Formulation of Criminal Law Policy Against Influence Trading as A Criminal Act of Corruption

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KEYWORDS	ABSTRACT
criminal law policy; trading in influence; corruption crimes	This research aims to examine the regulation of the formulation of trading in influence as a Corruption Crime according to positive law and analyse the criminal law policy towards the formulation of trading in influence as a Corruption Crime in the future. The research method used is normative juridical with analytical approach, with the specification of description analysis. The results showed that the absence of regulation regarding the formulation of the offence of trading in influence in Indonesian positive law causes law enforcement officials to often use the offence of bribery to criminalise while between bribery and trading in influence are two different things. The offence is different from the offence of bribery and other corruption offences so it is necessary or a different crime from the category of corruption-related crimes covered by the relevant Legislation. In order to achieve the objectives of the law as stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia that Indonesia is a State of law, as a form of legal development through legal policies that formulate existing rules with elements, namely each party involved, the form of trading in influence regulated in the respective regulations, the perpetrators who carry out these acts, the form of action and also the form of giving and receiving from the parties for one purpose, namely obtaining an undue advantage or benefit.

1. Introduction

Corruption (Poerwadarminta, 1966) (Andreae, 1983) (Prakoso, 1990) (Sudarto, 1996) (Hasibuan, 2018) (Mulyadi, 2020) (Klitgaard, Korupsi, & Hermoyo, 2001) is categorized as extra ordinary crime (Olii, 2005), as a criminal act that is considered a common enemy with a transational crime nature (Hidayat, 2022) occurs in developing countries but also occurs in developed countries (Fariz, Sjafrina, Sari, & Herawan, 2014). According to (Bacio Terracino, 2011), there is no one widely accepted definition of corruption. In fact, (Groot et al., 2015) suggest that there are at least three variations in the definition of corruption, namely based on public office-centered, market-centered and public interest-centered. Therefore, handling corruption requires strong prevention efforts, such as increasing government transparency and accountability, strengthening law enforcement agencies,

active public participation in combating corruption, increasing public education and awareness about the dangers of corruption, and international cooperation in combating corruption.

In Indonesia, a strong legal basis in the eradication of corruption is Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. A year later this law was then amended again with the issuance of Law Number 30 of 2002 concerning the Corruption Eradication Commission. This law authorizes the KPK to investigate, prosecute, and prevent corruption.

Based on empirical facts, in recent years, there has been a paradigm shift in the world of corruption with the emergence of the term "trending influence" through the mode of trading influence (important decisions) or access (utilizing networks and personal relationships) to people who have power (important positions or public officials) for personal or group gain. Trading influence is a form of corruption that is difficult to describe and understand (Slingerland, 2011) because it has its own level of complexity.

Normatively, influence trading is regulated in Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003). In article 18, it defines trading influence as an act of promising influence for personal or group benefit (Fajriah, Adnyani, & Hartono, 2021). Systematically construct trading influences as stipulated in article 18 letters (a) and (b) of the United Nations Convention Against Corruption (UNCAC) on Trading in Influnce, Article 18.

On a practical level, trading influence as a new paradigm in corruption in Indonesia has occurred in Indonesia. In all these cases, there is abuse of power and unethical relationships between state officials, political parties, and private companies that seek to influence government decisions for personal gain. This kind of corrupt practice is a serious threat to the integrity of the government system and hurts public trust in state institutions. Therefore, handling criminal acts of corruption, including trading in influence, must be carried out seriously and firmly to create a clean government environment and free from corrupt practices that harm the community at large.

The current trend of "influence trading" in corruption shows that the handling of corruption cases is no longer limited to conventional investigations and the application of punishment alone. However, in judicial practice, trading in influence mutatis mutandis is equated with bribery, gratification and extortion as stipulated in Article 5 paragraphs (1), (2), Article 11 and Article 12 of Law Number 31 of 1999 jo Law Number 20 of 2001.

