

HANDLING MULTIJURISDICTIONAL CORRUPTION: A CASE STUDY ON BRIBERY IN PT. GARUDA INDONESIA (PERSERO), TBK.

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I. BACKGROUND

Today, acts of corruption are becoming increasingly massive, occurring in almost all sectors and levels of government. In order to combat this matter, our country has issued statutory provisions to support the acceleration of corruption eradication, namely through Law Number 31 of 1999 about Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 about Amendments to Law Number 31 1999 about the Eradication of Corruption Crimes. However, there are still many perpetrators of corruption crimes who successfully escape and were not detected by law enforcement officers. The perpetrators of corruption are increasingly adept at utilizing various sophisticated equipment and using all available resources. Corruption is becoming increasingly complex by utilizing the cross-jurisdictional-banking and financial system so that it does not recognize national borders anymore. In addition, the corruptors also try to hide the results of their corruption abroad, carry out bribery transactions abroad, involve foreign people or organizations, and use shell companies overseas.

On the other hand, law enforcement officers who have the authority to handle corruption cases have limitations because they do not have authority in other countries. Moreover, the knowledge, skills, abilities and experience of law enforcement officers who handle cross-jurisdictional corruption cases cannot be said to be qualified. There are many challenges and obstacles to dealing with this. Law enforcement officers need to synergize with each other to be able to uncover and ensnare perpetrators of transnational corruption. Exchange of information, intense communication and good cooperation between law enforcement agencies is absolutely necessary here.

The Corruption Eradication Commission (KPK) is a new institution formed during the reform era with the aim to accelerate the eradication of corruption in Indonesia. KPK was established on 29 December 2003. Until now (as of 31 March 2021), KPK has handled 1,145 cases. Not all corruption cases in Indonesia can be handled by KPK. Only cases with certain specifications can be handled, namely: those causing State financial losses of at least IDR 1 billion, those involving law enforcement officers or public officials, or those disturbing the public. Beyond that, the case must be handled by the police or prosecutors. Based on Law Number 30/2002 about the Corruption Eradication Commission, as amended by Law Number 19/2019 about the Second Amendment to Law Number 30/2002 about the Corruption Eradication Commission, it is stated that KPK has the following duties: coordination with institutions authorized to eradicate corruption; supervision of institutions authorized to eradicate corruption; conducting pre-investigations, investigations and prosecutions of corruption crime; taking measures to prevent corruption; and monitoring the practices of government.

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In almost all corruption cases involving a large flow of money handled by KPK, it was found that the funds flowed and were hidden in a foreign country. Even in some cases, the bribe money has even flowed from the accounts of foreign companies abroad to the accounts of Indonesian officials abroad. This fact shows that law enforcement officers in eradicating corruption (especially KPK) cannot work alone and only rely on domestic cooperation. International cooperation in efforts to eradicate corruption is one of the main keys to the success of eradicating corruption.

One of the international collaborations that has been carried out by KPK was when handling corruption cases at PT. Garuda Indonesia (Persero), Tbk. This corruption case has been handled by KPK since 2015, and the perpetrators were only sentenced by the judge in 2020. The length of handling this case is more or less influenced by the length of the international cooperation process because it involves many jurisdictions.

II. MAIN TOPIC

A. Case Background

The Garuda case is a corruption case followed by a money-laundering case carried out by the board of directors, namely the President Director / CEO Mr. Emirsyah Satar (Mr. ES), Director of Engineering Mr. Hadinoto Soedigno (Mr. HS) and EPM (Executive Project Manager) Aircraft Delivery Mr. Agus Wahjudo (Mr. AW). In addition, there was a private party who was also involved, namely Mr. Soetikno Soedarjo (Mr. SS). Briefly, the case model is in the form of procurement and purchase of aircraft, aircraft engines and aircraft engine maintenance at PT. Garuda Indonesia. When PT. Garuda Indonesia signed a contract with a manufacturer of aircraft or aircraft engines, then the manufacturer gave a commission to Mr. SS for successfully securing the contract. A portion of the commission was then given to the directors. PT. Garuda Indonesia is a State Owned Enterprise so its directors are public officials.

The story begins in 1989 when PT. Garuda Indonesia purchased nine units of A330-300 aircraft from Airbus S.A.S with Rolls-Royce Trent 700 engines. The success of this sale is due to the contribution of Mr. SS as commercial adviser for Rolls-Royce in Indonesia. Using the company's account, namely PT. Mahasara Buana and PT. Mugi Rekso Abadi, Mr. SS received a commission from Rolls-Royce for this success.

