



The law enforcement practices on corruption cases by the heads of villages in Indonesia

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Abstract

The increase in criminal acts of corruption in Indonesia provides significant opportunities for the government and the community to continue to work together and join hands in fighting the corruption. This corruption has become an acute disease in this country. It takes hard work and seriousness against it. In the midst of the large amount of budget allocated for the management of village funds, the state is faced with rampant corruption problems at the village level. In addition, the practice of law enforcement on corruption cases committed by the village heads is still quite weak compared to the number of corruption cases committed by the village heads even though the judge has decided on some corrupt practices carried out by the village head as happened in Surabaya District Court ruling with number: 66/ Pid.SUS-Tpk/ PN.Sby.

Keywords: practices, law enforcement, corruption, village head.

Introduction

Basically, the development in the State of Indonesia is supported by development at the national and provincial levels, as well as backward development in the province is inseparable from development in the regencies below. Thus, it has been ascertained that the back and forth of the Regency depends on the development carried out in the kelurahan and villages under its administration. Likewise, the rate of economic growth in a region, both regencies and provinces, is inseparable from the progress of economic development in the villages.

A criminal act of corruption is an extraordinary crime, in which the crime causes financial losses to the state or the country's economy and impedes national development, so it must be eradicated to create a righteous and prosperous society based on Pancasila and the 1945 Constitution. In various parts of the world, corruption^[1] always get more attention compared to other criminal acts. Corruption cases of corruption so far have been widespread and structured, the impacts of which have caused them to be detrimental to the country's finances, and have caused losses to the people's economy. In addition, corruption is a violation of the social and economic rights of the community at large, so that criminal acts of corruption need to be classified as extraordinary crimes or eradication must be carried out in extraordinary ways too or Extraordinary law. Barda Nawawi Arief argues that corruption is a very despicable, damned and very hated act by most people, not only by the people and people of Indonesia but also by the people of the nations of the world^[2]. The increasing corruption index in Indonesia provides significant

opportunities for the government and the community to continue to work together and join hands in order to fight corruption. This corruption has become an "acute illness" in this country. Considering this matter, it takes hard work and seriousness in "fighting it". Corruption becomes a chain that continues to wrap around careless souls, thirsting for self and group interests as well as those who follow their passions. Corruption is a major crime that can affect anyone in the environment, do not know the position and social status. Corruption in Indonesia has been "wrapping" its roots in various sectors and becoming a "virus" that continues to spread^[3].

Current corruption does not only occur in the executive, legislative and judiciary sectors, but has entered into a lower level in the Regional Government. One of the problems that are prone to corruption and even now it has begun to occur is the corruption that occurred in the village, in this case the criminal act of corruption committed by the Village Government officials. Since rolling in 2015 until now, the village funds that have been disbursed by the government amount to Rp 186 trillion. This fund has been distributed to 74,954 villages throughout Indonesia. In its development, the abundant village funds are prone to corrupt practices. Based on the results of monitoring by Indonesia Corruption Watch (ICW) from 2015 to Semester I 2018, cases of corruption in village funds have increased from year to year. At least 181 cases of village fund corruption have been recorded with 184 corruption suspects and a loss of Rp 40.6 billion^[4]. Based on the description above, the researcher is interested in studying and conducting this research since the problem of

¹ Sri Endah Indriawati, The Effectiveness of Corruption Law Enforcement Against Corporations Based on Law No. 20 of 2001 concerning Corruption Crimes, Surya Kencana Satu Journal: The Dynamics of Legal and Justice Problems Vol. 6 No.2, October 2016, P. 92. The practice of corruption, collusion and nepotism takes place due to cooperation between two parties. which is not his/ her property usually by way of violating the law for personal or group interests, misuse of office, mutual authority in the case of acts which are detrimental to the state, society or other persons committed.

