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ADDRESSING LEGAL GAPS IN REGULATING TRADING IN INFLUENCE IN INDONESIAN TRADE SECTOR: COMPARATIVE LESSONS FROM FRANCE AND THE UNITED KINGDOM

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ABSTRACT

Trading in influence is regarded as the exchange of favours where individuals offer or accept benefits due to their influence over public authorities. The practice serves as a tactic used by individuals to seek profit and personal enrichment by circumventing established norms and ethics in fulfilling governmental duties and obligations. Conducting normative legal research on this issue, including the analysis of relevant legal sources and the identification of regulatory gaps, shows that such a legal vacuum creates confusion and uncertainty. Although Indonesia has ratified the United Nations Convention Against Corruption (UNCAC), the latest Criminal Code and Corruption Law in Indonesia do not explicitly regulate trading in influence due to its *non-mandatory* nature, which raises the potential for domestic enforcement of the convention. French and English legal systems have different definitions and rights to criminalise trading in influence. Therefore, this research aimed to recommend the criminalisation of trading in influence in the Indonesian Criminal Code and its detailed inclusion in a specialised anti-corruption law. The measures would provide a clear interpretation of legal provisions, in line with efforts to strengthen anti-corruption institutions. The analysis also addressed and clarified the implications of trading in influence, particularly in the trade sector.

Keywords: Trading in influence, trade sector, corruption, crime.

INTRODUCTION

Trading in influence, often referred to as “influence peddling” in France under Article 432-11 of the French Criminal Code, is defined as the unauthorised acceptance or solicitation of offers, donations, promises, gifts, or other forms of advantage. This offence may include an individual holding public office or an electoral mandate accepting benefits in exchange for performing or abstaining from certain actions related to their duties, or for exploiting personal influence to secure favourable decisions, such as employment or contracts, from public entities (French Anti-Corruption Agency, 2020b). Countries like France and the United Kingdom (UK) recognise the trade in influence but retain discretion to criminalise perpetrators (Slingerland, 2010).

Trading in influence is among the corruption offences outlined in Article 18 of the United Nations Convention Against Corruption (UNCAC). Corruption is a serious legal offence that has a significant impact on the damage and moral collapse of a country. When not addressed effectively through law enforcement, this offence becomes an ingrained and persistent issue. Recognised as an *extraordinary offence*, corruption demands special laws that address vulnerabilities exploited by public officials. Enforcement against corruption follows the principle of “*lex specialis derogat legi generali*,” which holds that specific laws take precedence over general legal principles (Agustina, 2015).

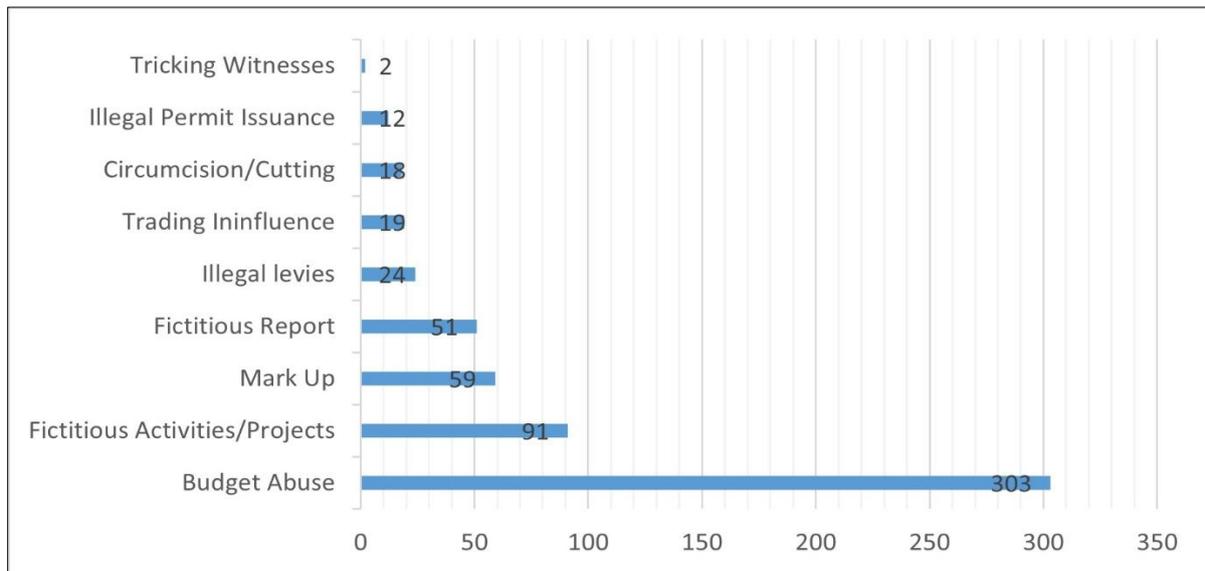
According to the Transparency International report, Indonesia’s Corruption Perceptions Index (CPI) in 2024 dropped to 34 on a 0-100 scale, a decline of 4 points from the previous year (2022). Globally, Indonesia fell from 96th to 115th position in CPI ranking in 2022 (Transparency, 2023), reflecting a worsening perception of corruption compared to other countries in Southeast Asia. The persistence of certain operating methods, or *modus operandi* (Black’s Law Dictionary), defined as distinctive patterns or characteristics in criminal behaviour, continues to show legal loopholes. An increasingly prominent example is “trading in influence,” which often arises from ethical and moral lapses among public officials or includes private sector collusion (Effendi et al., 2023).

