Significance of Qualification of Trading Influence as a Criminal Act

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Abstract

Trading in influence as a corrupt behavior that deviates from ethics and morality is often carried out by public officials or relationships arising from political relations. The trade of influence is aimed at getting an improper advantage. This is due to the absence of criminalization of the act of trading influence into positive Indonesian law. This article is intended to analyze the importance of qualifying the influence of trafficking and how to formulate trafficking as a criminal act. This article is a normative study using a conceptual approach. The formulation of the problem written was analyzed using perspective analysis with grammatical and systematic interpretation. The legal provisions used are relevant arrangements including Law No. 3 of 1980 concerning Bribery, Law Number 31 of 1999 concerning Corruption Crimes jo Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication Criminal Acts of Corruption, United Nations Convention Against Corruption (UNAC). The conclusion of this article is the qualification of trading influence is considered necessary and very important, given the rise of new cases committed especially by public officials.

Keywords: trading influence, criminalization, criminal act

I. BACKGROUND

Indonesia is known as a country that has independent characteristics, this cannot be separated from the form of the state of Indonesia as a state of law. Law is a rule that must be obeyed by all levels of societyindiscriminately. The law itself consists of various kinds, including criminal law, civil law, constitutional law, administrative law, and many more. Criminal law becomes something that is easily found in everyday life which contains acts that are prohibited and included in the category of criminal acts. A criminal offense is an act that is prohibited by a rule in which there are sanctions in the form of certain penalties for the criminal.

One of the many criminal acts that occur in Indonesia is the problem of corruption. Corruption based on Latin is "corruptio" or "corroptus" while in English and French it is called "corruption" and in Dutch, it is "korruptie". Indonesian is known as corruption. Corruption in general is an act that can be detrimental to the country's economy, detrimental to the welfare and interests of the people.

Another opinion arises from EggiSudjana's thought, which explains that corruption is rotten, cruel, dishonest, and can be bribed. As in Dutch terms nietambtelijkcorruptieor Indonesian the word corruption is a bad act, for example, embezzlement of money, bribery activities, and so on. Corruption seems to be a common thing in this country. As one example of the creation of extraordinary crime, criminal acts of corruption parallel to crimes against humanity (Genocide), war crimes, and crimes of aggression. Acts of corruption certainly hurt many parties, this practice of corruption can be found from a small scope to a large scope of the country. Likewise with the perpetrators of criminal acts of corruption, from ordinary people to state officials. This proves that corruption acts to know which people come from. Corruption is also categorized as a white-collar crime. It is undeniable that one of the white-collar crimes of corruption is said to be an invisiblecrime, always experiencing dynamism in its modus operandi from all sides, so that the handling requires criminal law policies.

Indonesia already has rules regarding the eradication of criminal acts of corruption, namely Law Number 20 of 2001. Certainly not only those laws that apply in Indonesia, previously there were other laws namely Law Number 3 of 1971 and Law Number 31 of 1999. Not without reason the law was examined and reviewed. Previous laws were deemed incapable of keeping pace with developments so that newer laws are needed to keep up with existing developments.

One example of a case that was handled by the Corruption Eradication Commission some time ago set three suspects in the case of alleged bribery of selection of positions in the ministry of religion in 2018/2019. Three people in the case were named as suspects after the arrest incident by the KPK, Friday, March 15, 2019. Unfortunately that this case occurred within the Ministry of Religion. an example of others buying and selling positions.

Chronology briefly, three suspects were examined for 1 x 24 hours by the Corruption Eradication Commission, so that the first sufficient evidence was found to determine the three suspects including RMY as a member of the DPR for the period 2014/2019, HRS as Head of the Regional Office of the Ministry of Religion of East Java Province, and MFQ as Head of the Ministry of Religion in Gresik Regency. RMY together with the Ministry of Religion is suspected of taking bribes to influence the results of the selection of high leadership positions, namely: Head of the Office of the Ministry of Religion in Gresik Regency, and Head of the Regional Office of the Ministry of Religion of East Java Province. Two other suspects namely HRS and MFQ allegedly gave bribes to launch their process of occupying the desired position. Position selection allegedly arranged in such a way that HRS is elected as the Head of the Regional Office of the Ministry of Religion of the Regency of Gresik.

