

Criminal Legal Aspects Of Trading In Influence

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Abstract

Trading in influence is increasingly under public scrutiny, as legal cases emerge that are detrimental to the public, businesses, and the state. Trading in influence is often used by officials and/or their subordinates or colleagues to influence the policies or actions of fellow officials for their own benefit and/or the benefit of others. This trading in influence is also fraught with business collusion and bribery, involving the abuse of real or supposed influence. Provisions are needed that can cover not only civil servants or state administrators but also business actors, who are difficult to prosecute under the Corruption Law (UU TPK). This is because the scope of this offense is broader, encompassing unlawful acts, unfair business competition, and other legal aspects. Although this act is clearly detrimental, the perpetrators often escape the reach of the law due to laws and regulations that do not explicitly regulate and provide sanctions. Although Indonesia has ratified the UN Convention Against Corruption, Vienna, 2003, through Law No. 7 of 2006, Indonesian laws and regulations do not specifically regulate Trading in Influence. This study aims to examine the harmonization of Indonesian laws and regulations in relation to the UNCAC, with the specific goal of determining legal liability for trading in influence through a criminal law approach

A. INTRODUCTION

Trading in Influence often occurs in Indonesia, carried out by state officials or people who have authority and power (Hukum & Pengaruh, 2013). Law enforcement officials are struggling to prosecute perpetrators due to limited regulations. The Criminal Code, a product of Dutch colonial rule, is no longer adequate to handle new crimes (Bego et al., 2025). Even some new legislation currently does not contain provisions on trading in influence. Trading in influence, or what is better known as trading in influence, is an act carried out by intentionally promising, offering, or giving to a person, public official, or other person, directly or indirectly, an undue advantage, so that the public official abuses his or her real or perceived influence, an undue advantage for the original instigator of the act or for another person (Effendi et al., 2023). Trading in influence is an element of promising and then trading influence for which there is then compensation in the form of the traded profit

(Hukum & Pengaruh, 2013). This action is possible without using bribes, but is carried out through a kinship or collegial approach.

In Indonesia, the act of trading in influence is increasingly under public scrutiny because of the trend being carried out by public officials, political party officials and businessmen (Hamiruddin, 2021). Even an official who uses his power/authority can influence the policies or actions of other officials or subordinates for the benefit of himself and/or others (Manohara, 2023). The closeness of party elites to power is used to control government projects in order to obtain a number of funds as services (fees) for managing these projects (example cases: beef imports, the Hambalang case, TCW is strongly indicated to have arranged projects funded by the APBN and APBD in Banten, the *Papa Minta Saham* case involving the former chairman of the DPR, namely Setya Novanto, a member of the DPR named Dewie Yasin Limpo in the bribery case of the micro hydro power plant project in Deiyai Regency, Papua, as well as the case of the former chairman of the DPD Irman Gusman and so on). In this case, if those who commit the crime are state officials as regulated in Law No. 28 of 1999 concerning the State Administration that is free from KKN, then they can be charged with this Law and most of these actions can be charged with the Law on the eradication of criminal acts of corruption.

However, in some cases, this act is difficult to classify as a corruption offense, because it involves more than just public officials. Political figures outside the executive and legislative branches tend to trade influence with subordinates, party cadres, or colleagues to influence certain decisions (Husen, 2024). These perpetrators are difficult to prosecute using the Corruption Eradication Law because one of the requirements for bribery is that the recipient must be a state official. For example, the case of the former president of the Prosperous Justice Party (PKS), Lutfi Hasan Ishak, and the former chairman of the United Development Party (PPP), Muhammad Romahurmuzy, coincidentally served as members of the legislature. Therefore, when they accepted bribes, they could be prosecuted under the Corruption Eradication Law. The Indonesian Corruption Eradication Law cannot be used to prosecute actors involved in trading in influence if the perpetrator is not a state official (Suryanto, 2021). Most corruption in the political sector involves legal corruption, meaning the unlawful abuse of political power that harms state finances, and moral corruption, meaning political power lacks political ethics and marginalizes the interests of the people, thus reducing the fulfillment of substantial rights (Hartanto et al., 2024). Corruption cannot be separated from political factors or those related to power. The term "misappropriation of state funds" was popularized by Lord Acton, who lived in England from 1834 to 1902 (Coucter et al., 2020). He stated that "Power tends to

corrupt, but absolute power corrupts absolutely", which means that power tends to corrupt, but excessive power results in excessive corruption.

