The Connection Between the Crime of Trading in Influence and Gratification in Corruption

Hubungan Antara Tindak Pidana Perdagangan Pengaruh dan Gratifikasi dalam Tindak Pidana Korupsi

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ABSTRACT

Corruption poses a persistent threat to the foundations of good governance and public integrity. One of the common modes used in corruption practices is *trading in influence* and *gratification*. *Trading in influence* occurs when a person leverages their influence over a public official to obtain certain benefits; unlike bribery, the object of *trading in influence* is influence itself, not direct authority. Meanwhile, *gratification* encompasses all forms of gifts or benefits that may affect the independence of officials in making decisions. Both practices have the potential to undermine bureaucratic systems and diminish public trust in the government. This study aims to analyze the correlation between *trading in influence* and *gratification* as forms of corruption, as well as to review their impact and implications on the legal and governmental system. The research method used is a normative juridical approach, analyzing relevant legislation and case studies of corruption incidents involving these two practices. The results show that *trading in influence* and *gratification* often serve as the entry points for more severe corruption practices. In this context, Article 18 of the UNCAC provides an important conceptual basis for the development of national legal norms to specifically define and address *trading in influence*. Therefore, there is a need for stronger regulations and more effective law enforcement to prevent and combat these practices.

Keyword: Abuse of Influence, Bribery, Corruption.

ABSTRAK

Tindak pidana korupsi merupakan ancaman serius bagi tata kelola pemerintahan yang bersih dan transparan. Salah satu modus yang sering digunakan dalam praktik korupsi adalah *trading in influence* dan gratifikasi. *Trading in influence* terjadi ketika seseorang memanfaatkan pengaruhnya terhadap pejabat publik untuk memperoleh keuntungan tertentu; berbeda dari suap, objek dari *trading in influence* adalah pengaruh, bukan kewenangan langsung. Sementara itu, gratifikasi mencakup segala bentuk pemberian yang dapat memengaruhi independensi pejabat dalam mengambil keputusan. Kedua praktik ini berpotensi merusak sistem birokrasi dan menurunkan kepercayaan publik terhadap pemerintah. Penelitian ini bertujuan untuk menganalisis keterkaitan antara kejahatan *trading in influence* dan gratifikasi dalam tindak pidana korupsi serta meninjau dampak dan implikasinya terhadap sistem hukum dan pemerintahan. Metode yang digunakan dalam penelitian ini adalah pendekatan yuridis normatif dengan menganalisis peraturan perundang-undangan yang relevan serta studi kasus dari berbagai kejadian korupsi yang melibatkan kedua praktik tersebut. Hasil penelitian menunjukkan bahwa *trading in influence* dan gratifikasi sering kali menjadi awal dari praktik korupsi yang lebih besar. Dalam konteks ini, Pasal 18 UNCAC memberikan dasar konseptual penting bagi pengembangan norma hukum nasional untuk mengkualifikasi dan menanggulangi praktik *trading in influence* secara lebih spesifik. Oleh karena itu, diperlukan penguatan regulasi dan penegakan hukum yang lebih efektif untuk mencegah serta menanggulangi praktik ini.

Keyword: Trading in Influence, Gratifikasi, Korupsi.

1. Introduction

According to the 2023 corruption trend monitoring report by Indonesia Corruption Watch (ICW), there was a significant increase in corruption cases. That year, a total of 791 cases were recorded, with 1,695 individuals identified as suspects. The estimated potential state losses reached Rp 28.4 trillion, with alleged bribery and gratification amounting to Rp 422 billion, potential illegal levies or extortion reaching around Rp 10 billion, and assets suspected to be hidden through money laundering totaling Rp 256 billion (Data et al., n.d.). Despite various efforts and legal frameworks, the persistence of these figures highlights the gaps in enforcement. The results of this corruption trend monitoring provide an illustration that law enforcement efforts to eradicate corruption in Indonesia remain weak, particularly in cases of gratification. This crime seems to only be recognized as an offense if the element of authority as a state official is proven, while it does not apply to individuals within the sphere of power who, despite not holding official positions, can still exert influence in determining situations that harm the state.

