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Trading in Influence as a Crime in Indonesia Criminal Law System: A Juridical Study

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ABSTRACT

The research aims to find out whether the rules in Indonesian Corruption Eradication can be applied in the case of influence trading and to determine the prospects for regulating influence trading in the Indonesian Corruption Eradication Law in the future. As a research method, the researchers uses a normative research method based on the antinomy between one law and another. The results of this study can be applied to cases of trafficking under influence, including Article 5, Article 12 letters a and b, Article 11 of the Corruption Eradication Law and related to Article 55 of the Criminal Code (KUHP). However, the application of these articles still has several weaknesses, both from legal subjects and related to objective requirements. both in the formulation of the elements of the article and strict sanctions then they do not conflict with existing regulations. The form of regulation can be set forth in a special regulation on trading in influence, or it can also be reformulated with the existing articles in the Indonesian Corruption Eradication Law or modify the elements of Article 18 UNCAC, 2003 concerning trading in influence so that the regulation does not overlap with the existing regulations. exists then that it deserves to be criminalized. This aims to create legal certainty and justice for the community and prevent the community from falling into the act of trading in influence.

Keywords: *Corruption, Criminalization, Trading in influence, UNCAC 2003*

INTRODUCTION

The Corruption is an extraordinary crime (extraordinary crime) where the crime is not only detrimental to state finances and/or the economy, but also violates the social and economic rights of the community as part of human rights. Corruption is defined as the abuse of power for personal gain, which is a major obstacle to economic progress and has a detrimental effect on the welfare of society. Corruption hinders foreign investment, slows economic progress, and increases national unemployment¹

In the context of creating a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the Indonesian government and the public work together to prevent and eradicate corruption in a systematic and long-term manner. Corruption is no longer a local issue; has become a transnational phenomenon that affects the entire society and the economy, then international cooperation is needed to prevent and eradicate it, including the assets recovery confiscated as a result corruption case. Integrity, accountability and good governance must support international cooperation in prevention and corruption eradication.

The Indonesian people have actively joined the international community's efforts to prevent and eradicate corruption by signing the United Nations Convention Against Corruption, 2003, which was adopted in Merida. Subsequently, on 19 September 2006, the Indonesian government accepted and issued Law of the Republic of Indonesia Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003.² Countries that ratify UNCAC are required to prevent and eradicate corruption in their own countries. The participating countries are encouraged by the Convention to coordinate the criminalization of acts that are considered corruption.³

The Corruption crime Eradication's struggle against corruption is not without obstacles. There are still fundamental weaknesses in the Law on the Corruption Eradication, which is often referred to as the UUPTPK. The clause under Article 18 of the United Nations Anti-Corruption Convention, 2003, which "deals with influence", is completely new and foreign to Indonesia's PTPK Law. Influence trading is a type of corruption that occurs in a three-way relationship with actors, including not only state officials but also ordinary people, and is carried out through the exchange of gifts or promises. These guidelines seem comparable to the purpose

¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005).

² Hamzah. Andi, *Korupsi Di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2017).

³ Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional Dan Internasional* (Jakarta: PT RajaGrafindo Persada, 2005).

and element of bribery or pleasure at first glance. The UUPTPK does not contain criminal provisions that regulate in the event of trading influence (TI) violation.⁴

In essence, trading in influence is corruption behaviour that is contrary to morals and ethics because the aim is to obtain illegal and improper profits by exploiting or abusing the power of a position or power that comes from other people through political relations, friendly relations, or relationships. other. There are still many corruption cases found in various corruption cases, but they cannot be prosecuted because the UUPTPK has not yet criminalized trading in influence crimes. Even if there are still many influencers who are not state administrators, law enforcement will apply the bribery article when there is an act of buying and selling influence, whether it is carried out by state officials or civil servants, Even if there are many influencers who are not state officials or civil servants, such as party officials and leaders other political parties, can give influence in the process of state administration, law enforcers will apply bribery rules.