In international law, trading in influence is addressed as a corruption offence within UNCAC. However, the inclusion of trading in influence in such a convention is non-mandatory, meaning that its regulation in national law is not required (Lawrence & Adhari, 2021). The classification of corruption offences related to trading in influence is outlined in Article 18, sections (a) and (b) of UNCAC (United Nations Convention Against Corruption, 2003). In essence, UNCAC defines trading in influence as the act of promising, offering, or attempting to provide something to public officials, whether directly or indirectly, with the intent that public officials or an individual with real influence use their authority to gain an undue advantage (Bulu & Mustajab, 2022).

Although Indonesia has ratified UNCAC through Law No. 7/2006, the specific offence of trading in influence remains unaddressed in both its Corruption Crime Law and Criminal Code. This legal vacuum provides room for exploitation, as perpetrators may be defended by claiming that this type of corruption offence is not clearly defined or regulated in Indonesian law. Consequently, enforcing laws against trading in influence becomes challenging, as the lack of a clear legal framework hinders efforts to hold the perpetrators accountable (Pahlevi & Pura, 2021).

Figure 1

Mapping of Corruption Cases by Mode in 2022 in Indonesia



Source. Indonesia Corruption Watch (ICW) 2022.

In 2022, the Corruption Eradication Commission (Komisi Pemberantasan Korupsi/KPK) uncovered allegations of corruption cases involving trading in influence, identifying 19 instances where individuals leveraged their influence for personal gain (ICW, 2023). The absence of specific regulations on trading in influence has created further legal challenges. Therefore, this research aims to provide an overview of the need for legal certainty in enforcing corruption cases, particularly in relation to trading in influence, to prevent the offence from persisting in an unregulated legal space. In addition, as mandated by Law No. 7 of 2006, which ratifies UNCAC (JDIH BPK, 2006), it is crucial to categorise and clearly define distinct corruption offences, including trading in influence, bribery, and gratuities. Each offence requires specific indicators and elements to be thoroughly defined as part of the Indonesian anti-corruption framework.

This research aims to support the government, particularly lawmakers, in considering the incorporation of trading in influence into the Criminal Code and special laws addressing corruption. The analysis shows the relevance of trading in influence as a contributing factor to corruption within the trade sector, both at national and international levels. Indonesia, a country abundant in natural resources, faces challenges in maximising assets for societal welfare and economic development due to governance issues. These particular challenges leave the country vulnerable to loopholes that facilitate corrupt practices.

The prevalence of corrupt practices is largely attributed to weak legal frameworks for combating corruption and limited accountability efforts by the state (Global Integrity, 2024). Therefore, this research aims to provide a data-driven perspective, showcasing that the trade sector is one of the loopholes for trading in influence under the disguise of investment. For instance, the Supreme Court Decision No. 1195 K/Pid.Sus/2014 (page 24) reported the case of Luthfi Hasan Ishaq, who was convicted of corruption, including money laundering and profiting from personal influence in the adjustment of beef import quotas. This case details the misuse of influence for personal or mutual gain (Putusan MAHKAMAH AGUNG Nomor 1195 K/Pid.Sus/2014 Tanggal 15 September 2014-LUTHFI HASAN ISHAAQ, 2014).

Bribery is prevalent in the trade sector, but corrupt actions can take the form of promises based on an individual's position of authority in the government. Specifically, the private sector remains highly susceptible to corruption, with KPK data showing that, as of the first half of 2023, bribery accounted for 399 reported cases (HukumOnline, 2023). Trading in influence, a concept akin to bribery, offers an enrichment avenue for officials and private-sector actors, presenting another complex aspect of corruption that requires targeted legal attention.