Several recent corruption cases in Indonesia demonstrate the interconnection between *trading in influence* and *gratification* as part of broader corrupt practices. In May 2023, reports emerged of alleged trading in influence within the Ministry of Law and Human Rights, where individuals were suspected of leveraging their connections to public officials in exchange for certain gratifications. Two cases related to this practice were reported to the Corruption Eradication Commission (Law & Justice: Portal Berita & Investigasi, 2023). Another notable example is the case involving the former Chairman of the United Development Party (PPP), Romahurmuziy, who was implicated in a bribery scheme concerning position trading within the Ministry of Religious Affairs. Although he was a member of Commission XI of the House of Representatives, Romahurmuziy was believed to have used his political influence as a party leader to facilitate job placements in an institution outside his official purview, allegedly in return for material benefits—thus combining elements of both trading in influence and gratification (Hukumonline, 2019). Additionally, major financial scandals such as the Asabri and Jiwasraya cases also revealed patterns of influence being exploited for illicit gains. While not always explicitly categorized as trading in influence, the abuse of access and relationships to secure financial advantages in these cases reflects the same mechanism—where influence is commodified and rewarded with various forms of gratification (CNBC Indonesia, 2023). These examples underscore how trading in influence and gratification often operate in tandem, reinforcing one another in the execution of corrupt schemes.

Trading in influence is a form of corruption recognized under the United Nations Convention Against Corruption (UNCAC). This practice involves the misuse of influence or position to grant advantages or favors to another party, typically in exchange for a certain benefit. The key elements of trading in influence include the presence of power or authority, the abuse of influence, and the unlawful gain obtained from the act (Ilyas et al., 2022). As a country that has ratified UNCAC, Indonesia must integrate the concept of trading in influence into its national laws, particularly in the Anti-Corruption Law. Clear regulations on this practice would strengthen anti-corruption efforts by closing legal loopholes that enable the misuse of influence and authority for personal or group interests.

This study focuses on examining the connection between the crime of trading in influence and gratification in corruption offenses. It aims to analyze how the abuse of influence is linked to the act of receiving undue benefits, which can compromise the integrity of public institutions. By exploring legal frameworks and case studies, this research seeks to identify patterns and challenges in addressing these corruption-related crimes. Additionally, it highlights the need for clearer legal provisions to prevent and combat trading in influence and gratification. The findings of this study are expected to contribute to the development of more effective anti-corruption policies and legal reforms.

2. Method

This research employs a normative legal study to examine the connection between the crime of trading in influence and gratification in corruption offenses. The normative method is used because it is particularly suitable for analyzing legal norms, assessing the adequacy of current laws, and proposing improvements within the legal framework. The study adopts a statutory and conceptual approach, focusing on legal provisions and theoretical frameworks related to corruption. Legal materials are collected through literature studies, including legislation, legal doctrines, court decisions, and scholarly writings. This method allows for an in-depth analysis of existing regulations and their effectiveness in addressing trading in influence and gratification. The research applies a prescriptive analysis, aiming to provide recommendations

for improving legal frameworks and enforcement mechanisms. By critically examining relevant laws and concepts, this study seeks to identify gaps and inconsistencies in the current legal system. The findings are expected to contribute to a better understanding of how trading in influence and gratification intersect in corruption cases. Ultimately, the study aims to support the development of clearer legal standards to strengthen anti-corruption efforts.

3. Result and Discussion

Etymologically, the term "gratification" can be translated as a gift or reward given as a form of appreciation or compensation. It originates from the Latin word "gratia", which means grace, pleasure, or kindness, and the English word "gratification", which refers to satisfaction or a reward as a token of gratitude (Ricardo Lalu, 2019). In a legal context, however, gratification is understood as a gift or benefit that has the potential to influence a person's decisions or actions, particularly in the realm of corruption.

Gratification is defined as any form of gift, reward, or benefit received by an individual as compensation for services or advantages provided. This giving can come from individuals or entities that have a relationship with government institutions, including for the purpose of securing contracts or other benefits. This definition is outlined in Law No. 20 of 2001, which amends Law No. 31 of 1999 on the Eradication of Corruption Crimes (Pramesti et al., 2022). Gratification reporting includes various forms of giving, such as money, goods, discounts, commissions, interest-free loans, travel tickets, free healthcare services, and other facilities. This practice applies to benefits received both domestically and internationally and can be conducted through electronic or non-electronic means.