Nearly every country in the world, both developing and developed, faces the problem of corruption. One global response to this problem was the establishment of the United Nations Convention Against Corruption (UNCAC) in 2003 in Mérida, Mexico, which aimed to raise awareness among countries about the dangers of corruption that can undermine democratic institutions and ethical values (Webb, 2005). One form of corruption regulated in the UNCAC, specifically Article 18, is trading in influence. Indonesia has ratified the UNCAC through Law Number 7 of 2006. However, to date, provisions regarding trading in influence have not been incorporated into the Corruption Eradication Law (UUPTPK). As a result, existing regulations create loopholes for political elites or influential parties who are not state officials to trade in their influence for material gain. Because this practice often does not involve bribery of state officials, it is difficult to prosecute under the current UUPTPK (Sewu, 2015).

The state-of-the-art research on trading in influence shows that academic studies have developed across various approaches, but still leave gaps in the context of harmonizing Indonesian national law. First, Alkostar (2009) research highlights the practice of influence peddling in political and power relations in Indonesia, emphasizing that the proximity of party elites to the center of power is a dominant factor in controlling government projects. This study confirms the existence of relational patterns that are difficult to address with conventional bribery offenses. Second, Lamijan & Undaris (2022) analyze the correlation between state modernization and the increasing complexity of corruption, including the abuse of influence in public decision-making processes. They conclude that the more complex governance, the greater the opportunity for corruption based on informal networks of influence.

Third, Anita Mihardja et al. (2020) examine the expansion of criminal liability through the doctrine of vicarious liability, particularly in the context of corporate crime. This research opens up the conceptual framework that accountability does not always stop with the direct perpetrator but can extend to parties with control or command relationships. Fourth, Kurniawan & Hapsari (2022) examines the development of the doctrine of vicarious liability in the Indonesian legal system and emphasizes the importance of normative limitations to avoid conflict with the principle of *nullum crimen sine culpa*. Fifth, Bego et al. (2025) criticize the limitations of the Criminal Code as a colonial product that is not fully responsive to modern forms of crime, including trading in influence, which has not been explicitly formulated in Indonesian positive law.

While these five studies make important contributions, most remain partial—whether focusing on political aspects, the doctrine of liability, or criticizing regulations—without comprehensively integrating an analysis of harmonization between national provisions and international standards as stipulated in the United Nations Convention Against Corruption (UNCAC), particularly Article 18 concerning trading in influence. Thus, there is a need for academics to systematically examine the integration of UNCAC norms into the Corruption Eradication Law, while simultaneously formulating an adaptive model of criminal liability for non-state actors who trade in influence.

Based on the description above, these issues can be formulated in the following problem identification:

1. What legal aspects arise from the act of trading in influence?
2. How is the law enforcement practice for trading in influence?
3. What laws must be harmonized to support the implementation of provisions regarding trading in influence in Indonesia?

B. METHODS

This study employs a normative legal research (doctrinal legal research) method with a qualitative approach (Rizkia & Fardiansyah, 2023). The focus of the study is directed at analyzing positive legal norms related to trading in influence and their conformity with the provisions of the United Nations Convention Against Corruption (UNCAC), which Indonesia ratified through Law Number 7 of 2006. The research aims to identify normative gaps and regulatory disharmony within the Corruption Eradication Law (UUPTPK) concerning the practice of abuse of influence.

The approaches used include the statute approach, conceptual approach, and case approach (Rahayu, 2020). The statute approach is conducted by examining the provisions of the Corruption Eradication Law and the Criminal Code (KUHP) to assess the possible construction of the offense of trading in influence. The conceptual approach is used to understand the distinction between bribery and abuse of influence as a form of modern corruption. Meanwhile, the case approach analyzes law enforcement practices through relevant cases, including those involving Luthfi Hasan Ishaaq and Irman Gusman, to examine how bribery provisions have been applied to acts substantively containing elements of trading in influence.

The legal materials used consist of primary legal materials (legislation and international instruments), secondary legal materials (scholarly journals and academic literature), and tertiary legal materials. Data collection is conducted through library research, and the analysis is carried out qualitatively using systematic and

comparative interpretation to formulate the need for legal reform and to strengthen legal certainty in regulating trading in influence in Indonesia

C. RESULTS AND DISCUSSION

Legal Aspects Arising from Trading in Influence

Trading in influence is defined as an act carried out by intentionally promising, offering or giving to a public official or another person, directly or indirectly, an undue advantage, so that the public official abuses his real or perceived influence, an undue advantage for the original instigator of the act or for another person (Sitorus et al., 2024). The narrow meaning of the meaning of Trading in Influence is using influence (kinship, family, friendship or other relationships) to incite a public official in order to smooth the interests of a businessman or perpetrator of corruption. This corruption does not use bribes, so this corruption is carried out through kinship.