As the alleged recipient, RMY et al is alleged to have violated Article 12 letter (B) or Article 11 of Law Number 20 of 2001 concerning Eradication of Corruption in conjunction with article 55 paragraph (1) of the Criminal Code. MFQ suspected as the giver is suspected of violating Article 5 paragraph (1) of the Corruption Crime. Furthermore, in the interest of the investigation, the KPK arrested three suspects for the next 20 days. RMY was detained at the KPK Detention Center in the Red and White Building, MFQ was detained at the KPdam Detention Center at the Pomdam Jaya Guntur branch, HRS was detained at the KPK Detention Center Building C1.

Such a term is associated with corruption offenses of the type of gratification of Article 12 letter (B) or bribery of Article 11 of the Law concerning the eradication of corruption not with a separate article in the form of trading the influence. Even though what RMY did was to influence the results of the selection of high leadership positions which were more precisely associated with trading influence.

Theoretically, based on the doctrine of jurists, the characteristics of gratuity and bribery are different from the characteristics of trading influence. Therefore, linking gratuity and bribery to trading influence is prone to violate Article 1 paragraph (1) of the Criminal Code, namely the

principle of legality because the delusions of trading influence have not been regulated in Indonesia's positive law. As explained by FajarArie in his journal entitled 'Analysis of Criminal Acts of Trading Influence as Criminal Acts in Indonesia' states that the trading of influence and passive bribery has a difference that lies in the subject involved, for example, the effect trafficker can come from people who have large public access or authority. Whereas in the case of bribery, the actors involved are absolutely from the state administrators, differences in the influence of bribery and bribery also lie in the form of acts and regulations in force.

The previous article which discussed Trading Influence as a form of a criminal act was the article 'Criminalization of Influence Trading as a Criminal Act of Corruption 'by RikkyAdhiSusilo, et al. This article explains that trading in influence and corruption has a strong correlation. In criminal corruption, it is not often that the influence of power trade is exploited by the perpetrators to launch their actions. In his writing, AdhiSusilo et al directly focus on the need for a more precise formulation of regulations on the contents of the article on rules on influence trading to be made specifically so that the action of trading influence can properly and precisely be processed. This is similar to the concept that the author wrote in this journal, which explains how the concept of actual influence trading actions so that the signification and urgency of qualifying the influence of trades (Influence) as a crime are considered necessary. But more interestingly, in this journal before formulating the contents of the article in the regulation of influence trading, this journal in detail and to discuss how the influence trading (Influence Tradition) can be formulated as a criminal act we are required to understand whether the influence trade meets the elements assessed as criminal acts so that later we can formulate specific rules and strong article contents to overcome the influence trade (Influence Tradition) as a form of government policy in overcoming existing problems.

II. FORMULATION OF LEGAL ISSUES
1.   Is the qualification of trafficking significant like a criminal act?
2.   How to formulate trading of influence as a criminal act?

III. RESEARCH METHODS
This article uses a normative research methodology using a conceptual approach. The formulation of the problem written was analyzed using perspective analysis with grammatical and systematic interpretation. The legal provisions used are relevant arrangements including Law No. 3 of 1980 concerning Bribery, Law Number 31 of 1999 concerning Corruption Crimes jo Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication The United Nations Convention Against Corruption (UNAC) Corruption Act.

IV. DISCUSSION

IV.1The Qualification of Trading Influence as a Criminal Act is a significant matter

Discussing cases of corruption is not a new problem, this case has long been an issue that needs to be resolved. Onghokhamthinks that a person can be said to have committed a criminal act of corruption when that person has committed separation (fraud) on personal finance and public finance. In Indonesia, corruption has become one of the factors of the country's economic collapse. Corruption is a criminal offense that has gnawed at the system of state government, in other words, corruption has proceeded systemically in the process of implementing state government. Therefore it is very necessary to eradicate this case to save the lives of the nation and the state even more so in the existing government system.