The most serious legal problems arise when the perpetrators of buying and selling influence are not state officials or civil servants; As a result, trading in influence actors cannot be arrested by UUTPK if they do not include state officials or civil servants. Anyone with power can engage in influence trading, but the perpetrator has little control over his actions. The culprit, as in the case of the sugar import quota, is Irman Gusman, as Chairman of the DPD RI. The question is whether the clause against bribery can be applied to affected traffickers. Many cases of influence trading are then charged with bribery laws that are irrelevant to their actions.

Article 1 of the Criminal Code states: "There is no crime if it was not previously regulated in a statutory provision", meaning that it is difficult to catch criminals who are not included in the Criminal Code. Trading in influence, which has not yet been officially regulated, has resulted in a legal vacuum in the Indonesian judiciary. For situations of trading in influence, judges can use the Law of the Republic of Indonesia Number 7 of 2006 concerning Ratification of UNCAC, 2003 conducting legal construction, because the legal system used by the Indonesian state requires prior regulation into legislation. This is certainly a barrier to the Corruption crime Eradication in the future, as Indonesia's current positive law does not classify influence trading as a corruption charge.

Indonesia has judgement in positive law that influence trading conducted by state officials or civil servants can be legally prosecuted as a crime of bribery; However, if the person who trades influence in his influence is not a state official or civil servant but a civilian, it is clear that the case cannot be prosecuted legally. Because Indonesia's positive law has not yet regulated this matter, Corruption crime

⁴ Hamzah. Andi, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional Dan Internasional* (Jakarta: PT. Raja Grafindo Persada, 2005).

Eradication law in Indonesia has almost stopped in the face of an incident like this, even though eradicating corruption in politics is a great hope that the public has been waiting for. The government's failure to eradicate corruption will further tarnish the government's image in the eyes of the public in terms of governance, as can be seen from the public's scepticism, public disobedience to the law, and the increasing absolute poverty rate. If there is no great progress, the unity and integrity of the nation will be seriously endangered.⁵

The research aims to find out whether the rules in Indonesian Corruption Eradication can be applied in the case of influence trading and to determine the prospects for regulating influence trading in the Indonesian Corruption Eradication Law in the future. As an early example of a case that will be investigated, consider the corruption case of H. Irman Gusman, S.E., MBA, a statesman, politician, official, and businessman, which was applied in Jakarta by a former official who conducted *Treding in Influence*. He was the Chairman of the Regional Representative Council (DPD) of the Republic of Indonesia from 2014 to 2016 when he was involved in corruption issues. He was who represented West Sumatra Province in the DPD RI was elected. He was as the Chairman of the Regional Representative Council (DPD) of the Republic of Indonesia, his power used to influence the authority of Bulog in setting sugar import quotas for CV Semesta Berjaya's interests, even though he had no authority over sugar import quotas.

RESEARCH METHODOLOGY

The type of research in this legal research is used to normative or doctrinal legal research. Normative legal research involves the study of the law as an object and removes any non-legal material from the scope of this research.⁶ The research is study of doctrinal legal that provides a systematic explanation of the rules governing a particular legal category, analyses the relationship between regulations, explains difficult of areas and may predict future development.

In this research has took studied of the statutory approach, conceptual approach, comparative approach. This study uses materials as a research source that will be sought for processing and will then be analysed in order to find answers to the research problems that the screenwriter wrote. The technique of collecting legal materials that support and relate to the presentation of this research is document study (library study). The research of data collecting is used a tool for collecting legal materials through written legal materials using content analysis. The processing and analysing stages are the steps after the collection of legal materials.

⁵ Rukmini. Milen, *Aspek Hukum Pidana Dan Kriminologi*, (Bandung: PT. Alumni, 2014).

⁶ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 201–207, <https://linkinghub.elsevier.com/retrieve/pii/S1877042816300660>.

All existing legal materials that have been obtained from research results are needed to answer the existing problems. As for the material obtained in the literature study research, statutory regulations (Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning (the Corruption crime Eradication), then the researchers in an article describes and relates it in such a way that can be presented in a more systematic form of writing in order answering the problems that have been formulated.

RESULT AND DISCUSSION

Regional Influence Trading in Indonesia Criminal Legal System.

