



The Urgency of Regulating Trading in Influence: An Analysis of the Doctrine of Participation in Indonesian Criminal Law

Talenta Sitorus¹, Elis Rusmiati², Wanodyo Sulistyani³

¹Universitas Padjadjaran, Indonesia, Email: talenta20001@mail.unpad.ac.id

²Universitas Padjadjaran, Indonesia, Email: els_rusmiati@yahoo.co.id

³Universitas Padjadjaran, Indonesia, Email: wanodyo@mai.unpad.ac.id

Submitted: October 5, 2024; Reviewed: November 20 2024; Accepted: December 27, 2024

Article's Information

keywords:

Anti-Corruption Enforcement, Legislative Reform, Legal Vacuum.

DOI :

<https://doi.org/10.25041/corruptio.v5i2.4025>

Abstract

Trading in influence is a non-mandatory offense regulated under the United Nations Convention Against Corruption (UNCAC). Indonesia ratified the UNCAC through Law Number 7 of 2006. In practice, trading in influence has been prevalent in Indonesia; however, it is often prosecuted as bribery. Perpetrators are typically charged under Article 55 of the Criminal Code (concerning participation) in conjunction with bribery or gratuity provisions under the Corruption Eradication Act. This research employs a normative legal research method, analyzing laws, legal literature, and doctrines related to the concept of influence trading. The findings indicate an urgent need for explicit regulation of trading in influence within Indonesia's legal framework. The current anti-corruption laws, particularly when applied alongside Article 55, do not comprehensively address cases where influence trading occurs without direct bribery but still results in financial losses to the state. Establishing clear legal provisions on trading in influence is essential to prevent legal uncertainty and close existing regulatory gaps.

A. Introduction

Corruption is both a national priority and an international concern.¹ The term originates from "corruption," denoting decay, financial dishonesty, and institutional deterioration.² It involves the misuse of authority for personal or third-party gain, often to the detriment of the

¹ Ye Wei and Wenjian He, "Can Anti-Corruption Improve the Quality of Environmental Information Disclosure?," *Environmental Science and Pollution Research International* 29, no. 4 (January 2022): 5345–59, <https://doi.org/10.1007/s11356-021-15932-w>.

² Suramin Suramin, "Indonesian Anti-Corruption Law Enforcement: Current Problems and Challenges," *Journal of Law and Legal Reform* 2, no. 2 (2021): 225–42, <https://doi.org/10.15294/jllr.v2i2.46612>.



national economy.³ Robert Klitgaard describes corruption as "one of the foremost problems in the developing world," emphasizing its significance as a systemic issue rather than merely a normative concern. In Indonesia, pervasive corruption has severely impacted economic development and the social and economic rights of its citizens.⁴

Corruption has evolved beyond bribery and gratification to include the abuse of power for personal benefit.⁵ It is often committed by individuals with intellectual competence within government institutions who divert public funds for private gain. According to the Corruption Eradication Commission (KPK), 149 individuals were named as suspects in corruption cases in 2022. The rising number of cases reflects both the KPK's increasing effectiveness and the persistent prevalence of corruption.⁶ Despite enhanced enforcement, financial losses to the state continue to grow, indicating weakened budget oversight at both central and regional levels. This erosion of financial governance adversely affects national development, violates social rights, and undermines economic welfare.⁷

The Indonesia Corruption Watch (ICW) report on Corruption Case Mapping Based on Modus Operandi 2022 identifies various methods of corruption, including budget misuse, fictitious projects, mark-ups, falsified reports, trading in influence, extortion, illegal levies, unauthorized licensing, and witness manipulation.⁹ Some of these practices remain unregulated under Indonesia's legal framework. Notably, ICW documented 19 cases involving trading in influence, a method that leverages public office, political connections, or personal relationships for undue advantages. Unlike conventional corruption, this practice weakens governance and disrupts political and economic stability.⁸

The regulation of trading in influence is established under the United Nations Convention Against Corruption (UNCAC), an international legal framework aimed at combating corruption. Indonesia, as a state committed to anti-corruption efforts, ratified UNCAC through Law No. 7 of 2006 on the Ratification of the United Nations Convention Against Corruption, 2003. However, this offense has not been explicitly incorporated into Indonesia's positive law. This omission is attributable to its classification as a non-mandatory offense under UNCAC, which, while recommending its adoption by ratifying states, does not impose a binding obligation to do so.