In the Corruption Eradication Act (UU Tipikor) Number 31 of 1999 jo. Law Number 20 of 2001, gratification is regulated under Article 12B, which states that any gratification given to a civil servant or state official related to their position and contrary to their duties or obligations is considered bribery, unless the recipient reports it to the Corruption Eradication Commission (KPK) within 30 working days of receiving it. Furthermore, Article 12C stipulates that if the gratification is reported within the specified time frame, the recipient will not be subject to criminal penalties. Meanwhile, in the Corruption Eradication Commission Act (UU KPK) Number 19 of 2019, gratification falls within the duties and authority of the KPK, particularly in preventing and prosecuting corruption crimes. The KPK has the authority to receive, examine, and determine the status of reported gratifications by officials or civil servants. However, despite these existing provisions, current Indonesian regulations have not yet explicitly accommodated trading in influence as a distinct and punishable offense. This regulatory gap presents a significant challenge in addressing cases where influence, rather than formal authority, is exploited for illicit gain. Therefore, there is an urgent need to develop more comprehensive legal norms that can effectively cover the practice of trading in influence in accordance with international standards, such as those outlined in Article 18 of the UNCAC.

Gratification is typically given to officials who hold authority and power in decision-making. This offering is intended to influence the official to issue policies that benefit the giver. Such practices can lead to an abuse of office, where decisions are no longer made in the public interest but rather for personal or group gain (Mauliddar et al., 2017). Gratification undermines government integrity as it can influence officials' decisions based on personal or group interests rather than public interests. If this practice is left unchecked, public trust in the government will decline, ultimately weakening clean and transparent governance.

Gratification is not always given directly to the relevant official but can also be provided through intermediaries or third parties. In some cases, it is disguised as gifts, sponsorships, or specific facilities that personally benefit the official (Purwanto & Widyaningrum, 2023). This practice is often linked to trading in influence, where someone leverages their connections or position to influence another official's decision (Ferdinand et al., 2021). Through this method, the giver of gratification can gain benefits without directly interacting with the authority in charge. Gratification is not always in the form of money but can also include travel, specific job positions, or exclusive facilities. When gratification is given indirectly, proving it becomes more challenging, making it easier to exploit legal loopholes.

Perpetrators of trading in influence are not individuals who hold official positions or direct power in the government. However, they often have close relationships with officials or influential figures in decision-making. By leveraging these connections, they can offer services to influence policies or decisions for personal or group benefits (Sembiring et al., 2020). This practice is dangerous because it allows corruption to

occur without the direct involvement of the authorized official. Additionally, trading in influence is often difficult to prove as it is carried out discreetly through lobbying or intermediaries.

The diagram below illustrates the pattern of trading in influence in corruption practices. The process begins with the perpetrator of trading in influence approaching an official and offering promises of benefits or certain rewards. The influenced official then exercises their authority to issue policies that favor the gratification giver. As a result, both the giver and the perpetrator of trading in influence gain advantages, whether in the form of material benefits or exclusive facilities. Ultimately, this leads to corruption and abuse of power, undermining clean and transparent governance.

