

## Law Enforcement Against Bribery Perpetrators and Grantors of Lobster Seed Export Permits at the Ministry of Maritime Affairs and Fisheries

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### Abstract

*Corruption becomes an extraordinary act of punishment so that it is necessary to impose the heaviest sentence. The bribery of lobster seeds at the Ministry of Marine Affairs and Fisheries is very sad when viewed from the glasses of the Law. This research uses normative legal analysis by analysing and reviewing both primary and secondary legal materials to obtain legal materials relevant to legal issues that have been formulated in the study. The results of this study are charged with imprisonment for life or imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years, and a fine of at least two hundred million rupiahs and at most one billion rupiahs. The conclusion of this study is the application of criminal enforcement for bribery perpetrators and export licensees according to the provisions of the Corruption Act for state organisers is considered not yet maximal because the minimum illegal conviction period is five years.*

### Keywords

bribery; corruption; export, lobster seeds



## I. Introduction

To create a just, prosperous and prosperous society based on Pancasila and the Constitution of the Republic of Indonesia of 1945, it is necessary to maintain a clean state from collusion, corruption and nepotism (UU Nomor 19 Tahun 2019 Tentang Komisi Pemberantasan Tindak Pidana Korupsi). Acts of bribery as criminal acts have indications that the raiding of state wealth will threaten and hinder the development of the country, disrupt development plans, resulting in the wealth of the country only being enjoyed by a group of corrupt people and cause effects outside the Rule of Law (Amirudin, 2012).

The crime of corruption is a very despicable, cursed and deeply hated act, not only by the people and nation of Indonesia but also by the peoples of the world's nations. The crime of corruption that has occurred widely harms the country's finances and has been a violation of the social and economic rights of the community at large. Hence, the crime of corruption needs to be classed as a crime whose eradication must be done extraordinarily (Arifin, 2017).

Corruption, including bribery, has a tremendous impact on the order of the wheels of Government that arises from the criminal act of sin, causing the loss of government authority (Iswara, 2020). Corruption cases have prevailed in the executive, legislative and judiciary

institutions, and even in state-owned companies (Basri, 2021). The corruption that is a plague today is a criminal act of bribery that is so widespread and spreading in government offices, a network of transactions between individuals, companies and private, non-governmental institutions (Supriyanto et al., 2021).

Bribery is included in one form of criminal corruption according to Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Combating Corruption. The regulation of the crime of

corruption in the form of bribery in Law No. 20 of 2001 on The Eradication of Acts of Corruption is regulated in several provisions, namely Article 5 paragraphs (1) letters a and b, Article 5 paragraph (2), Article 6 paragraph (1) letter a and b, Article 6 paragraph (2), Article 11, Article 12 letters a and b, Article 12 letters c and d, and Article 13.

Corruption has spread widely in all sectors, including the fisheries sector. To prevent corrupt practices through the provision of permits in the fisheries sector, the Government has established Law No. 45 of 2009 on Fisheries in Article 14 explained that the preservation of ecosystems and the glorification of fisheries resources, the Government should regulate and develop the utilisation of germplasm. For everyone is obliged to preserve germplasm and is prohibited from damaging the plasma cum.

Lobster belongs to the category of germplasm plasma that can not be colonised artificially by humans because lobster cultivation can only raise lobsters from lobster seeds to adult lobsters (lobster enlargement). From 2013 - 2014, Indonesia has exported lobster seeds on a large scale to Vietnam from 10.3 tons to 24.6 tons because Vietnam does not have many ideal glasses of water as lobster seed habitat. The high demand for lobster seed exports eventually led to a massive increase in lobster seed fishing (Sosiawan, 2019).

To preserve lobster seeds as a germplasm category, the Ministry of Marine Affairs and Fisheries has issued a ban on the export of lobster seeds through The Minister of Marine Affairs and Fisheries Regulation No. 56 of 2016 on Lobster Fishing, which prohibits the trade of lobster seeds and lobsters measuring less than 200 grams abroad.