²Muladi dan Barda Nawawi Arief dalam Ridwan, Policy of Criminal Law Formulation in the Counter Corruption, Thesis, Master of Law Program, Diponegoro University Semarang, 2010, page: 16

³ Mar'atul Makhmudah, Prevention of Corruption Crimes in Village Governance: Political Study of the Policy and Law of the Management of Natural Resources in Hayat Village, Yustisia.Vol.5 No.2 May-August 2016, page. 361

⁴ <https://nasional.kompas.com/read/2018/11/21/19000481/icw-ada-181-kasus-korupsi-dana-desa-rugikan-ne>. Accessed on December 25, 2018.

corruption in Indonesia has not yet to be resolved, particularly corruption committed by a village headman. Therefore, the problem in this study is how is the Law Enforcement Practices on Corruption Cases by the Village Heads in Indonesia?

Research Method

This study was a normative juridical research^[5]. The data used in this study were secondary data, including primary legal materials, secondary legal materials and tertiary legal materials related to the study of Law Enforcement Practices on Corruption Cases by the Village Heads in Indonesia. The data collection techniques was done using literature study^[6], while the data analysis technique uses qualitative juridical analysis, meanwhile, the data analysis technique was done using qualitative juridical analysis^[7].

Discussion

Before discussing corruption practices by the head of Indonesia, his race needs to be explained by the author to describe the general picture of the village. The village is the smallest form of government in the country. The area of the village is usually not too large and is inhabited by a number of families. The majority of the population works in agriculture and their education levels tend to be low. Because the population is not so much, then usually the kinship relationship between the people is strong. The people also still believe and uphold the customs and traditions left by their ancestors. As the smallest part of the government system in Indonesia, the village plays an important role, particularly with regard to developments that directly touch the community. Many programs are issued by the Government for the creation of a better village life and welfare for its people.^[8] The sources of village income are, among others, original village income, regional tax revenue sharing and district/ city regional contribution, part of the central and regional financial balance funds received by the district/ city, assistance from the government, provincial government, and district/ city government, grants and donations from third parties. The reality shows that the village financial sources as referred to above have not been fully managed optimally, especially the sources of village income that come from the original village income. This is inseparable from various inhibiting factors, one of which is still limited or weak Human Resources (HR) of the village government apparatus itself. As such it is almost certain, many villages rely solely on assistance from the central, provincial and district governments. This fact is compounded by the lack of laws and regulations that specifically regulate village financial management. Even though there are not a few funds distributed by the central, provincial and regency governments for villages. As a result the objective of implementing regional autonomy is to advance the economy in the region, creating efficiency and

effectiveness in managing regional wealth resources is difficult to achieve^[9].

The abundance of village resources provides a significant opportunity for the village government in developing the village economy and welfare for the village community. These potentials must be well identified and developed through empowering the community on an ongoing basis. There are so many potentials that have not been optimally and optimally explored and have not been well managed. There are many obstacles behind, including village finance, village human resources and infrastructure that does not support. It is not uncommon that government finances which are not well managed only benefit a group of villagers. It is common knowledge that the availability of competent and professional human resources. Besides that the sources of funding are still inadequate both from the village itself and from outside^[10].

Regulation and institutions have a positive impact on accelerating village development. Besides, through the Village Law, villages are required to create an Inter-Village Cooperation Agency (BKAD) to facilitate villages to access the network or manage village resources together, so that they are lightly carried together, weight is equally borne into a slogan that can be applied in village development.

On the other hand, there are gaps in regulations and institutions that can be infiltrated to abuse authority and criminal acts of corruption. The magnitude of the village's potential and opportunities for managing village's abundant resources, if the control over weak policy makers has a great opportunity to be abused. Active community participation and orientation for the welfare and economic improvement of the community become siren buttons for the village government. Johan Budi former (Acting) Deputy Chairman of the KPK revealed that the prone to criminal acts of corruption at the level of regulation and institutional because it is incomplete and technical instructions for the implementation of village finances which are also incomplete become a gap for corruption^[11].

