti Korupsi, USAID, Kemitraan, The Asia Foundation, 2015.

Taufiq, Muhammad, "Perdagangan Pengaruh sebagai Bentuk Korupsi dalam Perspektif UNCAC dan Implikasinya terhadap Hukum Nasional," Jurnal Hukum dan Pembangunan, Vol. 49, No. 2, 2020.

Zulfa, Eva Achjani, "Kekosongan Hukum dalam Pengaturan Perdagangan Pengaruh di Indonesia: Tinjauan UNCAC", Jurnal Hukum dan Korupsi, Vol. 5, No. 2, 2019.