METHODOLOGY

This research used a legal method focused on analysing laws and regulations (Joneidy Efendi & Johnny Ibrahim, 2016). Additionally, it aimed to establish truth using scientific logic within a normative framework. The method examined not only Law No. 19 of 2019, which amended Law No. 30 of 2002 on the KPK, but also incorporated additional sources, including doctrine (Christiani, 2016), legal expert opinions, and relevant literature. Furthermore, the research adopted a comparative method by analysing the legal systems of England and France, which followed common law and civil law, respectively, specifically concerning trading in influence. In the UK, trading in influence was addressed as a form of bribery under the Bribery Act 2010. Meanwhile, France classified both active and passive trading in influence as criminal offences under the Nouveau Code Penal (Criminal Code) and the Sapin II law, which was also known as the Economic Modernisation Law (2016-1691). The comparative method broadened the perspective on trading in influence, which currently lacks explicit regulation in Indonesia. Through descriptive-analytical explanations supported by accurate data, this research presented legal opinions to clarify the interrelationship and implications of trading in influence within the country.

RESULTS

Corruption in the Trade Sector in Indonesia

Corruption, particularly in the public sector, is commonly defined as the misuse of power by government officials or employees for personal gain (Hoa et al., 2023). Forms of corruption have expanded to include nepotism, embezzlement, bribery, trading in influence, and others. Some actions, such as 'lobbying' to secure material benefits at the expense of public interest, are widely recognised yet largely unaddressed issues (Mahmud et al., 2024).

The offence of corruption, in all its forms, aligns with Arnold Heidenheimer's definition, which considers any act viewed by the public as corrupt. Cultural factors in each country further shape the definition of actions that benefit individuals, such as nepotism, collusion, and corruption. Additionally, UNCAC addressed various types of corruption, including unauthorised enrichment, trading in influence, and abuse of functions (Wouters et al., 2013). This research identified trading in influence as a tactic often used in business dealings between state officials and private parties, both domestically and internationally (Chan et al., 2023). Trading in influence could be used in areas such as trade and carbon taxes (Conway & Hermann, 2021) as well as in issuing licenses for business activities, plantations, and other permits.

Corruption in the trade sector has resulted in significant financial losses to the state, amounting to a total of Rp 20.9 trillion across 10 cases, as recorded by ICW sector-based mapping in 2022 (Katadata, 2023). Recent cases have uncovered corruption in crude palm oil exports, where the Director General of Foreign Trade at the Ministry of Trade, along with three private-sector individuals, including the Commissioner and General Manager of PT Wilmar Nabati Indonesia and the Senior Manager of Corporate Affairs at Permata Hijau Group, were identified as suspects. As charged by the prosecutor, the suspects were allegedly to have committed violations in terms of export applications and licenses that should have been rejected due to non-compliance with key requirements, such as the discrepancy with the domestic selling price. In addition, the suspects allegedly failed to meet the Domestic Market Obligation (DMO), which mandated that 20% of total exports needed to be allocated for domestic cooking oil distribution (Camila et al., 2022).

Research by Torrez (2002) showed the relationship between trade restrictions and corruption, suggesting that trade restrictions could shift resources from productive activities toward rent-seeking activities. The analysis observed a predominantly negative relationship between trade and corruption, but some of the relationships lacked strength in empirical evidence (Majeed, 2014).

In a state governed by law (*rechstate*), the government bears the responsibility of making and executing legislation that serves as a standard for societal conduct. These laws typically outline prohibitions, obligations, sanctions, and compliance requirements. Baharudin Lopa (Attorney-General of the Republic of Indonesia, 1935-2001) identified several factors contributing to corruption, including (a) systemic weakness, (b) low morale, (c) economic instability, (d) frequent demands for contributions by power holders, (e) weak law enforcement, (f) weak existing laws, (g) lack of understanding of corruption offenses, and (h) other compounding factors (Lopa, 1997).

Efforts to address and prevent corruption could not only be tackled through criminal law but also from the perspective of state financial law and state administrative law. This method is particularly relevant to the case of corruption in the trade sector, which represented the largest category of such an offence in Indonesia. For instance, offences committed by several corporations should be analysed through business law, international trade law, and international criminal law.

As a legal state, Indonesia adheres to the Continental European legal system (Civil Law) characterised by the *rechtsstaat* concept, or a state governed by written law (Ramadhan, 2018). This system emphasises that legal truth and justice are defined in the written provisions (Dainow, 1966). However, Indonesia still lacks explicit legal provisions addressing certain forms of private corruption, such as foreign bribery, trading in influence, and illicit enrichment, despite having ratified UNCAC.