Despite the absence of specific legal provisions addressing trading in influence, individuals accused of such conduct have been prosecuted under existing legal frameworks. A notable case is that of Atty Suharty, the Mayor of Cimahi (2012–2017), and her husband, H.M. Itoc Tochija, in relation to the Cimahi Pasar Atas Development Project Phase II (2016–2017) (Case No. 21/Pid.Sus/TPK/2017/PN.Bdg). The couple was convicted of accepting a bribe amounting to IDR 500 million from two businessmen, Triswara Dhanu Brata and Hendriza Soleh Gunadi.⁹ In this case, Itoc Tochija, a former two-term Mayor of Cimahi, leveraged his political influence to communicate with the businessmen regarding the selection of the project's contractor. His role as an accomplice (penyerta) was deemed more significant than that of Atty Suharty, who,

³ Kari A Griffore et al., "Corruption Risks in Health Procurement during the COVID-19 Pandemic and Anti-Corruption, Transparency and Accountability (ACTA) Mechanisms to Reduce These Risks: A Rapid Review.," *Globalization and Health* 19, no. 1 (November 2023): 91, <https://doi.org/10.1186/s12992-023-00994-x>.

⁴ Jim Goldman, "Who Benefits from Anti-Corruption Enforcement?," 2024.

⁵ Kevin E. Davis, "Anti-Corruption Law and Systemic Corruption: The Role of Direct Responses," *Revista Direito GV* 17, no. 2 (2021): 1–23, <https://doi.org/10.1590/2317-6172202129>.

⁶ Barda Nawawi Arief, "Sari Kuliah Hukum Pidana II," *Fakultas Hukum Undip*, 1984.

⁷ Willeke Slingerland, "Trading in Influence," *Elgar Concise Encyclopedia of Corruption Law*, 2023, 403–5, <https://doi.org/10.4337/9781802206494.00104>.

⁸ Irwansyah Irwansyah, "Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel," *Yogyakarta: Mirra Buana Media* 8 (2020).

⁹ Rahman Amin, *Hukum Pembuktian Dalam Perkara Pidana Dan Perdata* (Deepublish, 2020).

as the primary perpetrator (*pelaku material*), qualified as a public official responsible for making official decisions within her authority.¹⁰

Another significant case involved Luthfi Hasan Ishaaq, the former President of the Prosperous Justice Party (*Partai Keadilan Sejahtera*, PKS), who was implicated in a corruption case concerning the allocation of beef import quotas. At the time, Bambang Widjojanto, the Deputy Chairman of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, KPK), asserted that Luthfi abused his political position to exert influence over the Minister of Agriculture, Suswono—also a member of PKS—to secure a beef import quota for PT Indoguna Utama.¹¹ Similarly, in Surabaya, Binti Rochman, a former member of the Regional House of Representatives (*Dewan Perwakilan Rakyat Daerah*, DPRD), engaged in trading in influence by collaborating with Agus Setiawan Jong, a businessman and Golkar Party cadre. Rochman allegedly facilitated a scheme in which she received illicit profits amounting to 10–15% from a 2016 local government grant project while simultaneously securing political backing for her candidacy in the 2019–2024 DPRD election.¹²

The prevalence of trading in influence in Indonesia has necessitated the reliance of law enforcement authorities on Article 55 of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) concerning accomplice liability, in conjunction with the provisions of Law No. 20 of 2001, which amended Law No. 31 of 1999 on the Eradication of Corruption Crimes. Several legal scholars argue that prosecuting trading in influence under the accomplice liability framework, supplemented by anti-corruption laws, provides a legal basis for addressing such offenses and prevents a legal vacuum. Fundamentally, trading in influence constitutes an extension of bribery-related offenses. However, this raises a critical question: Is the existing legal framework adequate for addressing trading in influence, or is there a need for a specific legal provision explicitly regulating this offense within Indonesia's positive law?