With so many cases of criminal acts of corruption in Indonesia causing many government structures that were built from the results of fraud by corruptors or bribes, the eradication of corruption will be a weapon to conquer the people who are willing to commit bribes or corruption to get a position. The struggle to fight corruption has been widely carried out. But the fact is that there are still many cases of criminal acts of corruption that are carried out repeatedly even with more sophisticated and systematic motives. For example, on the influence of trading influence, the term trade influence is a new thing in cases of criminal acts of corruption. So that a strong and systematic commitment to eradicating this case is needed.

The meaning of "Trading influence" can be explained as follows. Trade is trading, trading, trading, or trading something to get an improper profit. The United Nations Convention Against Corruption (hereinafter referred to as UNCAC) does not provide a definite understanding related to the terms "influence" or "influence trading". Influence is a condition to put pressure on someone to influence their attitudes and opinions. Pressure can be in the form of political power and economic pressure, of course, this pressure can provide benefits for people who want to be influenced. Pressure alone means that public officials use their influence to influence others to commit acts that violate the law. Actors trading influence only from among those who have power. Power is the ability possessed by a person or group to exert influence on a person's behavior or other groups so that the desired objectives are achieved. The presence of power is often accompanied by corruptionbecause most of the background of the perpetrators of corruption are people who abuse power.

Every person who has power always has the authority to misuse, misbruik van Recht or arbitrarily, because this is because a power contains rights and authority, where the rights and authority can make someone feel they have a position more than the other.

Trading influence is a state crime that falls into the category of danger similar to white-collar crime. White-collar crime is a fraudulent act committed by a person or group working in the government sector or the private sector, using positions and authority to influence policy and decision.

In recent years the term Trading influence has appeared in various media, but unfortunately, the rules regarding trading influence have not yet become a written rule in Indonesia. Thus, trading influence actors can be free from a punishment that will ensnare it. Often those who should be included in the trading influence category are classified as bribery, even though there is a clear difference between trading influence and bribery. If it is seen that trading influence has no relationship with corruption, trading influence is the use of the influence of the power held by a public official to influence people to do or not do something evil even though there is no authority with the institution or institution to benefit himself or others. While bribery is fraudulent behavior to get a position that is highly valued, usually in bribery behavior there are two parties namely the giver and the recipient of the promise. Although the recipient of the promise already knows and can suspect that the promise is intended to make him do something or not do something with his job, which is contrary to the authority or obligations concerning the public interest.

Trading Influence Actors are legal subjects who are state administrators who have access to rights or power to public authorities. As explained earlier that the parties involved are those who want profit and those who can trade their influence. Forms of behavior in trading influence the main character of this behavior usually does not have a direct conflict with the authority and obligations that later the benefits derived from Trading Influence are commonly referred to as undue disadvantage.

Article 18 letters a and b of the United Nations Convention Against Corruption (UNAC), explain that Trading Influence is a promise, offer or gift to a public official or another person, directly or indirectly, for a public official or person to abuse his influence to obtain from an official public. Promises referred to in trading influence (trading influence) that is something that is promised or

given does not always have a broader meaning that is all the benefits that are not appropriate and also the promise or gift must not be given directly but can be through intermediaries (brokers).

Unlike bribery, bribery is a legal subject that is an absolute recipient of promises or gifts from civil servants or state administrators. The parties involved are bribe givers (state administrators or private parties) and recipients of bribes must be from in the form of state administrative positions because they have an element of abusing power or authority in office. The form of bribery is that which is contrary to the obligation or the giver of the action there is a relationship with the position of the recipient. The form of receiving something that has a meaning or promise. According to Article 12 of the Corruption Crime Act (Tipikor Law), bribery is the act of a civil servant or state official who receives a gift or promise even though the gift is known or deserved to be given because of the power or authority related to his position, moving to do something in his position which is contrary to obligations and as a cause or result of doing or not doing something in his position.

Based on the description above it can be concluded that Trading Influence triggers the cause of the emergence of corruption, so it should be the root of the problem that gives a gap in abusing power based on the influence exerted. So that they need to qualify trading influence as an act of crime in Indonesia because trading influence behavior is considered to damage the joints of the life of the state, damage the morale of the rulers because of utilizing their authority, grow fertile enthusiasm in carrying out corrupt actions and an act of evil that if carried on will be very dangerous because it meets the adequacy of the conditions, one of which is among the people of high knowledge. Besides trading influence (trading influence) is the public domain because the impact caused damaging the interests of the wider community both material and immoral, which in turn will destroy the social order of society and can interfere with a legal interest.