The need to establish a legal system for corruption offences, with the mode of trading in influence, arose due to a legal vacuum and ambiguity in enforcement. As a country adhering to a civil law system that relies on written law, Indonesia must take decisive steps to include trading in influence in the KPK Law and the Criminal Code. In the case of corruption offences where the suspects are state officials who trade in influence, bribery articles could be charged, but it remains challenging to charge the participating private parties. The trade sector is closely related to private parties who exploit any available means to maximise their profits.

ICW data indicated that trading in influence frequently occurred in the trade sector. This sector was particularly susceptible to corrupt practices by powerful actors who abused their influence for enrichment.

Modus Operandi of Trading in Influence in Corruption in the Trade Sector and the Face of Law Enforcement in Indonesia

The widespread corruption in Indonesia is influenced by several persistent factors that have not been adequately addressed by the government. As both the lawmaker and policy implementer, the government played a crucial role in establishing regulations to control these issues. Martini (2012) identified various drivers of corruption, including the pursuit of personal interests linked to political networks, poor salaries for civil servants, the low quality of existing regulations, limited judicial independence, and the broad discretionary power granted to officials without proper calculations and enforcement mechanisms (Martini, 2012).

The term *modus operandi*, as defined in the Big Indonesian Dictionary, referred to 'ways and operations' (Kamus Besar Bahasa Indonesia, 2023), characterising the distinct methods commonly associated with individuals or groups committing criminal acts. In Latin, it was defined as "procedures and ways of acting". In cases of corruption, the *modus operandi* typically included considerations of moral, social, and legal justice, which influenced the severity of penalties imposed on the perpetrators.

The practice of trading in influence is identified as a distinct offence and a form of corruption observed in several countries. It was generally categorised as bribery, with penalties varying internationally, including imprisonment, fines, exclusion from public roles, exile, and revocation of political rights. As a signatory to the UNCAC of 2003, Indonesia was obligated to adopt measures that were in line with the objectives of the convention. The objectives included (a) effectively and efficiently preventing and combating corruption by coordinating efforts among authorised institutions, particularly measures to protect the whistleblower of alleged corruption, (b) enhancing international cooperation for recovering criminal assets, and (c) promoting integrity, transparency, accountability, and good governance in the public sector. The three objectives were essential to curtail trading in influence, as transparency and sound public-sector management were necessary in preventing such practices. Hadi et al., (2024) reported the importance of transparency and accountability in the public sector to mitigate abuses of power by public officials, which might lead to improper decisions, misuse of resources, and even bribery.

Trading in influence differed from passive bribery primarily in its legal structure, which included distinctions in the form of actions, the legal subjects, and the receipt of benefits. In cases of trading in influence, the perpetrators were typically non-state actors who had access to public authorities. In contrast, passive bribery exclusively includes state officials who exploit their positions to derive unilateral benefits. The evolving nature of trading in influence required serious attention, as Indonesia would likely need legal reforms to address such practices in the future (Werdhiyani & Parsa, 2020).

According to Philip (2009), the crime of trading in influence required an enlarged relationship that often included a fourth party. The party, known as the 'seller of influence', was the individual who marketed the actual or perceived influence they hold. In Indonesia, intermediaries frequently acted as brokers, selling the influence of officials in a manner that blurred the line with bribery. Although the indications of trading in influence were subtler than bribery, the country should enforce all forms of conduct that contributed to corruption.

Trading in influence refers to the practice of leveraging influence over government officials or powerful individuals to affect their decisions. Although it was similar to bribery, trading in influence differed because the seller of influence did not have direct authority over the results the bribe-giver desired. Law

No. 1 of 2023 on the Criminal Code did not specifically address trading in influence but only covered actions that enrich oneself or others at the expense of the state's financial and economic interests through abuse of office. Article 605 of the Criminal Code describes the crime of offering or promising something to a civil servant or state official in order to perform or refrain from an action contrary to their duties. The phrases resemble aspects of trading in influence, but this research focused only on the act of gift-giving or making promises. Meanwhile, Article 606 addresses the provision of guarantees and gifts to officials empowered as state administrators.

As a civil law country rooted in Continental European legal traditions, Indonesia relied on a codified legal system. According to Merryman (1985, as cited in Siregar, 2022), such a system comprised laws (statutes), derivative regulations, and customs. The absence of specific regulations addressing trading in influence posed challenges for law enforcement agencies such as KPK and the prosecutor's office, which struggled to handle corruption cases involving this practice. Ineffective law enforcement could affect the functioning of a country since officials become preoccupied with self-enrichment, often in collaboration with others who violate laws and regulations. Research by Ng et al. (2022) showed that "attempts to enrich oneself by illegal means" constituted corruption, posing a significant threat to every country. As the World Bank President stated in 2013, every dollar diverted by corrupt officials deprived citizens of essential services like health services, education, and infrastructure development.