In the practice, given the village to manage village finances are often misused by village government officials. The village head as the highest structure in the village administration is the party most responsible for the misappropriation of village funds. Some misuse of village funds that occurred in various areas including:

1. The Misuse of Village Funds in Sragen

One of the allegations of misuse of Village funds in Sragen Regency occurred in the construction of drainage and road gutters, each of which was valued at Rp. 62,000,000 (sixty two million rupiah) and Rp. 172,500,000 (one hundred seventy two five hundred thousand rupiah) in Doyong Village, Miri District, Sragen Regency. A number of residents in four hamlets namely Pungkruk, Bulu, Doyong, and Baran, planned to report the alleged misappropriation of Village funds (DD) to the Sragen District Prosecutor's Office. Residents accused there was a

⁵Peter Mahmud Marzuki, 2005, *Legal Research*, Jakarta, Perdana Media. page. 29

⁶*Ibid.* page. 52.

⁷Maria S.W. Soemrdjono. 2001. *Guidelines for Making Research Proposals a Basic guide*, Jakarta, Gramedia Main library. page. 10.

⁸ Yuyun Yulianah, *Potential Perversion of Village Fund Allocations in Assessments According to Regulation of the Minister of Home Affairs Number 37 of 2007 Concerning*

Village Financial Management, Journal of *Mimbar Justitia*, Vol. I No. 02 July-December 2015 Edition. page 610

⁹ Mardiasmo, *Regional Autonomy and Financial Management*, Andi Publishers, Yogyakarta, 2004. page. 59

¹⁰ Maryunani, *Village Finance and Economics*, Papers, Faculty of Economics, Universitas Brawijaya, Malang, 2006

¹¹ Yuyun Yulianah. *Loc. Cit.*

fictitious committee in the implementation of the road drainage and drainage construction project. In addition to the alleged fictitious committee, the drainage project and the road talut were accused of being full of mark up practices. Residents found spending on renting two molen machines for the drainage project for 25 days. The molen machine was reportedly rented for Rp. 70,000 (seventy thousand Rupiah) / day. However, according to residents, the drainage construction project did not use molen machines. The residents also found irregularities in the SPJ for the two physical projects. The irregularity is in the form of the similarity of the names of workers who work in the two projects. In fact, the two projects were carried out at the same time from 18 December 2016 to 11 January 2017^[12].

2. The Misuse of Village Funds in Karanganyar

One of the Non-Governmental Organizations (NGOs) reported the Head of Jatisawit Village, Jatiyoso Subdistrict, to the Karanganyar District on suspicion of misappropriation of village funds. The mode of misappropriation of funds was when purchasing material. The reporter reported cases of misappropriation of funds in a number of infrastructure development projects in Jatisawit. Projects for the construction of talut, bridges, roads, and others. The purchase of building materials is allegedly not in accordance with the budget plan (RAB). The reporter gave an example of one of the allegedly problematic development projects, namely the breakthrough of the Wates Manggal agricultural road in May 2016. The RAB stated that 42 construction workers received Rp. 60,000 (sixty thousand Rupiah)/ person for one day, even though the workers are from the local residents. However, according to him, residents who worked on the project have not received an honorarium so far. The reporter has reported a number of development projects in Jatisawit Village in 2016 to mid 2017. For losses, the reporter has not calculated the total loss of the government or village related to alleged cases of misappropriation of village funds. They expect Kejari to follow up on the report^[13].

3. The Misuse of Village Funds in Boyolali Regency

A village head (Kades) in Simo sub-district, Boyolali, allegedly misappropriated village development funds worth around Rp120,000,000 (One Hundred Twenty Million Rupiah). As a result of the misappropriation of funds, the building which was built in 2015 and until now has not been completed. The unfolding of allegations of irregularities in the village development budget began when residents questioned the construction of a local village building which until now has been abandoned. The building should have been completed in early 2016. On this basis, it was found that the local village head used the development money for personal gain. Its value reaches

around Rp120,000,000, - (One Hundred Twenty Million). The use of the money was also known to the local village treasurer. The village head concerned has admitted his actions, and the funds are used for his personal interests^[14].