In 2020 the policy was repealed and replaced with the issuance of The Minister of Marine Affairs and Fisheries Regulation No. 12 of 2020 Lobster Management (Panulirus spp.), Crab (Scylla spp.), and Rajungan (Portunus spp) in the Territory of the Republic of Indonesia. This policy was issued to maintain the sustainability of the availability of fishery resources, improve community welfare, equality of cultivation technology, investment development, increasing state foreign exchange, and the development of Lobster cultivation (Panulirus spp), Crab (Scylla spp.), and Rajungan (Portunus spp.) it is necessary to reset the provisions of the capture or production of Lobster (Panulirus spp.), Crab (Scylla spp. ), and Rajungan (Portunus spp. ). After the re-enactment of lobster seed export permits from May to August 2020, the value of lobster exports has reached 10.2 million US dollars, with the number of lobster seeds exported reaching 6,037 kilograms.

The issuance of The Minister of Marine Affairs and Fisheries Regulation No. 12 of 2020, according to the Special Staff of the Ministry of Foreign Affairs and Fisheries, TB Ardi Januar said, all parties benefited. Anglers who catch seeds get economic value, farmers also receive economic value, entrepreneurs who export benefit, and the country also gets income. So everybody's happy. All benefit from this Ministerial Regulation, which is not obtained in Ministerial Regulation No. 56 of 2016.

Implementing the Regulation of the Minister of Marine Affairs and Fisheries No. 12 of 2020 has been found that there was the first shipment of lobster seed exports to Vietnam that occurred a month after the Ministerial Regulation was passed. This export is contrary to Article 5, which requires exporters to carry out cultivation activities first. Lobster cultivation activities take a minimum of 4 (four) to 6 (six) months, depending on the size ready to sell.

Since the enactment of The Minister of Marine Affairs and Fisheries Regulation No. 12 of 2020 dated May 5, 2020, there are 30 (thirty) companies that have received export permits, of which 25 (twenty-five) are Limited Liability Companies, 3 (three) of which are Comditer's Guild, and 2 (two) of them are trading business units. The practice of sustainable harvesting and lobster cultivation takes approximately 1 (one) to 2 (two) years, not a matter of months.

Acts of corruption in a policy are easy to trace in the arrest activities carried out by the Corruption Eradication Commission (KPK) against the Minister of Marine Affairs and Fisheries. This corruption case was related to the lobster seed export policy. On November 25, 2020, the Minister of Marine Affairs and Fisheries was arrested by the KPK for getting a kick back (bribes) from the policies and regulations issued related to lobster seed export permits. Various efforts have been made to eradicate corruption, but the results are still far from satisfying (Zulyadi, 2020). Both actions (against the law and abuse of authority) are important to distinguish the boundaries of corruption and are also interesting to talk about (Purba, 2019).

Exporters must use one particular company designated by the Ministry of Marine Affairs and Fisheries as a freight forwarder to export lobster seeds. Although in the policy of the Minister of Marine Affairs and Agriculture does not explicitly mention a single cargo provider in the regulations it makes. However, in various meetings, the Ministry of Marine Affairs and Fisheries always directed the company he appointed as a freight forwarder.

As a result, for exporters who do not use the company, the Expenditure Time Certificate (SKWP) will not be issued by the Ministry of Marine Affairs and Fisheries. SKWP is the main requirement for exporters to be able to export lobster seeds. There is no other option for SKWP to be issued, forcing exporters to use freight forwarder companies' services. Regulatory, this practice is a monopolistic practice.

Based on Law No. 5 of 1999 on The Prohibition of Monopoly Practices and Unfair Business Competition, monopoly practices are prohibited in Article 7, which can be related to the appointment of one freight forwarder company has resulted in other business actors being unable to enter into business competition for the same goods or services and the company controls 100% of the lobster seed cargo service provider market, This is a crime that can be acted on using the Prohibition Of Monopoly Practices and Unfair Business Competition.