According to international law under UNCAC, each state party must consider adopting legislative and other necessary measures to establish the following as a criminal offence when committed intentionally. The established criminal offence was "The promise, offer, or gift to public officials or individuals, directly or indirectly, to gain undue advantage, prompting public officials or individuals to misuse their real or perceived influence for personal benefit" (Timoty & Firmansyah, 2020).

In the context of trading in influence, this form of criminal act was not limited to a bilateral relationship, as was typical with bribery. Instead, it included a trilateral relationship (Effendi et al., 2023). A bilateral corruption relationship involves two parties, in which the first is the party that offers something of value to gain influence and benefit from public officials, while the second is the public officials who received a bribe. In contrast, a trilateral relationship covers three parties, including the bribe giver who wanted to benefit from the actions of the officials, the seller of influence who acted as a public official (Fariz et al., 2014), the officials who have the power to make decisions or policies that advance the interests of the bribe giver (Fariz et al., 2014).

According to Slingerland (2010), trading in influence was widely recognised in European countries. This legal issue was increasingly gaining interest, as shown in the research published by the Council of Europe (COE) on corruption eradication in 2000. Titled *Trading in Influence and the Illegal Financing of Political Parties* (Council of Europe, 2000), the research discussed the criminalisation of trading in influence linked to illegal political financing as a form of corruption, including a trilateral relationship. This type of corruption involved not only state officials but also ordinary citizens who participated by offering gifts or making promises.

Trading in influence, also known as influence peddling, was essentially the act of an individual who, because of their "influence", was able to do something to achieve personal benefits. This 'influence' was "paid" through promises, money, or other means to benefit from the influence exercised.

According to Supreme Court Justice Artidjo Alkostar, trading in influence was often used by officials who received bribes to evade law enforcement. The inclusion of trading in influence in Indonesian law

was crucial, as several court decisions have classified such a practice as a corruption offence, thereby establishing legal precedents. One significant case included Luthfi Hasan, who was a member of the DPR Commission I. Hassan lacked formal authority over matters related to meat imports, but his influence as a political party president enabled him to pressure an authorised party member, then serving as Minister of Trade. Consequently, Luthfi Hasan was sentenced to 16 years in prison and a fine of Rp 1 billion. Alongside Ahmad Fathanah, he was found to have received Rp 1.3 billion from the President Director of PT Indoguna Utama in exchange for facilitating an additional beef import quota. This case highlighted the difficulty of prosecuting similar offences. Luthfi Hasan had held only a party leadership role without official governmental affiliation. Although Indonesia has Law No. 11 of 1980 on Bribery, the KPK faced challenges in applying it to Hasan's case. In response to this, he was also charged with the criminal offence of money laundering.

Gluck and Macaulay (2017) reported that many countries were hesitant to incorporate trading in influence into their anti-corruption laws, largely due to the inherently opaque nature of the practice. Slingerland (2011) argued that such legislation might also restrict 'legitimate' political influence in the context of lobbying. For instance, in New Zealand, trading in influence appeared prevalent in the political system. The National System Integrity Study identified several problematic 'grey' areas, including lobbying abuses, party funding issues, unresolved conflicts of interest, and others.

Houillon's research (2014) on "*Corruption and Conflict of Interest: Future Prospects on Lobbying*," supported the view that action, including influence, was often motivated by specific interests. When 'lobbying' was motivated by the buyer's interests, it might constitute trading in influence.

The Concept of Law Enforcement and Handling of Trading in Influence in Indonesia and Practice in France and the UK

Preventing and addressing corruption presented a significant challenge for every country, particularly in eradicating all tactics associated with the offence, such as trading in influence in the trade sector. In Indonesia, existing preventive policies included specialised agencies dedicated to handling corruption cases and special laws designed to address such offences. The broader consequences of corruption, particularly its influence on the economy and investment, showed the importance of effective measures. Non-transparent commercial governance in the trade sector, specifically in the scope of exports or imports, was vulnerable to trading in influence or bribery. According to Putra and Linda (2022), one indicator of corruption in investment was the manipulation of costs, often through inflated prices. This practice resulted in higher investment costs, driven by bribery. Entrepreneurs might offer bribes to officials in exchange for contracts, further escalating contract costs. The particular behaviour became evident when trading in influence was suspected.

