

Law Enforcement Against Perpetrators of Illegal Charges Perpetrated by Civil Servants (Case Study of the Makassar District Attorney)

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ABSTRACT

Law enforcement against perpetrators of illegal levies committed by civil servants that occurred in Makassar has not been firmly enforced with penalties in accordance with the law. This research is an empirical normative research, combining a normative legal approach to legislation with empirical elements in the form of interviews. The results of the study indicate that law enforcement against criminal acts of Corruption with the Modus Operandi of carrying out illegal levies (Pungli) by Civil Servants and State Organizers is currently still limited to the application and enforcement of the provisions of Article 12 letter e of the Republic of Indonesia Law Number 31 of 1999 regarding the Eradication of Criminal Acts of Corruption as amended and added to the Law of the Republic of Indonesia Number 20 of 2001, this is due to an understanding by Law Enforcement Officials who are of the view that illegal levies have nothing to do with State Financial Loss, and (2) In the context of In the author's research, the Makassar District Attorney has many factors that affect the enforcement of illegal levies, as follows, namely the Law Factor, Law Enforcement Factor, Facilities or Facilities Factor, Factors society, cultural factors.

ABSTRAK

Penegakan hukum terhadap pelaku pungutan liar yang dilakukan oleh pegawai negeri sipil yang terjadi di Makassar belum ditegakkan secara tegas dengan sanksi yang sesuai dengan undang-undang. Penelitian ini merupakan penelitian normatif empiris, memadukan pendekatan hukum normatif peraturan perundang-undangan dengan unsur empiris berupa wawancara. Hasil penelitian menunjukkan bahwa penegakan hukum terhadap tindak pidana Korupsi dengan Modus Operandi melakukan pungutan liar (pungli) oleh Pegawai Negeri Sipil dan Penyelenggara Negara saat ini masih sebatas penerapan dan penegakan ketentuan Pasal 12 huruf e UU No. Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi sebagaimana telah diubah dan ditambah dengan Undang-Undang Republik Indonesia Nomor 20 Tahun 2001, hal ini disebabkan adanya pemahaman dari Aparat Penegak Hukum yang berpandangan bahwa pungutan liar tidak ada kaitannya dengan Kerugian Keuangan Negara, dan (2) Dalam konteks Dalam penelitian penulis, Kejaksaan Negeri Makassar memiliki banyak faktor yang mempengaruhi penegakan pungutan liar, sebagai berikut, yaitu Faktor Hukum, Faktor Penegakan Hukum, Faktor Fasilitas atau Fasilitas, Faktor Masyarakat, Faktor Budaya.

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I. INTRODUCTION

Public service has become a strategic policy issue because the implementation of public services has not had a broad impact on changes in aspects of people's lives. Because before the reform era, the government bureaucracy dominated the administration of government and public services, so that community involvement in government was very limited.

The current conditions that occur in regions in Indonesia show that the implementation of public services is still faced with a government system that is not yet effective and efficient and the quality of human resources of the apparatus is not adequate. This is involved in the number of complaints from the public such as complicated procedures, no certainty in the settlement period, costs to be incurred, requirements that are less transparent, the attitude of officers who are less responsive and others. So that it creates a bad image that is not good for the image of the government in the eyes of its own people, especially in the eyes of ordinary people who do not know anything about public services.

Public services are often tainted by the practice of illegal levies (extortion) carried out by unscrupulous state officials. Many individuals take advantage of their position as community services to enrich themselves by abusing their authority and violating the rules of law and established procedures. The practice of extortion is a form of Corruption Crime, generally carried out by parties who have important positions in government, including by implementing public services.

The practice of extortion in the bureaucracy is caused by weak supervision and supervision among government agencies, although a number of internal and external oversight institutions have been established, the culture of extortion among the bureaucracy has not diminished, let alone eliminated. In general, extortion is carried out by low-class public service officers. The motive is to increase income due to the official salary of the bureaucrats on average is still relatively low. If the high-level bureaucracy can commit corruption to increase its income, the lower-level bureaucracy can use extortion. The existence of opportunities, weak supervision and low ethics of bureaucrats are factors driving the proliferation of corrupt behavior through extortion.

Corruption is a crime committed by every legal subject, both individuals and legal entities that are directly or indirectly related to the misuse of state finances. The consequences of corruption have a very broad impact, not only concerning state finances, but also being able to damage the government system, economy and development. The ongoing decline in the economy and development in Indonesia at this time affects the joints of life in society, nation and state.

