

## **RECONSTRUCTION OF RESTORATIVE JUSTICE MECHANISMS IN RESOLVING TRADING IN INFLUENCE: A CRIMINAL LAW PERSPECTIVE AND TARGET 16 SDGS**

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### ***Abstract***

*Trading in influence is a form of corruption that has gained increasing attention in Indonesia's legal system. This practice involves leveraging social relationships and access to public officials to gain certain advantages, either directly or indirectly. However, Indonesian law has yet to explicitly criminalize trading in influence as a distinct corruption offense, leading many cases that should fall under this category to be prosecuted under bribery or gratification laws instead. Amid these legal limitations, the concept of restorative justice emerges as an alternative resolution mechanism that focuses more on restitution and reconciliation rather than mere punishment. This study employs a normative juridical approach by analyzing relevant legal regulations and case studies at both national and international levels. From a criminal procedure law perspective, implementing restorative justice in trading in influence cases faces significant challenges, particularly in terms of evidence and victim identification. Nevertheless, this mechanism has the potential to enhance law enforcement effectiveness by promoting transparency, accountability, and the restitution of unlawfully obtained benefits. In the context of implementing Target 16 of the SDGs, the application of restorative justice can strengthen the rule of law and foster more transparent and inclusive institutions. Therefore, clearer regulatory reforms are necessary to accommodate restorative justice as a viable approach to addressing trading in influence as part of Indonesia's broader anti-corruption efforts.*

**Keyword:** *Trading in Influence; Restorative Justice; Criminal Procedure Law; Corruption; SDGs.*

## A. INTRODUCTION

*Trading in influence* or influence trading is a form of corruption that is increasingly becoming a concern in international and national law. This practice occurs when someone who has a position or access to power uses his influence to influence the decisions of public officials for personal or other party interests.<sup>1</sup> In the case of influence trading, it does not always involve a direct exchange of money, but often takes the form of promises, friendships, or indirect benefits that are difficult to prove in the existing legal system. Because of its vague nature, many countries have difficulty in prosecuting perpetrators of influence trading through applicable laws.<sup>2</sup>

Trading in influence in the legal system in Indonesia has not been explicitly categorized as a criminal act of corruption such as bribery or gratification. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption focuses more on bribery, gratification, and abuse of authority, but does not yet have a specific article regarding trading in influence.<sup>3</sup> This makes many cases that should be qualified as trading in influence have to be processed with other articles that are not always relevant. On the other hand, in international law, the United Nations Convention Against Corruption (UNCAC) has recognized trading in influence as a form of corruption in Article 18. This convention encourages its member states to criminalize such behavior in order to increase transparency and accountability in government.<sup>4</sup>

Indonesia has ratified the UNCAC through Law Number 7 of 2006, but until now has not adopted provisions related to trading in influence into the national legal system. Article 18 of the UNCAC states that trading in influence includes the act of giving, offering, or promising benefits to someone who has real or claimed influence that can influence the decisions of public officials.<sup>5</sup> The unclear regulations in Indonesia make cases of influence peddling often

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<sup>1</sup> Erdianto Effendi et al., "Trading in Influence (Indonesia): A Critical Study," *Cogent Social Sciences* 9, no. 1 (2023): 2231621.

<sup>2</sup> Willeke Slingerland, "The Fight against Trading in Influence," *Viešoji Politika Ir Administravimas* 10, no. 1 (2011): 53–66.

<sup>3</sup> Nasrullah Djamil, "Trading in Influence: Modus Baru Dalam Korupsi Indonesia Tahun 2022 Dan Paradoks Kriminalisasi: Trading in Influence: Indonesia's New Mode of Corruption in 2022 and the Criminalization Paradox," *JAAMTER: Jurnal Audit Akuntansi Manajemen Terintegrasi* 1, no. 4 (2023): 294–304.

<sup>4</sup> Mokhammad Najih, Fifik Wiryani, and Kenny Desinta Saraswanti, "Trading Influence as the Phenomenon of the Corruption in Indonesia (Study of Application of UNCAC Principles of Trading Influence in Corruption Act Law in Indonesia)," in *2018 3rd International Conference on Education, Sports, Arts and Management Engineering (ICESAME 2018)* (Atlantis Press, 2018).

<sup>5</sup> Julia Philipp, "The Criminalisation of Trading in Influence in International Anti-Corruption Laws" (University of the Western Cape, 2009).

difficult to process legally, because they must be categorized under other more specific criminal acts such as bribery or gratification.

One example of a case that reflects the practice of influence trading in Indonesia is the case involving the former Secretary of the Supreme Court, Nurhadi.<sup>6</sup> In this case, Nurhadi is suspected of using his position to influence legal decisions for the benefit of certain parties in exchange for money. Although this case is more categorized as bribery, the pattern of relationships that occurred shows how influence trading works in the justice system. In addition, in various government projects, indications are often found that certain parties get exclusive access to permits or infrastructure projects because of their closeness to state officials.

Trading in influence in the United States is also a serious problem even though it has been regulated in various regulations, including the Foreign Agents Registration Act (FARA) and political lobbying rules.<sup>7</sup> One case that has been highlighted is the involvement of Paul Manafort, former chairman of Donald Trump's campaign team, in lobbying activities for foreign interests. Manafort used his influence to lobby government policies and gain benefits from contracts obtained through his political connections. Although he was mostly charged with charges related to taxes and money laundering, this case shows how political networks can be used to gain personal benefits in the political and governmental system.<sup>8</sup>

Law enforcement in the Indonesian criminal law system against the practice of trading in influence still faces major challenges. Trading in influence is often difficult to prove legally because it does not always involve direct financial transactions, but rather more complex relations of power and interests. Law Number 31 of 1999 concerning the Eradication of Corruption does not explicitly regulate trading in influence as a stand-alone crime, so cases involving this practice are often processed through articles on bribery or gratification.<sup>9</sup> In the exemplary case, there is a main element of trading in influence, namely the use of position or closeness to public officials to obtain

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<sup>6</sup> Andi Saputra, "Kronologi Kasus Jual Beli Perkara Eks Sekretaris MA Hingga Kasasi Ditolak," 2022, <https://news.detik.com/berita/d-5884570/kronologi-kasus-jual-beli-perkara-eks-sekretaris-ma-hingga-kasasi-ditolak>.

