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Criminalization of Trading in Influence in Indonesia Law

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ABSTRACT

Corruption is a form of crime that is considered a plague or disease, not only in the national sphere, but also in the international or inter-state sphere. United Nations Convention Against Corruption is a form of active participation of world countries in combating corruption. In Article 18 of UNCAC there is a regulation concerning trading in influence which has not yet been formulated or accommodated in positive law in Indonesia. Though seeing cases of corruption that often occur in Indonesia, the act of trading influence can already be found in Indonesia. This type of research is research with academic goals that are expected to give birth to an academic work. The method used is normative and its specifications are prescriptive, where with the existence of this research, it can produce arguments which can then be useful for building new mindsets and giving a positive thing. The results of this study give rise to arguments based on the facts that Indonesia indeed needs to accommodate the offense of trading the influence as stipulated in Article 18 of UNCAC into positive law in Indonesia.

Keywords: *corruption, trading in influence, criminalization of a crime, criminal law*

1. INTRODUCTION

"Power tends to corrupt, absolute power corrupts absolutely", a statement postulated by Lord Acton, a British historian in the early 20th century who observed that one's morality would diminish with increasing power. This argument is very appropriate to describe a situation where the authorities tend to be prone to abuse their power so that corruption occurs not limited in the form or involving money, but also in the form of other benefits. Indonesia as a state of law implements that all actions or behavior carried out by both the authorities and ordinary people must be accounted for based on the laws or rules that govern it so that legal certainty is maintained and the welfare of the community can be created.) Following up on the vulnerability of corruption that can be carried out by State Officials as the administrators of power, regulations in Indonesia have been enacted regarding criminal acts of corruption.

In general or general concept, Corruption is considered as a crime in which the perpetrators are people from middle to upper class, where the person is considered to have power or wealth so that corruption is often given the nickname as White Collar Crime or white collar crime in which the crime has the subject of someone who is abundant or has excessive assets and is seen as a "respectable" person, because he has a position or position both in government or in the economic industry. This is then supported by the opinion of Indriyanto Seno Adji, where inevitably the conception of corruption is dubbed as White Collar Crime which also changes its behavior or dynamic patterns, whose mode of operation continues to evolve and change in various forms so that it is also dubbed as an invisible crime or invisible crime which therefore requires a special policy in the field of criminal law in eradicating it.

The problem of corruption does not only occur in Indonesia but is already a problem that occurs in other countries both developing countries and developed countries. The impact of corruption itself is considered fatal enough where corruption has the potential to interfere with the development of a country whether it is infrastructure development or development in other fields which aims to support the life of a country's people to be better. In terms of eradicating criminal acts of corruption, of course we need a commitment from the government and cooperation from the community because corruption itself is a crime that continues to evolve with the times, showing a systematic new pattern with a constantly changing mode

of adjusting the legal gap in each country. This can be proven from the number of corruption cases that are increasingly showing new patterns and modes in Indonesia. Marwan Effendy argues that "corruption in Indonesia will never end, the more eradicated will be more widespread, and will continue to grow both in terms of the number of cases and in terms of the state losses caused". This certainly shows that there is a loophole in Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption (Corruption Law) which this gap has the potential to be used by parties are looking for profits that have the nature or morals are not responsible for and then commit an act of corruption, one of which is trading in influence or trading influence.

Trading in influence or trading influence is an act that is classified as a criminal act of corruption which has been included in Article 18 of the United Nations Convention Against Corruption (UNCAC). However, in positive law in Indonesia, trading influence is not specifically regulated in the legislation. Based on this background, the writing of this journal is entitled "Criminalization of the Law on Trade in Influence in Positive Law in Indonesia".

2. FORMULATION OF THE PROBLEM

With the background of the reasons and main thoughts as above, then in the writing of this journal, the main issues to be discussed are regarding:

1. How is trading in influence or trading activities of influence regulated in positive law in Indonesia?
2. How is the formulation of the offense trading the influence then applied to eradicate corruption in Indonesia in the future?