Illegal levies are included in a crime of office, the concept of a crime of office is explained that officials for the sake of benefiting themselves or others, abuse their power to force someone to give something, to pay or receive payment with a discount, or to do something for themselves. This includes clearly the criminal act of corruption, which was later reformulated in the Law of the Republic of Indonesia Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

Illegal levies do not only appear in public services but sometimes there are officers who carry out illegal levies in the economic sector, as is the case in one example that occurred in Makassar City, where in order to support the economic and tourism sectors and realize the importance of street vendors as a driver of the people's economy. In developing creative businesses in Makassar City, the Makassar City Government deems it necessary to organize and empower Street Vendors who were later named by the Makassar City Government as "Kanrerong Street Vendors" by establishing the Karebosi Area in the southern part of the Baru Village, Ujung Pandang District. and built on land owned by the Makassar City Government as referred to in Perwali Number 29 of 2018 concerning Street Vendors in Kanrerong Karebosi

Makassar City Karebosi who have committed acts that deviate from what has been regulated in Makassar Mayor's Regulation Number 29 of 2018 concerning Street Vendors in Kanrerong Karebosi, one of which is that they have transferred 31 Kiosks in Kanrerong Karebosi from old street vendors to new traders without the TDU procedure as referred to in Perwali No. 29 of 2018 concerning

Kanrerong Street Vendors; and has also received an amount of money from the proceeds of the rental/buying transaction of kiosks in the Kanrerong area.

Illegal levies which are included in the realm of corruption carried out by UPT elements of the Kanrerong Integrated Service Center for the Rental and Sales of Kiosks to Street Vendors in the Tourism and Culinary Area of Kanrerong Karebosi Makassar City to Street Vendors who force them to give something, pay, or receive payment at a discount, which was adopted from Article 423 of the Criminal Code which regulates an official who, with the intention of benefiting himself or another person and against the law, by abusing his power, forces someone to give something, to pay or receive a discounted payment, or to do something for someone else. and contained in Article 12 letter e of Law Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption which essentially regulates corruption of Civil Servants or State Administrators by abusing power to force people to give something. u.

The rise of illegal levies in various government services makes the author motivated to carry out a research entitled "LAW ENFORCEMENT AGAINST CRIMINAL ACTS OF ILLEGAL EXCLUSIONS PERFORMED BY CIVIL STATE EMPLOYEES (Case Study of the Makassar District Attorney)" with the formulation of the problem How is law enforcement for perpetrators of illegal levies as employees Civil Service for abuse of its authority? And what are the factors that influence law enforcement for the crime of corruption?

II. RESEARCH METHOD

This research is normative empirical legal research, legal research equipped with empirical data, is a type of research that uses secondary data from the literature and is supported by primary data based on field research, such as observations, interviews, and surveys. (Irwansyah & Yunus, 2020). In this study, it is related to normative research using literature or rules that discuss Law Enforcement Against Criminals of Illegal Charges carried out by Civil Servants, while in empirical research the authors conduct field research such as observations and interviews with the UPT Karebosi Street Vendors Service Makassar and other enforcement officers. law at the Makassar District Attorney's Office.

III. RESULT AND DISCUSSION

Law Enforcement of Criminal Acts of Illegal Charges carried out by Civil Servants

Law Enforcement of Illegal Charges has not been specifically regulated in Indonesian laws and regulations. However, currently the implicit or explicit regulation of extortion is regulated in the Criminal Code and in specific regulations. The crime of corruption has the closest relationship with the crime of extortion. Extortion is classified as corruption because it fulfills the elements in a criminal act of corruption, including:

- a. Elements of every person including corporations;
- b. The element of committing an act against the law;
- c. The element of action is carried out with the aim of enriching oneself;
- d. The element of the act that is carried out is detrimental to the state's finances.

This extortion can also be classified as a criminal act of extortion. Where extortion is a common crime that often occurs in Indonesia. Based on this, it can be seen that the elements of extortion are as follows.

- a. Objective Elements
Civil Servant or State Administrator or an official; Abusing power, Doing coercion against someone with; give something, pay, receive, and/or do something for himself.
- b. Subjective Elements
Benefiting oneself or others, and Profiting unlawfully)

This crime of extortion involves contradictory dual functions performed by officials or civil servants. When an official or civil servant, for example, issues a letter permit, the act of issuing the permit is a function of his position as well as his personal interests. Those who do that usually try to keep their actions a secret. Extortion is carried out consciously and intentionally by the perpetrators. Law enforcement against the crime of extortion goes back to how the community responds to public services and how the ASN related elements realize that the work they do is for the benefit of the community.