Based on the provisions of Article 18 of the United Nations Convention Against Corruption (UNCAC), an act can be classified as a criminal act of corruption if it fulfills the following elements:

- Actively trading influence.

Actively trading influence is the active use of influence by a person on a public official by making promises or offers or providing undue benefits to a public official or other person, whether carried out directly or indirectly so that the public official or other person abuses their existing or perceived influence with the intention of obtaining undue benefits for the benefit of the original instigator of the act or for another person. Thus, those subject to criminal penalties under this provision are "any person" who makes promises or offers or provides inappropriate benefits so that public officials abuse the influence they have. A person is deemed to have committed a criminal act of corruption by actively trading influence if they fulfill the following elements.

- 1) Done by everyone;
 - 2) The act was carried out intentionally;
 - 3) The act in question is in the form of making promises, offers or providing inappropriate benefits;
 - 4) The gift is addressed to a public official or other person;
 - 5) Carried out either directly or indirectly;
 - 6) With the aim that the official concerned abuses the influence he has;
 - 7) Done with the intention of obtaining undue benefits for the interests of the instigator or other person.
- Passively trading influence.

In contrast to the act of actively trading influence, passively trading influence is the request or acceptance of improper benefits carried out by a public official or other person, either directly or indirectly, either for himself or for another person, where the public official or other person who requests and receives the improper benefits abuses the influence that exists or is considered to exist with the intention of obtaining improper benefits, whether benefits for himself or for another person or benefits for the instigator. Therefore, those who are threatened with criminal penalties according to this provision are public officials who request and receive improper monetary benefits that they obtain by abusing the influence that exists or is considered to exist with them.

A person can be considered to have committed the crime of trading passive influence if he fulfills the following elements:

- 1) Carried out by a public official;
- 2) The act is carried out intentionally;
- 3) The act in question involves the request or acceptance (either directly or indirectly) of an undue benefit;
- 4) The official in question or another person abuses the influence they have or are perceived to have;

This act provides an undue benefit to the public official, another person, or the instigator. Article 18 of the UNCAC clearly demonstrates a criminal law aspect when someone engages in influence peddling, specifically the legal aspect of corruption. Therefore, someone who engages in influence peddling should be subject to the articles contained in the Corruption Eradication Law, whether regarding gratuities or bribery. The current issue is that the Corruption Eradication Law does not regulate influence peddling. However, it can be prosecuted under influence peddling. If a gift is found, the offenses can be extortion, gratuities, or bribery. Article 18 of the UNCAC is a self-executing treaty, meaning that prohibited acts do not constitute criminal acts because there is no criminal penalty. The primary requirement for a criminal act is the threat of a criminal penalty. Therefore, Trading Influence in UNCAC cannot yet be applied as a criminal act because it has not been adjusted, but if we look at its basic nature as a self-executing treaty, then it could be applied even though it cannot be charged with Trading Influence (Fajriah et al., 2021).

This is based on several theoretical arguments. First, according to the UNCAC, corruption is an international crime. This means that the universal principle in criminal law requires every country to prosecute and punish perpetrators of international crimes. Second, the Indonesian government's ratification of the UNCAC was certainly based on careful consideration that the contents of the convention are appropriate to the situation and conditions of a country actively fighting corruption.

Third, the ratification of an international convention is subject to the general principle of international law, namely *pacta sunt servanda*, which means that agreements made by parties are binding like law.

Regarding the act of trading influence, responsibility develops based on the doctrine of vicarious liability which is taken from civil law and is then used in criminal law practice (11). Article 1367 of the Civil Code states that every person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his responsibility, or caused by goods under his control. There are two important conditions that must be met in order to apply the theory of vicarious liability, namely:

1. There must be a relationship, such as an employment relationship, between the employer and employee; and
2. The crime committed by the employee must be related to or within the scope of his or her employment.

From a criminal liability perspective, the doctrine of vicarious liability is similar to the concept of participation (*deelneming*). Both require at least two individuals: a perpetrator who meets the requirements for a crime (the physical perpetrator) and a perpetrator who does not (the non-physical perpetrator), who can be held accountable. This doctrine is an extension of the concept of participation in criminal liability. The differences can be seen in:

- Participation (*Deelneming*)

Accountability for "non-physical perpetrators" (ordering parties, instigators) is based on the element of intent (intent, desire to commit a crime).

