

The Urgence of the Criminalization of Trading in Influence in Corruption Eradication

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Abstract

Corruption has developed and is increasingly having a major impact on the life of the nation, state and society. Corruption is an act committed by a person or legal entity which is an act of abuse for personal or other people's interests that can harm state finances. Trading in influence is the answer to the development of patterns of handling corruption whose mode is growing from time to time. This article will discuss the regulation of trading in influence in positive law in Indonesia, and the regulation of trading in influence in the future to fill the legal vacuum in dealing with corruption. The writing of this article uses a normative legal research method by means of a literature study. The analysis used in this study is to use deductive analysis techniques. The approach used in this legal research is a conceptual approach and a statutory approach. The result of this study is to know about the urgency of adopting trading in influence norm that regulated in UNCAC to optimize in effort to eradicating corruption. The conclusion is trading in influence norm in UNCAC is very important to adopt in Indonesian Anti-Corruption Law because has wider range in corruption tracing.

Keywords : Criminalization, Trading Influence, Corruption;

History:

Received: October 3rd 2021

Accepted: October 9th 2021

Published: August 1st 2021

Publisher: Universitas PGRI Madiun

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INTRODUCTION

Indonesia is a legal state which at every policies or operations taken by the organization state government must be based on law (*rechstaat*) and not based on arbitrariness (Asshiddiqie, 2014). Indonesia as a developing country cannot be separated from various problems, one of which is a criminal act corruption. Corruption is a behavior or deed people in the form of misappropriation for the interests of yourself or others who can harm financially country (Syamsuddin, 2017). The wave of reform in Indonesia that was rolling in the context of overthrowing the New Order which was full of abuse of power, corruption, collusion, nepotism (*KKN*) and violations of human rights seems to have continued, given the essence of the vision and mission of reforms far from being accomplished (Nur et al, 2021)

Corruption is a problem that does not only occur in developing countries such as Indonesia, but also in developed countries. The impact of corruption can disrupt the development of a country's infrastructure development in supporting people's lives for the better (Fariz et al, 2014). To eradicate Corruption requires commitment from the government and society because corruption seems to be more patterned and systematic with a mode that over time undergoes irreversible changes accompanied by appropriate regulatory changes. Seen from the number of corruption cases with various modes has been handled by law enforcement such as the Police, the Prosecutor's Office and *CCP*. This is in line with the opinion of Marwan Effendy who stated that: "corruption in Indonesia will not exist" end, the more it is eradicated, the more widespread it will be, and will continues to grow both in terms of the number of cases and in terms of state losses caused (Pradjonggo, 2010).

As a result, there are Weaknesses of Law Number 20 of 2001 concerning Amendments to Law No. 31/1999 on the Eradication of Criminal Acts Corruption where this is exploited by many individuals or groups to perform actions that include in criminal acts of corruption, one of which is trading in influence.

One of the roles of the state and society to against corruption is to the signing of the United Nations Convention Against Corruption (UNCAC). Trading in influence is regulated in Article 18 of the convention that, but in the positive law of Indonesia, trading in These influences are not specially regulated so they still happen legal vacuum. The problem that will be answer in this paper is about the regulation of trading in influence Indonesia positive law and how are trading in influence norm in corruption eradication in the future. Based on the above background, then The writing of this article is titled, “The Urgence of the Criminalization of Trading in Influence in Corruption Eradication”.

MATERIALS AND METHODS

Writing this journal applies the library method or normative legal research methods, namely research with presents a problem that will be discussed later by using legal theories that are in accordance with the legislation (Soekanto dan Mamudji, 2015). The type of approach used is a statutory approach that refers to regulations, conceptual approaches related with legal principles, and a comparative approach by comparing the law of a country with the law other countries (Marzuki, 2013).

The legal material that the author applies is legal material primary and secondary legal materials. Primary legal materials that used as Law No. 31 of 1999 on the Eradication of Corruption Crimes and Law No. 7 of 2006 concerning 2006 Ratification of the United Nations Convention Against Corruption Year 2003, secondary legal materials include legal journals, law books and research results (Marzuki, 2013).

Collection of legal materials, the author uses a library technique. Analysis on this article uses a description technique on primary legal materials and secondary data that have been collected are then associated with theory and legal literature so that it can assist in writing this article.