In connection with the case of ASN persons who commit criminal acts of extortion, of course, in the material law, administrative sanctions will be given. Article 87 paragraph (4) of the ASN Law essentially stipulates that civil servants can be dishonorably dismissed due to:

- a. Doing acts that deviate from Pancasila and the 1945 Constitution of the Republic of Indonesia;
- b. Sentenced to imprisonment or confinement based on a court decision that has legal force due to committing a crime of office crime or other crimes related to office and/or general crime;
- c. Concurrently serving as a member and/or administrator of a political party;
- d. Sentenced to imprisonment based on a court decision that has legal force for committing a criminal act with a maximum imprisonment of 2 (two) years in which the act was carried out with a prior plan; or
- e. Article 5 of the Anti-Corruption Law states that: "The punishment is a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah) any person who: gives or promises something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his position, which is contrary to his obligations; or giving something to a civil servant or state administrator because of or in connection with something that is contrary to his obligations, done or not done in his position." Furthermore, Article 11 of the Anti-Corruption Law stipulates that: "The punishment is a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah) civil servant or state administrator who receives a gift or promise even though it is known or reasonably suspected that the gift or promise was given because of the power or authority related to his position, or according to the opinion of the person who giving the gift or promise has something to do with his position."

From this research conducted by the author in the case of illegal levies that occurred in Makassar City, most Civil Servants use the mode to trick victims by asking for something by abusing their authority and position to enrich themselves. Some of the data that has been obtained by the author when conducting direct research at the Makassar District Attorney, where in the last 5 years the Makassar District Attorney has handled cases of illegal levies committed by civil servants, among others:

- a. In 2017, There is a case of illegal levies carried out by Civil Servants with the initials AH at the New Student Admission (PPDB) for the 2016 Academic Year at SMAN 1 Makassar City where the perpetrator is a teacher. Where in this case the Public Prosecutor's Demand is imprisonment for 1 (One) Year 6 (Six) Months with consideration of the amount of illegal levies not more than Rp. 30,000,000 (Thirty Million Rupiah);
- b. In 2017, there was a case of illegal levies carried out by a Civil Servant with the initials MY on New Student Admission (PPDB) for the 2016 Academic Year at SMAN 5 Makassar City where the perpetrator was also a teacher. Where in this case the Public Prosecutor's Demand is imprisonment for 1 (One) Year 6 (Six) Months with consideration of the amount of illegal levies not more than Rp. 30,000,000 (Thirty Million Rupiah);

- c. In 2021, there was a case of illegal levies carried out by a Civil Servant with the initials MS, which became very interesting because this case was the result of an investigation by the Makassar District Attorney where the Alleged Acts of Corruption in Illegal Charges (Pungli) were carried out by UPT personnel. The Kanrerong Integrated Business Service Center at the Makassar City Cooperative and SME Service for the Rental and Sales of Kiosks to Street Vendors in the Tourism and Culinary Area of Kanrerong Karebosi Makassar City and was sued by the First Article 12 Letter e or Second Article 12 letter b or Third Article 11 of the Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended and added in Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption; Jo. Article 64 Paragraph (1) of the Criminal Code. In this case, the author agrees with the article used by the Public others unlawfully, or by abusing his power by forcing other people against the law, or by abusing his power by forcing someone to give something within the law. Corruption cases and Article 12 letter b of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended and added in Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes.

Factors Affecting Law Enforcement of Illegal Charges

In the process of public services, the position of the community is very vulnerable to becoming victims of illegal levies due to low bargaining power. People are "forced" to hand over additional money because there is no effective supervisory agency to force bureaucrats who often carry out illegal levies. The public also does not get a bona fide complaint agency because of the low public trust in the image of the bureaucrats. In addition, public complaints often do not get an adequate response from the inspectorate as an internal supervisor.