<sup>7</sup> Giorgi Gamkhitashvili, "Problematic Aspects of Influence Trading in the Context of Comparative Legal Analysis of Georgia and European Countries," *J. Law*, 2023, 252.

<sup>8</sup> Voaindonesia, "Mantan Ketua Kampanye Trump, Paul Manafort Dinyatakan Bersalah," 2018, <https://www.voaindonesia.com/a/mantan-ketua-kampanye-trump-paul-manafort-dinyatakan-bersalah/4538926.html>.

<sup>9</sup> Lastuti Abubakar et al., "Restorative Justice Approach in Corporate Dispute Resolution as Business Actor in Indonesia," *Journal of Indonesian Legal Studies* 9, no. 1 (2024).

personal benefits or for certain parties, often not fully covered by the existing legal framework.<sup>10</sup>

The main challenge in cracking down on influence trading in Indonesia is its complex evidentiary mechanism.<sup>11</sup> Unlike bribery cases that usually involve traceable monetary transactions, influence peddling often involves only informal communication, recommendations, or oral instructions that are difficult to prove legally. In some cases, social connections and political proximity are major factors in determining a person's success in obtaining certain benefits, but it is difficult to categorize them as criminal acts without clear evidence.<sup>12</sup>

The concept of restorative justice is increasingly developing as an alternative in resolving criminal cases, especially for cases that have broad social dimensions. Restorative justice focuses on restoring losses caused by a crime and prioritizes involvement between the perpetrator, victim, and community in the case resolution process.<sup>13</sup> In this context, the application of restorative justice in cases of trading in influence becomes an interesting discourse, considering that corruption in the form of trading in influence often not only harms the state financially, but also damages public trust in the legal system and government institutions.<sup>14</sup>

Although restorative justice has been applied in several types of criminal acts in Indonesia, its application in corruption cases, especially trading in influence, is still being debated. One of the main reasons is that corruption is considered a crime that has a broad impact on the public interest, so many parties consider that the retributive or punitive approach is still more relevant than the restorative approach. In various corruption cases that have been processed in Indonesia, the decisions handed down to the perpetrators are more oriented towards punishment, with the aim of providing a deterrent effect.<sup>15</sup>

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<sup>10</sup> Mulyono Dwi Purwanto and Tuti Widyaningrum, "Pentingnya Pengaturan Delik Perdagangan Pengaruh (Trading In Influence) Pada Undang-Undang Tindak Pidana Korupsi Di Indonesia," *Jurnal Kajian Ilmiah* 23, no. 2 (2023): 125–34.

<sup>11</sup> Muhammad Fadhil, Taufik Rachman, and Ahsan Yunus, "Konstruksi Hukum Perdagangan Pengaruh (Trading in Influence) Dalam Tindak Pidana Korupsi," *Amanna Gappa*, 2022, 15–34.

<sup>12</sup> Rikky Adhi Susilo, "Kriminalisasi Perdagangan Pengaruh (Trading in Influence) Sebagai Tindak Pidana Korupsi" (Brawijaya University, 2020).

<sup>13</sup> Anis Lailatul Fajriah, Ni Ketut Sari Adnyani, and Made Sugi Hartono, "Perdagangan Pengaruh (Trading In Influence) Ditinjau Dari Perspektif United Nations Convention Against Corruption (Uncac)," *Jurnal Komunitas Yustisia* 4, no. 2 (2021): 554–63.

<sup>14</sup> Muhammad Munjin Sulaeman et al., "Trading in Influence (Perdagangan Pengaruh) Dalam Tindak Pidana Korupsi," *Reslaj: Religion Education Social Laa Roiba Journal* 5, no. 6 (2023): 2996–3024.

<sup>15</sup> Rafael Diaz and Laura Gomez, "Indirect Influences in International Trade," *ArXiv Preprint ArXiv:1411.7593*, 2014.

Several countries have tried to integrate the principle of restorative justice in handling corruption crimes with different approaches. In some jurisdictions, for example, case resolution through asset recovery mechanisms and compensation to affected communities has become part of the law enforcement strategy against cases of political corruption and influence peddling. In the Indonesian legal system, similar steps can be considered, especially by strengthening the mechanism for returning state losses and involving the community in the supervision and case resolution process.<sup>16</sup>

The main debate in adopting restorative justice for trading in influence cases also relates to public trust in the justice system.<sup>17</sup> One concern that arises is that the restorative approach can be used to provide impunity to perpetrators who have political or economic power. Therefore, if this mechanism is to be implemented, strict and transparent regulations are needed to ensure that the resolution of cases through restorative justice still prioritizes accountability and does not reduce the deterrent effect for perpetrators.