The concept of "trading in influence" was difficult to define, making it challenging to criminalise as a specific corruption offence in some countries. The Association of Accredited Public Policy Advocates to the European Union (AAELP) highlighted such an issue, noting that the ambiguity surrounding trading in influence complicated efforts to classify it as a criminal act. According to AAELP (2015), "The difficulty in criminalising trading in influence was due to the vagueness of the act of corruption. Proving whether public officials have been influenced or had engaged in trading in influence was often challenging, as the causal relationship between the parties was unclear and difficult to investigate and prove." This statement showed the difficulty in determining whether officials have exerted influence and whether that influence benefited a party with a vested interest.

Several countries, including France, the UK, Spain, and Hungary, have incorporated trading in influence as a recognised corruption offence, targeting both state and non-state officials (Gawi & Imtichani, 2021). This paradox indicated a broader societal recognition, particularly in Western countries, of the increasing prominence and urgency of addressing trading in influence effectively. One such case included the Duchess of York, who was accused of offering her ex-husband, Prince Andrew, a promise to serve as a semi-official trade envoy to 'Wealthy Businessmen.' The case showed the potential for inappropriate influence to shape decision-making processes (Slingerland, 2010).

In some countries, trading in influence was explicitly prohibited by law. This research would examine how France and the UK handle law enforcement of trading in influence in their legal systems.

France

France's efforts to fight corruption dated back to the Revolutionary era, with the introduction of the 1791 Penal Code. The Code mentioned provisions on "Corruption de fonctionnaires," which were subject to severe punishment, including the denial of civil rights (*degradation civique*). The punishment was more severe when the perpetrators were law enforcement actors, such as judges (Jaluzot & Meiselles, 2009). French Criminal Law categorised corruption based on the individuals involved and the circumstances, distinguishing between active and passive corruption, as well as active and passive forms of 'trading in influence' (Jaluzot & Meiselles, 2009).

The Sapin II Law or the Economic Modernisation Law (2016-1691) mandated that all companies operating in France, including foreign companies, register with the Register of Interest Representatives. This requirement aimed to prevent and detect corrupt practices, particularly trading in influence, and supported the work of the French Anti-Corruption Agency (AFA) (French Anti-Corruption Agency, 2020a).

In the French legal framework, trading in influence is defined as the act of using or promising something to public officials in order to sway the outcome of a decision. The French Penal Code addressed trading in influence in Articles 435-2 and 435-4, which outlined rules on both passive and active forms of the offence. The *Nouveau Code Penal* (Criminal Code) clarified that both forms of trading in influence were criminal offenses committed in the form of giving, receiving, or offering promises, gifts, and benefits, directly or indirectly, to abuse the power of influence with the aim of securing a decision, contract, award, or advantage from state administrative bodies, public authorities, and related institutions. The rules provided legal certainty regarding trading in influence in the French Criminal Code. This contrasted with the Indonesian Criminal Code, which did not clearly and explicitly regulate trading in influence, even though Articles 603-606 addressed the criminal offence of corruption. The Indonesian code did not clearly define or include provisions specifically related to trading in influence.

Active trading in influence occurs when an individual offers a bribe to public officials in an attempt to induce the official to misuse their influence (Articles 435-4, 435-9 CP). In contrast, passive trading in influence occurs when public officials accept a bribe in exchange for using their influence (Articles 433-2, 435-2, 435-7 CP).

In France, several categories served as prerequisites for the act of trading in influence. Passive influence was applied to a) individuals with decision-making authority in public bodies or law enforcement, b) those responsible for managing public services, and c) individuals holding elected mandates. Meanwhile, active trading in influence included individuals or entities who could exert influence

independently. The key element in trading in influence was the intentional exertion of influence to achieve a specific result based on the needs of the requesting or receiving party (French Anti-Corruption Agency, 2020b).

An example of trading in influence in France is illustrated by a case in the French Supreme Court's ruling, Case No. 04-81939, on October 6, 2006. The case involved a class C civil servant, a procurer in the forestry and agriculture department, who was responsible for selecting and recommending suppliers for no-tender contracts. The perpetrator was found to have received "undue" benefits from the candidate suppliers. As a result, the defendant was sentenced to 18 months' imprisonment, fined €4,500, and banned from holding any public sector office (French Anti-Corruption Agency, 2020b).