Dealing with a crime should pay attention to the insignificant principle, meaning that a criminal act must be seen whether or not the level of seriousness and also the magnitude of the impact caused including the value of losses by the provisions of the law.

Trading influencehas a significant principle which is the antonym of the insignificant principle, which means Trading influence is considered as something important and cannot be released just like that. Not formulating it in positive law in Indonesia by having an adverse effect which of course would damage the morale of the nation. Trading influence (trading of influence) is mostly done as a modus operandi of corruption which is accompanied by bribery, so that so far in deciding on a case that trading influence should be a bribery crime. Furthermore, if there is no bribery then it cannot be considered as a criminal offense so that the offender cannot be convicted because of a legal vacuum. Another reason is that Indonesia must show the form of responsibility as a member of the UNCAC which requires Indonesia to resolve its national law. Adopting norms deemed important to Indonesian law is one of the juridical consequences for Indonesia which has ratified UNAC through Law Number 7 of 2006 concerning Ratification of UNAC. The ratification aims to improve and catch up with Indonesia's law in handling corruption cases. Corruption does not only appear in simple forms or patterns, such as markups, markdowns, bribes, gratuities, or even the trading influence and others.

If Indonesia regulates trading influence, it can be said that Indonesia has cooperated in the eradication of corruption with other parties and also Indonesia has harmonized regulations on corruption with other countries that have also participated in ratifying. The formulation thinking related to trading influence in criminal law in Indonesia is how the law can provide sufficient explanation regarding their qualifications, namely public officials who are considered to have influence that can influence the independence of public officials or state administrators to do or not do something based on their authority.Therefore it is necessary to qualify the Trading Influence as a form of crime.

IV.2. **Formulation of Trading Influence as a Criminal Act**

As stated in books II and III of the Criminal Code, there are several formulations of actions that are complemented by criminal sanctions. This is intended to show the types of actions that are prohibited and should not be done. There are several elements or conditions for an action said to be prohibited to be doneso that the terms and elements become a reference that can be a differentiator where the actions are prohibited and not prohibited. For example, in the theft article, there is a provision that anyone who takes the rights of another person accidentally or intentionally without permission from the owner for his interests is called theft. But not all take other people's things. However, not every take someone else's property is called theft, because there are people who take other people's belongings to be stored and then handed over to the owner. therefore in Article 362 of the Criminal Code, another element is added, to have it against the law.

The formulation of a criminal offense is divided into two namely formal offense and material offense. The difference between the two lies in how to formulate it. It is said as a formal offense if what is mentioned or is the subject of the formulation is behavior. Becausethe behavior is considered the main thing to be prohibited. For example, in article 362 of the Criminal Code is a theft article, in that article directly explains that the most important element in the article is the behavior to move (take) goods without rights. While the so-called material offense namely formulating an action in a criminal offense is not seen from how the act took place but rather from the resulting consequences. Examples of material crimes are in Article 351 of the Criminal Code concerning persecution. In this article, the consequences of actions taken are the main factors for formulating criminal acts.

In this increasingly modern era, corruption no longer appears in simple forms such as embezzlement, bribes, gratuities, and so forth. Many types of corruption with other modes such as trading influence. Trading influence is strictly regulated in Article 18 UNCAC letters (a) and letter (b) which states: "Each party shall consider adopting such a legislative and other measures as may be necessary to establish as criminal offenseswhen committed intentionally: original instigator of the act for any other person ... "and the letter b states: " The solicitation or acceptance by a public official or any other person, directly or indirectly .... ". the two articles make it clear that Every country that is a member of UNCAC must consider taking legislative and other actions deemed necessary to determine criminal offenses, i.e. if a criminal act is done intentionally to make a promise of offering or giving to a public official or any other person, directly or indirectly, undue benefit.