2. Materials and Methods

This type of research is normative juridical more dominant descriptive analytical (Soekanto, 2015) with a statutory approach (Ibrahim, 2006), conceptual approach, case approach (Marzuki 2014), and comparative legal approach (Eberle, 2011). Research data is sourced from primary and secondary legal materials (Ali, 2021), namely the 1945 Constitution, the Criminal Code, Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 concerning Criminal Acts of Corruption, Law Number 7 of 2006 concerning the Legalization of the United Nations Convention Against Corruption, and the United Nations Convention Against Corruption (UNCAC) concerning Trading in Influnce, Article 18. Data obtained through literature studies are analyzed and analyzed based on qualitative methods.

3. Result and Discussion

Implementation of Influence Trading Arrangements on Criminal Acts of Corruption According to Current Positive Law

Of the many corruption problems that occur in this part of the world including Indonesia, corruption often occurs in political parties and one of the most attention. This phenomenon does not only occur abroad but domestically. As can be seen from the global corruption baromiter survey

released by transparency international which shows that political parties are institutions that are perceived to be corrupt by respondents. The occurrence of corruption cannot be separated from political factors or related to power. Lord Acton who lived in 1834-1902 stated that "power tent to corrupt, but absolute power corrups absolutely" which means power tends to corruption, but excessive power results in excessive corruption as well (Surachmin & Cahaya, 2011).

The phenomenon of corruption that occurs in contemporary times has developed so rapidly both in terms of mode and actors, so it is difficult to argue that law enforcement is increasingly difficult to sanction actions that can be categorized as a criminal act of corruption, focusing research on trading influence in influence.

The act of trading influence trading in influence certainly has characteristics that are very similar to bribery. However, in positive law in Indonesia, trading in influence is still included with bribery.

Discussions on trading in influence have been conducted since 1993 in the Council Of Europe's Criminal Convention On Corruption (CEO Convention). To date, 43 countries have ratified the CEO Convention, especially on trading in influence. The State of Indonesia as one of the countries that ratified or ratified The United Nations Conventions Against Corruptions (UNCAC) on September 19, 2006. It turns out that the Indonesian state still has not formulated trading in influence on the corruption law (Manohara, 2023). Sanctions for corruption trade influence in Indonesian criminal law, namely the positive law cannot be separated from the criminal sanctions for bribery.

Indonesia sanctions perpetrators of the crime of trafficking influence in equated with bribery. The crime of bribery has been regulated in U.U Tipikor, Article 5, Article 6, Article 11, Article 12 letters a, b, c, d, e, f, g, h, i, then article 12 b. In the articles mentioned above, it is very clear that the criminal act of corruption trading influence trading in influence, namely bribery, is a criminal offense that must get punishment for the perpetrators, because the crime can harm the country's economy or finances, acts that are unlawful, then enrich themselves or corporations. These sanctions start from physical sanctions or imprisonment and fines, the shortest imprisonment is 1 year, and the maximum is 20 years, then fines, starting from the least is Rp. 50,000,000.00 and the most is Rp. 1 billion Red and White Library Team 2007.

Trading in Influence is a form of corruption by trafficking influence where the act is done by deliberately promising, offering or giving to a public official or another person, directly or indirectly, an undue advantage, in order for the public official to abuse the real, or predicted, influence of an undue benefit to the original instigator of the act or to people Another by using his power.

Furthermore, trading in influence arrangements are regulated in Article 18 letters (a) and (b) of UNCAC. In essence, based on these provisions, there are two parts of trading in influence, namely: active trading in influence which means providing an offer to trade influence as contained in article 18 (a), and passive trading in influence which means accepting an offer to trade influence contained in article 18 (b).

If the provisions of article 18 are concluded, the form of error from the article is intentional which means that the perpetrator wants the act and its consequences. The subject of the law that can be punished from the article is not only public officials, but also any person, whether or not they have a relationship with such public officials. The formulation of the article extends criminal liability to perpetrators who trade influence. Not only a person who trades influence on a public official, but also an intermediary in the act of trading influence can be held criminally liable. With the term "undue advantages" the form of profit that does not necessarily lead to two forms, can be in the form of position and material benefit.

Trading in influence caused by juridical factors, namely in the form of weak punitive sanctions, as well as opportunities for breakthroughs in laws and regulations related to criminal acts of corruption. When discussing weak sanctions for trading in influence criminal cases, it means that thinking analysis can lead to two aspects, namely the role of judges in handing down decisions and

sanctions that are indeed weak based on the sound of articles and verses in laws and regulations related to trading in influence crimes.