This research seeks to critically assess the sufficiency of Indonesia's current legal framework in addressing trading in influence as a distinct form of corruption. Specifically, it aims to achieve several interrelated objectives. First, it examines the conceptual foundations and defining characteristics of trading in influence as articulated in the UNCAC and its manifestations within Indonesia's socio-political context. Second, it evaluates the effectiveness and limitations of prosecuting trading in influence through the application of the doctrine of participation (Article 55 of the KUHP) in conjunction with existing anti-corruption provisions. Third, it identifies the legal vacuum that arises in cases where trading in influence occurs without explicit bribery transactions yet still results in financial harm to the state. Lastly, this research seeks to establish a compelling case for the explicit criminalization of trading in influence within Indonesia's positive law. By addressing these objectives, this research contributes to the broader academic discourse on corruption prevention strategies and proposes concrete recommendations for legal reform.

B. Discussion

1. Trading in Influence as a Corruption Offense

Corruption offenses encompass a wide range of illicit activities, as stipulated in Law No. 31 of 1999, as amended by Law No. 20 of 2001 on the Eradication of Corruption Crimes. These offenses include acts of self-enrichment, the enrichment of others or corporations, and the receipt of undue benefits by state officials in connection with their authority. However, despite the broad scope of corruption-related provisions, none explicitly regulate trading in influence.

¹⁰ Geraldo Alfaro Tambuwun, Refly Singal, and Vecky Yani Gosal, "Tinjauan Yuridis Terhadap Upaya Menghalangi Proses Hukum (Obstruction of Justice) Oleh Advokat Dalam Penyelidikan Dan Penyidikan Tindak Pidana Korupsi 1," *Jurnal Fakultas Hukum Unsrat Lex Administratum* XII, no. 5 (2023).

¹¹ Soerjono Soekanto, "Penelitian Hukum Normatif: Suatu Tinjauan Singkat," 2007.

¹² Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Sinar Grafika, 2022).

Trading in influence and corruption are intrinsically linked, functioning as two sides of the same coin. In contemporary governance, trading in influence facilitates corrupt transactions by providing a concealed mechanism through which illicit benefits are exchanged. Unlike bribery or gratification, which often involve explicit agreements, trading in influence is more difficult to detect, as the parties involved rarely articulate their intentions overtly. This covert nature complicates law enforcement efforts, making trading in influence a more complex and elusive form of corruption. Without intermediaries who "sell" their influence, corrupt actors would face greater difficulty in executing their schemes effectively.¹³

As a recognized form of corruption, trading in influence is explicitly addressed in the United Nations Convention Against Corruption (UNCAC). Its legal formulation closely parallels bribery and gratification but extends beyond the direct exchange of benefits for specific acts or omissions. Instead, it criminalizes the misuse of actual or perceived influence to secure undue advantages. Articles 15 and 16 of UNCAC regulate bribery, specifically targeting public officials, state administrators, and law enforcement officers as the primary subjects of these provisions. However, to address the role of third parties—whether acting actively or passively—in facilitating corrupt transactions, UNCAC introduces Article 18 on Trading in Influence. This provision expands legal liability beyond public officials and state administrators to include **any individual** who leverages their relationship with public officials for illicit gain, regardless of their formal position.

Under **Article 18 of UNCAC**, the provision on *trading in influence* states:¹⁴

“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- 1) 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.*
- 2) 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 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.*

From this regulation, several key elements can be identified:²⁰

- a. "Each State Party may consider..." This clause indicates that the offense of trading in influence is classified as a non-mandatory offense, meaning that there is no binding agreement among State Parties to criminalize this act as a corruption offense. The decision to adopt or not adopt this provision lies entirely within the discretion of each ratifying country.
- b. Active and Passive Trading in Influence
 - Article 18(a): *“The promise, offering, or giving to a public official or any other person...”*
This provision describes active trading in influence, wherein an individual actively engages in the act of trading influence.

¹³ Dadang Siswanto, "Korupsi Sebagai Bentuk Kejahatan Transnasional Terorganisir," *Masalah-Masalah Hukum* 42, no. 1 (2013): 123–30.

¹⁴ Muhammad Fadhil, Taufik Rachman, and Ahsan Yunus, "Konstruksi Hukum Perdagangan Pengaruh (Trading in Influence) Dalam Tindak Pidana Korupsi," *Jurnal Ilmu Hukum AMANNA GAPPA* 21, no. 1 (2013): 15–34.

- Article 18(b): “*The solicitation or acceptance by a public official or any other person...*”

This provision refers to passive trading in influence, which pertains to the practice of accepting an offer to trade influence.