Amid the complexity of law enforcement against trading in influence, a more balanced approach between retributive and restorative justice can be a more effective solution.<sup>18</sup> The combination of strict criminal penalties with recovery mechanisms for affected communities can be a more appropriate model for handling cases of trading in influence. This can also strengthen the legitimacy of the legal system and increase public trust in judicial institutions in handling cases related to corruption and abuse of power.<sup>19</sup>

Trading in influence is a phenomenon that is contrary to the principles of justice and good governance, as emphasized in Target 16 of the Sustainable Development Goals (SDGs)<sup>20</sup>. This target focuses on building effective, accountable and transparent institutions to ensure access to justice for all. In this context, influence peddling poses a serious threat because it can undermine the legal system, create inequalities in access to public policies, and strengthen a culture of corruption that hinders sustainable development. When important decisions in government are influenced by the interests of

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<sup>16</sup> Purwanto and Widyaningrum, "Pentingnya Pengaturan Delik Perdagangan Pengaruh (Trading In Influence) Pada Undang-Undang Tindak Pidana Korupsi Di Indonesia."

<sup>17</sup> Ahmad Syahird and Amir Ilyas, "Restorative Justice Approach as Ultimum Remedium of Corruption Crimes.," *Pakistan Journal of Criminology* 16, no. 3 (2024).

<sup>18</sup> Emilie M Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression," *International Organization* 59, no. 3 (2005): 593–629.

<sup>19</sup> Ade Mahmud et al., "Opportunities for Restorative Justice in the Settlement of Corruption," *KnE Social Sciences*, 2024, 53–64.

<sup>20</sup> Joyeeta Gupta and Courtney Vegelin, "Sustainable Development Goals and Inclusive Development," *International Environmental Agreements: Politics, Law and Economics* 16 (2016): 433–48.

certain individuals or groups, public trust in legal institutions is weakened, creating inequality in the implementation of justice.

The absence of regulations in the Indonesian legal system that explicitly regulate trading in influence worsens the situation, because this legal loophole allows various forms of abuse of power to continue without clear legal consequences. This is contrary to Target 16.3 of the SDGs, which demands the supremacy of law and equal access to justice for all individuals.<sup>21</sup> When trading in influence occurs systematically in licensing, procurement of goods and services, and the justice sector, individuals or groups with greater economic and political power tend to gain unfair advantages. Meanwhile, the general public, especially vulnerable groups, are increasingly marginalized from policies that should protect their interests.<sup>22</sup>

The impact of weak regulation on trading in influence is not only felt in the legal system, but also in the effectiveness of government institutions. Target 16.5 of the SDGs emphasizes the importance of reducing corruption and bribery in all forms, but trading in influence that is not specifically categorized as a criminal act of corruption creates new challenges in eradicating this practice.<sup>23</sup> In some cases, trading in influence is disguised as lobbying activities or legitimate business relationships, making it difficult to categorize as a crime. As a result, law enforcement mechanisms that are supposed to ensure justice for all are losing their effectiveness, due to gaps in regulation and implementation.<sup>24</sup>

Ineffectiveness in dealing with influence peddling also undermines the credibility of institutions responsible for preventing and eradicating corruption. Target 16.6 of the SDGs requires transparent and accountable institutions, but in the Indonesian context, many law enforcement agencies still face major challenges in proving cases involving influence peddling. In some cases, the relationship between state officials and interested private parties actually creates a conflict of interest that leads to indecisiveness in the legal process. Therefore, without stricter regulations and stronger oversight mechanisms,

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<sup>21</sup> Gebi Vani Habeahan, Herlina Manullang, and July Esther, "A Comparative Study of Trading in Influence in Indonesian and Spanish Corruption Laws," *Journal of Law, Politic and Humanities* 5, no. 3 (2025): 1414–24.

<sup>22</sup> Joanna MacMillan, "Reformasi and Public Corruption: Why Indonesia's Anti-Corruption Agency Strategy Should Be Reformed to Effectively Combat Public Corruption," *Emory Int'l L. Rev.* 25 (2011): 587.

<sup>23</sup> Elise S Brezis and Joël Cariolle, "The Revolving Door, State Connections, and Inequality of Influence in the Financial Sector," *Journal of Institutional Economics* 15, no. 4 (2019): 595–614.

<sup>24</sup> Simon Luechinger and Christoph Moser, "The Value of the Revolving Door: Political Appointees and the Stock Market," *Journal of Public Economics* 119 (2014): 93–107.

efforts to build effective and accountable institutions will continue to face significant obstacles.<sup>25</sup>

Comprehensive legal reform is needed in order to achieve Target 16 of the SDGs to include trading in influence as a criminal offense that can be prosecuted, as has been implemented in several countries with more advanced legal systems. In addition, strengthening the oversight mechanism for public officials and increasing transparency in policy-making are strategic steps to prevent this practice from growing. Without concrete steps in improving the legal system and institutions, the goal of creating a just, peaceful, and inclusive society as mandated in the SDGs will be difficult to achieve. Therefore, the urgency of strengthening the law against trading in influence is a crucial aspect in supporting the implementation of Target 16 of the SDGs in the Indonesian legal system.

To overcome this problem, more specific regulatory reforms are needed to criminalize influence trading. Indonesia needs to consider adopting the provisions of Article 18 of the UNCAC into the Corruption Eradication Law so that there is a clear legal basis for handling influence trading cases. In addition, the monitoring mechanism for officials who have access to strategic policies also needs to be strengthened to prevent abuse of power in the form of influence trading.<sup>26</sup>

Trading in influence is a threat to the legal system and clean governance. If left without adequate regulation, this practice can further exacerbate public distrust of legal and government institutions. Therefore, concrete steps are needed to overcome this problem, either through stricter regulations, transparency in decision-making, or increasing public awareness of the dangers of trading in influence in the government system.<sup>27</sup>

This study offers a new perspective on examining the implementation of restorative justice mechanisms in trading in influence cases, which have traditionally been resolved through a retributive approach in Indonesia's legal system. This article proposes a more comprehensive legal reform by adopting a hybrid approach between restorative justice and criminal law instruments to enhance the effectiveness of law enforcement against trading in influence. By linking the concept of trading in influence with the implementation of Target 16 of the SDGs, this research makes a significant contribution to developing a

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<sup>25</sup> Zhenci Xu et al., "Impacts of International Trade on Global Sustainable Development," *Nature Sustainability* 3, no. 11 (2020): 964–71.

