

WHEN THE VIRUS BROKE OUT, THE OUTBREAK OF CORRUPTION WAS EVEN MORE MASSIVE IN INDONESIA

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I. THE STATUS OF THE NATIONAL DISASTER IS A REASON FOR CORRUPTION

On 2 March 2020, the first case of Covid-19 was officially detected in Indonesia. This suddenly shocked the public, considering that at first the government was optimistic that the virus variant would not enter Indonesian territory, so that people were faced with a situation in which they had not been prepared to deal with the emergency. The spread of Covid-19 has had the impact of increasing the number of victims and property losses, expanding the coverage of areas affected by the disaster and having implications for broad socio-economic aspects in Indonesia.

To anticipate this emergency, the President of Indonesia issued Presidential Decree No. 12 of 2020 concerning the Designation of Non-Natural Disasters Spreading COVID-19 as a National Disaster (Keppres 12/2020) deciding the spread of Covid-19 as a National Disaster and the establishment of a Task Force chaired by the Regional Head, namely the Governor, Regent and Mayor, to decide a policy in the affected area.

In line with the adage “*Salus Populi Suprema Lex Esto*”, which means people's safety is the highest law, the Indonesian government immediately rushed to take various steps and strategies to suppress the spread of Covid-19 and also overcome the domino effect of the pandemic. One of the sectors affected by the pandemic is the economic sector, so the government was forced to immediately take the right policies.¹

The initial step taken by the government was the enactment of Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability (Law 2 /2020), but the problem is seen in Article 27 paragraph (2) of the Law, namely:

*KSSK members, secretaries, secretariat members and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority and the Deposit Insurance Corporation and Other Officials, relating to the implementation of this Regulation, cannot be prosecuted either civilly or criminally if in carrying out the task it is based on good faith and in accordance with the provisions of the regulation.*²

The content of Article 27 of Law 2/2020 shows that there is “immunity” for the actions of officials in handling Covid who may commit corrupt acts. Sure enough, the practice of corruption has never been extinguished even though the country is being hit by the Covid-19

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² Law Number 2 of 2020 (emphasis added).

pandemic and is even more massive and worrying. During the Covid-19 pandemic, where Indonesia is helter-skelter to face the epidemic, corruption is getting worse and had mushroomed into a “new epidemic”. Like a dazzling gold field, the situation is all-round. This difficulty is used by corruptors for personal gain. Corruption controversies have become increasingly heated after the former Minister of Social Affairs, Juliari Batubara, was caught red handed over corruption cases involving public social assistance funds. Society is being hit by an all-round situation, and the crisis is getting worse. The priority of the state at this time is indeed the health aspect, but this type of *white-collar crime* cannot be ignored. This paper will discuss the mode of corruption during the pandemic, especially cases that have been handled directly by the author.

II. MAIN DISCUSSION

A. Typology of Corruption in Indonesia

Corruption in Indonesia is widespread in society. Its development continues to increase from year to year, both in terms of the number of cases that occur and the amount of state financial losses as well as in terms of the quality of criminal acts that are carried out more systematically and in scope that enters all aspects of people's lives.

The uncontrolled increase in corruption crimes will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. The widespread and systematic crime of corruption is also a violation of social rights and economic rights of the community, and because of that all corruption crimes can no longer be classified as ordinary crimes but have become extraordinary crimes. Likewise, in efforts to eradicate it, it can no longer be carried out normally, but extraordinary methods are required through special rules governing it.

One of the principles of preference known in legal science is *lex specialis derogate legi generalis*, namely special laws that override general laws. The principle has the intention that for special events a law that mentions the event must be applied, although for such special events a law can also be applied which mentions the event more broadly or more generally.

In line with this principle, the crime of corruption is regulated *lex specialist* through the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 (PTPK) concerning Eradication of Acts of Corruption. Meanwhile, in a *lex generalist manner*, the rules for corruption are contained in the Criminal Code (KUHP).

The categories of types of criminal acts of corruption as contained in the 30 Articles contained in the Law of the Republic of Indonesia Number 31 of 1999 are as follows:

- State financial losses;
- Bribery;
- Blackmail;
- Embezzlement in Position;
- Fraud;
- Conflict of Interest in the Procurement of Goods and Services;
- Gratification.³

³ Adami Chazawi, Material Criminal Law and Formal Corruption in Indonesia.

Referring to the category of types of corruption and looking at the handling of corruption related to the Covid-19 pandemic, law enforcement officers in Indonesia usually charge corruption related to state financial losses as regulated in Article 2/Article 3 of the PTPK Law and Bribery as regulated in Articles 5, 11, 12, 13 of the PTPK Law.

Likewise in handling corruption cases involving the Minister of Social Affairs, Juliari Batubara, corruption cases of public social assistance funds are subject to an article on bribery, namely Article 12 of the PTPK Law. Therefore, the author will discuss cases of corruption during the Covid-19 pandemic outside of corruption which resulted in state financial losses and bribery, namely Conflicts of Interest in the Procurement of Goods and Services (Article 12 Letter I of the PTPK Law).