- c. "Directly or indirectly..." This phrase, when combined with the concept of trading in influence, illustrates the intentional nature of the act. In other words, the establishment of influence abuse does not necessarily require actual misuse of influence; rather, it is sufficient that the assumption or perception of such abuse exists.
- d. "A public official or any other person..." This phrase demonstrates that the legal subject of the offense is not limited to public officials but extends to any individual, including those who are not public officials. This provision highlights the broadening of criminal liability for those engaged in trading in influence, indicating that not only public officials but also brokers or intermediaries can be held accountable. This clause underscores the importance of understanding the concept of criminal participation.
- e. "Undue advantage..." This phrase refers to a range of gifts or benefits that are promised or offered to a public official or another person. The term *advantage* in this context is broadly defined but remains quantifiable, such as money or other valuables. However, the standard for *undue* remains unformulated, as it refers to intangible benefits that lack a concrete definition.
- f. Mens Rea (Criminal Intent) In relation to mens rea, an individual committing this offense must have a deliberate intent to obtain illicit benefits by misusing their authority.

Under the provisions of the United Nations Convention Against Corruption (UNCAC), the legal formulation of trading in influence expands the scope of criminal liability to include not only public officials but also intermediaries or brokers who facilitate such transactions. Although UNCAC does not explicitly define the legal status of these intermediaries, it acknowledges their susceptibility to corruption-related offenses. The provision governing trading in influence stipulates that the offense must be committed “with intent,” a formulation that aligns with the legal concept of direct intent (opzet als oogmerk), wherein the perpetrator acts with full knowledge and deliberate intent (weten en willen) to achieve a specific unlawful objective.

The concept of trading in influence is characterized by a trilateral relationship involving three key actors: (1) the interested party, who seeks to obtain an undue advantage; (2) the influencer, who possesses influence and exploits it for personal gain; and (3) the public or state official, who holds decision-making authority and is influenced to act or refrain from acting within their official capacity. By contrast, bribery is structured as a bilateral relationship involving two parties: (1) a state or government official who receives the bribe and (2) a public official or private party who offers the bribe. While bribery directly contravenes the duties and authority of the public official involved, trading in influence does not necessarily entail a direct violation of official authority or legal obligations. Instead, it operates through the manipulation of influence, often without overtly breaching legal provisions. This indirect nature renders trading in influence more complex, making it significantly more challenging to detect, regulate, and prosecute in comparison to bribery.

Based on research conducted by Indonesia Corruption Watch (ICW) regarding trends in the concept of trading in influence, three distinct forms of trading in influence have been identified:¹⁵

1. Vertical Model, this model arises from political transactions or interactions between certain institutions and power holders. The influential party is an individual with authority or power, aiming to push specific individuals or groups by offering compensation or rewards.

¹⁵ Luh Putu Purnama Ning Widhi and Aa Ngurah Oka Yudistira Darmadi, “Kedudukan Hukum Perdagangan Pengaruh Dalam Tindak Pidana Korupsi,” *Jurnal Kertha Desa* 9, no. 12 (2023): 13–22.

2. Vertical Model with Brokers, this form of trading in influence is commonly found in political and public offices. In this case, a broker—often a family member or a trusted associate—acts as an intermediary. The broker refers to individuals or organizations that abuse the power of state officials for personal or political gain.
3. Horizontal Model, in this model, the client and broker are both active participants, while the public official is the influenced party. This occurs when a client provides an undue advantage—such as money or gifts—to someone with decision-making authority who is not a state official. This method is used to avoid direct bribery charges since if the benefit were given directly to a state official, it could immediately be classified as bribery. This model is prevalent within political parties with connections to the executive branch, where policy-makers within the government are often influenced by external factors, particularly their own party representatives.

Although Indonesia lacks specific legislation explicitly prohibiting trading in influence, certain provisions within the Anti-Corruption Law implicitly address such conduct. According to Indriyanto Seno Adji, trading in influence constitutes an unlawful act that is intrinsically linked to bribery, rather than existing as an independent offense. This interrelation suggests that trading in influence operates as an extension of bribery, rather than as a distinct category of corruption.