In 2005, Mr. ES began serving as President Director of PT. Garuda Indonesia. When he was appointed to be a CEO, he carried out a programme named Quantum Leap to reform the company. The goals were to revitalize aircraft and improve the quality of engine maintenance. This opportunity was understood by aircraft and aircraft engine manufacturers to offer their products to PT. Garuda Indonesia. Mr. SS saw the opportunity and asked Rolls-Royce for permission to become a commercial adviser of Airbus and ATR. Subsequently in 2008, Mr. SS founded Connaught International Pte. Ltd. in Singapore and appointed Ms. CTLM as its President Director. Mr. SS then opened a company account at UBS Bank to receive the next commission from Rolls-Royce. Apart from Connaught, Mr. SS also owned several companies whose accounts were used to receive commissions and provide bribes to Indonesian officials. These companies are Summerville Pacific Inc., Upstars Ltd., Vintone Business Inc., Innospace Investment Holding Ltd., PT. Ardyaparamita Ayuprakasa and PT. Mugi Rekso Abadi. Most of these companies are domiciled in Singapore and have no business activities (shell companies).

Rolls-Royce, through Mr. SS, began to aggressively approach Mr. ES to take a Total Care Program (TCP) contract for maintaining Rolls-Royce aircraft engines equipped on A330 aircraft. TCP is a method of maintaining aircraft engines on a regular basis regardless of whether the engine is in good or bad condition. This is different from the engine maintenance method that has been used by PT. Garuda Indonesia, namely Time and Material Base (TMB). This treatment method is only carried out when the aircraft engine is damaged. Mr. SS also approached Mr. ES to buy another A330 aircraft from Airbus. In the end, PT. Garuda Indonesia signed an engine maintenance contract using the TCP method with Rolls-Royce and signed a purchase contract for 21 units of A330 aircraft with Airbus. For this success, Mr. SS received commissions from Rolls-Royce and Airbus where part of the commission was then given to Mr. ES, Mr. HS and Mr. AW. Mr. SS also managed to secure a purchase contract for 50 units of A320 aircraft from Airbus to PT. Garuda Indonesia where these aircraft would be used for Citilink. Citilink is a subsidiary of PT. Garuda Indonesia, which focuses on serving economy class flights. For the ATR company, Mr. SS managed to secure a purchase contract for 15 units of ATR 72-600 aircraft by PT. Garuda Indonesia. The pattern of bribes is also the same way, which was given to Garuda officials after Mr. SS received commission from ATR.

Mr. SS's business then developed after he was trusted to be a commercial adviser for Bombardier. In contrast to the previous business pattern, the contract with Bombardier was carried out through the company named Hollingsworth Management International (a Hong Kong company) owned by his colleague, Mr. BD (French citizen). Using the company, Mr. SS and Mr. BD shared the task of marketing Bombardier in Indonesia. After Mr. SS approached Mr. ES, Mr. HS and Mr. AW, in 2012 PT. Garuda Indonesia signed a contract to purchase six units of CRJ1000 aircraft from Bombardier. PT. Garuda Indonesia also signed a lease contract for 12 units of CRJ1000 aircraft with Bombardier. At the same time, Hollingsworth began receiving sales commissions from Bombardier which were then partially passed to Mr. ES, Mr. HS and Mr. AW.

How did Mr. ES take bribes from Mr. SS? In 2009, Mr. ES founded a company named Woodlake International Ltd. in Singapore and opened a corporate account at UBS Singapore. Through this account, Mr. ES several times received transfers from Mr. SS with a total of USD 680,000 and EUR 1,020,975. A small part of the money was then sent to an account in Indonesia owned by his family or withdrawn in cash by Mr. ES. Meanwhile, USD 1,458,364 was deposited with Mr. SS by sending it back to Mr. SS's account at Standard Chartered Bank, Singapore. They agreed to make an underlying transaction so that the money could be returned to Mr. ES in a way as if Mr. SS bought Silversea apartment owned by Mr. ES. In the end, the money was sent back to Mr. ES and the Silversea apartment remained the property of Mr. ES because the buying and selling process was not valid as it was not reported to the Singaporean authorities.

Apart from the transactions through Woodlake, Mr. ES also received bribes from Mr. SS when buying a house in Pondok Indah, Jakarta. Mr. ES bought a house in Pondok Indah from Ms. IIS to give to his mother-in-law. Payments for the house were made several times, and Mr. SS also paid by giving a number of checks to Ms. IIS with a total amount of IDR 5.79 billion. The process of disguising the origin of the bribe money from Mr. SS to Mr. ES was then processed as a money-laundering crime and submitted to a trial at the same time as the corruption case.