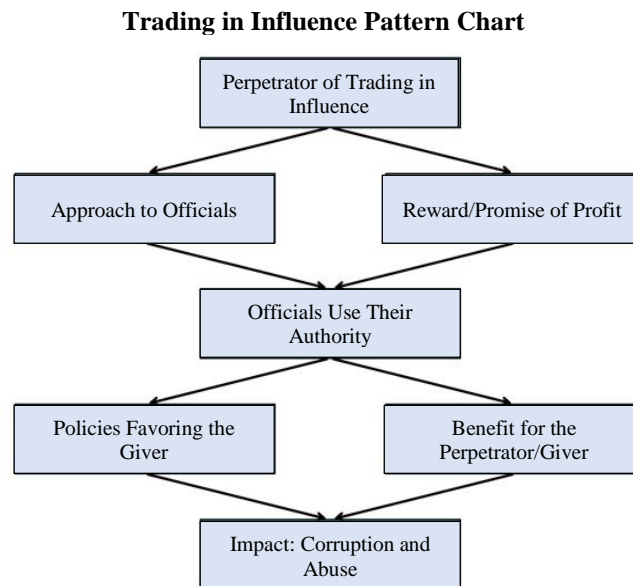**Trading in Influence Pattern Chart**

Figure1. Trading in Influence Pattern Chart

The regulation of trading in influence in the UNCAC aims to prevent and combat the misuse of influence in public decision-making. This provision ensures that individuals with access to or close relationships with public officials do not exploit their influence for personal gain or the benefit of others in an unlawful manner. By enforcing this rule, transparency and accountability in governance are expected to improve, while the risk of conflicts of interest can be minimized. Furthermore, the implementation of this norm also strengthens international cooperation in addressing corruption practices involving influence peddling across different countries (Irza & Jaya, 2020).

The Indonesian government should adopt the concept of trading in influence as regulated in the UNCAC into its Anti-Corruption Law. The criminalization process of this practice is essential to close legal loopholes that allow the misuse of influence in policy-making (Pratama, 2020). In criminalizing an act, consideration must be given to the established criteria for criminalization. These criteria include the social impact it causes, the level of danger or harm it generates, and the extent to which the act contradicts legal and moral values in society. Additionally, the effectiveness of the law in addressing such actions must also be taken into account to prevent excessive criminalization or legal abuse (Werdhiyani & Parsa, 2020).

Trading in influence has a significant social impact on the government system and public trust. This practice creates injustice in decision-making, as policies that should serve the public interest are instead influenced by personal or group interests. As a result, the public loses confidence in the integrity of state officials and government institutions. Additionally, disparities arise in access to policies, where those with greater influence tend to receive special treatment. Therefore, the criminalization of trading in influence is necessary to maintain social stability and public trust in the government system.

Trading in influence can cause significant losses to both the state and society. The abuse of influence in decision-making processes has the potential to harm state finances, especially in matters related to public projects, procurement of goods and services, or business licensing. Moreover, this practice exacerbates the culture of corruption by creating informal mechanisms that are difficult to control under existing laws. In the

long run, the economic impact can be highly detrimental, as the allocation of state resources is not conducted fairly and transparently. For this reason, this act should be classified as a criminal offense subject to strict penalties.

From both moral and legal perspectives, trading in influence contradicts the principles of justice and good governance. An ideal legal system should uphold transparency, accountability, and fairness in decision-making. However, the practice of trading in influence undermines these principles by allowing decisions to be made based on personal interests rather than public welfare. Additionally, in many legal systems, this practice is often categorized as a form of corruption or covert bribery. Thus, the criminalization of trading in influence aligns with the legal and moral values that states seek to uphold in ensuring clean governance.

The criminalization of trading in influence must be accompanied by a strong legal framework to ensure effective implementation. Clear regulations will provide a legal basis for law enforcement authorities to identify and prosecute those engaged in this practice. Without specific legal provisions, proving trading in influence can be challenging, as transactions are often conducted discreetly and without direct evidence. Therefore, the evidentiary system must be strengthened with thorough investigative mechanisms, such as tracking financial flows and communications between involved parties. With a comprehensive approach, this criminalization can be effectively enforced and serve as a deterrent to potential offenders.

Based on the analysis of four criminalization criteria, trading in influence meets the requirements to be classified as a criminal offense that should be regulated under national law. Its detrimental social impact, the significant losses it causes, and its contradiction with legal and moral values provide strong justification for its criminalization. Furthermore, the effectiveness of law enforcement in addressing this issue can be improved through stricter regulations and better enforcement mechanisms. Countries that have adopted this provision in their legal frameworks demonstrate that this issue can be controlled with the right legal approach. Therefore, Indonesia must promptly incorporate this provision into its Anti-Corruption Law to enhance the effectiveness of corruption eradication efforts.

Based on its characteristics, the offense of trading in influence is classified as a formal offense (*delik formil*). This is because the crime is considered complete once the act of exerting influence in exchange for a benefit occurs, regardless of whether the intended result is achieved. In other words, the mere act of offering or receiving benefits to influence a decision-making process is already punishable by law. This distinguishes it from material offenses (*delik materiil*), where the criminal act is only considered complete if it results in concrete harm or consequences. The formal nature of this offense is crucial for law enforcement, as it allows authorities to intervene before corrupt decisions are fully executed. By criminalizing the act itself, the law aims to prevent and deter corrupt practices that undermine fair and transparent governance.