Literally, corruption is an act of misappropriation or embezzlement that benefits others or oneself in the form of evil, destructive, and rotten acts. Corruption is not only an extraordinary crime but also an organized crime. Moreover, corruption has an effect that knows no national borders and has an effect on lawlessness in almost all parts of the world with a very dangerous category (Olii, 2005).

Conceptually, it is true that it is difficult to understand and describe the form of the act of trading influence. In fact, the formulation of influence trading is similar to bribery except that influence trading is broader. It is called broader because the trading in influence formula deals with "the abuse of influence that is considered to exist or that is real". In the formulation of influence trading can also ensnare actors who are not officials or state organizers because in trading in influence there are three parties, namely public officials / state administrators as owners of influenced authorities and people who have influence and sell their influence (not necessarily public officials / state administrators), and intermediaries (in certain forms influence trading involves brokers). However, not all forms of influence trading involve brokers or brokers, therefore actors in influence trading can also be only 2 (two) parties.

The element of undue advantage is not the only thing that distinguishes influence trading from bribery because there are several other fundamental differences, including (1) Parties in influence trading or trading in influence is a trilateral relationship, (2) In trading in influence the actions of an actor have nothing to do with the authority he has or it can be said that there is no violation of his authority or obligation, While corruption, bribery, the actions of the perpetrator have something to do with the authority or obligation he has. In influence trading is divided into 3 patterns, including: First, Vertical Pattern (often occurs in the case of political transactions), Second, Broker Vertical Pattern, and Third, Horizontal Pattern, this pattern is divided into 3 parties, namely clients or interested parties, influential parties also concurrently brokers, and public official authorities.

In addition to often being identified with bribes, trading in influence is also identified with extortion. The difference between trading in influence and blackmail can be seen from the elements, if in blackmail the threat of violence is the main element, in trading in influence there is no element with "violence or threat of violence". The act of trading in influence with "unlawful" elements contained in bribes or gratuities with the same purpose. Trading in influence can be said to be part of the motive for corruption or part of mens rea (the inner attitude of the perpetrator when committing his evil actions or intentions). So for now the pattern of influence trading itself can still be constructed in existing law.

In the new Criminal Code has not been explained about Trading In Influnce, the new Criminal Code only discusses Bribery in article 605 which is the same element as the corruption law but which distinguishes the sanctions both imprisonment and fines

This is very unfortunate because trading in influence has been widely carried out as the modus operandi of corruption crimes accompanied by bribery so that so far bribery articles or provisions of article 55 paragraph 1 to 1 of the Criminal Code (participating in doing / medepleger) are associated with bribery if there is participation. Because the absence of trading in influence arrangements is considered a criminal act of corruption, so the perpetrators cannot be convicted because of the legal vacuum. In fact, trading in influence is a delictum sui generis (a stand-alone criminal act), so trading in influence can still occur with or without bribes.

Formulation of criminal law policy against influence trading as a future corruption crime

Indonesia as a state of law (Azhary, Rasyidi, & Suny, 1992) (Rahardjo, 2009) (Fadjar, 2016), means carrying out state activities that must be supported by concern in order to realize the ideals of the state, every actor / official must find out what concern is available to him for the country. This concern is the essence that animates the work, namely with passion, empathy, dedication,

commitment, honesty and courage. Since renewal is in the public interest, it should be a continuous work carried out in accordance with the development of society or the public itself. Jerome Hall argued that the improvement or development of criminal law should be a permanent and continuous undertaking and detailed records of it should be kept and maintained.

Adopt the term from the provisions in UNCAC, and according to the author the term Public Officer is the most appropriate because it is broader and not only limited to Public Servants or State Administrators. The definition of Public Officials in the Law on the Eradication of Corruption is in accordance with the definition of Public Officials in UNCAC (Article 2). Realizing this, the TPK Bill has been published regarding the act of Trading in Influence as stipulated in Article 4.