- Vicarious liability

Criminal liability for non-physical perpetrators (superiors, employers) is not based on intent, but rather on the existence of a specific relationship between the person concerned and the physical perpetrator.

This expansion can be seen in that in involvement, non-physical perpetrators can be held criminally responsible when there is an element of intent (*mens rea*), whereas in vicarious liability, even without intent, a person can be held criminally responsible as long as there is a certain relationship.

Compared to some other countries, the act of peddling influence is regulated by Anti-Corruption Laws, such as those in Belgium, France, Hungary, Poland, and Slovenia. These countries establish clear provisions for this act. However, the scope of the offense varies. For example, some laws only criminalize the act of requesting or receiving an improper advantage, while others also cover the giving or promising of similar advantages and stipulate sanctions for both the giver and the recipient. However, it is important to be aware that an act identified as peddling influence in

one country may be categorized as bribery in another country with a different jurisdiction (Jkn et al., n.d.).

Law Enforcement Practices Against Trading In Influence

Trading in influence was first mentioned in Article 18 letters a and b of the United Nations Convention Against Corruption (UNCAC) 2003. This was motivated by the lack of concern of major countries in the world regarding the problems and threats that can arise from acts of corruption, which of course have more negative impacts and hinder development (Hermawan et al., 2024).

In Indonesia, the practice of influence peddling is commonplace and occurs in national life. This practice is carried out by certain officials in the executive, legislative, and judicial branches. Common forms of influence peddling include collusion, which involves committing an unlawful act. This act is carried out because someone holds authority or influence, such as a position within the legislative, executive, or judicial branches. This authority or influence is exercised to facilitate a matter and ensure its smooth running. Influence peddling is not only carried out by certain executive, legislative, and judicial officials at the central level, but also at the regional level, including provincial, district, or city levels. Naturally, this practice is carried out clandestinely because they understand that such actions violate regulations or prevailing societal norms/rules (Aldian, 2018).

Indonesia does not yet have regulations to prosecute perpetrators of influence peddling. If there were, they would use provisions in the Corruption Eradication Law, usually related to bribery. The government and the DPR must consider steps to revise the legislation on eradicating criminal acts of corruption by including articles related to the prohibition on trading in influence.

It's time to criminalize the act of influence peddling as a criminal act of corruption, especially since Indonesia has ratified the provisions of the UNCAC in Law No. 7 of 2006. By criminalizing influence peddling as a criminal act of corruption, political figures who are not civil servants or state officials, including private parties, can be prosecuted.

Several corruption cases have been found to have substantial influence peddling, but because influence peddling has not been criminalized under the Corruption Law, they are prosecuted under bribery laws because the perpetrators happen to be state officials. Influence peddling is often carried out by political figures who are not state officials but wield significant influence over government officials. Recent developments in the methods and perpetrators of corruption indicate that the intellectual actors of corruption often emerge from political forces other than state officials, using their influence to trade. Therefore, it is time for the act of trading in

influence to be regulated in Indonesian positive law, and the most appropriate regulation is through a revision of the Corruption Crime Law.

Any legal revision or reform aimed at improving public welfare is inextricably linked to criminalization efforts, namely the process of determining an individual's actions as punishable. This process culminates in the creation of a law, which carries a criminal sanction. Criminalization is a declaration of an act as a criminal offense, based on normative considerations, the final outcome of which is a decision. Criminalization can also be defined as the process of determining an individual's actions as punishable. This process culminates in the creation of a law, which carries a criminal sanction (Widayati, 2019).

Criminalization can also be viewed from a value perspective, namely a change in values that causes a number of acts that were previously blameworthy and not subject to criminal prosecution to become acts that are deemed blameworthy and require punishment. From a labeling perspective, criminalization is the decision of the criminal law-making body to label human behavior as a crime or criminal offense.

The handling of corruption cases by the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK) shows the involvement of party elites who work to raise funds as political capital for the continuation of the party's operations. Party elites are in the sphere of power, but they are not state administrators. The proximity of party elites to power is exploited to control government projects in order to obtain funds as services (fees) for managing the projects in question (Subekti, 2014). In this case, if those who do it are state administrators as stipulated in Law No. 28 of 1999 concerning the Governance of a State Free of Corruption, Collusion, and Nepotism, then they can be charged under the Corruption Crime Law. If the perpetrators are not state administrators, then the Corruption Crime Law in Indonesia cannot be used to ensnare actors who trade in influence. This occurs because Indonesia has not adopted the provisions on trading in influence as stipulated in Article 18 of the United Nations Convention Against Corruption. This situation creates a loophole for political elites or other influential people who are not state administrators to use their influence to obtain material benefits or improper benefits from project services obtained by third parties.

