

A New Modus Operandi of Corruption: Exploring the Phenomenon of Trading in Influence in Indonesia

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Abstrak: Penelitian ini membahas bentuk baru kejahatan korupsi berupa perdagangan pengaruh. Latar belakang penelitian ini berasal dari regulasi perdagangan pengaruh dalam Konvensi PBB tentang Pemberantasan Korupsi 2003 dan peningkatan jumlah kasus korupsi. Dalam penelitian ini, digunakan jenis penelitian normatif yang bersifat preskriptif dan teknis. Penelitian ini menggunakan dua pendekatan, yaitu pendekatan legislatif dan pendekatan konseptual. Ada dua isu yang dihasilkan dari penelitian ini. Bagaimana pola perdagangan pengaruh? (2) Bagaimana regulasi perdagangan pengaruh di Indonesia? Hasil penelitian pada isu pertama menemukan tiga pola perdagangan pengaruh, yaitu horizontal, vertikal, dan vertikal dengan perantara. Adapun isu kedua, disimpulkan bahwa perdagangan pengaruh belum diatur dalam hukum positif Indonesia, tetapi diatur dalam UNCAC 2003.

Kata Kunci: Korupsi; Tindak Pidana; Perdagangan Pengaruh

Abstract: This research discusses a new form of corruption crime in the form of influence peddling. The background of this research stems from the regulation of influence peddling in the United Nations Convention Against Corruption 2003 and the increase in the number of corruption cases. In this study, a normative type of research that is prescriptive and technical in nature is used. This research uses two approaches, namely the legislative approach and the conceptual approach. There are two issues derived from this research. How is the pattern of trading in influence characteristics? (2) How is the regulation of trading in influence in Indonesia? The results of this research on the first issue found three patterns of influence trading, namely horizontal, vertical, and vertical with intermediaries. As for the second issue, it was concluded that influence peddling is not yet regulated in Indonesian positive law, but it is regulated in the UNCAC 2003.

Keywords : Corruption; Criminal Offense; Trading In Influence

1. Introduction

Corruption is one of the forms of crime that has become widespread in Indonesia. This is quite tragic considering Indonesia is a rich country with a substantial population. Criminal law expert from Hasanuddin University, Prof. Andi Hamzah, in his book titled "Corruption in Indonesia: Problems and Solutions," once quoted Fockema Andreae's opinion on the origin of the word corruption. Fockema states that corruption is a word derived from the Latin word "corruption," which in turn comes from an older Latin word, "corrumpere" (Hamzah, 2003: 9). Through this root word, it then spread into many languages and was eventually adopted by many countries such as English: corruption, corrupt; French: corruption; and Dutch: corruptie (Hamzah, 2003: 9). According to the existing historical facts that the Netherlands occupied Indonesia for a long time, it can be concluded that the word "corruption" in Indonesia is derived from the Dutch language.

The Great Dictionary of the Indonesian Language (KBBI) defines corruption as a deviation or misuse of state funds (companies, organizations, foundations, etc.) aimed at seeking personal or others' gain. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the Anti-Corruption Law) in Article 2 Paragraph (1) defines corruption as an unlawful act committed to enrich oneself or others or corporations that can harm the state finances or the national economy. Based on several definitions of corruption that have been outlined above, it can be concluded that corruption is an unlawful act that causes financial loss to the state or corporations.

Corruption crimes can occur anywhere and anytime without regard to place and time (Suparman, 2014: 211-213). This implies that corruption has the dimension of organized crime and can be categorized as a transnational crime. The categorization is based on the process of corruption occurring. In the process, corruption is carried out in an organized, systematic manner, and operates across national borders. Therefore, when corruption is uncovered, law enforcement officers will have difficulty finding where the assets from the proceeds of the corruption crime are located (Mendrofa, 2015: 2827).

Corruption can also be viewed as a form of crime that deprives a country's welfare (Faridzi & Nachrawi, 2022: 3014-3015). The impact of this deprivation of welfare can be felt from various perspectives, two of which are social and economic. From a social perspective, corruption can disrupt national stability and security, undermine the rule of law, and increase crime rates. Meanwhile, from an economic perspective, corruption affects the pace of economic development by the government and hinders the rate of poverty alleviation.