Bribery extends beyond public officials and state administrators to encompass law enforcement officers. Article 6 of the Anti-Corruption Law explicitly criminalizes efforts to influence legal proceedings, indicating that provisions on gratification may serve as a legal basis for prosecuting individuals engaged in trading in influence. However, existing bribery and gratification provisions are primarily structured to prosecute individuals who, directly or indirectly, offer or provide inducements to government officials, judges, prosecutors, advocates, and other law enforcement officers.

This legal gap underscores the necessity of applying the doctrine of participation in conjunction with bribery and gratification provisions to ensure the accountability of third parties acting as intermediaries or brokers in corrupt transactions. However, for a conviction to be secured, a fundamental condition must be satisfied: the occurrence of a tangible “transaction” between the bribe giver and the recipient. In the absence of such a transaction, the only remaining legal recourse would be to pursue charges of criminal conspiracy.

2. The Relationship Between Participation and Trading in Influence as a Corruption Offense

Corruption is not an offense that can be committed in isolation; rather, it typically involves the participation of multiple parties. As corruption systematically undermines the bureaucracy, government institutions, and society at large, it is inherently linked to collusion, making it both extensive and complex. The underlying rationale is that individuals engaged in corrupt practices often collaborate to conceal their illicit activities, distribute unlawfully obtained proceeds, or facilitate further corrupt acts.¹⁶

This perspective aligns with the argument of Syed Hussein Alatas, as cited by Surastini, which posits that one of the defining characteristics of corruption is the involvement of multiple actors. Corruption is classified as a *delictum qualitatis* (a qualified offense), meaning that the offense necessitates specific attributes or qualifications in its perpetrators. Moreover, corruption falls within the category of *noodzakelijke deelneming* (necessary participation), indicating that its commission inherently requires the involvement of more than one individual.¹⁷

¹⁶ Ratna Kumala Sari and Nyoman Serikat Putra Jaya, “Kebijakan Formulasi Pertanggungjawaban Pidana Korporasi Terhadap Perbuatan Trading in Influence Sebagai Tindak Pidana Korupsi,” *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 12–23, <https://doi.org/10.14710/jphi.v2i1.12-23>.

¹⁷ ICW, “Laporan Hasil Pemantauan Tren Penindakan Korupsi Tahun 2022,” *Www.Antikorupsi.Org*, 2023, 1–40, [https://antikorupsi.org/sites/default/files/dokumen/Tren Penindakan Tahun 2022.pdf](https://antikorupsi.org/sites/default/files/dokumen/Tren%20Penindakan%20Tahun%202022.pdf).

Forms of participation are regulated under Article 55 of the Indonesian Penal Code (KUHP), which states:

1. A person shall be punished as a perpetrator of a criminal offense if:
 - 1) They commit, direct, or participate in the act;
 - 2) Any individual who intentionally incites others to act by providing or promising something through abuse of power or status, threats, deception, or by offering opportunities, means, or information.
2. Regarding incitement, only acts that occur as a direct result of intentional inducement shall be considered, along with their consequences.

A common form of participation in corruption offenses is aiding and abetting, although incitement to commit an offense is also possible. Bribery is classified as a special offense that requires specific conditions to be met by the perpetrator, a classification known as *delictum qualitatis* (qualified offense). In terms of perpetrator qualification, Simons and Von, as cited by Andi Hamzah, argue that an individual who facilitates the commission of a crime but does not possess the specific status or qualifications required of the principal perpetrator can only be classified as an accomplice.

Regarding instigation, or inducing another to commit an offense, the instigator may be held criminally liable if certain conditions are met: (a) Intentional inducement—there must be a deliberate intent to encourage or incite another person to commit a criminal act; (b) Means of inducement—as stipulated in Article 55(1), point 2 of the Indonesian Penal Code (Kitab Undang-Undang Hukum Pidana or KUHP), instigation may take various forms, including offering gifts or promises, abusing power or influence, employing violence, threats, or deception, or providing opportunities, tools, or information. Vos, as cited by Van Bemmelen, further elaborates on this concept.¹⁸

"An individual who is not a civil servant or state official may be prosecuted as a *doen pleger* (perpetrator by proxy/instigator) in an offense related to official misconduct, provided that the material perpetrator holds the status of a civil servant."