Legislation That Must be Harmonized to Support The Implementation of Provisions Concerning Trading in Influence in Indonesia

Article 22 of the 2003 United Nations Convention on the Law on Embezzlement of Property in the Private Sector stipulates that each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, in the context of economic, financial,

or commercial activities, the embezzlement by a person managing or working, in whatever capacity, for a private sector entity of any property, private funds, securities, or other valuables entrusted to him by virtue of his position.

Bribery in the private sector is bribery committed intentionally within the framework of economic, financial, or commercial activities. Bribery in this sector is committed against a person working in any capacity, whether for the benefit of the private entity, for themselves, or for another person, with the intention of causing them to act or refrain from acting in violation of their obligations (Zalianti et al., 2025).

Embezzlement in the private sector is embezzlement committed in the context of economic, financial or trade activities, embezzlement by a person who manages or works, in any capacity, in a private sector body of any wealth, private funds or securities or other valuables entrusted to him based on his position. The act of embezzlement is actually regulated in the Criminal Code, but if the punishment is included in corruption, it is hoped that it will have a deterrent effect with a higher criminal threat (Hiariej, 2020).

Article 21 of the UNCAC concerning bribery stipulates three things: first, the legal subject is a person who leads or works in a capacity for a company. Second, the activity is limited to sectors engaged in or carrying out economic, financial, or trade activities. Third, the sector limits involve the business world.

The act of trading in influence does not fall within the definition of state finance or the economy as stipulated in Law No. 31 of 1999. In accordance with the above, it is necessary to amend Law No. 31 of 1999 by adding corruption through trading in influence as a criminal offense, in accordance with the UNCAC recommendations. This is intended to reduce and eliminate the widespread and entrenched corruption. Bribery should be included in the category of corruption crimes. Although criminalizing corruption through trading in influence will not completely eradicate the culture of corruption, it can at least be used as an effort to prevent corruption.

The act of trading in influence can be examined from various legal perspectives, including:

- The legal aspect of corruption, based on an examination of Article 55 paragraph 1, point 1 of the Criminal Code and Article 18 of Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning the Eradication of Corruption.
- The legal aspect of business competition, based on an examination of the provisions on conspiracy as stipulated in Article 1 letter b, Article 1 letter f, Article 22, Article 23, Article 24, and Article 19 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

- The legal aspect of companies, based on an examination of the provisions on good corporate governance, the principle of piercing the corporate veil, the principle of ultra vires, the principle of self-dealing, and the principle of derivative actions as stipulated in Articles 87 to 114 of Law Number 5 of 1999. 40 of 2007

Civil Law Aspects based on a review of the provisions of Article 1365 of the Civil Code.

These provisions, when compared, have both similarities and differences. The similarities prohibit fraudulent, dishonest, and harmful acts from others. This aligns with the development of corruption. Corruption cases continue to evolve and become increasingly complex, both in terms of *modus operandi* and the perpetrators, making it increasingly difficult for law enforcement officials to process certain acts that could be categorized as criminal acts. Meanwhile, each law that could ensnare them seems to stand alone and cannot be enforced integrally. If an act involves violating several provisions, the applicable articles should be layered and carry heavier penalties. This occurs due to the lack of regulations that are inadequate to ensnare the actions of these perpetrators. One such act is trading in influence. In addition to criminal acts in the private sector, trading in influence has emerged and received public attention, where an official uses his power/authority to influence the policies or actions of fellow officials or subordinates for personal and/or other people's benefit. The principle of vicarious liability for corruption, whether in the private corporate sector or among public officials in state institutions, has not yet been implemented in Indonesia. To raise public awareness, particularly public officials' awareness of the forms of gratification, a strategy is needed to require public officials to report their gratification or assets as a form of prevention against corruption.

The act of trading influence is seen in corruption in the procurement of goods and services which is no longer in a conventional form or pattern (such as mark up, mark down, bribery, or gratuity), but there are actions that have long been commonly carried out by perpetrators, but there are no legal regulations that regulate it, namely trading in influence—giving bribes or gratuities that are not given to people who have authority with the intention of influencing the policy of the owner of authority, with the main aim of obtaining benefits for the bribe giver and the bribe recipient (Kahar et al., 2023).