The pattern of receiving bribes from Mr. SS to Mr. HS and Mr. AW was the same as when Mr. SS received commissions from the manufacturer; then, some amounts would be sent to Mr. HS and Mr. AW through their account in Singapore. The difference between the two is in the amount of money received. Mr. HS always received about two times the money from Mr. AW at the same time. The total amount of money received by Mr. HS from Mr. SS through his SCB Singapore account was USD 2,302,974 and EUR 477,540, while Mr. AW through his HSBC Singapore account received bribes from Mr. SS with a total of USD 1,049,125 and EUR 135,305.

In addition to accepting bribes, the officials of PT. Garuda Indonesia also received gratification from Mr. SS including: lunch, dinner and lodging at the Four Season Hotel, Bali; lunch, dinner and lodging at the Bulgary Hotel, Bali. They also received gratification in the form of a private plane rental payment for flights from Bali to Jakarta.

B. International Cooperation

As described above, this case involves many jurisdictions, such as Indonesia, Singapore, the UK, Hong Kong, Canada and France. Each of these countries has a different legal system and challenges in building a cooperative relationship with KPK. To trace and prove the corruption scheme, KPK conducted a parallel investigation with the UK's Serious Fraud Office (SFO) and Singapore's Corrupt Practices Investigation Bureau (CPIB).

The beginning of the cooperation began when SFO investigated a bribery case by a British company, Rolls-Royce, that made payments to several foreign public officials, including in Indonesia, namely the directors of PT. Garuda Indonesia. At that time, KPK team consisting of investigators, prosecutors and cooperation specialists left for England to examine a witness in another case facilitated by SFO. On that occasion, SFO informed KPK that SFO was investigating Rolls-Royce for giving bribes to foreign officials to smooth out its business. One of these officials was a director of Garuda Indonesia. SFO also provided intelligence information for KPK to investigate because they believed that KPK would take this case seriously as proved by their handling of the previous case.

After the meeting, KPK and SFO began communicating with Singapore's CPIB. With various considerations, it was agreed that a trilateral meeting would be held between SFO-KPK-CPIB to discuss the case in more detail. The casework meeting was finally held in Singapore. The KPK team that attended the meeting consisted of a preliminary investigator, investigator, prosecutor and cooperation specialist. The purpose was to show outsiders that KPK was taking this case seriously.

During the meeting, it was agreed that a joint investigation would be carried out to handle this case together. SFO would handle Rolls-Royce and Airbus, KPK would handle Garuda officials and other Indonesian citizens involved, and CPIB would handle corporations based in Singapore such as Connaught (owned by Mr. SS) and Woodlake (owned by Mr. ES). Another point of agreement was that the defendants would not be charged with the death penalty. During the meeting, KPK obtained evidence on an intelligence basis, such as evidence of communication between the aircraft manufacturer and Indonesian citizens from SFO. KPK also received information on several streams of money which included a commission from the manufacturer to Mr. SS and also bribes to Garuda officials. The documents were obtained from CPIB.

By the data and information given, KPK began to open an investigation into this case. As in general investigations in other cases, KPK began to collect supporting evidence through searches, seizures and examination of witnesses. KPK also started to list the required documents located in other countries. The required documents would later be requested from the requested country through the MLA mechanism. Most of these documents were obtained by KPK during the trilateral meeting. The MLA process was only to obtain these documents formally so that they could be used in court. The formal mechanism for requesting MLA from Indonesia to other countries is: KPK → Central Authority (Ministry of Law and Human Rights) → Central Authority of the requested country → institution that has the documents. Before the list of documents is sent to the Central Authority, KPK sends the list of documents to the SFO or CPIB via email for the verification process. Verification carried out by the destination country includes the suitability of the requested document, the accuracy of its legal basis and whether the destination country has the requested document and is willing to provide it to KPK. If something was not right, SFO or CPIB had agreed to inform KPK.

After the list of documents was deemed appropriate, KPK coordinated with the Central Authority of Indonesia to prepare the MLA request. Usually, the initial draft of the MLA request, which is generally prepared by the Corruption Eradication Commission, is then reviewed by the Central Authority of Indonesia. Thus, the Central Authority of Indonesia does not have to bother to prepare an MLA draft which is not necessarily in accordance with the wishes of KPK. The Central Authority of Indonesia then sends the MLA request to the UK's Central Authority and Singapore's Central Authority.