Under the provisions of Article 18 of the UNCAC, corruption can be qualified into two types, namely the active and passive use of influence. Active use of influence means that trade of influence is exercised by a person against a public official by making promises, offers or granting improper use, either directly or indirectly, with the intention that the public official abuses his authority or influence to obtain undue benefits for the sake of the interests of the original instigator of the act or others. Whereas passive influence trading is the acceptance of undue benefits carried out by public officials or other people both directly and indirectly, to get undue benefits both for themselves and others in this case public officials use the power and authority available there is her.

Along with the times, there needs to be a legal renewal of the Criminal Code (KUHP), the Criminal Code is considered to be no longer following the development of Indonesia's national criminal law and people's behavior. Various kinds of crimes have taken control of people's lives, even more so the crime of corruption committed by public officials. Because it is funny when a public official should be able to serve the needs of the community without having to pay or in other words to pay to use his influence. Therefore the government is required to conduct a criminal law policy with criminalization or decriminalization. For example, by changing the rules, especially in the case of criminal acts of corruption quickly to improve the welfare of the community.

Law Number 20 of 2001 concerning Corruption as an amendment to Law Number 31 of 1999 concerning Corruption, is an example of the policy taken by the government against corruption. As we know that corruption has harmed not only state finances and hampered national development, but also violated the social and economic rights of society at large.

The draft criminal code (RUU-KUHP) has endeavored to adopt the existence of the article on influence trading. In the Draft Penal Code, a formulation regarding the trading of influence can be found in Article 691 of chapter XXXII with the title Corruption. But it becomes very unfortunate when the revision of the Criminal Code which has been considered long enough has not been able to complete until now. The many obstacles experienced by the government make the Criminal Code revision difficult to declare complete. Of course, this affects the increasingly widespread risk of influence trading carried out within the power environment of those who have influence. As for several types of groups that are considered to influence including:

a.   Public officials as referred to Article 1 number 8 of the Law on Public Information Openness:
b.   Chairman of political parties and structures under them;
c.   People who have familial relations with public officials;
d.   Entrepreneur.

For example, the influence trading case that has received a court decision and has permanent power. Namely the case of Lutfi Hasan Ishaq, wherein that case Lutfi Hasan Ishaq as a member of the Indonesian Parliament had traded influence or Trading Influence. Based on the Supreme Court Decision No.1195 K / Pid.Sus / 2014, dated 15 September 2014, Luthfi Hasan Ishaq was found guilty of committing a criminal act of corruption from article 12 letter an of Law No. 31/1999 concerning Eradication of Corruption as amended by Law No. 20 of 2001 in conjunction with article 55 paragraph 1-1 of the Criminal Code and active money laundering criminal acts from article 3 of Law No. 8 of 2010 concerning Prevention and Eradication of Criminal Acts of Money Laundering jo article 55 paragraph (1) of the 1st Criminal Code jo article 65 paragraph (1) Criminal Code and sentenced for 18 (eighteen) years and a fine of Rp. 1 billion subsidair 6 months confinement and revoke the right to be elected in public office. Whereas in fact, the case carried out by LHI is trading of influence, but the absence of a mechanism regulating this influence trading causes the public prosecutor to tend to accuse the bribery article in cases like this.

If there is no receipt of an amount of money by those who trade in influence, then the Indonesian criminal law faces a legal vacuum because such acts have not been regulated in the Corruption Eradication Law. Regarding corruption cases related to trading influence, that influence trading has a wider scope than bribery, if we look at it again, trading influence is a non-mandatory offense.

V. CONCLUSIONS

Based on the discussion of the problem formulation, it can be concluded that:

1.   Qualification of influence trading (influence trading) is deemed necessary and very important, given the rise of new cases, particularly by public officials. Qualification of Trading Influence is also considered important as a consequence of the juridical consequences of UNAC ratification by Indonesia. So that Indonesia is obliged to adopt norms into Indonesian positive law as a form of Indonesia's seriousness in eradicating criminal acts of corruption. Corruption does not only appear in simple forms or patterns, such as mark-ups, mark-downs, bribes, gratuities, or even Trading Influence and others.
2.   The formulation of Tadding Influence (influence trading) is an important thing to do by the government, bearing in mind the government must continually take legal policy steps that must be following the development of society. Especially in corruption cases. So that later if

there is a case of Trading Influence or what is known as influence trading, it can be resolved with an appropriate legal process, no longer settled on bribery charges.

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