<sup>26</sup> Ahmad Qisa'i, "Sustainable Development Goals (SDGs) and Challenges of Policy Reform on Asset Recovery in Indonesia," *Indonesian J. Int'l L.* 17 (2019): 231.

<sup>27</sup> Ting-An-Xu Liu, Wen-Jong Juang, and Chilik Yu, "Understanding Corruption with Perceived Corruption: The Understudied Effect of Corruption Tolerance," *Public Integrity* 25, no. 2 (2023): 207–19.

more inclusive and transparent resolution model within the national legal system.

The importance of further research on the implementation of the concept of restorative justice in cases of trading in influence becomes very relevant. A more in-depth legal study on the harmonization of criminal regulations and the principles of restorative justice is needed to design a mechanism that can ensure that substantive justice can be achieved without sacrificing the basic principles of eradicating corruption. Through a more innovative approach, the Indonesian legal system can be more adaptive in dealing with crimes that continue to develop, including in dealing with the complexity of trading in influence.

## **B. RESEARCH METHODS**

This study employs a normative juridical method with a statute approach and a conceptual approach. The method aims to analyze the application of restorative justice mechanisms in resolving trading in influence cases based on the prevailing criminal procedure law and its relation to the implementation of Target 16 of the SDGs. The data used in this study are derived from primary legal sources, such as relevant legislation, as well as secondary legal sources, including scientific journals, books, and relevant court decisions. Additionally, the analysis is conducted qualitatively by examining how restorative justice mechanisms can be applied in corruption cases, particularly in the context of influence peddling, to achieve a fairer and more sustainable justice system. The regulations used include Law Number 31 of 1999 on the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001, which regulates corruption crimes, including bribery and gratuities. This law is often used to prosecute trading in influence cases, even though it does not explicitly classify it as a distinct criminal offense. Additionally, Law Number 7 of 2006 on the Ratification of the United Nations Convention Against Corruption (UNCAC) is also relevant. Indonesia has ratified UNCAC, which, in Article 18, recognizes trading in influence as a form of corruption that must be criminalized by member states.

## **C. RESULTS AND DISCUSSION**

### **1. The Concept of Restorative Justice Can Be Applied in Resolving Trading Influence Cases**

The restorative approach to resolving criminal cases has developed as a response to the limitations of the retributive criminal justice system.<sup>28</sup>

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<sup>28</sup> Shahrul Kresna Imansyah and A Djoko Sumaryanto, "Trading in Influence as a Crime in Indonesia Criminal Law System: A Juridical Study," *YURIS: Journal of Court and Justice*, 2022, 26–34.



Restorative justice focuses on restoring the victim's losses, the perpetrator's accountability, and restoring social relationships damaged by the crime.<sup>29</sup> However, in the context of trading in influence, the application of the restorative approach is still debated because of its different nature from conventional crimes that have direct victims. Trading in influence often involves structural power relations and interests, so the recovery mechanisms offered by restorative justice need to be analyzed more deeply before being implemented.

In trading in influence, the relationship between the perpetrator and the injured party is indirect and often occurs in a more complex network of power. The interests of the affected community cannot always be represented by one individual or group, so that resolution through the dialogical mechanism that is characteristic of restorative justice becomes more difficult to implement.<sup>30</sup>

However, it is possible that a restorative approach can be adapted in cases of trading in influence, especially in the form of a settlement mechanism involving the return of ill-gotten gains and the restoration of public trust in state institutions. Several countries have adopted out-of-court settlement mechanisms in corruption cases with an emphasis on the recovery of state losses and policy reforms to prevent similar practices in the future. If this approach is applied in cases of trading in influence, the main focus should not only be on the punishment of individuals, but also on improving the systems and regulations that allow this practice to occur.<sup>31</sup>

The application of the restorative justice mechanism in cases of trading in influence can also be linked to the deferred prosecution agreement (DPA) or non-prosecution agreement (NPA) policies implemented in several jurisdictions.<sup>32</sup> In this scheme, parties involved in the practice of trading in influence can avoid the criminal justice process by fulfilling certain requirements, such as admitting guilt, returning illegal profits, and implementing stricter anti-corruption policies. This approach can be an alternative in resolving complex cases of trading in influence that are difficult to prove in court.

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<sup>29</sup> Helena Hestaria, Made Sugi Hartono, and Muhamad Jodi Setianto, "Tinjauan Yuridis Penerapan Prinsip Restorative Justice Terhadap Tindak Pidana Korupsi Dalam Rangka Penyelamatan Keuangan Negara," *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 112–28.

<sup>30</sup> Brigita Manohara, *Dagang Pengaruh (Trading In Influence) Di Indonesia* (Pt. Rajagrafindo Persada-Rajawali Pers, 2023).

<sup>31</sup> Adek Junjuran Syaid, "Implementation of Restorative Justice with Obligation of Reversal Burden of Proof as an Attempt to Restitute State Losses for Justice in the Crime of Money Laundering with Predicate Crime of Corruption.," *International Journal of Arts & Humanities Studies* 2, no. 1 (2022).

<sup>32</sup> Ira Katznelson and Martin Shefter, *Shaped by War and Trade: International Influences on American Political Development* (Princeton University Press, 2002).

It should be noted that the use of restorative mechanisms in cases of trading in influence should not lead to impunity or provide leeway for perpetrators to avoid criminal responsibility. Without strict oversight mechanisms, this approach can be misused to protect actors with great political and economic influence. Therefore, if the concept of restorative justice is applied in this context, there must be high transparency and public participation in ensuring that the settlement reached still reflects the principles of substantive justice.