1. Cooperation with the UK

In the middle of 2017, KPK sent its MLA request to the UK to obtain documents held by SFO. Some of these documents had already been given to KPK by SFO as intelligence. These documents included: email communications between Rolls-Royce officials and PT. Garuda Indonesia or Mr. SS; Commercial Adviser Agreements between Rolls-Royce and Mr. SS. In order for the request to be fulfilled immediately, KPK informed SFO that Indonesia had sent the MLA request to the UK. SFO personnel provided updates on the MLA process in the UK to KPK directly via email or telephone.

When communicating with SFO personnel, sometimes SFO asked for an explanation of the facts of the case or an update on the handling of the case. KPK often informed SFO that KPK had obtained important documents as a result of search and seizure operations. In such circumstances, SFO usually asked KPK to send the documents to SFO. In addition, SFO also asked for statements from several witnesses who had been examined by KPK. Data/information from KPK to SFO was always sent as intelligence. In this case, SFO never requested data/information from KPK/Indonesia through the MLA mechanism.

In the middle of 2018, KPK received documents from SFO through the MLA mechanism in two stages. Thus, this MLA process took about 1 year. This was a short time to process an MLA request so that it can be said to have been successful. The speed of the MLA process was influenced by the details of the requested documents and the speed of response in both technical and non-technical terms. In addition, the trust between SFO and KPK was also influential because SFO saw that KPK was serious about handling this case.

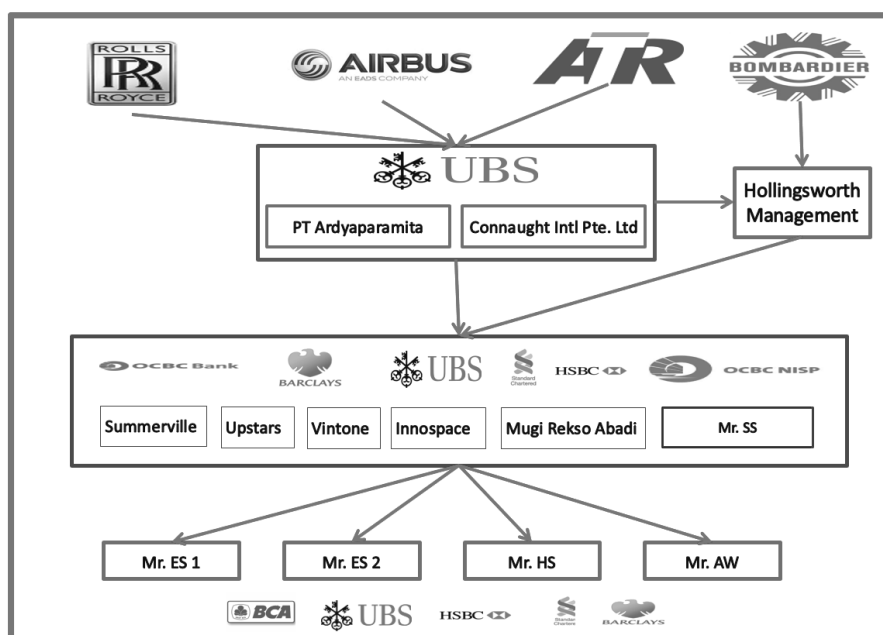
2. Cooperation with Singapore

The process of requesting data/information from Singapore through the MLA mechanism was also carried out simultaneously with the MLA request sent to the UK, which took place in the middle of 2017. The documents requested from Singapore included: Commercial Adviser Agreements between the manufacturer and Mr. SS through Connaught, banking documents belonging to Mr. SS, Mr. ES, Mr. HS and Mr. AW which includes account opening, Beneficial Owner declaration, Account Statement and specific transfer documents, as well as an affidavit of Ms. CTLM. Communication was also carried out with CPIB personnel to speed up the delivery of the MLA request where the process is almost the same as the communication process with SFO. The difference is that Singapore needs to hold a trial first to execute the MLA request. At trial, related parties can file objections, and this causes the process to take longer.

KPK only started receiving the requested data/information from Singapore in early 2019. The documents were sent in four stages. Even though it took longer than the MLA request to the UK, the MLA process in Singapore was quite fast overall. This is because Singapore needed to be careful with these documents as it involved bank secrets which can only be released with the consent of the Singapore Government.