Influence trading is a type of trilateral relationship in corruption, according to some literature. At least three parties were involved in the crime: two policy makers, including those who sold their influence (not necessarily public officials or state administrators); and someone gives something to a public official or state administrator.⁷

Influence trading follows at least three patterns:⁸

1. Vertical Pattern

- Influence trading with a vertical or upward pattern.
- Certain political or institutional interactions with key people often result in a vertical trend of influence trading models.
- Influential parties in the vertical influence trading model are the most powerful/authorized parties.
- The power used to create incentives for certain people or groups.

2. Vertical Pattern with Broker

Vertical influence trading patterns with scalpers/brokers.

- In the realm of power and public office, the vertical influence trading model with brokers is very popular. Family is one of the closest people to power.
- Brokers, in this concept, are individuals or groups who take advantage of the influence of public authorities.
- This cash is often used in procurement projects and the appointment of state administrators.

3. Influence trading in a horizontal or horizontal form.

⁷ Willeke Singerland, *The Fight Against Trading in Influence*, Saxion University of Applied Sciences, School of Governance & Law (Netherlands: Saxion University, 2019).

⁸ Agustina. Shinta, *Trading in Influence: Peluang Dan Tantangan Penerapannya Di Indonesia*, 2013.

- Customers or intermediaries are the two active parties in the horizontal influence trading paradigm, while the authority of public officials is the affected party.
- Clients give money to powerful people who are not government officials.
- If the client pays money directly to a public official, a bribery charge can be filed immediately.
- The second horizontal model mostly occurs in the realm of political parties that have ties to executive power. People in government institutions are often influenced by external elements, especially from their own political parties, when making policies.

Some observers argue that trading in influence is a type of KKN (Corruption, Collusion, and Nepotism), as defined in Law Number 28 of 1999 concerning State Administration Free of Corruption, Collusion and Nepotism. Is this a valid point of view? To answer all these questions, it is necessary to first define corruption, collusion and nepotism in the context of Law No. 28/1999.⁹

CORRUPTION	According to the laws and regulations governing corruption, corruption is a criminal act.
COLLUSION	Collusion is an illegal agreement or cooperation between State Administrators or between State Administrators and third parties that detrimental other people, society and the state.
NEPOTISM	Any act of a State Administrators against the law that benefits his family and/or cronies against the community, nation and state is called nepotism.

Irman Gusman's Influence Trading Case.

Irman Gusman was caught red-handed as he received a bribe from CV Semesta Berjaya (SB) within the amount of IDR. 100,000,000 (One Hundred Million Rupiah) to help procure imported sugar at Perum Bulog, West Sumatra Province.

Irman Gusman was used his influence to influence the President Director of Bulog, according to the indictment that was hijacked by the prosecutor's office. When Memi, the owner of CV SB, arrived at Irman's house, the collaboration between Irman and CV SB began.

⁹ Mulyadi. Lilik, *Kompilasi Hukum Pidana Dalam Prespektif Teoritis Dan Praktek Peradilan* (PT. Mandar Maju, 2007).

Audari Memi submitted a purchase order for 3000 tons of imported sugar to the Regional Division of the West Sumatra Logistics Agency (Divre) on July 21, 2016, in order to obtain a more affordable sugar supply. Because the price of sugar in West Sumatra had increased of IDR. 16,000 (sixteen thousand rupiah) per kg, has been completed. On the other hand, the Logistics Affairs Agency did not respond to the grant. When Memi's sister visited his houses, he was offered to help at a cost of IDR. 300 (three hundred rupiah) per kilogram. Memi, Irman's sister, grants his request.

Irman contacted the Director of Bulog on July 22th, 2016, at around 19.00 WIB. He is asked that imports to West Sumatra be channelled through the West Sumatra Bulog Divre (Divre) because previously through Jakarta, which was expensive. Irman's brother is also confirmed her as a reliable party to distribute imported sugar. After that, the Director of Bulog contacted the Head of the West Sumatra Bulog Division to ask for Irman's request.

CV SB bought 1000 tons of sugar in the warehouse of Perum Bulog Kelapa Gading Jakarta on August, 21th, 2016. And distributed the sugar in a way that was not in accordance with its original purpose. Following the incident, Memi is called Irman to ask the price of sugar to be sold in West Sumatra.