According to the Indonesia Corruption Watch (ICW) report, throughout 2022 there were 579 corruption cases prosecuted, an increase of 8.63% compared to the previous year which was 533 cases. Trading in influence is a complex form of corruption because it not only involves the parties who give and receive benefits, but also has a broad impact on the legal, economic, and social systems.<sup>33</sup> In the context of restorative justice mechanisms, identifying victims in cases of trading in influence is a challenge in itself. Unlike crimes that have direct victims, trading in influence often causes systemic harm that impacts society as a whole. Victims can include parties who are harmed by unfair decisions, competitors who lose economic opportunities, and institutions that experience a degradation of public trust. Therefore, the approach to identifying victims must consider the macro impact of this crime.

Victims in cases of trading in influence can be divided into two main categories: direct victims and indirect victims.<sup>34</sup> Direct victims are individuals or groups who directly experience losses due to interventions carried out through traded influence, for example business actors who lose in tender competitions due to interventions by certain officials. Meanwhile, indirect victims are the wider community who are affected by unfair policies or decisions due to the intervention. Identification of victims in this category requires an in-depth analysis of the long-term impact on the economy and public trust in the legal system.

Restorative justice mechanisms for cases of trading in influence must include compensatory and rehabilitative remedies. Compensatory remedies relate to compensation for losses suffered by individuals or groups directly affected. In the case of a project tender manipulated through trading in influence, for example, remedies can include the cancellation of contracts that were illegally awarded and the reprocessing of tenders with a more transparent mechanism. Meanwhile, rehabilitative remedies focus more on

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<sup>33</sup> Miklos Hollan, "Trading in Influence: Requirements of the Council of Europe Convention and the Hungarian Criminal Law," *Acta Juridica Hungarica* 52, no. 3 (2011): 235–46.

<sup>34</sup> Katznelson and Shefter, *Shaped by War and Trade: International Influences on American Political Development*.

restoring public trust in the legal and governmental systems by improving oversight mechanisms and increasing transparency in decision-making.<sup>35</sup>

One approach that can be used in recovering losses due to trading in influence is a restorative dialogue mechanism that brings together the parties involved in the case, including the officials involved, the injured party, and the institutions responsible for overseeing public policy. This dialogue aims to build a shared understanding of the impacts caused by trading in influence and find solutions that can reduce its negative impacts. This approach not only aims to restore the situation to its original state, but also to create systemic changes that prevent similar practices from occurring in the future.<sup>36</sup>

Reparation for the harm caused by influence trading also requires an approach based on transformative justice. This means that in addition to restoring the rights of victims, the legal system must also carry out deeper reforms to the policies and regulations that allow the practice of influence trading to occur. This could include revising policies on transparency in decision-making, strengthening conflict of interest regulations, and increasing the accountability of public officials. Thus, reparation is not only retributive, but also strengthens the legal and ethical foundations of government.<sup>37</sup>

Comparative studies on the handling of cases of trading in influence in various countries show variations in the legal approaches used, depending on the applicable legal system and the level of commitment to eradicating corruption. The United Nations Convention Against Corruption (UNCAC) explicitly recognizes trading in influence as a form of corruption that must be eradicated through adequate legal instruments. Article 18 of the UNCAC regulates bribery of foreign public officials and officials of international organizations, which also includes the actions of a person who unlawfully uses his/her influence to obtain benefits for a particular party.<sup>38</sup> However, not all countries that have ratified the UNCAC have regulations that explicitly criminalize this practice. Some countries choose to integrate the provisions of the UNCAC into their national laws with various approaches, while others still rely on existing bribery and gratification laws.<sup>39</sup>

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<sup>35</sup> Imansyah and Sumaryanto, "Trading in Influence as a Crime in Indonesia Criminal Law System: A Juridical Study." *YURIS: Journal of Court and Justice*, 26-34

<sup>36</sup> Lorenzo Bizzi and Alice Labban, "The Double-Edged Impact of Social Media on Online Trading: Opportunities, Threats, and Recommendations for Organizations," *Business Horizons* 62, no. 4 (2019): 509–19.

<sup>37</sup> Temesgen Worku, Juan P Mendoza, and Jacco L Wielhouwer, "Tariff Evasion in Sub-Saharan Africa: The Influence of Corruption in Importing and Exporting Countries," *International Tax and Public Finance* 23 (2016): 741–61.

<sup>38</sup> Arusha Cooray, Chandan Kumar Jha, and Bibhudutta Panda, "Corruption and Assortative Matching of Partners in International Trade," *European Journal of Political Economy* 77 (2023): 102273.

<sup>39</sup> Mochamad Ramdhan Pratama, "Criminalization Policy against Influence Trading Acts in Corruption Crimes," *Nurani Hukum* 3 (2020): 14.

France is one of the countries that has adopted the provisions of the UNCAC into its legal system by establishing traffic d'influence as a separate criminal offense.<sup>40</sup> In the French legal system, both the giver and the beneficiary in the practice of trading in influence can be subject to criminal sanctions, even if there is no direct evidence of a bribery transaction. Courts in France also have the authority to investigate non-transparent interest relationships and charge perpetrators with serious crimes. The strict application of this law reflects France's commitment to addressing forms of corruption that do not always involve the direct exchange of money, but still damage the integrity of public policy. This is different from the legal system in Indonesia, which does not specifically regulate trading in influence, so it still relies on other articles that often do not fully reflect the complexity of the case.