Corruption in bribery licensing of lobster seed exports impacts the country and damages the morals of state management and the broader impact on the destruction of lobster fishery resources in the long run (Butarbutar, 2017). Unregulated fisheries tend to deplete stocks and result in over capitalism. The more economic value of fish resources, such as lobsters and the like, the higher the tendency to drain if regulation is not carried out. Granting permits has become one form of fisheries regulation. Not only can extraction be controlled, but the Government also obtains revenue from fish resources.

The Corruption Eradication Commission named 7 (seven) suspects in the case as suspected recipients are Minister of Marine Affairs and Fisheries Edhy Prabowo, Chief Executive officer of the Due Diligence Team Andreau Pribadi Misata, Deputy Chief Executive of Safri's Due Diligence Team, a private party who is also the Private Secretary of the Minister of Marine Affairs and Fisheries Amiril Mukminin, the administrator of PT Aero Citra Kargo Siswadi and staff of the wife of the Minister of Marine Affairs and Fisheries Ainul Faqih.

As the recipients of bribes, the suspects are suspected of violating Article 12 paragraph (1) letter a or b or Article 11 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Combating Criminal Acts of Corruption juncto Article 55 paragraph (1) to 1 of the Criminal Code juncto Article 64 paragraph (1) of the Criminal Code.

As a briber in the lobster seed export case of the Ministry of Marine Affairs and Fisheries, Suharjito was charged with violating Article 5 paragraph (1) letter an of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Combating Criminal Acts of Corruption juncto Article 64 paragraph (1) of the Criminal Code or Article 13 of the Criminal Code of Corruption juncto Article 64 paragraph (1) of the Criminal Code.

## II. Research Methods

This article uses this type of normative legal research. Normative legal research is legal research that analyses and examines both primary and secondary legal materials to obtain legal materials relevant to legal issues that have been formulated in the research (Fletcher, 1998).

The legal issue studied in this article is the enforcement of the Law against perpetrators of bribery in the bribery category corruption case in the case of lobster seed export corruption in the Ministry of Tourism and Fisheries based on Law No. 31 of 1999, which has been amended by Law No. 20 of 2001 on Combating Corruption.

This type of normative legal research can be used more than one research approach, namely, a statutory approach and a conceptual approach. The data analysis technique used by researchers is descriptive.

## III. Discussion

### 3.1 Crime of Bribery

The crime of bribery in various forms, many are carried out during people's lives. Forms of corruption, among others, can be in the form of giving goods, bribe money and so forth. The purpose of bribery is to influence the decision-making of a bribed person or employee, or office.

The meaning of bribery is also called bribery or giving lubricant money. In the language of Shari'ah is called risywah. In terms of providing cash and so on to officers (employees), in hopes of getting convenience in an affair (Triyanta, 2012).

According to Wiyono (2005), bribery is an act of giving a certain amount of money or goods or special agreements to someone who has the authority or is trusted, for example, officials, and persuading him to change his jurisdiction for the benefit of the person who gives money or other goods or agreements as to compensation for something he wants to cover other demands that are still lacking.

This means that someone involved in bribery should be ashamed when living the meaning of the word bribe that is very despicable and even very degrading to humanity, especially for the recipient of bribes.

In the extensive dictionary of Indonesian, bribery is interpreted as giving in the form of money or bribe money to civil servants. The broader meaning of bribes is not only in cash. Still, it can be in the form of gifts, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist travel, free treatment and other facilities provided to civil servants or state officials whose gifts are considered to have something to do with their position and contrary to their obligations or duties as civil servants or state officials.

Bribery is done by another party, civil servants, state officials, and other parties with authority/influence. The giver of bribes obtains certain rights, facilities or facilities.

