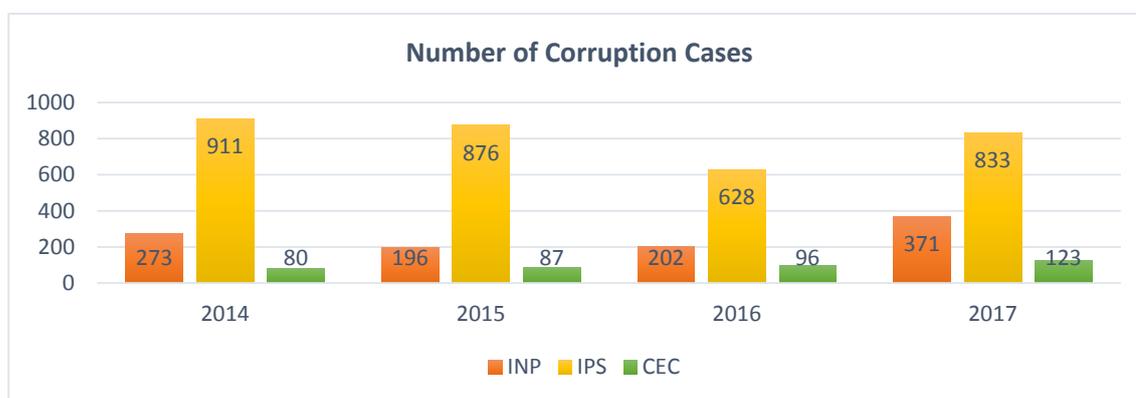


# MISUSE OF LEGITIMATE BUSINESS TRANSACTIONS BETWEEN COUNTRIES AS THE LATEST CORRUPTION METHOD

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## I. INTRODUCTION

Corruption eradication has always been and will always be a commitment for the Indonesian government. The Indonesian National Police, the Indonesian Prosecution Service and the Corruption Eradication Commission, as the state institutions which are authorized to investigate corruption, are working together to eliminate corruption acts in Indonesia. As an illustration of their efforts, the following chart shows the number of corruption cases handled by the Indonesian National Police, the Indonesian Prosecution Service and the Corruption Eradication Commission over the last four years:<sup>1</sup>



Those corruption cases occurred in various administrative sectors which relate to goods and services procurement conspiracy, licensing conspiracy, bribery, extortion and budget manipulation<sup>2</sup> perpetrated by various professions such as members of parliament, ministers, governors, mayors/regents, high-level officials, judges, prosecutors, policemen, advocates, businessman and corporations,<sup>3</sup> which are categorized as “legal subjects” by the Law on Corruption Eradication.

However, despite the abundant cases handled by Indonesian law enforcement apparatus, it does not mean that the efforts to investigate and prosecute those cases were easy. The criminals have and will always try to develop their methods in committing corrupt acts, as mentioned by an adage which says that criminals are always one step ahead of law enforcement. The development of civilizations and Industrial Revolution 4.0, which was supported by the advancement of information technology, has created more complex, sophisticated, faster, globalized and undetected methods of crime. This has encouraged the

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<sup>1</sup> Based on CEC RI Repression Division data.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

criminal to modify the method to steal the state's wealth and the ways they commit bribery. The old school methods are applied less.

Instead of receiving bribe money directly into their bank accounts or by hard cash, they disguise the bribe transaction as a legitimate business transaction which involves several bank accounts and which somehow seems unrelated to the perpetrators. These transactions are meant to deceive law enforcement so it looks as though those transactions were legal business transactions. To that effect, the bribe transactions remain undetected by *The Indonesian Financial Transaction Reports and Analysis Centre (INTRAC)*.

The most interesting part of these bribe transactions is that they are committed through legitimate business transactions not only involving domestic companies but also overseas companies. Therefore, good cooperation among law enforcement in domestic and foreign jurisdictions is one of the keys to successfully tracking bribe money and revealing the case.

Regarding the latest corruption trends in Indonesia, this paper will discuss the misuse of legitimate business transactions as the latest corruption method in our recent cases.