In the United States, the approach used is more based on lobbying regulations and political transparency. The Foreign Agents Registration Act (FARA) requires individuals or entities acting on behalf of foreign interests to register their activities with the relevant authorities. Although trading in influence is not always explicitly categorized as a criminal offense, violations of this regulation can be the basis for broader law enforcement.<sup>41</sup> Several high-profile cases, such as that involving Paul Manafort in political lobbying related to foreign interests, show how the United States uses this regulation to suppress trading in influence practices that can damage government transparency. Unlike Indonesia, which does not yet have strict regulations on lobbying activities, the United States has developed a stricter oversight mechanism to prevent the abuse of political influence.

The UK legal system also pays special attention to trading in influence by enacting the Bribery Act 2010, which has a broad scope in regulating corruption crimes.<sup>42</sup> One of the advantages of this regulation is its ability to ensnare individuals and corporations involved in trading in influence, including those operating outside the UK but having an impact on the public interest of the country. In other words, the UK adopts an extraterritorial approach in eradicating trading in influence, unlike Indonesia which still relies on national jurisdiction in prosecuting perpetrators. The application of stricter and broader laws in the UK allows authorities to pursue cross-border corruption cases that are often difficult to uncover with more limited national laws.

This comparison shows that countries with a strong commitment to the UNCAC tend to have more specific regulations in dealing with trading in

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<sup>40</sup> James Gluck and Michael Macaulay, "Trading in Influence: A Research Agenda for New Zealand?," *Policy Quarterly* 13, no. 2 (2017).

<sup>41</sup> Ramya Shanmugham and K Ramya, "Impact of Social Factors on Individual Investors' Trading Behaviour," *Procedia Economics and Finance* 2 (2012): 237–46.

<sup>42</sup> Amanda Sanseverino, *The Impact of Anti-Corruption Laws: Evidence from the UK Bribery Act's Extraterritorial Reach* (SSRN, 2022).

influence. Indonesia, although it has ratified the UNCAC, still faces challenges in adopting these provisions into its legal system in a more comprehensive manner. The absence of rules that explicitly regulate trading in influence means that cases that should fall into this category are instead processed with other articles that are not always relevant. In the future, legal reforms in Indonesia need to accommodate the provisions of the UNCAC more firmly, as has been done by several other countries that have proven the effectiveness of their regulations in dealing with this increasingly complex corruption practice.<sup>43</sup>

The main challenge in implementing loss recovery through restorative justice mechanisms in cases of trading in influence is the lack of awareness and acceptance of the concept of restorative justice in corruption crimes. Many parties still see corruption as a crime that must be punished retributively through the formal criminal justice system. However, an approach that only focuses on punishing individuals without fixing the system that supports trading in influence is often ineffective in preventing similar cases from recurring. Therefore, combining restorative justice mechanisms with policy reform efforts is an important aspect of the recovery strategy.

The restorative justice approach in cases of trading in influence must ensure that victims have access to fair and effective remedies. In some cases, victims of trading in influence are difficult to identify or are reluctant to report their cases due to threats or fear of the negative impacts they may face. Therefore, there needs to be a mechanism for protecting victims, including an effective whistleblower policy and an independent institution that can accommodate and handle reports of trading in influence practices without political intervention or other external pressure.<sup>44</sup>

The implementation of restorative justice mechanisms in cases of trading in influence is not only aimed at restoring material losses experienced by certain individuals or groups, but also to improve the legal and government systems that allow this practice to occur. By adopting a more comprehensive approach, it is hoped that a more transparent, accountable, and equitable ecosystem can be created in governance and public policy.

Thus, the application of restorative justice in cases of trading in influence still requires further study to ensure that this mechanism is not only effective in restoring the losses incurred, but also in improving the legal system that allows this practice to occur. A restorative approach can be a relevant

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<sup>43</sup> Steven R Salbu, "Redeeming Extraterritorial Bribery and Corruption Laws," *Am. Bus. LJ* 54 (2017): 641.

<sup>44</sup> Cooray, Jha, and Panda, "Corruption and Assortative Matching of Partners in International Trade."

alternative if implemented by considering the complexity of the case and ensuring that the public interest remains the main priority in every resolution.<sup>45</sup>

## **2. Criminal Procedure Law Perspective in the Application of Restorative Justice Mechanisms in Trading in Influence Cases**

Restorative justice mechanisms are increasingly developing as an alternative to resolving cases that are oriented towards recovery, not just punishment.<sup>46</sup> This concept emphasizes the involvement of victims, perpetrators, and the community in finding fair solutions for all parties. In the context of trading in influence, the application of this mechanism is a challenge in itself because of the characteristics of cases that involve power relations and influence in government structures and the business world. Unlike conventional crimes, trading in influence does not always result in victims in the visible sense, but rather has implications for the legal system, public policy, and public trust in state institutions.

Criminal procedure law in Indonesia has not explicitly accommodated the application of restorative justice in cases related to corruption and abuse of authority. The Criminal Procedure Code (KUHP) is more oriented towards a retributive approach, with procedures that emphasize proving guilt and imposing sanctions on perpetrators. However, the development of national legal policies shows a tendency to expand the scope of restorative justice, especially in crimes involving the public interest. This can be seen from certain policies that provide opportunities for resolving corruption cases through the return of state losses or settlement outside the formal litigation process.<sup>47</sup>

The application of the restorative justice mechanism in cases of trading in influence faces various obstacles, both from the legal and philosophical aspects. One of the main obstacles is the nature of the crime which is often abstract and difficult to prove directly. In many cases, trading in influence is carried out through intermediaries with communications that are not always explicitly recorded, so that the process of proof in criminal procedure law becomes complex. Consequently, the option of settlement through a restorative mechanism must consider the aspect of substantive justice without ignoring the principle of legal accountability.