From the numerous problems caused by corruption, this also affects the classification of corruption crimes. Corruption is classified as an extraordinary crime. The impact arising from the existence of corruption crimes is evident from the decline in the welfare of a country, as corruption results in significant losses that directly affect the financial stability and welfare of the people. In the effort to eradicate corruption, which is classified as an extraordinary crime, law enforcement officers also require extraordinary efforts in handling it. Corruption in Indonesia can already be said to be one of the rampant problems. This is evidenced by the increasingly declining rank of

anti-corruption efforts each year. For example, in 2023, Indonesia ranked 115th out of 180 countries.

Many factors influence the increase in corruption cases in Indonesia, one of which is the development of information technology (Jufri Galaento, 2023: 5). The advancement of increasingly sophisticated information technology seems to erase the distances that exist in the world. Almost all activities can be conducted through social media without the need for face-to-face interaction. This obviously also has implications for the sophistication of new modes of corruption. Therefore, the government needs to be vigilant considering that Indonesia has more than 200 million people, making it more vulnerable as a target for the spread of new crime methods. One of the new modes of corruption that should be watched out for is the existence of influence peddling, commonly known as trading in influence. Actually, influence peddling has long been regulated under the United Nations Convention Against Corruption (UNCAC) 2003. However, until now, Indonesia has not created regulations that can accommodate the criminalization of trading in influence. Therefore, in this article, the Author will discuss (1) What are the patterns and characteristics of trading in influence? (2) How is the regulation of trading in influence in Indonesia?

2. Methods

Research methods are a systematic arrangement of procedures for conducting research. Systematic can be understood as a process carried out with a clear plan of activities and stages of implementation. The research method serves to provide guidelines for the author in conducting analysis, studying, and understanding legal research (Sihombing & Hadita, 2022: 4). In this study, the author uses a type of normative or doctrinal research that is prescriptive and technical in nature. The prescriptive nature is intended to provide recommendations, suggestions, and views on an issue oriented towards improvement (Marzuki, 2017: 69-70). Meanwhile, the technical nature is intended as an application of research results that does not stop at description but also includes actions taken to address the issue (Marzuki, 2017: 60). The library materials used consist of three types: primary legal materials, secondary legal materials, and tertiary legal materials. The approaches used in this research consist of two types: the statutory approach and the conceptual approach.

3. Analysis and Discussion

3.1. Patterns and Characteristics Trading in influence

The Oxford Dictionary defines influence peddling as the use of a position or office held, along with the political influence of others, to gain undue advantage and benefit (Bulu & Mustajab, 2022: 3453). From this explanation, it can be concluded that in the case of influence peddling, it can be divided into two. First, the phrase "the use of an office held" means that the actor in this influence peddling is someone who holds power. Meanwhile, the phrase "political influence held by others" means that the perpetrator of influence peddling is someone else, not the person who holds that influence. The objective to be achieved from these two forms of influence peddling is

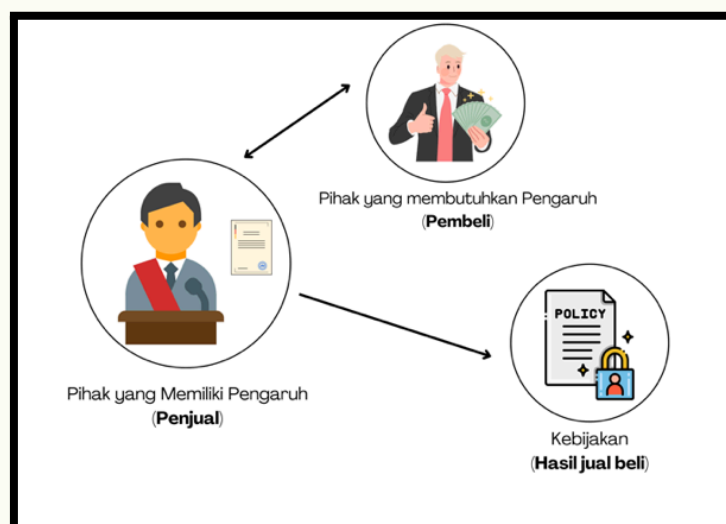
an improper purpose and benefit. If contextualized with the wording of the last phrase in Article 18 of the UNCAC, then this fulfills the element of "...undue advantage" or undue benefit.