The UK

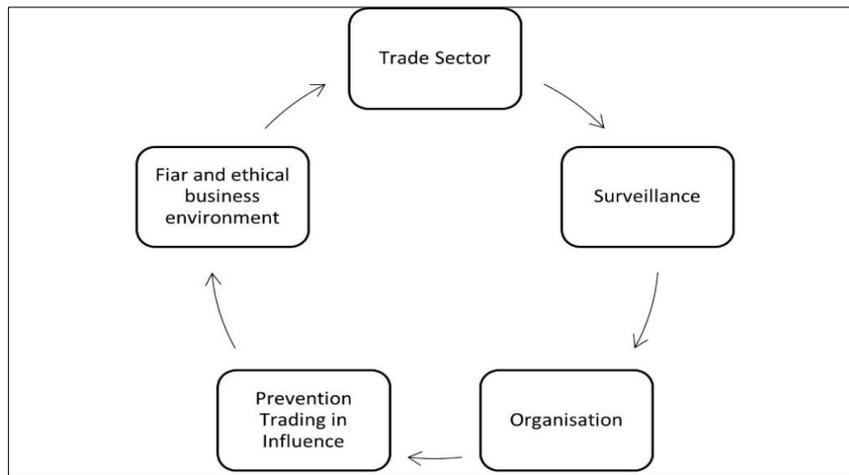
In 1999, the UK Home Secretary signed the Council of Europe Criminal Law Convention on Corruption. The Convention mandated the criminalisation of trading in influence where it was not covered by existing laws. The Council of Europe Criminal Law Convention on Corruption defined trading in influence as "Acts committed by promising, offering, or giving, directly or indirectly, an undue advantage to any person who declared or asserted that they exercise undue influence on the outcome of a decision made by public officials, members of national or international assemblies, officials of international organizations, judges, and officials of international tribunals" (Straw, 2000). The definition included acts where the undue advantage was for an individual offering it or for a third party, and also covered the acceptance of such offers, as well as any influence exerted to achieve the desired result.

In the context of English law, trading in influence was specifically regulated under the Bribery Act 2010, which prohibited bribery both in the UK and internationally. Trading in influence was treated as a form of bribery under this act. Companies found guilty of breaching the act might face unlimited fines and up to 10 years of imprisonment for individuals who were engaged (Effendi et al., 2023).

The rules regarding trading in influence in Indonesia must be clearly defined in the law, driven by the evolving nature of corruption crimes in both the Anti-Corruption Law and the Criminal Code. The absence of clear legal provisions created a gap that hindered the effective eradication of corruption, particularly as perpetrators of trading in influence have become increasingly adept at masking actions or reducing the severity of their sanctions. Although the legal frameworks governing trading in influence varied across countries, there was a common recognition that this form of corruption required regulation to ensure a fair business environment based on ethics and integrity.

Figure 2

Cycle of Monitoring and Enforcement of Trading in Influence (Specifically in the Trade Sector)



As legal systems evolved to combat corruption through the trading of influence, this crime has become a common practice across various state institutions. While trading in influence was often associated with bribery, there were theoretical distinctions between the two offences based on the regulation of legal subjects included in bribery, gratuities, and trading in influence. The following distinctions showed the need for specific legal provisions in Indonesian law to address trading in influence.

Table 1

Difference between Bribery and Trading in Influence Based on the Law in Indonesia

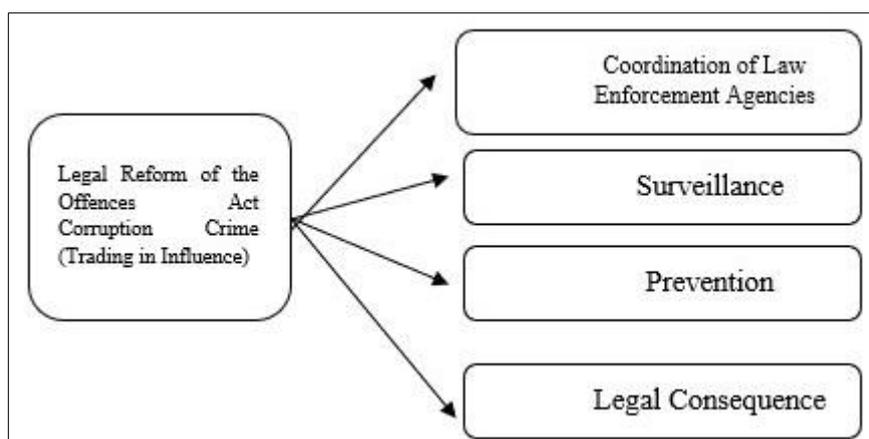
The Difference	Bribery	Trading in Influence
Legal Basis	In Indonesian law, it is regulated in Art 5 (1) and (2); Art 6.1 (a) and (b), Art 6.2; Art 11; Art 12 (a) and (b) of Law No 31 of 1999, Jo No 20 of 2001.	Article 18 (a) and (b) UNCAC. Indonesia has ratified but has not yet regulated influence peddling/trading in influence.
Legal Subject	The recipients of the gift or pledge were civil servants or state officials, such as judges and advocates.	Perpetrators were only those whose roles were expressed and found in the phrase “public official or any other person”.
Elements that fulfil the act	The perpetrator's actions do not have a direct conflict with his/her obligations or authority.	One of the main elements of bribery is that the offender's actions are contrary to his obligations or authority, or in the mind of the giver, his/her actions are related to the recipient's position.
Differences in Parties involved	<i>Bilateral relationship:</i> 1) The recipient in the category of bribery must be a state official because there is an element of abuse of his authority over his power; 2) Bribe-givers can be state officials or private individuals.	<i>Trilateral relationship and bilateral relationship:</i> 1) The parties or two actors are state officials or policymakers, and people who sell influence; 2) Givers who want to benefit from policies that will be taken by officials who have the authority or the state organiser.