According to the authors, this means "undue advantage" in the United Nations Conventions Against Corruption covers a wide scope, ranging from incentives promised or offered to public officials or others, to all forms that place public officials or others in a better position (advantage) for policies directed at the public sector by violating legal procedures or mechanisms that exist. The form of "undue benefit or benefit" is something tangible or valuable, such as money, valuables, political positions, promotions, and so on. In addition, "undue benefits or gains" can also be intangible, such as information, sexual pleasure, entertainment, and so on.

The formulation of article 18 letter a of the United Nations Conventions Against Corruption includes formal offenses because there is no need for the consequences of the act, what matters is the way a person or public official trades his influence, namely by giving undue promises, offers, or benefits. Similarly, the formulation of article 18 letter b of the United Nations Conventions Against Corruption also includes formal offenses. Simply by proving that a person or public official receives or asks for undue benefits by other people or public officials, it can be said to have committed a criminal act of corruption.

Then what is meant by "abusing authority, opportunity, or means that exist because of position or position" is to use the authority or power, opportunity, or means attached to the position or position being held or occupied by perpetrators of corruption crimes for purposes other than the purpose of granting authority or power, opportunity, or means.

The next element is "may harm the State's finances or the State's economy". In this provision, the word "may" indicates that the criminal act of corruption is a formal offense, that is, the existence of a criminal act of corruption is sufficient with the fulfillment of the elements of the act that have been formulated not by the emergence of consequences. Then what does the word "harm" mean To lose or to be reduced or to shrink or to be degenerate. Thus, what is meant by the element "can harm State finances or the State economy" is to be a loss or to be reduced or to shrink or to be a decline in State finances or the State economy (Moeljatno, 2021).

From the results of the research that the author gets, there are 3 kinds of Trading In Influence Forms that are very influential in the renewal of Criminal Law in Indonesia, namely the vertical Trading In Influence model, the vertical Trading In Influence model with brokers, and the horizontal Trading In Influence model. The method of legal renewal mechanism against the offense of trading in influence in Indonesia Evolutionary Method / Evolutionary Approach This method provides improvements, refinements, and amendments to long-standing regulations. Global Method / Global Approach This method is carried out by making separate regulations outside the Criminal Code, such as new laws on corruption in general. Compromise Approach This method is done by adding a separate chapter in the Criminal Code regarding certain crimes. That in terms of the relationship between the offense of trading in influence and the offense of bribery in the criminal act of corruption is that the two offenses are almost the same, but the range of the offense of Trading In Influence is wider because it involves "abuse of influence that exists or is considered to exist" (real or supposed influence), not "do or not do" (according to the will of the bribe-giver). Trading In Influence offenses include formal offenses because there is no need for the consequences of the act, what matters is the way a person or public official trades his influence, namely by giving undue promises, offers, or

benefits. and also Influence trading is a form of bilateral relationship and trilateral relationship. This is different from the criminal act of bribery which is a form of bilateral relationship because it occurs between the bribe giver and the bribe recipient.

There are 3 (three) elements, there are three elements that must be considered in the law enforcement process, namely elements of legal certainty, legal expediency, and legal justice. With legal certainty, the community will be more orderly, because it benefits from law enforcement. In essence, in law enforcement there must be a compromise between these three elements. All three must receive balanced attention, although in practice it is not always easy (Mertokusumo, 1977).

According to the authors, the element of the use of influence is replaced by "abusing its real or perceived influence". With such editorials, the understanding is broader, not only people who have positions but including people who have certain closeness with officials who have influence can be entangled with the provisions of trading in influence.

Even if it will be regulated about the act of receiving both "active" and "passive", according to the author it is better to separate and make it in a separate verse, so as not to be ambiguous and complicate proof later. But the author argues that this is not necessary, because as to whether the act of receiving "active" or "passive" does not need to be separated, the main thing is whether there has really been acceptance of either a promise or something by a public official or other person who has influence. Regarding active and passive, it will be used as a consideration for the severity of punishment for perpetrators.

The most difficult element to prove is the element of "Abusing real or perceived influence", so that some countries do not criminalize IT actions, as AAELP said that the difficulty in criminalizing influence trading is how to know an official has been affected and prove a causal relationship between the acting actor and the actor being influenced.