It appears to be a problem that has become quite global, Black Law Dictionary defines trading in influence as an abuse of power by someone by obstructing the freedom possessed by others and replacing their goals. This definition is considered to have a broader interpretation compared to the definition released by the Oxford Dictionary (Bulu & Mustajab, 2022: 3353-3354). In the Black Law Dictionary, influence peddling is defined as more than just political influence on someone's behalf, but also as a broad misuse of power. At first glance, this influence peddling has several elements that are similar to gratification and bribery. However, if we make a comprehensive comparison with the regulations on gratification and bribery in the Anti-Corruption Law, the regulations on bribery and gratification in the Anti-Corruption Law have a narrower scope of application.

The Anti-Corruption Law still cannot prosecute someone who engages in influence peddling if that person is not a state organizer or a civil servant (Susilo et al., 2016:3). Trading in influence has a form of relationship in the form of a trilateral relationship, which means that in the *modus operandi* of trading in influence, three related parties are involved: an actor who receives the influence and provides a reward in the form of an undue benefit, and two actors, one who has the influence and one who trades the influence (A. Saputra & Mahyani, 2017:85). Trading in influence has several patterns, including the following:

a. Vertikal Pattern

Gambar 1. *Trading in influence* dengan Pola Vertikal

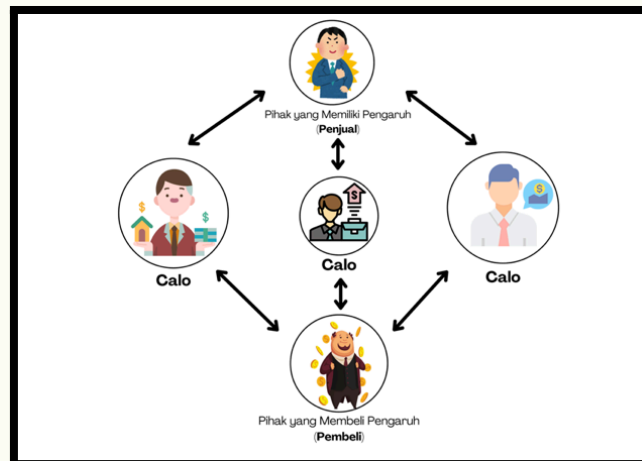


In this vertical pattern, the parties involved in an influence trade consist of only two parties (A. Saputra & Mahyani, 2017: 85). The first party is someone who holds a position or power that inherently includes influence in the form of policies. The second party is someone who buys that influence to gain undue benefits in the form of the

creation or non-creation of a policy. This vertical pattern is often encountered in a political transaction (Palma et al., 2014: 29-31).

b. Vertikal Pattern Using A Broker

Figure 1. *Trading in influence* dengan Pola Vertikal menggunakan Calo

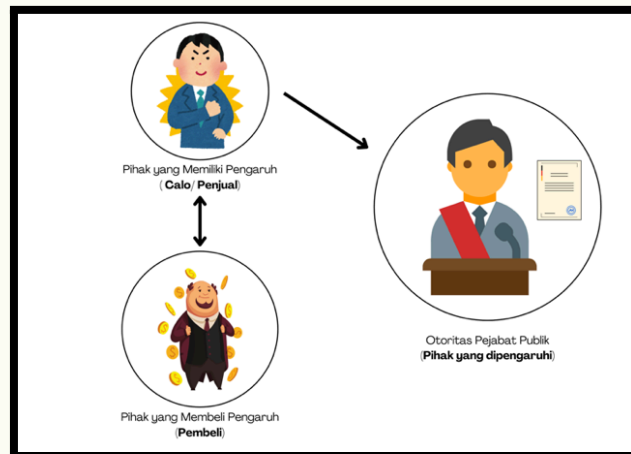


In the form of influence trading with a vertical pattern, it involves three parties. First, there is the party that has influence or power. Second, there are brokers who trade and exploit the influence of the first party or influential individuals. Generally, brokers in the form of influence peddling crimes are parties who have a special closeness to those in power. Thirdly, the party that buys or uses the services of the broker to gain undue advantage from the first party or influential person (Fariz et al., 2014: 31).