Indonesia has ratified the UN Convention Against Corruption, Vienna, 2003, through Law No. 7 of 2006. However, anti-corruption legislation in Indonesia does not specifically regulate Trading in Influence as a punishable offense. Based on the above background, it is necessary to amend Law No. 31 of 1999 to include Trading in

Influence as a corruption offense, thus becoming a viable tool in eradicating corruption.

The principle of vicarious liability has not yet been implemented in Indonesia, whether in the private corporate sector or for public officials within a state institution. The concept of vicarious liability is derived from civil law and is then applied in criminal law practice. For example, this provision can be seen in Article 1367 of the Civil Code which states that every person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents, or caused by goods under his control.

When linked to the act of trading in influence, if political elites or other influential individuals (but not state officials) use their influence to obtain material benefits or profits from services provided by projects obtained through third parties (the political elites do not have an employment relationship with the third party or the third party is not their employee), then criminal liability cannot be imposed on them.

Strategies that can be used to raise public awareness, especially public officials, regarding forms of gratification are used to trace the wealth of civil servants or state officials. In Law No. 31 of 1999, as amended by Law No. 20 of 2001 concerning the Eradication of Corruption, there are seven forms of corruption: unlawful acts that harm state finances, bribery, acceptance of gratification, conflicts of interest in procurement, extortion, embezzlement, and fraudulent acts.

The explanation of Article 12B of Law No. 31 of 1999, as amended by Law No. 20 of 2001 concerning the Eradication of Corruption, states that gratification is a gift in the broad sense, including money, goods, discounts, commissions, interest-free loans, travel tickets, accommodation, tours, free medical treatment, and other facilities. These gratifications can be received domestically or internationally, and whether they are received electronically or non-electronic. This article means that when a civil servant or state official receives a gift outside of their legitimate income, they have received a gratification. However, all gifts received by public employees or state officials are not subject to criminal penalties under the gratification law if they are promptly reported within 30 days.

For civil servants, the prohibition on accepting gratification is stipulated in government regulations on civil servant discipline (PNS), so all public employees are prohibited from accepting gifts in any form related to their position. Accepting gifts from others has the potential to influence the performance of public servant duties, either consciously or unconsciously. This can influence public servants in the process of providing public services or in policy-making.

Article 12 B paragraph (1) states that any gratuity given to a civil servant or state administrator is considered a bribe if it is related to their position and is contrary to their obligations or duties, with the following provisions:

- For gratuities worth IDR 10,000,000.00 (ten million rupiah) or more, proof that the gratuity is not a bribe must be provided by the recipient;
- For gratuities worth less than IDR 10,000,000.00 (ten million rupiah), proof that the gratuity is a bribe must be provided by the public prosecutor.

The meaning of this article is that gratification that meets the elements of this article will constitute an act of accepting a bribe. This article does not require the existence or absence of a follow-up action from the acceptance of the gift by a public employee, because the act of accepting the gift is already an unlawful act. All gratifications given to public employees are illegal, so a public employee who does not report their receipt within 30 days can be considered to have accepted a bribe, until proven otherwise or they can prove that the receipts are not related to their position. Civil servants and other public employees who are charged with the gratification article are required to prove that the receipt of the gift is not related to their position and is contrary to their obligations and duties, and/or that the gift was obtained from a legitimate source. If the public employee concerned cannot prove that the gratification came from a legitimate source, then they can be punished for accepting a bribe and all assets that cannot be explained can be confiscated by the state.

Accordingly, the person who gives a bribe should also be subject to criminal penalties, as the provision of such gratuities constitutes a criminal act of bribery. Therefore, the person who gives the gratuity can be punished under the bribery provision, namely Article 13 of Law No. 31 of 1999, as amended by Law No. 20 of 2001 concerning the Eradication of Corruption.

In practice, the article on gratuities considered bribery is rarely used to prosecute civil servants or state officials. This indicates that the article on gratuities considered bribery is not yet effective in enforcing the law on corruption. Strategies to raise public awareness, especially for public officials, regarding the forms of gratuities and the need to report gratuities or their assets as a form of prevention against corruption can be implemented by requiring and overseeing the reporting of gratuities by civil servants and state officials. Furthermore, the obligation for public officials to report their assets (LHKPN) can be optimally utilized as a means of investigating the improper wealth of civil servants or state officials. The combination of these two things can optimize efforts to eradicate corruption if law enforcement is carried out seriously.

In Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning the Eradication of Corruption, there are eight categories of corruption offenses:

- Offenses that can harm state finances or the national economy,
- Bribery (active or passive),
- Embezzlement in office,
- Extortion in office,
- Forgery,
- Offenses related to contracting, suppliers, and partners,
- Gratuity,
- Offenses that obstruct or hinder the handling of corruption cases.