4. The Misuse of Village Funds in Pasuruan Regency

A village heads in Pasuruan Regency have done several actions which are seen as a continuing act, namely unlawfully carrying out acts of enriching oneself or another person or a corporation that can harm the country's finances or the country's economy. - That as a result of the Defendant's actions as described above has resulted in state financial losses in this case the Government of Watukosek Village, Gempol Subdistrict, Pasuran Regency amounting to Rp 407,195,700 (four hundred seven million one hundred Ninety five thousand seven hundred rupiah) with the details used/ beneficial for the defendant himself is Rp.217,195,700 (two hundred seventeen million one hundred ninety five thousand seven hundred rupiah) and is used/ benefited for another person in the amount of Rp.190,000,000 (one hundred ninety million rupiah) or at least around that amount.

Based on the statements of the case, it can be concluded that corruption is nothing but misusing one's position, authority and power to enrich oneself or others by violating the law so that it can harm the economy of the country or the finance of the country.^[15] E. Setiadi stated that as required in Article 3 of the Corruption Crime Act that the perpetrators of a criminal act of corruption must assume an office or position that automatically has a position or office will have the authority.^[16]

Thus, the abuse of authority, opportunity and means available because the position or position uses authority, opportunity or means attached to the position or position occupied by the perpetrators of corruption is used for other purposes than the purpose of giving the authority, opportunity or means^[17]

According to Soerjono Soekanto^[18]: "the scope and term of law enforcement is very broad, since it includes those who are directly involved in the field of law enforcement. From this broad understanding he further limits understanding to those directly responsible for law enforcement that is not only "Law Enforcement" but also "Piece Maintenance". As such it includes those in charge of the police, crime, justice (judiciary) and correctional fields.

The term law enforcement is actually a translation of a law enforcement officer which in the strict sense is only the police but can also include prosecutors. However, in Indonesia it is usually expanded by judges and there is a strong tendency to include in the understanding of advocates (lawyers)^[19].

According to Oce Madril that there have been a number of corruption cases affecting the village government. Abuse of authority, budget, asset corruption, and procurement of goods and services. According to him, the KPK found 14 potential

¹²Moh. Khodiq Duhri, Village Funds for the Drainage Project and Talut Doyong are allegedly Misused, available at <http://www.solopos.com/2017/2017/08/08/korupsi-sragen-dana-desa-untuk-project-drainase-dan-talut-doyong-diduga-diselewengkan-815444>, accessed on December 19, 2017, at: 09:00 PM.

¹³ Sri Sumi Handayani, *Indicated as Perversion of Village Funds, Head of Jatisawit Reported to the Prosecutor's Office*, found at <http://www.solopos.com/2017/08/28/korupsi-karanganyar-indicated-selewengkan-dana-desa-kades-jatisawit-reported-to-kejari-846749>, accessed on December 6, 2017 at 3:00 PM.

¹⁴Aries Susanto, Village Head in Simo Allegedly Misappropriated the Village Development Budget, <http://www.solopos.com/2016/10/26/dugaan-korupsi-boyolali-kades-di-simo-diduga-selewengkan-budget-pembangunan-desa-763776>, accessed on December 6, 2017 at 02.35 PM.

¹⁵Indah Nurfitri, "Criminological Analysis of Corruption Abuse of Authority in Government Offices in Bandar Lampung", article in Journal of the University of Bandar Lampung Law Faculty, page:6

¹⁶E. Setiadi, *Criminalization of Policies and Working of Criminal Law*, Bandung Islamic University, Bandung, 2010, page. 4

¹⁷*Ibid*

¹⁸ Soerjono Soekanto, *Factors That Influence Law Enforcement*, Rajawali Press, Jakarta, 1983, page. 13.

¹⁹ Mardjono Reksodiputo, *Participation of the Legal Profession as Law Enforcement in Enhancing the Authority of Law Enforcement in Human Rights in the Criminal Justice System*, Center for Justice Services and Law Services at the University of Indonesia, Jakarta, 1994, page. 78.

problems with village funds consisting of 4 (four), namely regulatory and institutional aspects, governance, supervision and human resources. These four aspects can influence the occurrence of corruption in the village government ^[20].