Actually, the level of difficulty of proof is relatively the same as bribery and gratification, but with evidence clues in the form of wiretapping results of telephone conversations including SMS, BBM and others, it can be easily known and proven. Similarly, to overcome the difficulty of proving the existence of influence trading, according to the author, when wiretapping conversations are carried out on the parties involved, it will be easy to know and prove.

In addition, there is a need for arrangements regarding reverse proof of the provisions for trading influence, as has been applied in Article 12 letter B concerning gratuities. With reverse evidence, when in fact the perpetrator has received a gift both material and immaterial (undue benefits) but there is very little evidence that can be used to prove the existence of an act of trading influence, then the perpetrator is required to prove that the receipt is a legitimate acceptance without any connection with his influence. If the perpetrator cannot prove that acceptance is based on a valid right, it can be used to strengthen the proof that acceptance from the perpetrator is because he has abused / exploited his influence.

In addition, to prove the existence of the act of trading influence, you can find and find the facts of the imbalance of relationships between people who influence and people who are affected, for example imbalances in relationships due to economic and psychological factors. This also turns out to be true in civil law which in judicial practice is also known as a form of factor causing the occurrence of defects of will in the form of abuse of circumstances (e.g. van omstandigheden or undue influence).

in this study offers two categories in the act of trading influence that can be formulated in the revision of the PTPK Law. First, "any person who gives any promise or offer or gift to a public official or any other person, either directly or indirectly in order for such public official or other person to abuse his real or perceived influence with the intention of obtaining something from an administrative or public authority for the benefit of that person or anyone else". Second, "any person who accepts a promise or offer or gift of any thing, directly or indirectly, of undue benefit to himself or to any other person in order for such public official or person to abuse his real or perceived

influence with the intention of obtaining something from an administrative or public authority for the benefit of that person or any person".

Indonesia must provide certainty in eradicating criminal acts of corruption, including in the formulation policy on Trading in Influence (trading influence). Given that actions that are substantially included in the act of Trading in Influence have clearly grown and developed in government and political life in Indonesia, but are considered as "bribery" and there is no legal certainty in law enforcement to combat criminal acts of corruption.

The formulation of corruption in the Corruption Eradication Law in Indonesia is a stand-alone criminal formulation. The elements in the formulation of this law are threatened with using a certain type of crime with a certain criminal system. This includes corruption by enriching oneself, another person or a corporation, then bribery by giving or promising something, and bribery against public servants in a way that remembers the strength of their position. Of the various types of corruption, influence trading is not regulated in positive law in Indonesia. However, influence trading is often equated with bribery. Corruption and influence trading are such acts that have a close relationship because of their own nature that trading influence is the cause of corruption. Future reforms of the criminal law urgently need to be formulated or criminalized for influence trafficking offenses so that all acts of corruption that meet the elements of influence trading can be immediately overcome. The formulation of the criminal act of influence trafficking in Indonesian criminal law is evidence of the consequences of Indonesia's responsibility to ratify UNCAC. By implementing this, Indonesia has succeeded in participating clearly and actively in the eradication of corruption globally.

4. Conclusion

The conclusions in this study can be formulated as follows: (1) The absence of regulation regarding the formulation of offenses about trading influence in Indonesia's positive law causes law enforcement officials to often use bribery offenses to criminalize while between bribery and about trading influence are two different things. Offenses that are different from bribery offenses and other corruption offenses so necessary or crimes that are different from the categories of corruption-related crimes covered by the relevant laws and regulations. (2) In order to achieve legal objectives as stated in article 1 paragraph 3 of the Constitution of the Republic of Indonesia Year 1945 that Indonesia is a State of law, as a form of legal development through legal policies that formulate existing rules with elements, namely each party involved, the form of influence trading acts regulated in their respective arrangements, the actors who commit these acts, The form of action and also the form of giving and receiving from the parties for one purpose, namely obtaining an undue advantage or benefit. In accordance with the theory of criminal law policy, reform in terms of offenses and sanctions to other parties, especially those who have influence and / or public officials who abuse their authority and influence for negative or unlawful acts that can even harm the state. Specifically, the Article on influence trading in Law Number 31 of 1999 and Law Number 20 of 2001 concerning the Eradication of Corruption so that there is no legal vacuum in the event of a related case about influence trading.

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