From a criminal procedure law perspective, the application of restorative justice in this case must meet certain requirements to remain in line with the principle of due process of law.<sup>48</sup> First, there must be an acknowledgement

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<sup>45</sup> Sung Hui Kim, "The Last Temptation of Congress: Legislator Insider Trading and the Fiduciary Norm against Corruption," *Cornell L. Rev.* 98 (2012): 845.

<sup>46</sup> Ade Mahmud et al., "Opportunities for Restorative Justice in the Settlement of Corruption," *KnE Social Sciences*, 2024, 53–64.

<sup>47</sup> Hun Joon Kim and Jason C Sharman, "Accounts and Accountability: Corruption, Human Rights, and Individual Accountability Norms," *International Organization* 68, no. 2 (2014): 417–48.

from the perpetrator that they have abused their influence to obtain certain benefits. This acknowledgement is key in the mediation process between the perpetrator and the injured party. Second, there needs to be a compensation mechanism that can repair the impact of influence trading, either in the form of returning ill-gotten gains or other actions that can restore public trust in the relevant institutions.

Criminal procedure law must accommodate a mediation process that allows the involvement of various parties affected by the practice of trading in influence. In this context, the approach used in economic crimes and corruption can be a reference, where there is a settlement mechanism outside the court through cooperation with law enforcement officers. However, the fundamental difference in cases of trading in influence is the difficulty of identifying the parties who are directly harmed, so the approach used must focus more on the aspects of transparency and institutional accountability.<sup>49</sup>

The application of the restorative justice mechanism in this case must also consider the wider public interest. In conventional crimes such as theft or assault, the mediation process often involves the victim directly. However, in cases of trading in influence, the impact is more systemic, so that the resolution must involve state institutions and society as parties who have an interest in ensuring that justice is upheld. Therefore, the criminal procedure law approach must consider accountability mechanisms that are not only individual, but also institutional.<sup>50</sup>

Several countries have tried to apply the concept of out-of-court settlement in corruption and abuse of power cases, including through settlement agreements that allow perpetrators to cooperate with law enforcement officers in uncovering wider networks. This approach can be a model for Indonesia in developing a restorative justice scheme in influence trading cases, while ensuring that the mechanism is not misused to provide impunity to perpetrators. Therefore, criminal procedure law must clearly regulate the limitations of the application of restorative justice in this case, including strict supervision of its implementation.<sup>51</sup>

Ultimately, the perspective of criminal procedure law in the application of restorative justice mechanisms to cases of trading in influence must accommodate the balance between the interests of recovery and strict law enforcement.<sup>52</sup> Although the restorative approach can provide a more flexible

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<sup>49</sup> Surya Wahyu Danil Juni Harsya Dalimunthe, Triono Eddy, and Ida Nadirah, "Optimization of Restorative Justice in the Settlement of Criminal Cases of Fraud and Embezzlement by Police Investigator," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 3 (2024): 2777–92.

<sup>50</sup> Dalimunthe, Eddy, and Nadirah.

<sup>51</sup> Salbu, "Redeeming Extraterritorial Bribery and Corruption Laws." *Am. Bus. LJ* 54 (2017): 641

<sup>52</sup> Douglas Cumming and Ying Ge, "Trade Facilitation Costs and Corruption: Evidence from China," *Journal of International Financial Markets, Institutions and Money* 78 (2022): 101564.

and efficient solution in resolving certain cases, its application must still consider the principles of transparency, accountability, and legal certainty. Therefore, a more comprehensive policy reform is needed to ensure that restorative justice mechanisms can be implemented effectively in the Indonesian criminal law system, especially in handling increasingly complex cases of trading in influence.

### **3. Implementation of Target 16 SDGs and Relevance to Restorative Justice Trading in Influence**

Target 16 of the Sustainable Development Goals (SDGs) emphasizes the importance of building strong, transparent and accountable institutions to ensure access to justice for all. One of the main focuses of this target is to reduce corruption and bribery in all forms, including trading in influence. In the context of international law, the United Nations Convention Against Corruption (UNCAC) has identified trading in influence as a form of abuse of power that can undermine the integrity of public institutions and policy-making processes.<sup>53</sup>

Trading in influence is a practice in which individuals with political or administrative connections use their positions to influence government decisions for personal or party interests. Although it does not always involve a direct exchange of money, this practice is still considered a form of corruption because it can create inequality in access to justice and public policy. Therefore, the restorative justice mechanism is relevant in addressing this problem by providing a more holistic approach to resolving cases.

Restorative justice in cases of trading in influence can be an alternative to the conventional criminal law system which often focuses on retributive punishment. This approach focuses more on restoring the losses caused by the perpetrator to the affected community and institutions. In this context, resolving the case involves not only punishing the perpetrator, but also fixing the systems and policies that allow the practice to occur.

The UNCAC as an international instrument has provided guidelines on how countries should criminalize and prevent various forms of corruption, including trading in influence. Article 18 of the UNCAC explicitly regulates the need for action against individuals who sell or offer their influence to public officials to influence their official decisions or actions. Indonesia as a country that has ratified the UNCAC has an obligation to adopt these rules in its national legal system.

In the Indonesian legal system, there is no regulation that explicitly regulates trading in influence as a criminal act of corruption. The articles

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<sup>53</sup> Douglas C Woodhams et al., "Life-history Trade-offs Influence Disease in Changing Climates: Strategies of an Amphibian Pathogen," *Ecology* 89, no. 6 (2008): 1627–39.



available in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption still focus more on bribery and gratification in the form of material. The ambiguity of this regulation is a loophole that allows the practice of trading in influence to continue, thus hampering efforts to achieve Target 16 of the SDGs which aims to create a clean and integrated justice system.