Moreover, if reviewed in theory. Lawrence M. Friedman's theory suggests three elements that must be considered in law enforcement. Including law enforcement against corruption cases committed by the village head in Indonesia. the three elements, including the structure, substance and legal culture ^[21]. The structure of the system of law including ^[22].

1. The legal system has a structure

The legal system continues to change, but the parts of the system change at different speeds, and each part changes not as fast as certain other parts. There is a long-term continuous pattern, the aspect of the system that was here yesterday (or even in the last century) will be there in the long run. This is the structure of the legal system, its framework or framework, the part that persists, the part that gives a kind of form and boundary to the whole. The structure of the legal system consists of the following elements: the number and size of the court, its jurisdiction (that is, the type of case being examined, and how and why), and how to appeal from one court to another. Clearly the structure is a kind of incision in the legal system, a kind of still photograph that stops motion.

Friedmann likens the legal system as a legal "structure" like a machine. Substance is what is produced or done by the machine. Legal culture is anything or anyone who decides to turn the engine on and off and decide how it is used.

Related to the above explanation, if the theory of Lawrence M. Friedmann is associated with the current legal system in Indonesia, there are four "judicial" environments, namely the general, religious, military, and state administrative environment. Each of these judicial environments has levels that culminate in the Supreme Court as a high state institution.

The structure here relates to legal institutions and institutions, how the connecting thread between the police, judges, prosecutors, and lawyers must be arranged in a systemic structure. The authority of law enforcement agencies is guaranteed by law. So that in carrying out its duties and responsibilities regardless of the influence of government power and other influences. There is an adage which states "*fiat justitia ruat caelum*" which means uphold justice even though the sky is falling. The law cannot run or upright if there are no law enforcement officials who are credible, competent and independent. How good is a law and regulation if it is not supported by good law enforcement officers, then justice is only wishful thinking.

Thus, if it is linked between the theories of Friedman with the corruption law enforcement conducted by village heads in Indonesia, it turns out that the root of the problem also from the implementation of village governance also has the opportunity to occur village corruption. Management with the old management pattern has the potential to cause corruption. Continuous

assistance is needed for village governments in managing governance arrangements at the village level. It is not easy to manage government organizations, it requires qualified management, good systems and competent and quality resources. Therefore, education investment for the village government is important. Recruitment of village officials must take into account the level of education. The quality of public services, one of the indicators is education. The quality of education can have implications for the services provided and provide the potential for developing village governance to be more stable, democratic and transparent. Governance is constantly being improved. The village government must change the old governmental pattern with the new concept of government, namely reforming the bureaucracy of the government system and the state civil apparatus. This must be supported by weak supervision which can foster corruption at the village level. Supervision must be carried out internally and externally. Supervision also needs to be supported by community participation. High participation can control the performance of village officials in the implementation of good and transparent governance ^[23].

2. Another aspect of the legal system is its substance

It is called as the rules, norms and patterns of real human behavior that is in the system. Substantive also means "products" produced by people in the legal system - the decisions they make, the new rules they draft. The emphasis here is on living laws, not just rules in law books. As a country that still adheres to the Civil Law System or the Continental European System (although some laws have also adopted the Common Law System or Anglo Saxon) it is said that the law is a written regulation while the unwritten regulations are not declared law. This system affects the legal system in Indonesia. One effect is the principle of Legality in the Criminal Code. Article 1 Paragraph (1) of the Indonesian Criminal Code states that "there is no criminal offense that can be punished if there are no rules governing it". So that an act can or not is subject to legal sanctions if the act has already been regulated in a statutory regulation.

In terms of substance, it is centered on the Law, whether it has fulfilled a sense of justice, is not discriminatory, responsive or not. So it needs to be reviewed again about the material legislation. regulations and institutions have gaps that can be infiltrated to abuse authority and corruption. The magnitude of the village's potential and opportunities to manage the village's abundant resources, if the control of policy makers is weak, has a great opportunity to be misused. Active community participation and orientation for the welfare and economic improvement of the community are the siren buttons for the village government. Johan Budi former (Acting) former Deputy Chairman of the KPK revealed that the prone to criminal acts of corruption at the level of regulation and institutional because it is incomplete and technical instructions for the implementation of village finances which are also incomplete become a gap for corruption ^[24].