In bribery, bribery usually involves the giver of bribes, the recipient of fixes, and the goods or values handed over. However, it does not rule out the possibility that a bribery case also involves a fourth party as a broker or intermediary between the giver and the bribe recipient. This means that this element of bribery contains bribery, bribes, the existence of bribe recipients, and the existence of goods or values handed over.

A briber gives bribes. That is the person who gives up property or money, or services to achieve the goal. A person does bribery if he wants to get a privilege or people who are considered to provide convenience outside the procedure or have a strategic position. Bribery can be done by anyone ranging from government officials, civil servants, or private

employees. An act is categorised as bribery if a person gives something or promise to a party with the intent to do something related to their position.

The recipient of a bribe is also called a person who receives gifts or promises when it is known or suspected that the present or assurance is given because of the power or authority related to his office. Everyone who receives or promises to intend to do something for the blessing of bribes that is contrary to his obligations, whether the request is carried out or not implemented, or succeeds his case by defeating his point following the wished. Or give him a chance or get rid of his enemy is the recipient of bribes. Both those who share or take bribes get punished because both parties have harmed others by making bribes (Rahmanto, 2019).

The Criminal Code contains Articles on active bribery (Article 209 and Article 210) as well as passive bribery (Article 418, Article 419 and Article 420), which are then all withdrawn in Article 1 Paragraph (1) sub c of Law No. 3 of 1971 which is now Article 5, Article 6, Article 11 and Article 12 of Law No. 20 of 2001 on Combating Criminal Acts of Corruption. Likewise, with active bribery in the explanation of Article 1 Paragraph (1) sub d of Law No. 3 of 1971 (now Article 13 of Law No. 31 of 1999) and passive bribery in Article 12B and Article 12C of Law No. 20 of 2001.

Since the enactment of Law No. 31 of 1999, jo, Law No. 20 of 2001 on Combating Criminal Acts of Corruption, perpetrators who give bribes (active bribery) and who receive bribes (passive bribery) are the subject of corruption crimes and the placement of status as a subject has no absolute exceptionality. The meaning of bribery has been expanded. Introducing the norms of regulation of eradication of corruption has placed Actief Omkoping (active bribery) as the subject of corruption crimes because the bribery in the Criminal Law Code only regulates Passief Omkoping (passive bribery). Bribery is not always bound by the perception of giving money or gifts, but promises alone are still the object of bribery.

### **3.2 Accountability for Corruption**

The crime of corruption is a phenomenon of crime that undermines and hinders the implementation of development so that its countermeasures and eradication must be prioritised. The source of corruption crimes is found today, so corruption develops rapidly both in quality and quantity.

Although the countermeasures of corruption are prioritised, it is recognised that the crime of corruption includes the type of cases that are difficult to overcome and eradicate. Corruption is a threat to democratic principles, which uphold transparency, accountability, integrity, and the security and stability of the Indonesian nation.

Because corruption is a criminal act that is systematic and detrimental to sustainable development, it requires comprehensive, organised, and sustainable prevention and eradication measures both at the national and international levels. Carrying out the prevention and eradication of corruption crimes efficiently and effectively required the support of good governance management and international cooperation, including the return of assets derived from corruption crimes.

The crime of corruption is a threat to the principle of democracy, which upholds transparency, accountability, integrity, and the security and stability of the Indonesian nation because corruption is a criminal act that is systematic and detrimental to sustainable development so that it requires preventive and comprehensive eradication measures, organised, and sustainable both at the national and international levels.

Good governance management and international cooperation are needed to carry out the prevention and eradication of corruption crimes efficiently and effectively, including the return of assets derived from corruption.

A criminal act is any act that can be punished which is regulated in the course of the Law (Article 1KUHP). A criminal act or strafbaar feit is an act that contains elements of deeds or actions that can be punished and elements of criminal liability to the perpetrator. So that in terms of criminal punishment against a person, it can be summarily said that there can be no criminal punishment against a person without the existence of things that can be considered qualified for both elements. The criminal act only refers to the prohibition and threat of the action with a crime. Whether the person who did the show is also criminally punished as threatened will depend significantly on whether the perpetrator also has a mistake in doing his deed. While as a basis of accountability is a mistake found in the perpetrator's soul concerning his behaviour that can be punished and based on his psyche, the perpetrator can be blamed for his behaviour.