The application of restorative justice in resolving cases of trading in influence must also consider the balance between the interests of the perpetrator, the victim, and the public interest. In several countries that have implemented this approach, such as Canada and the Netherlands, the restorative justice system is used to handle corruption cases by prioritizing asset recovery, perpetrator rehabilitation, and increasing institutional transparency. If this mechanism is implemented in Indonesia, there must be a policy design that ensures not only that the perpetrator is responsible for his actions, but also a system that further prevents similar practices from recurring.<sup>54</sup>

The application of restorative justice in cases of trading in influence can also adopt the principles contained in the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.<sup>55</sup> This principle emphasizes that case resolution must be carried out by considering the interests of victims, the accountability of perpetrators, and systemic improvements in the affected institutions. In Indonesia, the corruption court can be one of the forums that adopts this mechanism by facilitating the return of ill-gotten gains, policy reform, and community involvement in monitoring public officials. In addition, the restorative justice mechanism can also help reduce the burden of criminal justice by accelerating the case resolution process without having to go through lengthy and bureaucratic court procedures. With a restorative justice-based settlement, recovery efforts can focus more on institutional improvement and increasing the integrity of public institutions. This approach is also in line with the principles adopted by the United Nations Office on Drugs and Crime (UNODC) which emphasizes that efforts to eradicate corruption must be preventive and not only oriented towards punishment.<sup>56</sup>

Restorative justice also plays a role in rebuilding public trust in the legal system and government. One of the biggest challenges in eradicating trading in influence is the public perception that this practice has become part of the

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<sup>54</sup> Donny Haryono Setyawan, Iyah Faniyah, and Otong Rosadi, "Restorative Justice Approach in Resolving Corruption Cases Based on State Financial Loss Recovery in Indonesia," *Ekasakti Journal of Law and Justice* 2, no. 1 (2024): 12–26.

<sup>55</sup> Kathleen Daly, "Restorative Justice: The Real Story," in *Restorative Justice* (Routledge, 2017), 85–109.

<sup>56</sup> Dimitri Vlassis, "Article 9 of the United Nations Convention against Corruption (UNCAC): Implementation and Practice," *Resource Material Series No 101* (2017).

political and bureaucratic culture. With the restorative justice mechanism, case resolution is not only about punishing the perpetrators, but also providing broader solutions for reforming the affected institutions.<sup>57</sup>

The application of restorative justice in corruption cases has proven effective in increasing transparency and accountability.<sup>58</sup> For example, in France, anti-corruption laws have been strengthened with a restitution mechanism involving the participation of the private sector and civil society. This approach ensures that corruption cases, including trading in influence, are not only handled in the criminal law realm but also through a more comprehensive restitution process.

The restorative justice mechanism also allows for compensation for parties who are harmed by trading in influence. In many cases, this practice is detrimental to the general public because policies that should be made for the public interest are instead influenced by the interests of certain individuals or groups. Therefore, through restorative justice, victims can obtain more real justice through policy improvements and compensation for the impacts that have occurred.

The application of restorative justice in the context of trading in influence also requires coordination between various law enforcement agencies, including the Corruption Eradication Commission (KPK), the Prosecutor's Office, and the Police.<sup>59</sup> Without good coordination, efforts to resolve cases will encounter obstacles, both in terms of regulation and implementation in the field. Therefore, legal reforms that support this mechanism must be accompanied by improvements in a more collaborative and integrated law enforcement system. From a criminal procedure law perspective, the restorative justice approach can be accommodated through a diversion mechanism or alternative resolution that prioritizes reconciliation and restoration. However, in the case of trading in influence, this mechanism must still pay attention to the principle of accountability so that it is not used as a loophole for perpetrators to avoid legal responsibility. Therefore, policies that regulate restorative justice in this case must be designed with clear and transparent standards.

The application of restorative justice in cases of trading in influence is a step that can strengthen the legal system in achieving Target 16 of the SDGs. This approach does not only focus on punishing the perpetrators, but also on institutional improvement and restoring public trust. Thus, efforts to eradicate corruption can be carried out more effectively and sustainably, in accordance

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<sup>57</sup> Setyawan, Faniyah, and Rosadi, "Restorative Justice Approach in Resolving Corruption Cases Based on State Financial Loss Recovery in Indonesia."

<sup>58</sup> Daly, "Restorative Justice: The Real Story."

<sup>59</sup> Erdianto Effendi et al., "Trading in Influence (Indonesia): A Critical Study," *Cogent Social Sciences* 9, no. 1 (2023): 2231621.

with the principles set out in the UNCAC and other international legal instruments.

#### **D. CONCLUSION**

Based on the analysis that has been conducted, the restorative justice mechanism can be an alternative in resolving cases of trading in influence in Indonesia. This approach emphasizes the restoration of losses and the restoration of public trust in legal institutions, so that it is not only oriented towards punishment. In various legal systems in the world, restorative justice has proven effective in handling non-violence corruption cases by taking into account the element of justice for victims, perpetrators, and the wider community. However, the application of this concept in the context of trading in influence still faces regulatory obstacles and a legal paradigm that tends to be repressive. From the perspective of criminal procedural law, the application of restorative justice in trading in influence requires a more adaptive legal reform. Currently, criminal procedural law in Indonesia accommodates a repressive approach in enforcing corruption laws, so that dialogue-based and recovery-based resolutions are still limited. The implementation of the restorative justice mechanism in trading in influence requires a clearer legal basis, including in terms of regulating the authority of law enforcement officers and a transparent negotiation process between perpetrators, victims, and the community. In line with the implementation of Target 16 SDGs, which emphasizes the importance of building strong, transparent, and accountable institutions, restorative justice has significant relevance in resolving cases of trading in influence. The principles contained in this approach, such as access to justice, inclusive conflict resolution, and strengthening clean governance, are very much in line with the vision of the SDGs in realizing social justice.

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