The proof of trading in influence as a formal offense (*delik formil*) focuses on the act of exerting influence rather than the actual outcome. This means that law enforcement only needs to establish that an individual has offered or accepted benefits to influence a decision-making process. It is not necessary to prove that the influence successfully changed a policy or decision. Evidence may include communications, financial transactions, or testimonies showing an agreement between the parties involved. The key element is demonstrating the intention and action of using influence for personal or group gain. This approach ensures that corrupt practices can be addressed early, preventing further damage to governance and public trust.

The ideal formulation of the offense of trading in influence incorporation into Indonesian law should reflect the key characteristics of this crime while aligning with the principles of criminal law. First, the legal subject of this offense should include not only public officials but also third parties who act as intermediaries in influencing official decisions. This is crucial because trading in influence often involves individuals who do not hold official positions but have access to decision-makers.

Second, the prohibited act should cover all forms of abuse of influence, whether directly or indirectly, to obtain a specific benefit. This includes promises, offers, requests, or acceptance of benefits in the form of money, goods, facilities, or other advantages in exchange for exerting influence over government decision-making. By formulating this element broadly, the law can effectively target all forms of hidden abuses of power.

Third, there must be intent or deliberate action in using influence over public officials to affect policies, decisions, or specific actions. This element ensures that trading in influence is not merely an ordinary social relationship but is conducted with a clear purpose of gaining unlawful benefits. The proof of this element can

be supported by recorded communications, transaction documents, or witness testimonies demonstrating a specific intention behind interactions between the perpetrator and the influenced official.

Fourth, there must be a benefit or advantage gained, whether by the perpetrator, the person exerting influence, or the party benefiting from the influenced decision. This benefit is not limited to monetary gains but can also include job promotions, business contracts, licenses, or other forms of facilities that provide an unfair advantage. This element is crucial to distinguish between legitimate political lobbying and corrupt trading in influence.

Fifth, criminal sanctions should be clearly defined to serve as a deterrent for offenders. Penalties may include imprisonment, fines, and the revocation of certain rights, such as disqualification from holding public office. With strict law enforcement and well-defined offense elements, the criminalization of trading in influence in Indonesia can serve as an effective tool in combating corruption and strengthening clean and transparent governance.

The formulation of the offense of trading in influence can be outlined as follows:

Article X
1. Any person who intentionally offers, requests, gives, or receives any form of benefit with the intent to influence the decision of a public official or state administrator to act in favor of the benefit provider shall be subject to imprisonment for a maximum of X years and/or a fine of up to X rupiah.
2. The offense referred to in paragraph (1) shall be deemed committed even if the influenced decision is not realized or does not align with the wishes of the benefit provider.
3. If the act referred to in paragraph (1) is committed by a public official or state administrator, the penalty shall be increased by one-third of the principal sentence.
4. The benefit referred to in paragraph (1) includes money, goods, facilities, services, positions, or other advantages that can be valued in monetary terms.
5. Any benefit obtained from the act referred to in paragraph (1) shall be confiscated for the state or returned to the rightful party.

The procedural law provisions for the offense of trading in influence must be designed to accommodate the unique nature of this crime, which is often difficult to prove. The following key aspects should be regulated in procedural law:
1. Investigation and Inquiry
   Law enforcement agencies, such as the Corruption Eradication Commission (KPK), the Attorney General's Office, or the Police, must be authorized to investigate indications of trading in influence based on public reports, audit findings, or financial transaction monitoring. Special investigative techniques, such as wiretapping, asset tracking, and communication surveillance between involved parties, should be permitted to uncover networks engaged in this practice.
2. Evidence and Proof
   Since this offense is classified as a formal offense (*delik formil*), proving this crime does not require demonstrating that the influenced decision was actually carried out, but only that there was an intention and action directed at trading in influence. Evidence may include financial documents, electronic communications, audio or video recordings, and witness or expert testimonies. The burden of proof may be reversed (*reversal of burden of proof*), especially for officials suspected of receiving gratification or benefits from this practice.
3. Trial Process
   Cases involving trading in influence should fall under the jurisdiction of the Corruption Court (Tipikor), which have special jurisdiction over corruption-related crimes. The court should provide witness and whistleblower protection to prevent intimidation or threats against those who expose the practice.
4. Sanctions and State Loss Recovery
   In addition to criminal penalties such as imprisonment and fines, the court must have the authority to confiscate assets obtained through trading in influence as a form of state loss recovery. If the perpetrator is a public official, additional administrative sanctions such as dismissal, revocation of political rights, or a ban from holding public office for a certain period may be imposed.