Anti-corruption laws and regulations in Indonesia do not specifically and specifically identify the private sector as a subject of law that can be punished. Existing regulations only define everyone, namely individuals or corporations, and the private sector is included in the definition of a corporation.

Article 21 of the 2003 UN Convention on Bribery in the Private Sector (UNCAC, 2003: Article 21) states that:

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the context of economic, financial or commercial activities:

The promise, offering or giving, directly or indirectly, of an undue advantage to a person who manages or works, in any capacity, for a private sector entity, for himself or herself or another person, so that he or she, in breach of his or her duties, will do or refrain from doing an act;

The solicitation or acceptance, directly or indirectly, of an undue advantage by a person who manages or works, in any capacity, for a private sector entity, for himself or another person, so that he or she, in breach of his or her duties, will do or refrain from doing an act.

Regarding the above matter, Indonesia needs to revise Law No. 31 of 1999, as amended by Law No. 20 of 2001, by including the act of Trading in Influence into the crime of corruption in accordance with the recommendations of the UNCAC, and needs to carry out legal construction to apply the provisions of corruption to the act of Trading in Influence.

Discussion of Criminal Law Aspects

The phenomenon of influence trading remains a gray area in the Indonesian criminal justice system. Although Indonesia ratified the UN Convention Against Corruption through Law No. 7 of 2006, provisions regarding influence trading have not been fully incorporated into national law. This creates a significant legal vacuum,

where acts of influencing the decisions of public officials for personal gain by third parties cannot be criminalized independently unless they meet the elements of conventional bribery.

The main obstacle to law enforcement against this practice lies in the normative limitations of legal subjects in the Corruption Law. Bribery articles, such as Articles 5, 11, and 12, strictly require the direct involvement of a civil servant or state official as the recipient of the promise or gift. Consequently, when a private intermediary or non-state actor sells their influence to a businessman to influence policy, they are difficult to prosecute because they lack the formal status of a state official.

This inaccessibility of private actors or brokers often creates a loophole for more sophisticated corruption practices. These brokers typically operate behind the scenes, lacking administrative authority, but possessing personal or political ties to policymakers. Because they are not state officials, their acceptance of commissions for their influence cannot be categorized as bribery by the Corruption Eradication Commission (KPK) as long as no funds are proven to have directly reached the officials involved.

A similar dilemma arises when law enforcement attempts to invoke the gratification law stipulated in Article 12B of the Corruption Law. The gratification law primarily focuses on civil servants' reporting obligations for any official-related receipts. Private intermediaries who do not hold public office are automatically outside the scope of this law. Therefore, even if they receive substantial material benefits from trading access to power, their actions are still considered formally legal.

This inconsistency between international norms and domestic law often requires law enforcement to employ "legal acrobatics" to prosecute brokers. Prosecutors typically use Article 55 of the Criminal Code, which deals with involvement, to link the actions of private intermediaries to public officials. However, this legal construction has a fundamental weakness, namely, if the public official is not proven to have received a material share, then the private actor who carried out the influence trade is often acquitted by the Supreme Court.

The impact of this regulatory vacuum is severely damaging to bureaucratic integrity and the investment climate. Without strict sanctions against trading in influence, the public decision-making process will continue to be distorted by narrow interests facilitated by rent-seeking actors. This creates injustice for honest business actors because decisions are not based on objectivity or quality, but rather on the strength of the intermediary's influence to reach those in power.

The first element underlying trading in influence is the existence of undue reward or advantage. In this context, reward is not limited to cash but includes all forms of material and immaterial benefits, such as promises of office, luxurious

amenities, and the fulfillment of political interests. These actions cover a broad spectrum, from active requests by influential parties to passive acceptance of offers made by interested parties.

Furthermore, the legal subject or primary actor in this crime is the influencer. The uniqueness of this element is its hybrid nature, where perpetrators are not limited to civil servants or state administrators but also include private parties or non-state actors. These private parties are often individuals with special connections to power, such as family members of officials, political party leaders, or consultants, who abuse their actual or perceived influence for personal gain.

The third element involves the target of this influence, namely the public official with decision-making authority. Unlike conventional bribery, where the public official must receive the material directly, in influence peddling, the official may not be aware that his or her name or authority is being "sold" by a third party. The primary focus is on the intermediary's efforts to direct the official's actions or decisions to benefit a particular party, thereby undermining the integrity of the supposedly objective policy-making process.