In this vertical pattern, there is an element of nepotism carried out by someone who holds power or an influential position. Therefore, this model of influence peddling using intermediaries is closely related to the element of nepotism. Some forms of activities that are often encountered using this vertical pattern include procurement projects, government employee recruitment, and even the judicial process (Fariz et al., 2014: 31-32).

c. Horizontal Pattern

Figure 2. *Trading in influence* dengan Pola Horizontal



In the form of influence trading with a horizontal pattern, there is a difference from the previous two patterns. This difference involves cooperation between several parties. This is evident from the party with an interest or the buyer of influence collaborating with the broker to obtain influence from someone who holds power or an influential position. In this horizontal pattern, the payment for the purchase of such influence is not given directly to the party who holds the influence (A. Saputra & Mahyani, 2017: 85-86). Instead, it is given to the party acting as a broker. This is done to disguise the form of the crime. If the payment is made directly to the influential party, it will be categorized as a bribe, whereas if it is paid to a broker, it will not be categorized as a form of bribery. This pattern is often used within political party environments, which of course have connections with stakeholders in the executive realm (Fariz et al., 2014: 35).

Trading in influence is often equated with several forms of crime that have been criminalized as offenses. For example, trading in influence is often misinterpreted as extortion and bribery. Whereas in fact, trading in influence has different characteristics from those two forms of corruption. Here, the author explains the differences between trading in influence and gratification and bribery (Fariz et al., 2014: 30-40).

a. The Difference Between Trading In Influence and Bribery

In conducting an analysis of the difference between trading in influence and the form of corruption known as bribery, the Author uses three distinguishing indicators. First, when compared using a comparative indicator in the form of legislation. Trading in influence in Indonesia has not yet been regulated into positive law. However, trading in influence is actually one of the mandates of the United Nations Convention Against Corruption 2002 as outlined in Article 18 (a) and Article 18 (b). Meanwhile, bribery has been regulated in Indonesian positive law as outlined in the Corruption Eradication Law, Article 5, Paragraphs (1) and (2), Article 11, Article 12a, and Article 12b. Second, compared to the indicator that involves committing a trading in influence crime, it has a form of relationship involving two to three parties, often referred to as a trilateral relationship. However, trading in influence can

also involve a two-party relationship (bilateral relationship). The actors in trading in influence consist of influence sellers, intermediaries, and those who buy influence. Whereas bribery has a bilateral relationship, which involves two parties, namely the bribe recipient and the bribe giver. The recipient of the bribe is a state official, and the giver of the bribe can be either a state organizer or a private party. Third, when compared using the indicator of the form of the act, in trading in influence, the actions taken by the perpetrator do not directly conflict with their obligations and authority. Whereas in bribery, the actions taken by the perpetrator directly conflict with their duties and authority. This is because the abuse of duty and authority is a key element in proving bribery.

b. The Difference Between Trading In Influence and Extortion

Trading in influence, besides often being equated with bribery, is also frequently interpreted as a form of extortion. There is one main difference that distinguishes trading in influence from extortion. The difference lies in the element of the act. Extortion has a main element of the use of violence or threats of violence. This is in accordance with the provisions stated in Article 368 Paragraph (1) of the Criminal Code, which explains that if someone intends to seek profit for themselves or others unlawfully by using violence or threats of violence, they may be sentenced to a maximum of nine months in prison. Whereas trading in influence generally does not involve acts of violence or threats of violence. Trading in influence more commonly uses subtle methods such as lobbying someone in power or with influence.