5. International Cooperation

    Since trading in influence often involves cross-border transactions, procedural law must include provisions for international cooperation, including the extradition of offenders, financial information exchange, and the recovery of illicit assets located abroad.

    Thus, the concept of trading in influence can serve as a foundation for formulating regulations to prevent and prosecute the misuse of influence in government. With a clear definition and elements of the offense, criminal law can be more effective in prosecuting individuals involved in this practice. Additionally, a well-structured procedural mechanism will ensure that the investigation, proof, and enforcement processes adhere to the principles of justice. The implementation of this concept also supports Indonesia's efforts to strengthen its anti-corruption legal system in accordance with international standards, particularly UNCAC. Therefore, regulating trading in influence within national law is a strategic step toward achieving a clean and transparent government.

4. Conclusion

The regulation of trading in influence is essential in combating corruption and ensuring transparency in governance. This practice, which involves the abuse of influence to obtain benefits, undermines public trust and distorts decision-making processes. Although Indonesia has made significant progress in addressing conventional forms of bribery and gratification, trading in influence remains insufficiently regulated within the current legal framework. By establishing trading in influence as a criminal offense, the legal system can address this covert form of corruption that often escapes traditional anti-bribery statutes. A clear legal framework defining the offense and its elements will provide a solid foundation for law enforcement efforts. Without proper regulation, the misuse of influence will continue to erode the integrity of public institutions and foster impunity among political elites.

    A formal legal framework must incorporate both substantive and procedural provisions to effectively establish trading in influence as a punishable offense. The substantive law should define the offense broadly to cover all forms of indirect influence-peddling, including third-party involvement, informal networks, and concealed transactions. This inclusive definitioFn is necessary to capture the various manifestations of influence abuse that currently fall outside the scope of existing anti-corruption laws. Meanwhile, procedural law must facilitate the investigation and prosecution of this crime by allowing special investigative techniques such as wiretapping, financial surveillance, and asset tracking. Additionally, the reversal of the burden of proof can help strengthen legal proceedings, particularly in cases involving public officials who exploit their positions informally. With these measures in place, legal authorities will have the necessary tools to detect and punish offenders effectively.

    The successful implementation of trading in influence regulations also requires strong institutional support and international cooperation. Since corruption and influence-peddling often involve cross-border financial transactions, global collaboration is necessary for asset recovery, mutual legal assistance, and extradition. The adoption of these regulations in accordance with the UNCAC, particularly Article 18, will align Indonesia's anti-corruption framework with international best practices and demonstrate its commitment to global anti-corruption norms. Furthermore, public awareness campaigns, legal literacy programs, and whistleblower protection mechanisms must be strengthened to encourage reporting and deter illicit influence-peddling. By integrating legal, institutional, and societal efforts, the fight against trading in influence can be more targeted and effective.

    In conclusion, establishing trading in influence as a punishable offense is a crucial step toward achieving a fair, accountable, and corruption-free government. The social and economic harm caused by this practice justifies its classification as a criminal offense under national law. Without specific legal provisions addressing trading in influence, law enforcement agencies may struggle to prosecute cases that do not involve direct monetary transactions but nonetheless represent serious abuses of power. By implementing comprehensive regulations and enforcement mechanisms, Indonesia can enhance its anti-corruption efforts and promote clean governance. A strong legal framework, combined with proactive enforcement and public participation, will ensure that decision-making processes remain transparent and free from undue influence. Therefore, incorporating trading in influence into Indonesia's anti-corruption law is not only a legal necessity but also a moral imperative to safeguard public integrity.

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