Probabilistic Automata

Corruption is an act which is literally described as a form of embezzlement or misappropriation aimed at getting the interests of oneself or others, and is an evil, damaging, and considered rotten thing. Corruption is considered to arise with causal factors in the form of modernization factors, non-transparency factors in a government system, and of course economic factors. On that basis, it was later seen that in order to deal with corruption, a form of responsibility involving the state and the commitment of the community was needed, which was then useful for opposing criminal practices that could potentially lead to corruption. The ratification of international treaties carried out by a country is evidence that the government is committed and the people in it have also actively contributed in combating corruption. The ratification of an international treaty will bring legal consequences. The consequence of the law in question is that everything contained in or contained in the provisions of the convention must be adopted and followed by the state as a subject of international law. In discussing the legal consequences, in the convention on the eradication of corruption or UNCAC conducted on December 18, 2003, Indonesia was one of the countries participating in ratifying this international treaty. This can be seen in Law Number 7 of 2006 which is the Law on the ratification of UNCAC. Trading influence or trading in influence itself is a part of the criminal act of corruption regulated in UNCAC which can be seen in Article 18 letters a and b of UNCAC.

Trading in Influence based on UNCAC has a definition:
Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
“The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person”.
“The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in orded that the public official or the person abuse his or her real or supposed influene with a view to obtaining from an administration or public authority of the State Party an undue advantage.”
The aforementioned article contains arrangements regarding the definition of trading in influence which in the first point clearly states every promise or offer to a public official or other person, directly or indirectly, which can provide undue benefits so that public officials or that person uses his influence improperly or has the intention to obtain an item or improper benefit from a public official for the interests of instigators or the interests of others; and second, namely requests or acceptance by public officials or anyone, whether directly or indirectly, undue benefit so that the public official or person abuses their influence and is deemed to have the intent and purpose of obtaining benefits from undue public officials.
The terminology of trading in influence is an act with the intention of promising an offer or giving something either directly or indirectly to a public official or someone to obtain a profit. Trading in Influnce in Indonesia is often equated with bribery, whereas bribery with Trading in Influence is two different offenses and can stand alone. The definition of bribery as contained in Law Number 11 of 1980 concerning bribery is:

1. Whoever gives or promises something to someone with a view to persuading that person to do something or not to do something in his duty, which is contrary to his authority or obligations concerning the public interest, is convicted of giving bribes with imprisonment for a maximum of 5 (five) years year and dena as much as Rp. 15,000,000 (fifteen million rupiah).)
2. Anyone who receives something or a promise, while he knows or should reasonably be able to suspect that giving

something or a promise is intended so that he does something or does not do something in his duties, which is contrary to his authority or obligations concerning the public interest being convicted for accepting bribes with imprisonment 3 years or a maximum fine of Rp.15,000,000 (fifteen million rupiah).)

From the definition of trading in influence and bribery above, it can be seen that the act of trading in influence or trading in influence with bribery as defined in Indonesian statutory law are two things that are similar but not the same. One of the elements contained in a bribery criminal act is in the form of intent or not to do something in his position so that it is contrary to his obligations) cannot be fulfilled, because in the offense of trading influence, doing or not doing something that is intended is not limited only in his position only, but as wide as possible. So that it would be more appropriate to include in the elements of the Trading in Influence offense as contained in Article 18 of UNCAC.

Cases where legal subjects originate from not being state administrators, but have access or power to public authorities (such as political officials) can certainly lead to a legal vacuum and the principle of legal certainty cannot be guaranteed by seeing that the Corruption Crime Act applicable in Indonesia currently cannot reach out to ensnare perpetrators.) The case in question is like a case involving a public official Lutfi Hasan Ishaaq. In the case of Lutfi Hasan Ishaaq, he held the position of Commission I of the House of Representatives of the Republic of Indonesia with the scope of duties in the fields of defense, foreign affairs, communication and informatics, and intelligence, it was clear that he was a public official which fulfilled the elements of article 12 The Corruption Act, the subject of which is a public official. Then seeing from this, the fact that the defendant fulfills the element of bribery that is a public official has been fulfilled, but if a case arises where a person who trades influence turns out not to be a public official but a member of a political party or even just someone from community organizations which in fact the person has influence or connection with government officials will create a condition of legal vacuum or legal loophole in our country.