On the other hand, the community also often contributes to the growth of illegal levies by getting used to giving money without being able to be critical of refusing payments outside of official fees. The culture of "giving" the public to facilitate dealings with bureaucrats is hard to get rid of because it has been going on for centuries. Since feudal times, people have been accustomed to "give" tribute to the king and the royal apparatus:

There are several factors that cause a person to commit illegal levies, namely:

- a. Abuse of authority, position or authority of a person can commit disciplinary violations by individuals who carry out illegal levies.
- b. Mental factors, character or behavior of a person in acting and controlling himself.
- c. Economic factors, income that can be said to be insufficient to meet the needs of life is not proportional to the duties/positions carried out making a person compelled to commit extortion.
- d. Cultural factors and Organizational Culture. The culture that is formed in an institution that is constantly against extortion and bribery can make extortion a commonplace.
- e. Limited human resources.
- f. Weak system of control and supervision by superiors.

The obstacle to the implementation of corruption in the form of extortion is because the operation must be OTT, so the only problem is how to find the right momentum so that there is evidence and transactions. The Task Force is not an organization for prosecution. As soon as the OTT, we collect and distribute it to the relevant ministries or institutions authorized to process the law, it can be directly submitted to the police. Law enforcement often encounters obstacles, especially when it involves executives who are always looking for loopholes to escape the law. In fact, in order to prevent the investigation process from turning into an investigative process, there are all kinds of silat tongues that are carried out even though they have to violate the rules that they have made themselves or according to the laws that have been drawn up and mutually agreed upon.

In eradicating corruption, there are bound to be obstacles, both juridically, such as the need for permission from the president for corruption committed by state officials so that it takes a long time,

audit results for calculating state financial losses from auditors and laboratory test results by experts take a long time witnesses who withdrew their statements in court, making it difficult to prove. Non-judicially, the obstacles that are often encountered, such as criminal acts of corruption are mostly carried out by a group of people or certain agencies in a covert manner, making it difficult to investigate, the occurrence of corruption crimes is only revealed after a long grace period so it is very difficult to find evidence, transfer of proceeds of corruption by laundering money.

Law enforcement includes two things, namely: (1) legal efforts aimed at preventing and overcoming violations through the utilization of authority in accordance with the mandate given by the legislation; (2) Court Review of court decisions. If it is related to Law Enforcement Theory, Soerjono Soekanto explains that the main problem of law enforcement actually lies in the factors that might influence it. These factors have a neutral meaning so that the positive or negative impact lies in the content of these factors. These factors are as follows.

- a. The legal factor itself;
- b. Law enforcement factors, namely the parties that form and apply the law;
- c. Factors or facilities that support law enforcement;
- d. Community factors, namely the environment in which the law applies or is applied; 5. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life

IV. CONCLUSION

Whereas the development of enforcement of the handling of cases of Corruption Crimes with the Modus Operandi of illegal levies (Pungli) by Civil Servants and State Organizers is currently still limited to the application and enforcement of the provisions of Article 12 letter e of the Republic of Indonesia Law Number 31 of 1999 concerning The Eradication of Criminal Acts of Corruption as amended and added to the Law of the Republic of Indonesia Number 20 of 2001, this is due to the understanding by Law Enforcement Officials who hold the view that illegal levies have nothing to do with State Financial Losses.

In the context of law enforcement against Corruption Crimes with the modus operandi of illegal levies (Pungli) in the author's research, the Makassar District Attorney has many factors that affect the enforcement of illegal levies, as follows, namely the legal factors themselves, law enforcement factors, facilities or factors facilities, community factors, and cultural factors. With the ratification of presidential regulation (perpres) number 86/2016, a task force team of saber extortionists has been formed, in which the task and function of eradicating extortion cannot be stopped. That the eradication of extortion must be successful and bring the greatest benefit to the community. The community supports the performance of the saber extortion team, but the formation of this team must give hope to the community that extortion is now a common enemy. Do not let the presence of the saber extortion team actually complicate services to the community because the apparatus ignores the application of existing rules, even though the condition of the community still does not allow for that. In addition, there needs to be a guarantee that services to the community will not change, there must be no extortion, in fact the service should be much better than before.

Illegal levies (extortion) are facts that in practice can be carried out by those who have authority or power over the public interest, and the community is very dependent on them. The community is in a position of need and feels that they are in a "begging" position which must comply with the "conditions" determined by the Authority Holder. So the steps to eradicate extortion as part of legal reform can be justified. The community must begin to dare to report extortion practices. The community does not need to feel themselves as objects that can be treated arbitrarily through extortion practices because juridically, the community has the right to get good services from the state in accordance with applicable legal regulations.

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