RESULTS AND DISCUSSION

1. Trading In Influence Norm in Indonesian Positive Law

Literally, corruption is a misappropriation or embezzlement for the benefit of others or personal in the form of things that are rotten, evil and destructive (Marzuki, 2013). Causative factor the emergence of corruption include economic factors, modernization, and there is no system of government transparent which results in the shifting of life values existing and developing in society (Syamsuddin, 2017). In line with this, in order to eradicate corruption, then a state's responsibility and participation is needed commitment from the community to oppose these practices corruption, considering that corruption is an act of crimes that harm the state and society. Through ratification of an international treaty by a state has prove that there is a commitment from the government and society to eradicate corruption.

The consequence of this ratification is that all something contained in the provisions of the convention must be obeyed and obeyed as a subject of international law (Kusumaatmadja, 2010). Indonesia is one of the countries that ratify UNCAC on December 18th 2003, which was realized through Law No. 7 of 2006 as a form of approval and understanding in eradicating crime corruption. Trading in influence is regulated in Article 18 letters a and b United Nations Convention Against Corruption (UNCAC).

The formulation of the articles in the convention regulates: understanding of trading in influence in essence first, every making promises or offers to public officials or people others, either directly or indirectly, which may provide undue benefits so that officials the

public or the person using his influence improperly true or have the intention to get something or inappropriate benefits of public officials for the benefit of agitators or the interests of others. Second, request or acceptance by public officials or anyone, either directly or indirectly, undue benefits so that public officials or the person is abusing influence and is considered to have a purpose and purpose take advantage of undue public officials.

In general, the core trading in influence terminology is an act with the intention of promising an offer or giving something either directly or indirectly to public official or someone for profit (Kristiadi, 2015). The existence of this undue advantage term by UNCAC includes a broad scope through something that is offered or promised to public officials or other people (Philipp, 2009). There are 2 (two) patterns of trading in influence crime, namely first, vertical pattern, is a pattern of trading in influence on the basis of the power it has, the two horizontal patterns are trading in influence that is carried out through intermediaries of influential people orang who doubles as brokers to influence the organizers country (Fariz et al, 2014). In some countries, trading in has also been regulated influence like in Spain, France and Belgium.

The formulation of criminal acts of corruption in Law No 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes is a stand-alone crime formulation. Certain elements in the formulation of the law are threatened using a type of crime with a criminal system that certain too. The formulation includes acts of corruption enriching oneself, another person, or a corporation, then the crime of bribery by giving or promising something, and the crime of bribery of civil servants recipients of gratuities and corruption of bribes to civil servants keeping in mind the power of office. Various types corruption, trading in influence is not regulated in Indonesian positive law.

2. The Formulation of Influence Trading in Eradicating Corruption in the Future

Drafting the *RKUHP* concept as an effort to reform National law has been initiated by the government for a long time, however until now, the *RKUHP* has not yet been ratified into a national Criminal Code. Barda Nawawi Arief stated that: "efforts"criminal law reform is essentially a part of the policy to update the legal substance in order to streamline law enforcement" (Arief, 2008).

Criminalization trading in influence is seen as very necessary to be done immediately considering that trading in influence is an act that detrimental to state finances, hindering national development and detrimental to society, so it is necessary to have Indonesian positive law reform by implementing method of comparison with other countries that have regulated trading in influence.

The regulation for trading in influence in Spain is available in Articles 428-430 of the Spanish Criminal Code, which includes acts of active and passive. These articles have important aspects that different where the provisions only refer to trading in influence is in the passive form while in the active form it is not criminalized as a crime. Trading in influence in passive form is divided into 2 (two) categories, namely Articles 428 and Article 429 regulate the abuse of influence, by influence sellers who are public officials and by each individual. Article 230 regulates benefits received or requested by public officials or individuals in terms of maintaining its influence.

Trading in influence in France is regulated in Article 435 paragraph (4) of the Spanish Criminal Code, both active and passive. Form of trading in influence in the French Criminal Code is divided into two, that is, the first form is regulated by trading in influence by public officials and the second form is carried out by individuals (Philipp, 2009). In contrast to bribes, people who use influence to gain the advantage of having the consequences are smaller even though the one who sells the influence received a severe punishment. With this provision, French legislator expands scope of trading in influence to the acceptance or offer to influence public officials or people who serve in the international organization.