B. Authority of the CEC Post Revision of the Law

In Indonesia, there are basically three law enforcement agencies in eradicating corruption, namely: (i) the Police; (ii) the Corruption Eradication Commission (CEC) and (iii) the Attorney General's Office (AGO). Each agency has the authority to investigate criminal acts of corruption.

In an effort to eradicate corruption, the implementation is carried out optimally, intensively, effectively, professionally and continuously. Based on the provisions of Article 43 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001, the CEC has the authority to coordinate and supervise, including conducting investigations, and prosecution. The CEC is a Central Government institution that has the duty and authority to prevent and eradicate Corruption Crimes as regulated in Law Number 30 of 2002 concerning the CEC.

However, in its development, the performance of the CEC is felt to be less effective, the lack of coordination between law enforcement lines, the occurrence of violations of the code of ethics by the leaders and staff of the CEC, as well as problems in the implementation of duties and authorities. These problems include: (i) the implementation of the duties and authorities of the CEC that are different from the provisions of the criminal procedure law, (ii) weakness of coordination with fellow law enforcement officers, (iii) problems of wiretapping, (iv) management of investigators and investigators who are not coordinated, (v) overlapping authority with various law enforcement agencies, as well as the weakness of the absence of a supervisory agency capable of supervising the implementation of the duties and authorities of the CEC so as to allow faults and deficiencies to exist, and (vi) accountability for the implementation of the duties and authorities of eradicating corruption by the CEC. For this reason, legal reform has been carried out so that the prevention and eradication of corruption acts in an effective and integrated manner so as to prevent and reduce state losses that continue to grow due to corruption.

Furthermore, the Government of Indonesia together with the House of Representatives of the Republic of Indonesia promulgated Law number 19 of 2019 concerning the Second Amendment to Law number 30 of 2002 concerning the Corruption Eradication Commission where the institutional arrangement of the CEC was carried out in line with the Constitutional Court Decision Number 36/PUU-XV/2017, which stated that the CEC is part of the executive branch of government, which is often called a government institution.

Under Article 6 of Law number 19 of 2019, the CEC has the task of taking preventive actions, coordinating with agencies authorized to carry out eradication of corruption and agencies that

carry out public services, monitoring the implementation of state government, supervision of agencies authorized to carry out corruption eradication, investigation and prosecution of criminal acts of corruption as well as actions to carry out the determination of judges and court decisions.

Then in addition to the duties, there is also the authority of the CEC as contained in Article 11 of the Act, namely, in carrying out its duties, the CEC has the authority to carry out investigations and prosecutions carried out by:

- involving law enforcement officers, State Administrators, and other people who are related to Corruption Crimes committed by law enforcement officers or State Administrators; and/or
- concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah).⁴

C. Corruption Case Related to the Distribution of Shopping Food During the Covid-19 Pandemic

It is undeniable that Article 27 of Law 2/2020 is a gap for corrupt officials to smooth out their intentions to take advantage to be used for their personal and cronies' interests. Instead of saving the community from the impact of the Covid-19 pandemic, the official betrayed the nation and state, especially with regard to his influence on the procurement of goods and services in the procurement of social assistance in the form of nine basic commodities (sembako) for the lower middle class.

1. Case Description

Former West Bandung Regent AA UMBARA SUTISNA, hereinafter referred to as the Perpetrator, was, around March 2020, involved in a corruption case involving the misuse of his position to participate in the procurement of goods for the COVID-19 Pandemic Emergency Response at the West Bandung Regency Social Service Office in 2020. The case began after there were reports from the public related to the existence of social assistance in the form of packages of nine staples (sembako) which are not feasible where the budget allocation comes from the Unexpected Expenditure (BTT) of West Bandung Regency in the amount of Rp52,151,200,000.00 (*fifty two billion one hundred fifty one million two hundred thousand rupiah*), which is intended for social assistance in the form of food packages as much as 120,000 (*one hundred and twenty thousand*).

However, in realizing the Social Assistance programme, because the Perpetrator wanted benefits for himself and his family, the Perpetrator appointed the social assistance package provider to the closest people to the Perpetrator and the Perpetrator's family, which was carried out in the following modes, namely:

- The perpetrator held a meeting with M. TOTOH GUNAWAN, a businessman who was his friend since childhood who was also the Perpetrator's Success Team during the 2018-2023 West Bandung Regent Election; in the meeting it was agreed that M. TOTOH GUNAWAN would be the provider of the Social Assistance (Bansos) package for the people of West Bandung Regency who were affected by the Covid-19 pandemic as many as 120,000 (*one hundred and twenty thousand*) basic food packages with the condition that they must set aside six per cent of the total profit for the Perpetrator;

⁴ Article 11 of Law number 19 of 2019.

- The perpetrator ordered the procurement official to directly appoint the company M. TOTO GUNAWAN without being accompanied by a study by the agency regarding the feasibility of the company.
- The Perpetrator also used the company owned by M. TOTOH GUNAWAN in the procurement of this social assistance, the Perpetrator also appointed a company prepared by ANDRI WIBAWA (the Perpetrator's biological son) without being accompanied by a study by the agency regarding the feasibility of the company in exchange for one per cent of the company's profits.⁵

The perpetrator as the West Bandung Regent who was assigned to oversee the procurement of goods and services in an emergency; however, it turned out that the Perpetrator participated in arranging the provider of the goods procurement package for the COVID-19 Pandemic Emergency Response at the District Social Service West Bandung TA. 2020 by appointing his close friend, TOTOH GUNAWAN and including his son ANDRI WIBAWA.