As for talking about the criminalization of a new offense in positive law in Indonesia, when an action cannot be imposed criminal because an action is not included in the formulation of offense, then we need two conditions, namely the act must be unlawful and can be denounced. Of the two conditions, of course, this has already been fulfilled from the offense of trading in influence, where of course when a person acts to trade in influence, the motivation is to obtain a personal or certain benefit in a despicable way because it is not in accordance with the rule of law. In addition, if we examine further, the impact of trading the influence itself is seen large enough where the practice of trading the influence is often done by the private sector to obtain its own benefits, this has an impact where a monopolistic business practices can occur. A concrete example in the case of Lutfi Hasan Ishaaq, PT Indoguna is trying to monopolize the beef import quota. The same thing can also be found in the case of Idrus Marham. This can have a detrimental effect on the industrial sector of the country's economy and 'tarnish' the power of the monopoly law itself and is certainly seen as insulting supremacy from the government.

Then in addition to discussing legal loophole, a fact that must be underlined is that the defendant as an official of Commission I of the House of Representatives engaged in defense, foreign affairs, communication and informatics, and intelligence certainly does not have any authority at all from which the Ministry of Agriculture, but it turns out that at that time served as the Ministry of Agriculture namely Mr Suswono was a member of the PKS Political Party which was headed by Lutfi Hasan Ishaaq at the time. From this it can be seen that what is 'traded' or misused by Lutfi Hasan Ishaaq is not his position as an official in the DPR-RI but the 'connection' or the influence he has as a leader of a political party to another person who is a member of his political party. From the example of the case, of course, one of the main elements driving the spirit of the formulation of the offense of trading in influence is to provide legal certainty for the people of Indonesia.

The certainty of law in question is so that the Law clearly regulates and limits what is wrong and what is right in this context regarding trading in influence. In addition, the formulation of the offense to trade influence, punishment or sanctions provided is also in accordance with the portion that should be received by the perpetrator. The point is that in the cases above, the three of them rely on Article 55 of the Criminal Code concerning inclusion, with the accommodating offense of trading in influence, then of course the hope is the degree of sanctions given to the appropriate or appropriate perpetrators whether it is heavier or otherwise.

The formulation of a criminal act of corruption as contained in the Corruption Act is a standalone criminal act formulation. Certain elements in the formulation of the law use the type of criminal with a particular criminal system. Of the various formulations contained in the Anti-Corruption Law in Indonesia, it is unfortunate if Indonesia, which has ratified an international convention on the eradication of corruption, has not yet adopted the formula regarding the offense of trading in influence.

The draft RKUHP which is aspired to immediately replace the existing KUHP is an effort to reform national law in Indonesia. Barda Nawawi Arief argues that the effort to reform criminal law has a main element in which renewal of criminal law is a part of a policy that aims to renew the substance of the law with the expected consequences of creating an effective law enforcement process. The criminalization of the offense of trading in influence is a matter that needs to be formulated immediately to see that the impacts resulting from the act of trading influence have a great potential to harm the country's finances, to the detriment of society, and thus hinder a country's national development process.

With the formulation of the offense of trading in influence, this is certainly in line with the spirit of progressive law in which progressive law itself has the meaning of changing, practicing reversal, or in general means making a new breakthrough in the science of law in accordance with the

needs of society. The spirit contained in progressive law is to assert that law is for humans. The connection with trading in influence is where seeing the number of cases that fulfill the element of trading in influence, it has become evidence that the Indonesian people need a regulation or legal basis regarding the offense of trading in influence. Indonesia must create a situation where justice and happiness of the people have a position above the law, not a society that is a prisoner of the system and the law alone.

Looking at other countries which have adopted or adhered to regulations regarding trading in influence, in Spain in Article 428-430 of the Spanish Penal Code, regulations have been formulated regarding trading in influence which covers the scope of active and passive actions. The article contains an important aspect that is different because the provisions contained therein only refer to trading in influence in the passive form, whereas in the active form it is not criminalized as a form of criminal action. Passive trading in influence is divided into two categories namely Article 428 and Article 429 regulating the abuse of influence by influence sellers who are public officials and by each individual. Article 230 regulates the benefits received or requested by public officials or individuals in terms of maintaining their influence.

Besides in Spain, trading in influence is also formulated in the French State where the form of trading in influence is divided into two, namely the form of trading the influence carried out by public officials and the form of trading of influence carried out by individuals. The main differentiator between the act of trading influence with a bribe, that is, those who use their influence to make a profit have smaller consequences even though those who sell influence are subject to severe penalties. Seeing this, then the scope of trading in influence in France tends to be broadened to include acceptance and offers to influence public officials or people who serve in international organizations.