3.2. The Regulation Of *Trading in influence*

Trading in influence is a new form of corruption crime. Actually, there are regulations that govern the form of trading in influence, namely in the United Nations Against Corruption (UNCAC) 2003, specifically in Article 18 Chapter 3 on Criminalization and Law Enforcement. The essence of the article explains that influence peddling is a promise or offer made by someone to a public official and an acceptance by the public official or another person. However, in Indonesia, there is still no regulation regarding influence peddling. Although Indonesia has ratified the UNCAC since 2006, as stated in Law Number 7 of 2006. The act of trading in influence has been included in Chapter III on Criminalization and Law Enforcement, specifically in Article 18. Article that defines Influence Peddling into two forms

- a. **Article 18 letter (a)** defines influence peddling as a promise, gift, or offer directed at public officials or others, directly or indirectly, with the aim of causing public officials to use their actual or perceived influence, with the expectation of creating benefits in the form of administration, public authority, or undue advantages from such actions for others or the initial instigator.

- b. Article 18 letter (b)** defines trading in influence as a form of request or acceptance by public officials or others, directly or indirectly, with the aim that public officials use their influence, whether real or perceived, with the intention of creating benefits in the form of administration, public authority, or undue advantages from such actions for others or the initial instigator.

Based on the explanation of Article 18 regarding influence peddling, several explanations can be derived from it. First, trading in influence is not classified as a mandatory offense under UNCAC, as can be seen from the wording of the initial sentence of the article, which states "Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally..."

Which means the state is given full freedom to consider whether the form of crime in the form of influence peddling needs to be regulated in its national law (Marbun, 2017: 54-56). Second, the form of crime in the form of influence peddling can be categorized into two forms, namely active and passive forms. The active form of influence peddling is seen in Article 18 Letter (a), which involves the act of making offers to others, while the passive form is seen in Article 18 Letter (b), which involves the act of accepting influence peddling (O.S Hiariej, 2020: 68). Third, in the trading of influence, there is an element of intent as the purpose. The proof of the element of intent as the purpose is facilitated by the phrase "... in order that the public official or the person abuse his or her real or supposed influence with a view...", In other words, there is no need for direct abuse of influence, but it is sufficient based on the idea that the action constitutes an abuse of influence (O.S Hiariej, 2020: 69).

4. Conclusion

Influence peddling as the use of a position or office held along with the political influence of others to gain undue advantages and benefits. Influence peddling has three patterns: vertical pattern, vertical pattern with a broker, and horizontal pattern. In addition, influence peddling differs from extortion and bribery. There are three main distinguishing indicators between trading in influence and bribery as forms of corruption. First, from the regulatory perspective, trading in influence has not yet been regulated in Indonesian positive law, even though it has been mandated by the United Nations Convention Against Corruption (UNCAC) 2002 in Articles 18 (a) and (b), whereas bribery has been clearly regulated in the Anti-Corruption Law. Second, in terms of the relationship between the actors, trading in influence can involve trilateral or bilateral relationships, while bribery only involves a bilateral relationship between the giver and the receiver. Third, in terms of the nature of the act, actions in trading in influence do not directly contradict the obligations or authority of the perpetrator, whereas in bribery, there is an abuse of authority that is the main element in its proof. Thus, trading in influence has different characteristics and requires special attention in regulation and law enforcement in Indonesia. Whereas regarding bribery Trading in influence is often misinterpreted as bribery or extortion. However, there is a key difference that distinguishes trading in influence from both of these crimes. In the case of extortion, the main element is the use of violence or the threat of violence, as

regulated in Article 368 Paragraph (1) of the Criminal Code. On the other hand, trading in influence does not involve violence or threats of violence, but rather uses more subtle methods, such as lobbying individuals who hold power or influence. Thus, trading in influence has unique characteristics that distinguish it from bribery and extortion, both in terms of actions and the approaches used.

Trading in influence is a new form of corruption that has been regulated in Article 18 of the UNCAC 2003, but has not yet been adopted into Indonesian national law despite the UNCAC being ratified through Law Number 7 of 2006. Article 18 defines trading in influence in two forms, namely active (offering) and passive (accepting), and emphasizes the element of intent as the purpose in its execution. UNCAC gives discretion to the state parties to determine whether the trading of influence needs to be regulated in their national laws. This crime can be considered as abuse of influence, whether real or perceived, to obtain undue advantage.

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