By the CEC Public Prosecutor, Perpetrator AA UMBARA was charged with a violation of Article 12(i), which reads: *“a civil servant or state administrator either directly or indirectly intentionally participates in the chartering, procurement, or leasing, which at the time of the act, for the whole or in part assigned to manage or supervise it”*, then imprisonment for 7 (seven) years and additional punishment in the form of payment of compensation as much as received by the Perpetrator in the amount of Rp.2,379,315,000.00 (*Two billion three hundred seventy nine million three hundred and fifteen thousand rupiah*) as well as the revocation of the right to be elected in public office for 5 (five) years after serving the sentence.

Furthermore, the judge at the first level up to the cassation level granted all the demands of the Public Prosecutor, but the case of corruption involving a close friend and child of Perpetrator AA UMBARA was acquitted by the judge on the grounds that it was not legally and convincingly proven.

2. Obstacles in Handling the Case

The main challenge in handling this case was to prove the involvement of the private sector or other parties for proof of article 12(i). This was the first time the CEC carried out a Covid-19 social assistance case, which previously only used acts of corruption that harm state finances as stated in Article 2, Paragraph (1), or Article 3 and acts of bribery as referred to in Articles 5, 11, 12 and 13 of the Corruption Eradication Law.

The CEC Public Prosecutor has screened the actions of other parties in layers with the actions of people who commit or who participate in and carry out as referred to in Article 55 paragraph (1) to 1 of the Criminal Code and then also present experts in the criminal field who explain that other parties can be held criminally responsible. However, the Judge is of the opinion that conflicts of interest in the procurement of goods and services can only be imposed on officials or state administrators who have the authority or influence over the decision in the procurement, which is of course contrary to the analysis submitted by the public prosecutor.

Another challenge in handling this case is that there is no common understanding between other law enforcers who still tend to move only to find state financial losses in the misuse of social assistance funds, which on the one hand really requires quite complicated proof while

⁵ Supreme Court Decision Number: 2910 .K/Pid.Sus/202 2 dated 13 July 2022.

the time is limited due to the length of detention of a suspect. The statutory instrument regulates other acts of corruption so that there is no harm in using articles that do not require complicated evidence and in the end it can also be confiscated assets by using additional penalties in the form of payment of compensation for an amount that the Perpetrator enjoys as stated in articles 17, 18 of the Eradication Law Corruption.

3. Countermeasures

Social assistance for handling those affected by Covid-19 can contain the potential for massive and large corruption due to the first weakness of supervision in the procurement process in which internal supervision is formed by the Regional Head, which is of course prone to intervention; secondly, the overlapping of rules related to procurement for social assistance and limitations of personnel in interpreting the intent of the regulation; and, thirdly, the weak value of integrity possessed by the bureaucracy in Indonesia.

The CEC has the authority in terms of prevention; therefore, strategic steps must be agreed to prevent acts of corruption including:

1. Encouraging government and winning companies to be more transparent in reporting all their activities including profits;
2. Improving the quality of the bureaucracy;
3. Strict punishment;
4. Increasing community participation in monitoring the implementation of social assistance;
5. Supervision of Anti-Corruption Institutions;
6. Reviewing overlapping rules.

From the handling of the cases above, a lesson can be drawn, namely that the Regional Head in determining policies that are prone to abuse of authority can involve relevant agencies as an example for preventing corruption involving the CEC. Then for technical procurement of goods and services it can involve the Government Goods and Services Procurement Policy Institute (LKPP).

In addition, law enforcement officers, including investigators, public prosecutors and judges, need to also improve their ability to recognize the ways in which the perpetrators of corruption carry out their actions so that there are similarities and updates on the mode of action, especially those who can be held criminally accountable, not only limited to actions regulated in one law but must be synchronized with other laws.

III. CONCLUSION

1. Social Assistance for communities affected by Covid-19 is very vulnerable to corruption, especially in Indonesia. Regional Heads or the highest officials in Ministries/Institutions are filled with people who come from political parties so that they can certainly have goals for their own interests or parties in determining policies. Instead of helping the community's economy, the fact is that the assistance was corrupted by taking refuge in the rules of Article 27 paragraph (2) of Law Number 2 of 2020 to obtain immunity, even though they forgot there was a phrase in the article that stated “...*in carrying out tasks based on Good intention...*” contrary to their actions that are not based on good faith. Therefore, serious efforts are needed to change the mindset of bureaucratic officials, especially regarding the values of integrity.

2. Conflict of Interest in the Procurement of Goods and Services is a type of corruption as referred to in Article 12(i) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001, which is certainly vulnerable to the authority possessed by an official. Therefore, it is necessary to involve the competent agency from an early stage to oversee the procurement process starting from planning to procurement implementation so that corruption can be avoided.