In addition to the two countries, the regulation on the offense of trading in influence can also be found in the country of Belgium which is regulated in Article 247 paragraph 4 of the Criminal Code of Belgium. The formulation of the offense in trading influence in Belgium is considered as a crime of corruption regardless of the article on bribery, both legal and illegal, the main offender is a public official. In the Belgian Penal Code, influence trading has penalties which use approaches and elements similar to those of active and passive bribery.

In Indonesia alone, trading in influence has often occurred in different modes from one another. In addition to the case of Lutfi Hasan Ishaaq, we can also see the case of the sugar import quota carried out by Irman Gusman, and the case related to the construction of a sports center conducted by Choel Malaranggeng. However, it is unfortunate that the regulation on influence trading has not yet been formulated or adopted to date in Indonesia. The Anti-Corruption Law in Indonesia only covers bribes committed by law enforcement and the government.

Influence trading with bribery is two different things in which if an act is not found or there is an acceptance of an amount of money by someone who trades its influence, then this can be an additional factor that proves that the creation of a legal vacuum. In the bribery offense, the concept adopted is the concept of bilateral relationship, but in the offense trading of influence, the concept adopted is the trilaterlal relationship concept. This means that the modus operandi used is involving three parties, namely the perpetrator as the giver of the prize for profit, and the two as well as the perpetrators as the policy makers and the people who have influence. These actors do not have to be state administrators, just have an influence. In bribery, the recipient of the promise or the recipient of a gift is a state organizer or a civil servant.

The formulation of corruption in the Anti-Corruption Act in Indonesia is a criminal act formula that stands alone. Certain elements in the formulation of this law are threatened with using a type of criminal with a certain criminal system. These include corruption by enriching oneself, another person or a corporation, then bribery by giving or promising something, and bribery of a civil servant by remembering the power of his position. Of the various types of corruption, trading in influence is not regulated in positive law in Indonesia. However, trading in influence is often equated with bribery. Corruption and influence trading are acts that have a close relationship because the nature of trading one's own influence is a cause of corruption. Future reform of criminal law is very necessary to formulate or criminalize the offense of trading in influence so that all acts of corruption that fulfill the elements of trading in influence can be immediately overcome. The formulation of the offense of trading influence in criminal law in Indonesia is a proof of the consequences of Indonesia's responsibility for ratifying UNCAC. By implementing this, Indonesia has clearly and actively participated in the eradication of criminal acts of corruption globally.

3.CONCLUSION

Judging from the studies and data that have been obtained as attached above, the conclusions that can be drawn are, first, corruption is a form of embezzlement or misappropriation where the aim is to take advantage for oneself or others' interests, and is considered to be an evil, destructive act and rotten. It needs a responsibility from the state and the contribution and commitment from the community so that corruption can be eradicated. Indonesia is also one of the countries that participated in ratifying UNCAC, this can be seen as stated in Law No. 7 of 2006. However, the act of trading influence or trading in influence as stipulated in article 18 letters a and b of UNCAC has not also regulated in criminal law in Indonesia. Acts of trading in influence or trading in influence have been regulated in other countries such as Spain, France, and Belgium. Indonesia itself has experienced or encountered many cases in which there was an act of trading influence in it such as the case with the defendant Irman Gusman, the case with the defendant Luthfi Hasan Ishaaq, and others. Cases that have an element of trading influence are considered as acts which fulfill the element of bribery. Whereas in a bribery offense what happens is a bilateral relationship while in influence trading, there is a trilateral relationship that is

between the broker, the influence holder, and the profit opinion. The formulation of the offense of trading in influence needs to be considered where the qualifications of a subject who is considered to have influence to influence a public official to commit an act that has the potential to harm the state for the benefit of others is a major focus that is considered important to immediately find its light.

4. SUGGESTION

Seeing the conclusions generated in this journal, the suggestions considered appropriate for immediate application include:

1. The legal vacuum that occurs as a result of not accommodating the offense of trading in influence in Indonesia has an impact where law enforcement officials often tend to use bribery as the main entrapment for acts that fulfill elements of the trading of influence. This has resulted in confusion both for the authorities and the community. For this reason, it is important to have a special regulating regulation regarding the offense of trading in influence as an offense which is included in a criminal act of corruption in Indonesia.
2. With the view that trading influence is a practice that has already taken place in Indonesia, it is important to criminalize the act of trading influence in order to create a legal umbrella or legal basis in ensnaring the influence trading actors.

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