Meanwhile, CPIB also asked KPK for assistance in facilitating the interview of Mr. AW. Previously, KPK informed CPIB that Mr. AW was a cooperating witness. He confessed his actions and was willing to return all the bribes he received. Therefore, CPIB was interested in taking his statement. After Mr. AW was willing to be interviewed, CPIB came to Jakarta and conducted an examination of Mr. AW accompanied by a KPK investigator. Furthermore, CPIB also facilitated the return of bribes held in Mr. AW's account in Singapore which amounted to USD 1,402,125. The money was then sent to KPK's holding account for seizure.

Based on the international cooperation between KPK-SFO-CPIB, KPK was able to obtain important data and information needed to unravel this case. This can generally be seen from the illustration below:



Picture 1. Funds Flow

C. Challenges and Obstacles

As mentioned before, there are other jurisdictions in this case: Hong Kong, Canada and France. At the time of the initial handling of this case, KPK-SFO-CPIB had not contacted the relevant agency in those countries. KPK only tried to contact the agency in Hong Kong after KPK obtained sufficient evidence regarding the involvement of an entity in Hong Kong, namely Hollingsworth Management International, Ltd. (HMI). The agency that was asked for help in this matter was the Independent Commission Against Corruption (ICAC) Hong Kong. After several communications via email asking for ICAC's assistance, it was finally agreed to meet at ICAC's office. During the meeting, KPK tried to convince ICAC that KPK was serious in handling this case. KPK wanted to ask Hong Kong's ICAC to help obtain documents related to HMI including its banking transactions. However, KPK did not succeed in persuading Hong Kong's ICAC to cooperate. Hong Kong's ICAC found it difficult to share documents with KPK due to different legal aspects. In communication with SFO, they also informed KPK that their MLA request to Hong Kong had failed.

KPK was also trying to communicate with Canadian authorities regarding Bombardier's involvement. This communication was opened by SFO because they needed the assistance of Canadian authorities to carry out a search. The agency contacted by SFO was the Royal Canadian Mounted Police (RCMP). SFO also asked for KPK's permission because the basis for their request for RCMP's assistance was a document that came from KPK. Initially, SFO promised that KPK would get the documents obtained from Canada. However, Canada did not give permission for SFO to share the documents with KPK. In this case, KPK did not communicate directly with Canada, which might have led to a lack of trust between each party.

Besides that, KPK, facilitated by SFO, was also trying to establish communication with France. The process was almost the same as in Canada where SFO first opened a line with a French agency, namely Parquet National Financier (PNF). After that, KPK managed to establish direct communication with PNF. At the end of 2019, KPK also sent an MLA request to France to obtain data/information regarding entities there such as Airbus, ATR and Mr. BD. To accelerate the MLA request, KPK also met directly with PNF's official in France and explored the signing of a Memorandum of Understanding for cooperation between agencies. However, the results of the MLA request still have not been sent to Indonesia due to the Covid-19 pandemic.

III. CONCLUSION

Through this international cooperation, each country has succeeded in punishing the perpetrators it prosecuted. In Indonesia, Mr. ES has been sentenced by the court to prison for 8 years and a fine of IDR 1 billion plus an obligation to pay compensation of SGD 2,117,315 for accepting bribes and money-laundering. The Pondok Indah house has also been confiscated for asset recovery. The Director of Engineering, Mr. HS, was sentenced to 8 years in prison and a fine of IDR 1 billion plus the obligation to pay compensation of USD 2,302,974 and EUR 477,540, while Mr. SS was sentenced to 6 years in prison and a fine of IDR 1 billion plus the obligation to pay compensation of USD 14,619,937 and EUR 11,553,190. The UK's SFO through the DPA mechanism has succeeded in obtaining a fine payment from Rolls-Royce of GBP 497,252,645. SFO also succeeded in collecting a fine from Airbus of EUR 991 million as part of a EUR 3,592,766,766 global resolution.

According to SFO, the imposition of this fine through the DPA is the third time since the DPA regulation came into effect. This DPA is also the largest in terms of value.

The keys to the success of international cooperation carried out by KPK are commitment, speed of coordination and accuracy in developing communication strategies with foreign institutions. In order for the request for assistance to run smoothly, it is also necessary to build trust and adjust the cooperation mechanism according to the standards of each country. The important thing that needs to be done to strengthen international cooperation is appreciation for countries/agencies that provide assistance. KPK through its website and email has expressed its gratitude to SFO UK and CPIB Singapore for the assistance they have provided. On the other hand, SFO and CPIB have also expressed their gratitude to KPK for the successful cooperation carried out in the form of this joint investigation.

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