Although the perpetrator is the main actor, the doctrine of participation (*deelneming*) extends criminal liability to other participants, ensuring that each participant's actions remain linked to the principal offender's conduct. The assertion that bribery is a necessary form of participation is discussed in the writings of A.Z. Abidin and Andi Hamzah:¹⁹

"the requirement for criminal liability is knowledge (*opzet* in its three forms). If one party lacks intent, this also means there is no shared intent and, therefore, no *medepleger* (co-perpetrator) in the legal sense. Instead, what exists is *medewerking* or participation in the form of assistance. The same applies to offenses under Articles 238, 149, 209, 401, 397, and 102 of the Indonesian Penal Code (KUHP) as well as Article 326 *ter* of the Dutch Penal Code (*Ned. WvS.*), which pertain to bribing individuals who do not hold the status of civil servants.

According to Barda Nawawi Arief, the law does not explicitly define *medepleger* (co-perpetrator). However, the *Memorie van Toelichting* explains that a *medepleger* is someone who deliberately participates in or contributes to the commission of an offense. Thus, individuals engaged in trading in influence, as participants in a criminal act, may be subject to criminal sanctions due to their intentional and conscious cooperation in committing the offense.

In bribery offenses, a key element is the act of offering a gift or promise to a public official or state administrator, who then accepts the gift or benefit, establishing a clear transactional relationship. In contrast, trading in influence is inherently a *sui generis* offense, meaning that it can exist independently of bribery. In other words, trading in influence may occur regardless

¹⁸ Jurnas.com, "'Suami Kendalikan Istri Atur Ijon Royek Pasar Atas Cimahi,'" 2016,

<https://www.jurnas.com/artikel/10644/Suami-Kendalikan-Istri-Atur-Ijon-Proyek-Pasar-Atas-Cimahi/>.

¹⁹ Nefa Claudia Meliala, "Urgensi Kriminalisasi Perdagangan Pengaruh Dalam Pembaharuan Hukum Pidana," 2019,

<https://www.hukumonline.com/berita/a/urgensi-kriminalisasi-perdagangan-pengaruh-dalam-pembaharuan-hukum-pidana-lt5c45574b1e6e9/>.

of whether bribery takes place. This distinction reveals a significant legal loophole—without the explicit presence of bribery, perpetrators of trading in influence may evade legal consequences.

The element of undue advantage in trading in influence is broadly defined, encompassing not only financial benefits but also non-monetary advantages such as securing a position or title. This legal gap has contributed to the persistence of corruption in Indonesia. Therefore, incorporating explicit provisions on trading in influence into Indonesia's legal framework is essential for enhancing anti-corruption efforts.

Regulating trading in influence serves to protect public officials and state administrators in carrying out their administrative functions and exercising public power, ensuring they remain free from undue influence or external intervention. Furthermore, such regulation is a crucial step toward strengthening democratic governance and fostering the emergence of competent public officials capable of upholding Indonesia's national ideals.

3. Alternative Perspectives on Regulating Trading in Influence

While the explicit criminalization of trading in influence within Indonesia's legal framework presents a compelling argument, it is essential to consider alternative perspectives and counterarguments. These diverse viewpoints contribute to a more comprehensive discourse on this complex legal issue and offer nuanced insights for policy formulation.

a. Sufficiency of Existing Legal Framework

Some legal scholars argue that Indonesia's existing anti-corruption legal framework already provides sufficient mechanisms to address trading in influence without necessitating its explicit criminalization. They assert that the combined application of provisions on bribery, gratuity, and the doctrine of participation effectively functions as a "functional equivalent" to specific trading in influence regulations. From this perspective, the legal vacuum identified in this research may be overstated, as innovative prosecutorial approaches could mitigate potential gaps. Consequently, proponents of this view emphasize the need to strengthen enforcement capabilities and judicial interpretation rather than introduce new statutory provisions that may result in redundancies within the legal system.

b. Concerns About Legal Certainty and Overreach

Another perspective highlights concerns regarding the potential vagueness and overreach of trading in influence provisions. Critics argue that criminalizing "supposed influence" or "perceived influence" may introduce significant ambiguity into the legal framework, potentially undermining legal certainty. Caution that overly broad provisions on influence trading could inadvertently criminalize legitimate lobbying, advocacy, and political relationship-building, all of which are essential components of democratic governance. This perspective underscores the necessity of precise statutory drafting to clearly differentiate criminal trading in influence from lawful political and professional activities.

c. Alternative Regulatory Approaches

Some scholars propose regulatory approaches beyond criminal law to address trading in influence. Ramadhan and Schwarze²⁰ suggest a multi-pronged approach combining:

1. Enhanced transparency regulations for political parties and campaign financing
2. Administrative law interventions targeting conflict of interest
3. Ethics codes and compliance mechanisms for public officials and their associates
4. Whistleblower protection frameworks specifically designed to uncover influence trading networks

²⁰ Suramin, "Indonesian Anti-Corruption Law Enforcement: Current Problems and Challenges."