The regulation of trading in influence in Belgium is regulated in Article 247 paragraph 4 of the Belgian Criminal Code. Belgian legislature enter the formula for trading in influence as a the crime of corruption into Article 247, regardless of the article regulates bribery, whether legal or illegal, which carried out by public officials in paragraphs 1 and 2. In the Criminal Code Belgium trading in influence in law by using same approach and elements as in active bribery and passive.

The case of trading in influence in Indonesia has actually repeatedly using different modes. As in the case of sugar import quotas carried out by Irman Gusman, the case of trading in influence carried out by Choel Malaranggeng against *PT. Adhi Karya* related to the case the construction of a sports center to the case of the imported cattle quota carried out by Lutfi Hasan Ishaq (Fariz et al, 2014).

Even though it happened various cases of trading in influence, arrangements regarding trading in influence until now there is no. Law No. 31 of 1999 regarding the Eradication of Criminal Acts of Corruption only discusses regarding bribery by law enforcement and government (Bayu, 2016). In this case, the party who trades influence did receive a sum of money so that the prosecutor accused by using the bribery article, even though between bribes and trading in influence have different meanings. If there is no receipt of some money by them those who trade their influence will happen legal vacuum in terms of criminal liability because Indonesia's positive law has not regulated it.

In the bribery offense, the parties involved are bilateral relationship while in trading in influence the party who involved are trilateral relationship and bilateral relationship. Trilateral relationship means using the modus operandi involving three parties, namely the first actor providing something for the benefit of public officials as well as two actors from the side of policy makers, including people who sells its influence which in this case does not necessarily come from state administrators. The perpetrators of the bribery offense are those who accept promises or accept gifts in absolute terms from state officials and civil servants, while actors in trading in influence who have access to power but originating from non-state administrators can be categorized as trading in influence.

Trading in influence with corruption has close relationship in which the nature of trading in influence triggers the cause of the emergence of corruption, so it should be the root of the problem that provides a gap in abuse of power based on influence exerted. Indonesian criminal law in the future deemed necessary to criminalize trading in influence as a criminal act of corruption so that all forms of of existing criminal acts of corruption can be addressed immediately. The formulation of trading in influence in Indonesian criminal law What needs to be considered is an explanation of qualifications those who are considered to have influence that can influencing public officials or state officials or individual to do or not to do something based on the authority it has and how future criminal liability for them who are considered to have traded in influence both in active and passive forms.

The regulation of trading in influence in criminal law Indonesia is a form of Indonesia's responsibility as a countries that ratify UNCAC which requires Indonesia to adapt its national law to the provisions of in the convention. If Indonesia regulates trading in influence, it can be said that Indonesia has joined work together in eradicating corruption globally together with other countries to eradicate various criminal acts of corruption and harmonization of regulations corruption with other countries.

CONCLUSION

Corruption is the misappropriation or embezzlement of the interests of others or personal self in the form of things that rotten, evil and destructive. To eradicate acts corruption, it is necessary to take responsibility for a state and the participation and commitment of the community. Indonesia is one of the countries that ratify UNCAC which

realized through Law No. 7 of 2006. Trading in influence is regulated in Article 18 letters a and b United Nations Convention Against Corruption (UNCAC), but trading in influence is not regulated in Indonesian positive law.

Trading in influence has been regulated in several countries such as Spain, France and Belgium. In Indonesia there are cases of trading in influence, such as the case of sugar import quotas by Irman Gusman. On the bribery offense of the party who involved is a bilateral relationship while in trading in influence the parties involved are trilateral relationship and bilateral relationships. Formulation of trading in influence in Indonesia's positive law that needs to be considered is an explanation of the qualifications of those who considered to have an influence that can affect public officials or state administrators or individuals to do or not to do something based on the authority it has and how criminal liability in the future for those who are considered to have traded in influence in both active and passive forms.

ACKNOWLEDGMENTS

Alhamdulillah, All praises to Allah, Thanks to my family and all my friends for helping me complete this research.

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