²⁰ Hayat, Mar'atul Makhmudah, *Prevention of Village Government Corruption Crimes: A Political Study of the Policy and Law of Village Natural Resource Management*, Yustisia 95th Edition May - August 2016, page. 75

²¹ Lawrence M. Friedman, 2009, *Sistem Hukum Perspektif Ilmu Sosial (A Legal Sistem A Sosial Science Perspective)*. Translated by M. Khozim. Bandung, Nusa Media, page. 7-9.

²² Lawrence M. Friedman, *American Law An Introduction Second Edition* (Hukum Amerika Sebuah Pengantar) Translated by Wishnu Basuki, PT Tatanusa, Jakarta, 2001, page. 7-9

²³ Hayat, Mar'atul Makhmudah, *Op. Cit.*

²⁴ *Ibid.*

3. Legal culture, namely human attitudes towards law and the legal system

beliefs, values, thoughts and expectations. In other words, legal culture is the atmosphere of social thought and social forces that determine how law is used, avoided or abused. Without a legal culture, the legal system itself will be helpless - like a dead fish lying in a basket, not like a live fish swimming in its ocean.

Furthermore, Legal Culture is focused on what efforts can shape the awareness and understanding of community law. It seems to the legal apparatus that they are "community servants" who must do the best for the people. The Preamble to the 1945 Constitution explicitly stated the main tasks and objectives of the state include "to educate the nation. Intelligent society will easily understand what are their rights and obligations. Besides that, intelligent people will also think not only for themselves and their environment, however, it will also play an active role in helping the government create better conditions.

Village human resource management must continue to be based on their needs and competencies. Educational investment for village officials is important to improve the quality of village public services. Competitive and quality village apparatus can have implications for increasing village output. Comprehensive training and training in governance for village officials also needs to be considered at the village level. The greater the village management of existing rules, the more complex the problems faced. MEA is a challenge for the village government in the future. Village human resources must also be prepared properly and correctly. Village officials are the key to success of village governance ^[25].

Closing

Conclusion

The development of corruption in Indonesia is still relatively high, while the eradication is still very weak. This corruption has become an acute disease in this country. It takes hard work and seriousness in fighting it, now the corruption case has spread in the midst of the community as was done by the village head. Corruption practices carried out by village heads have been handled by many cases and convicted and the practice of law enforcement on corruption cases by village heads is still fairly weak. After being analyzed and it can be concluded that one of the problems of law enforcement against corruption committed by the village head is one of them, first, structure, second, substance, and third, legal culture. And government oversight of village funds managed by village heads is still quite weak and this is one of the opportunities for village heads to commit criminal acts of corruption.

In this case, in the future case of Village Fund Allocation Corruption and law enforcement as an inseparable set in the criminal justice system, it is necessary to thoroughly and totally reform the law enforcement institutions or a total change and renewal of the whole legal system and law enforcement. From the aspect of law enforcement, all law enforcement officials are known to have handled corruption cases that occurred in the

village. Most cases of corruption were handled by the Indonesian National Police with a total of 81 cases, while the Indonesian Attorney's Office with 72 cases and 1 case involving the Regent of Pamekasan was handled by the Corruption Eradication Commission (KPK).

Suggestion

In the context of addressing the Village Allocation Corruption case in the future, it is necessary to reform the judiciary and other law enforcement agencies that require planning that is directed and integrated, realistic and reflects the reality and aspirations of community needs. Thus, it is hoped that the legal institution will stand independently. Then, the substance in terms of the Corruption Act must be revised so that there are no blemishes that can be misused, as well as a culture of shame among officials who are based on integrity and good morality so that the law can be upheld through law enforcement institutions.

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²⁵ *Ibid.*

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