This perspective views criminal law as just one component of a comprehensive strategy, suggesting that preventive measures might be more effective than punitive approaches alone.

d. Response to Alternative Perspectives

While alternative perspectives provide valuable insights, several factors support the explicit criminalization of trading in influence. The "functional equivalent" approach has failed to address cases lacking clear financial transactions, creating an accountability gap. Legal certainty concerns can be mitigated through precise statutory drafting with intent requirements and well-defined offense elements. While regulatory measures are useful, they do not eliminate the need for criminal provisions targeting severe cases. Comparative experiences show that well-crafted laws can enhance accountability without overreach. Thus, these alternative viewpoints ultimately strengthen rather than weaken the case for explicit criminalization in Indonesia.

5. Policy Recommendations for Drafting Trading in Influence Legislation

To effectively criminalize trading in influence, Indonesia should enact precise legislation distinguishing the roles of the influence peddler, purchaser, and decision-maker while differentiating the offense from bribery. A tiered culpability framework should impose proportional penalties. A model provision could state: "Any person who, directly or indirectly, solicits, receives, offers, or provides an undue advantage to induce the abuse of real or perceived influence to obtain an improper advantage from public authorities shall be liable to imprisonment up to X years and/or a fine up to Y rupiah."

The law should empower prosecutors with specialized investigative tools, allow circumstantial evidence, and protect witnesses and whistleblowers. An administrative framework should mandate conflict-of-interest disclosures, while non-conviction-based asset recovery provisions would address evidentiary challenges. These reforms would close legal gaps and strengthen Indonesia's anti-corruption framework.

C. Conclusion

Trading in influence and corruption are inherently interconnected, with the absence of explicit legal provisions creating a legal vacuum that enables corrupt practices. In Indonesia, individuals engaging in trading in influence are prosecuted under bribery or gratuity provisions of the Anti-Corruption Law, which apply only to those who directly or indirectly offer or provide gifts to public officials. This limitation prevents the prosecution of intermediaries, brokers, or traders who facilitate influence trading but do not meet the statutory criteria for bribery or gratuity. While the doctrine of participation can extend liability in some cases, it remains insufficient where corruption does not involve direct bribery but results in financial losses to the state.

Unlike bribery-related offenses, trading in influence is a *delictum sui generis*—an independent offense that can exist without direct financial transactions. To address this gap, Indonesia requires a dedicated legal framework that criminalizes trading in influence while maintaining coherence with existing anti-corruption laws. Such a framework should define the offense by establishing its key elements: (1) intentional abuse of real or perceived influence, (2) solicitation or acceptance of undue advantage, and (3) a causal link between the influence exerted and the advantage sought. Penalties should be proportional to the severity of the offense, with stricter sanctions for public officials who exploit their positions of trust.

Procedurally, the framework should incorporate investigative protocols suited to the trilateral nature of influence trading, extending beyond the bilateral structure of bribery cases. Evidence-gathering mechanisms must account for non-monetary advantages, such as promises of future positions or preferential treatment. Given the transnational dimension of influence trading, jurisdictional provisions should also address cross-border cases. By treating trading in

influence as a standalone offense rather than a subset of bribery, Indonesia would align its legal framework with UNCAC standards, close existing enforcement gaps, and establish a robust deterrent against this sophisticated form of corruption.