Memi's sister visited to Irman Gusman's house on September 16, 2016, at 23:00, and handed over IDR. 100,000,000. (One hundred million rupiah). Indonesia Corruption Eradication Commission (KPK) conducted an Operation called Operation Overladen (OTT) at the house of Irman Gusman's brother shortly after the incident.

Based on the General Prosecutor's Office, the defendant was charged with committing the corruption crime as referred to and endangered with imprisonment in Article 12 letter b of Law Number 31 of 1999 concerning the Corruption crime Eradication as amended by Law Number 20 of 2001 concerning Amendments to the Law. Number 31 of 1999 concerning the Corruption crime Eradication. 1999 concerning the Corruption crime Eradication as an Alternative to the First defendant in court by the Attorney general.¹⁰

Since the KPK prosecutors and judges at the Central Jakarta District Court mistakenly took the indictment article, the reconsideration (PK) was approved. Article 12 letter b of Law no. 31 of 1999 concerning Bribery is used. The Supreme Court Justice cancelled the General prosecutor's office under this article. This shows that this is not a bribery operation. Therefore, in deciding reconsideration cases, the Supreme Court relies on Article 11 rather than Article 12 letter b.

Three things are regulated in this article: first, "receiving gifts or promises". Gratuities are included in everything that comes in the form of gifts or promises.

¹⁰ Dosminikus. Rato, *Filasafat Hukum Mencari Dan Memahami Hukum* (Yogyakarta: PT. Presindo, 2010).

And it's not against the law to get gratuities. Gratifications that are not reported to the Corruption Eradication Commission (KPK) within 30 days of receipt of the gratifications as referred to in Article 12 B and Article 12C, are considered invalid. Irman has the right to report gratuities, but the Corruption Eradication Commission (KPK) rejected it.

"Power or authority is tied to his position," said the second. The chairman of the Regional Representative Council (DPD) does not have the authority or authority to import and distribute sugar because Bulog has that authority. As a result, these reasons cannot be used to ensnare Irman.

"Or, in the mind of the person who offers a gift or promise that has something to do with his position," said a third.

Another reason is that the indictment of the Corruption Eradication Commission (KPK) prosecutor which is the basis for the Central Jakarta District Court's decision is based on the construction of influence trading, even though the influence trade sanctions are not regulated in Indonesian positive law. As a result, the Supreme Court considered the decision of the Central Jakarta District Court to have no legal basis. "This shows that the Central Jakarta District Court's decision has been overturned by the Supreme Court, indicating that it violates legal norms."

The Supreme Court decided that Irman's sentence should not be 4 years and 6 months, but 3 years, based on the decision of the Central Jakarta District Court and the granting of Irman's reconsideration petition, because the Supreme Court justice applied Article 11.¹¹

Considering that Irman was already serving a sentence of more than three years in prison when the Supreme Court's decision was issued, he immediately left the Sukamiskin Prison. It means, whatever the editorial, the Supreme Court decision frees Irman, not punishes him.

¹¹ Hamzah. Andi, *Menyibak Kebenaran (Eksaminasi Terhadap Putusan Perkara Irman Gusman)* (Jakarta: PT. Bumi Aksara, 2018).

CONCLUSION

From Irman Gusman case, the Supreme Court granted Irman Gusman's request for reconsideration on September, 24th, 2019 and at the same time annulled decision of corruption court Number: 112/Pid.SUS/TPK/2016/PN.Jkt.Pst. then that decision is automatically died by law. This decision resulted in the argument of the prosecutor and the panel of judges against Irman Gusman at the *judex facti* level being no longer valid. This is because the selection of the prosecutor's office article by the Corruption Eradication Commission (KPK) prosecutor as the basis for the Central Jakarta District Court's decision (Article 12 letter b) was deemed inappropriate by the Supreme Judge who tried the reconsideration of Irman Gusman case. The decision was overturned by the Supreme Court. Therefore, Indonesia really needs to make a more specific law that regulates Trading Influence in the future there will be no legal problems such as Irman Gusman case. Not only ratifying UNCAC, but also needing the stipulation and ratification of UUTIPKOR in the future.

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