## II. MAIN DISCUSSION

### A. The Authority of Indonesian Law Enforcement Apparatus in Handling Corruption Cases

Modus operandi of corrupt acts is becoming more sophisticated and difficult to detect nowadays. Thus, in order to reveal the case, the law enforcement agencies in Indonesia need to optimize the implementation of their authority as mentioned in Law number 8, year 1981 on Criminal Procedure, Law number 31, year 1999 on Corruption Eradication and Law number 30, year 2002 on the Corruption Eradication Commission, which provides special authority for investigators, prosecutors and judges as follows:

- a. to submit requests for statements from banks regarding the financial condition of the suspect or defendant to the Governor of the Bank Indonesia, as the law enforcement authorities may request that banks freeze any accounts in the name of the suspect or defendant if said accounts contain the proceeds of crime;<sup>4</sup>
- b. to add electronic evidence or any recorded data or information which can be seen, read or heard that is relevant as proof;<sup>5</sup>
- c. The investigators and prosecutors of the CEC are authorized to tap communication lines and record conversations, request data on the wealth and tax details of a suspect or defendant from relevant institutions, temporarily suspend financial transactions, trade transactions and other forms of contracts, or to temporarily annul permits, licenses and concessions owned by suspects or defendants connected to corruption cases currently being investigated;<sup>6</sup>

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<sup>4</sup> Article 29 Law number 31, year 1999 on the Eradication of Corruption, which subsequently changed and supplemented Law number 20, year 2001.

<sup>5</sup> Article 26A, *Ibid*.

<sup>6</sup> Article 12 Law number 30, year 2002 on the Corruption Eradication Commission.

- d. request assistance from Interpol Indonesia or the law enforcement institutions of other nations to conduct searches, arrest and confiscations in foreign countries; also may request assistance from the police or other relevant institutions to conduct arrests, confinements, raids and confiscations in corruption cases currently under investigation.<sup>7</sup>

Furthermore, cooperation between law enforcement or other relevant institutions in domestic and foreign countries, whether conducted through formal or informal mechanisms, are needed to ease the effort to disclose the misuse of legitimate business transactions in receiving bribe money as the latest corruption method.

## **B. Misuse of Legitimate Business Transactions by Set Off Debt as the Latest Corruption Method**

There were cases handled by the CEC which utilized legitimate business transactions by set off debt as the method for the perpetrators to handover the bribe money, *i.e.*:

### 1. The e-ID Case

Corruption in e-ID procurement occurred from 2010 – 2012. The e-ID project was intended to provide biometric IDs to all Indonesian citizens 17 years old and above. The e-ID corruption caused the state to lose approximately IDR 2.3 trillion of the project budget of around IDR 5.9 trillion. Based on the Audit Board of Indonesia's report, the state's loss was due to the mark-up pricing scheme which was more than 100% on software and hardware devices, card printing, and also on the Automatic Fingerprint Identification System (AFIS) device and its license.

The corruption started since the Indonesian Ministry of Home Affairs planned the e-ID project as a part of the State's Budget in 2010. There was a conspiracy between Irman and Sugiharto as high-level officials in the Ministry of Home Affairs with Andi Agustinus aka Andi Narogong (AA), Anang Sugiana Sugihardjo (ASS), Johannes Marliem (JM) and PT (entrepreneurs), Setya Novanto as the Head of the House of Representatives and other parliament members in order to arrange the e-ID project to be financed by the State's Budget instead of being financed using foreign grants. The aforementioned entrepreneurs also asked Setya Novanto and other parliament members to oversee and facilitate the e-ID project budget's discussion in the House of Representatives. For that reason, the entrepreneurs agreed to provide some money to Setya Novanto and other members of the parliament. To support the corrupt acts, the entrepreneurs and the Head of the House of Representatives manipulated the e-ID project procurement by creating a consortium (PNRI consortium) which was designed to win the procurement process.

Along with the PNRI consortium, the perpetrators also agreed to create another 2 (two) consortia, which were only intended to join the procurement process as a dummy bidders. These 2 (two) other consortia, namely the Murakabi and the Astragraphia consortia were never meant to win the procurement. They set up all the documents, prices and bids so that in the end they would only slightly lose to the PNRI consortium to camouflage the conspiracy.

Furthermore, in order to gain money for the bribe, the perpetrators (the government officials, *i.e.* the procurement committee, the entrepreneurs and Setya Novanto) had arranged

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<sup>7</sup> Ibid.

the procurement committee to come up with their own estimated price instead of being based on the market price. Accordingly, the marked-up price was IDR 18.000/ID card.

Thus, the company tasked to provide the bribe, which amounted to 5% of the e-ID's project budget or approximately IDR 70 billion – IDR 100 billion to Setya Novanto, was PT QS, which is owned by ASS, who supplied the biometrics products that were provided by JM (US citizen).

After the PNRI consortium won the e-ID project auction in 2011, Setya Novanto asked for the money that had been promised. Therefore, they agreed to channel the money using the following methods. First, Biomorf Lone Indonesia, a company owned by JM, sent an invoice to PT QS. This was a legitimate business transaction, since products were actually bought and sold between those companies, but of course as mentioned before, the price was already marked up. After PT QS paid JM according to the invoice, JM then separated the money, *i.e.* for the payment of the actual cost of the goods, for his own profit and for the bribe money. For the promised bribe money to Setya Novanto, JM then allocated USD 7.3 million and transferred the money to Biomorf Mauritius.