References

- Alfaro Tambuwun, Geraldo, Refly Singal, and Vecky Yani Gosal. "Tinjauan Yuridis Terhadap Upaya Menghalangi Proses Hukum (Obstruction of Justice) Oleh Advokat Dalam Penyelidikan Dan Penyidikan Tindak Pidana Korupsi 1." *Jurnal Fakultas Hukum Unsrat Lex Administratum* XII, no. 5 (2023).
- Ali, Mahrus. *Dasar-Dasar Hukum Pidana*. Sinar Grafika, 2022.
- Amin, Rahman. *Hukum Pembuktian Dalam Perkara Pidana Dan Perdata*. Deepublish, 2020.
- Arief, Barda Nawawi. "Sari Kuliah Hukum Pidana II." *Fakultas Hukum Undip*, 1984.
- Davis, Kevin E. "Anti-Corruption Law and Systemic Corruption: The Role of Direct Responses." *Revista Direito GV* 17, no. 2 (2021): 1–23. <https://doi.org/10.1590/2317-6172202129>.
- Fadhil, Muhammad, Taufik Rachman, and Ahsan Yunus. "Konstruksi Hukum Perdagangan Pengaruh (Trading in Influence) Dalam Tindak Pidana Korupsi." *Jurnal Ilmu Hukum AMANNA GAPPA* 21, no. 1 (2013): 15–34.
- Goldman, Jim. "Who Benefits from Anti-Corruption Enforcement ?," 2024.
- Griffore, Kari A, Andrea Bowra, Sara J T Guilcher, and Jillian Kohler. "Corruption Risks in Health Procurement during the COVID-19 Pandemic and Anti-Corruption, Transparency and Accountability (ACTA) Mechanisms to Reduce These Risks: A Rapid Review." *Globalization and Health* 19, no. 1 (November 2023): 91. <https://doi.org/10.1186/s12992-023-00994-x>.
- ICW. "Laporan Hasil Pemantauan Tren Penindakan Korupsi Tahun 2022." *Www.Antikorupsi.Org*, 2023, 1–40. [https://antikorupsi.org/sites/default/files/dokumen/Tren Penindakan Tahun 2022.pdf](https://antikorupsi.org/sites/default/files/dokumen/Tren%20Penindakan%20Tahun%202022.pdf).
- Irwansyah, Irwansyah. "Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel." *Yogyakarta: Mirra Buana Media* 8 (2020).
- Jurnas.com. "'Suami Kendalikan Istri Atur Ijon Royek Pasar Atas Cimahi,'" 2016. <https://www.jurnas.com/artikel/10644/Suami-Kendalikan-Istri-Atur-Ijon-Proyek-Pasar-Atas-Cimahi/>.
- Meliala, Nefa Claudia. "Urgensi Kriminalisasi Perdagangan Pengaruh Dalam Pembaharuan Hukum Pidana," 2019. <https://www.hukumonline.com/berita/a/urgensi-kriminalisasi-perdagangan-pengaruh-dalam-pembaharuan-hukum-pidana-lt5c45574b1e6e9/>.
- Putu Purnama Ning Widhi, Luh, and Aa Ngurah Oka Yudistira Darmadi. "Kedudukan Hukum Perdagangan Pengaruh Dalam Tindak Pidana Korupsi." *Jurnal Kertha Desa* 9, no. 12 (2023): 13–22.
- Sari, Ratna Kumala, and Nyoman Serikat Putra Jaya. "Kebijakan Formulasi Pertanggungjawaban Pidana Korporasi Terhadap Perbuatan Trading in Influence Sebagai Tindak Pidana Korupsi." *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 12–23. <https://doi.org/10.14710/jphi.v2i1.12-23>.
- Siswanto, Dadang. "Korupsi Sebagai Bentuk Kejahatan Transnasional Terorganisir." *Masalah-Masalah Hukum* 42, no. 1 (2013): 123–30.
- Slingerland, Willeke. "Trading in Influence." *Elgar Concise Encyclopedia of Corruption Law*, 2023, 403–5. <https://doi.org/10.4337/9781802206494.00104>.
- Soekanto, Soerjono. "Penelitian Hukum Normatif: Suatu Tinjauan Singkat," 2007.
- Suramin, Suramin. "Indonesian Anti-Corruption Law Enforcement: Current Problems and Challenges." *Journal of Law and Legal Reform* 2, no. 2 (2021): 225–42.

<https://doi.org/10.15294/jllr.v2i2.46612>.

Wei, Ye, and Wenjian He. “Can Anti-Corruption Improve the Quality of Environmental Information Disclosure?” *Environmental Science and Pollution Research International* 29, no. 4 (January 2022): 5345–59. <https://doi.org/10.1007/s11356-021-15932-w>.