Finally, the element of purpose determines the corrupt nature of this act, namely, to gain personal or other benefits. This demonstrates that trading in influence is a form of corruption that is transactional in nature but often invisible. The ultimate goal is bureaucratic manipulation, where access to power is converted into an economic commodity. With all these elements met, the UNCAC considers this act to have undermined public trust and the principle of transparency in government, even though no direct state financial loss has occurred.

The need for criminal law reform through the criminalization of trading in influence is increasingly urgent given the complexity and sophistication of modern corruption's *modus operandi*. This effort aims to close the legal loophole that has protected power brokers from prosecution. By explicitly adopting the crime of trading in influence into the revised Corruption Law or through harmonization with the new Criminal Code, the state can take action against non-state actors who have previously enjoyed immunity from the law due to their lack of civil service status, despite their central role in shaping public policy.

Furthermore, this reform is not merely a formality to fulfill international commitments to the UNCAC, but rather a strategic step to strengthen the integrity of Indonesia's judicial and bureaucratic systems. In 2025 and into 2026, discussions on this legal reform increasingly emphasize that without specific articles, law enforcement agencies such as the Corruption Eradication Commission (KPK) will continue to struggle to prove a causal link between the payment of bribes and the actions of influenced public officials. Legal certainty through explicit regulations will

empower investigators to prosecute anyone who trades access to power for personal gain. [3, 4]

Finally, incorporating this offense into national law will shift the paradigm of corruption eradication from one that relies heavily on state financial losses to protecting the integrity of the decision-making process. This legal reform is expected to create a deterrent effect for case brokers and politicians who frequently abuse their close ties to state officials. Thus, the quality of democracy and social justice can be safeguarded because policies are no longer determined by who has access to intermediaries, but rather by the genuine public interest.

The practice of influence peddling has a systemic, destructive impact on the quality of public services in Indonesia. When bureaucratic decisions are no longer based on objectivity, but rather on lobbying power and the large rewards offered through intermediaries, the principle of meritocracy collapses. This causes public services, which should be the right of every citizen, to become commodities accessible only to those with the connections or financial resources to bribe power brokers.

Furthermore, this phenomenon erodes public trust in government institutions. Transparency and accountability become mere administrative formalities, as the actual decision-making process takes place in shadowy spaces through backroom deals. As a result, the resulting policies are often flawed and poorly targeted, as the primary consideration is not technical expertise or the public interest, but rather the fulfillment of promises to those who have provided undue benefits to the influencers. In the long term, this damaged integrity of public services will create wider social inequality. Vital sectors such as business licensing, procurement of goods and services, and law enforcement will be distorted by the interests of rent-seeking individuals. If this practice is allowed to continue without firm legal action, the professionalism of the civil service will erode, replaced by a transactional culture that places "price" above service. This will ultimately paralyze the state's effectiveness in achieving the goal of fair and equitable national development

D. CONCLUSION

Based on the results of the research and normative analysis, it can be concluded that the criminal law aspect of trading in influence in Indonesia still faces a legal vacuum. Although this practice has been recognized as a form of corruption in Article 18 of the United Nations Convention Against Corruption (UNCAC), which Indonesia ratified through Law Number 7 of 2006, this provision has not been explicitly adopted in the Corruption Eradication Law (UU Tipikor). Consequently, the national legal system lacks a specific legal basis for prosecuting perpetrators of trading in influence, so law enforcement still relies on extensive interpretation of existing provisions.

In practice, law enforcement officials, such as the Corruption Eradication Commission (KPK) and the Attorney General's Office (AGO), tend to use articles on bribery or gratuities (e.g., Articles 5, 11, and 12 of the Law on Tipikor) to construct acts that substantially contain elements of trading in influence. However, this approach presents evidentiary challenges, particularly when the perpetrator is not a state official or there is no direct connection between the gift and formal official authority. Unlike conventional bribery, which requires a gift or promise to a public official related to their authority, trading in influence focuses on the use of influence—either real or perceived—by a third party with close proximity to or access to the decision-maker to obtain a specific benefit.

Conceptually, trading in influence comprises at least three main elements: (1) the presence of a perpetrator who possesses or claims to possess influence; (2) the promise, offer, or provision of benefits in exchange for using that influence; and (3) the presence of an official or decision-maker who is influenced, either directly or indirectly. Therefore, the explicit criminalization of this offense in the revised Corruption Law is urgent to address the complexity of modern corruption practices, close legal loopholes for non-state actors, and ensure legal certainty and consistency with Indonesia's international commitments.

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