Furthermore, in order for Setya Novanto to be able to have the said bribe money without being detected, such as by INTRAC (Indonesia FIU), JM delivered the USD 7.3 million bribe money to Setya Novanto by using assistance provided by a money changer. Thus, the money was delivered by concealing it in the process as follows:

- a. USD 3.8 million was transferred from Biomorf Mauritius' bank account to the defendant's (hereinafter "MOM") bank account in Singapore. In order to send the money to Indonesia, MOM, through the assistance of JH (person who works for the money changer in Indonesia), set off debt by settling the payments of bills of Indonesian companies to their business partner in Singapore, in which the billed amounts matched the amount of money that was transferred by Biomorf Mauritius to MOM. Afterward, the money that JH acquired from Indonesian companies, which formerly was intended to pay those bills, was given to Setya Novanto through an intermediary.
- b. USD 3.5 million was given by JM to Setya Novanto through IHP (Setya Novanto's relatives). The money delivery process began when IHP asked for IB's and JH's (person who works for the money changer in Indonesia) assistance to receive bank notes in the amount of USD 3.5 million from JM without any transaction record between him and JM. At that moment, IHP offered profit to IB and JH in the amount of IDR100 for every US dollar. Subsequently, JH accumulated the money which had been given by Indonesian companies that formerly ordered her to pay their debt to their business partner in Singapore and Hong Kong. After the amount of the money reached USD 3.5 million, JH gave the money and the bank account of the Indonesian companies' business partner in Singapore and Hong Kong to IB; then IB forward the money and the bank accounts to IHP. After that, IHP handed over the money to Setya Novanto and sent the bank account numbers to JM. Afterwards, JM transferred the money to those companies in Singapore and Hong Kong based on the bank accounts which had previously been provided by IHP.

For committing his corrupt acts, Setya Novanto was found guilty according to article 3 of the Law on Corruption Eradication by the Indonesian Court for Corruption Crimes in the

Central Jakarta District Court, verdict number: 130/Pid.Sus-TPK/2017/PN.JKT.PST date 24 April 2018, which sentenced him to 15 years of imprisonment, to pay a fine IDR 500 million or substituted to three months of additional imprisonment, and also ordered him to pay compensation of USD 7.3 million and revoked his right to be elected for 5 years, as additional penalties.

## 2. The Other Case

After successfully revealing the e-ID methods of corruption, the CEC found another case which utilized a legitimate business transaction scheme, by setting off debt which also was committed using the assistance of a money changer in Indonesia (the names of the perpetrators will be concealed because the case is still in the trial phase). The case occurred in 2016. It was started when B (entrepreneur) asked A (a parliament member) to allocate additional funds from the state's budget on a certain project. B promised to give money to A which amounted to 7% of the project fund, if A succeed to raise the said project's budget. Afterward, to conceal the money delivery process, A asked C (his staff) to seek bank accounts in a foreign country that could receive money from B in US currency. Through the assistance of D (an entrepreneur who has a business relationship with companies in China and Singapore), C obtained two bank accounts of companies in China and two bank accounts of companies in Singapore. Afterwards C notified A regarding those bank accounts. A then informed B of the bank accounts, and B transferred his money from Singapore to:

- (1) RRR Company in China, USD 200,000;
- (2) SSS Company in China, USD 100,000;
- (3) TTT Company in Singapore, USD 110,000;
- (4) UUU Company in Singapore, USD 501,480.

Once A was convinced that B had already transferred the money to those companies in China and Singapore, A ordered C to receive the bribe money from D in the amount of USD 911,480.

## **C. Settlement of the Case and Countermeasures to Prevent Similar Corrupt Acts**

### 1. Techniques to Reveal the Method of Corruption

As mentioned before, the misuse of legitimate business transactions by set off debt to camouflage the bribe transactions in the e-ID case were completed through the assistance of a money changer. We were able to reveal the scheme by following the money trails of the e-ID project, both in Indonesia and overseas. At the beginning, we were only notified by INTRAC that the money flows from PT QS to Biomorf Indonesia had been channeled to Biomorf Minneapolis and Biomorf Mauritius. The situation indicated that Indonesia should request legal cooperation from the United States and Mauritius in order to further seek information regarding the flows of the money. Realizing that formal mutual legal assistance cooperation with foreign jurisdictions would take a long time, and since Indonesia and the USA did not have a bilateral MLA treaty in place, we then engaged in *informal* cooperation with the Federal Bureau of Investigation (FBI) and the Financial Intelligence Unit (FIU) of Mauritius. As a result of good cooperation between fellow law enforcement, the FBI informed us of the evidence of JM's connection to the e-ID case, which was reflected on audio recordings of his discussions concerning the e-ID project with high-level officials of the Ministry of Home Affairs of the Republic of Indonesia, entrepreneurs and Setya Novanto.