Based on the description, the distinction between bribery and trading in influence can be understood by examining their different forms. Bribery typically includes a promise made by public officials to act or refrain from acting in a way that is unlawful. It is closely tied to influencing public officials' decision-making and policies. On the other hand, gratuities refer to gifts with a broader meaning, without necessarily including a promise. Trading in influence, however, extends beyond public officials to include individuals who possess the power to influence decisions made by public authorities. From the perspective of this research, trading in influence occurs when an individual, whether from the private sector or a government official, uses their influence through an intermediary, known as the "influence seller," to manipulate law enforcement officials.

Based on these distinctions, this research urged the Indonesian government to address the implications of trading in influence within the country's corruption laws. The recommendation was supported by the derivation theory of legal interpretation, as proposed by Jerzy Wroblewski in his research entitled "Rozumienie prawa i jego wykładnia (Understanding of the Law and Its Interpretation)" quoted by Tomasz Bekrycht (Bekrycht, 2020). The theory holds that each word in a legal text must have a clear and specific meaning in line with the legal norm. Therefore, the legal interpretation included reconstructing legal norms from statutory provisions (Bogucki, 2020). A case, such as the one involving Luthfi Hasan Ishaq, showed the difficulty in distinguishing between bribery and trading in influence. The primary goal of clarifying provisions related to trading in influence in corruption laws is to ensure that individuals with authority cannot evade oversight or punishment by disguising their actions as conduct other than corruption.

Figure 3

Chart of Legal Reform on Trading in Influence as Part of a Corruption Offence



Based on the chart in Figure 3, when trading in influence is incorporated into the Criminal Code and explicitly classified as a corruption offence, law enforcement agencies would have a clear legal framework to impose consequences on perpetrators. In the process of proving such cases, the material truth needed to be clearly expressed, in line with decisions by the Constitutional Court in Indonesia, which showed the necessity of proving the facts in criminal law trials (Eddyono, 2017).

Although bribery and trading in influence share similarities, key differences exist, as outlined in earlier research. The increasing prevalence of trading in influence has become a significant issue in corruption cases in Indonesia. Without a clear legal framework, this ambiguity complicated the efforts of the KPK

and other authorities in apprehending offenders with legal certainty. Legal reforms, particularly in the special law on corruption offences and the Criminal Code, could incorporate provisions addressing both "active and passive trading in influence," as outlined in French law.

As a result, the definition of trading in influence or bribery becomes difficult to apply in practice, and the lack of legal recognition increases the likelihood of its misuse, particularly by public officials and private parties seeking personal gain. This legal void facilitates a future in which individuals may exploit their influence for self-enrichment.

CONCLUSION

In conclusion, corruption was a crime that eroded the systems and development of every country. The methods used by perpetrators were varied and often subtle, allowing them to evade the scrutiny of authorities. One such method was trading in influence within the trade sector, where individuals with decision-making power collaborated with private parties who sought influence by offering "promises" in exchange for mutual benefit. The Luthfi Hasan case showed such practices, revealing contradictions in the legal process. Despite the judge imposing a criminal sentence, questions remained about the nature of the verdict. Luthfi was proven to have received a promise of Rp40 billion for managing PT Indoguna's beef import quota. Still, some speculate, as Bagir Manan's statement (2014) suggested, that this was a bribe involving a private distributor rather than a state institution. The case raised concerns about whether the offence should be classified as bribery, when it was more accurately reflected as a form of trading in influence. Key characteristics of this offence included the engagement of intermediaries offering promises, lobbying that led to illegal actions, and active and passive behaviours, similar to practices in France. This research focused on such characteristics, particularly the manipulation of lobbying, a common practice in politics, which could be used to benefit individuals through the misuse of authority. Legal reform was urgently needed in Indonesia to regulate trading in influence. According to data from ICW, 19 cases indicated the country faced a legal emergency regarding this issue.

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