The FIU of Mauritius also informed us regarding Biomorf's transactions to companies in Singapore and Hong Kong. In addition, we collaborated with the Corrupt Practices Investigation Bureau (CPIB) Singapore to obtain more evidence regarding the relation between the companies in Singapore with Biomorf Mauritius. With the support of the CPIB, we acquired evidence that the companies which received money from Biomorf actually had no business relationship with Biomorf Mauritius. Nevertheless, those companies did have a business relationship with Indonesian companies. Furthermore, we investigated those Indonesian transactions and discovered that those companies were in debt to their business partners in Singapore and Hong Kong (the aforementioned companies), in which they requested JH (the money changer) to transfer their money to Singapore and Hong Kong as the debt payment. With that information, we were able to find and link those transactions to the bribery process, which used legitimate business transactions by set off debt that was managed by the money changer. At a glance the transactions looked like a normal business transaction and unrelated to the crime. The set off debt scheme in the e-ID case was employed to camouflage the bribe transaction. In this case, the money changer played a significant role to hide the money flows. The most important lesson learned from this case is that when other similar methods appear on a different case, we were already able to identify directly the likely strategy of investigation and prosecution that should be applied in revealing the case.

## 2. Countermeasures

From our best practices, we learned that cooperation among law enforcement agencies in handling and completing criminal investigation and prosecution is very important, particularly for cases which involve foreign jurisdictions. Although the Indonesian government has stipulated Law number 1, year 2006 on Mutual Legal Assurances in Criminal Matters, which regulates the mechanism to obtain overseas evidence through a formal mechanism, more often, *informal* cooperation is preferred and more suitable as an alternative measure to accelerate the process. The e-ID case, in which we cooperated with the FBI, the FIU of Mauritius and CPIB Singapore was one good example of fruitful *informal* cooperation. Accordingly, we shall intensify the cooperation between law enforcement agencies in order to ease the effort of gathering evidence for similar cases in the future.

The misuse of legitimate business transactions performed and assisted by the money changer not only occurs in corruption and money laundering, but also in other areas of crime such as the funding of terrorism. To avoid the misuse of legitimate business transactions through money-changer assistance in the future, Bank Indonesia has issued Regulation number 19/10/PBI/2017 on *Application of Anti-Money-Laundering and Prevention of Terrorism Funding for Payment System Service Providers Other Than Banks and Non-Bank Foreign Exchange Business Activities Organizers*. The regulation compelled money changers to apply the *Anti-money-laundering and Prevention of Terrorism Funding* policy, perform customer due diligence and enhanced due diligence to high risk customers. Money changers in Indonesia are also required to report suspicious transactions to INTRAC and report on the implementation of the *Anti-money-laundering and Prevention of Terrorism Funding* policy to Bank Indonesia. There are sanctions that could be imposed on money changers or other non-bank foreign exchange if they violate the Regulation.

Moreover, law enforcement agencies will also need to enhance their ability to recognize the corruption perpetrators' methods of receiving bribe money, to ensure their consistency in following money trails and to develop good cooperation with law enforcement agencies in

foreign countries.

### III. CONCLUSION

1. The misuse of legitimate business transactions as a method of corruption were employed to disguise the bribe transactions in order to avoid being detected by law enforcement. Thus, the perpetrators made the bribe transactions as complicated as possible, in which the money changer played a significant role to conceal the bribe transactions through set off debt. The criminal acts involve overseas companies which have business relationships with Indonesian companies, so that the transactions appear as legal transactions. Law enforcement agencies shall always bear in mind that in order to reveal the method of corruption, they shall adhere to the principle of following the money and establish and maintain good cooperation with other law enforcement agencies, either domestic or abroad.
2. In order to restrain and supervise the non-bank foreign exchange business activities, Bank Indonesia issued Regulation number 19/10/PBI/2017 on Application of *Anti-Money-Laundering and Prevention of Terrorism Funding for Payment System Service Providers Other Than Banks and Non-Bank Foreign Exchange Business Activities Organizers*. This Regulation required money changers to implement the *Anti-money-laundering and Prevention of Terrorism Funding* policy, with the expectation that there will be no more misuse of legitimate business transactions by set off debt performed through money changers' assistance as a crime method in the future.