### **3.3 Impact of Corruption Crime**

The impact of corruption crimes by Nitibaskara (2006) in his book uphold the Law using the Law, states that the crime of corruption in Indonesian society has become endemic that is difficult to overcome. The crime of sin is not extraordinary, only the quality and quantity of its exceptional breeding.

While Umi Kulsum argues that the crime of corruption in Indonesia is an act that has been rooted in various joints of human life, so it seems as if it is considered a culture.

In line with the two opinions above, Supandji (2009) said that the crime of corruption had had a tremendous impact on the strength and quality of other criminal acts. This is because the growing gap between the rich and the poor has triggered an increasing number and mode of crime that occurs in society. The crime of corruption is already a serious threat to the stability and security of national and international communities. So that there is a limp in the income share received by various groups of society which is referred to as relative inequality, or there is an absolute poverty level.

The crime of corruption is a social disease that is universal and has occurred since the beginning of the human journey. The practice of corruption in Indonesia has become the most dangerous in the life of the nation and State. This is based on the country's economic conditions that are always in a wrong position for the development journey in Indonesia but in the course of later more than that, namely endangering and damaging the community's economy.

The corruption of corruption in Indonesia has not only been civilised but has become an organised crime or criminal act of international dimension. Therefore its eradication can no longer be dealt with like a regular crime but must be done through extraordinary efforts.

Therefore, efforts to counter and combat corruption cannot be carried out by only one State but must be done using international cooperation between States. Steps to combat corruption can't be done only by law enforcement officials but must involve the participation of the community. Efforts to combat crime can't be made using legal instruments alone. Still, they must pay attention to other tools such as education, system, culture, and integrity. No less important is the harmonisation of national Law with The United Nations Convention against Corruption (UNCAC).

### **3.4 Lobster Seed Bribery Case**

One of the cases of lobster seed bribery that has horrified the Ministry of Marine Affairs and Fisheries is a bribery case committed by former Minister of Marine Affairs and Fisheries Edy Prabowo. The Judges of the Jakarta Criminal Corruption Court (Tipikor) on Thursday, July 15, 2021, handed down a verdict for the former Minister of Marine Affairs and Fisheries for the criminal act of receiving bribes licensing lobster aquaculture with a prison sentence of five years and a criminal fine.

Edy Prabowo and his subordinates were proven to receive bribes of 77 thousand US dollars and Rp. 24,625,587,250 to facilitate the application of lobster seed exports in 2020. For his actions, the accused was charged with violating Article 12 letter a Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Combating Criminal Acts of Corruption jo Article 55 paragraph (1) to 1 of the Criminal Code jo Article 65 paragraph (1) of the Criminal Code.

The verdict of the panel of judges related to the bribery case at the Ministry of Maritime Affairs and Fisheries can be explained by looking at the elements contained in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption, Article 12 letter a and b which reads to be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of two hundred million rupiahs and a maximum of one billion rupiahs.

By reviewing the elements contained in Article 12 paragraph (1) letter an above, the conviction of the perpetrators of bribery corruption in the Ministry of Marine Affairs and Fisheries has fulfilled the conditions as intended. Still, the central criminal conviction of imprisonment for 5 (five) years is seen as not providing a sense of justice for the community and weak law enforcement because the detention is not comparable to the criminal acts committed, let alone concerning the elements of state organisers.

#### **IV. Conclusion**

A form of criminal liability for bribery and the grantor of lobster seed export licensing policy in the Ministry of Tourism and Fisheries is that the perpetrator of the criminal act is sentenced to a basic criminal and additional criminal conviction where the former Minister of Marine Affairs and Fisheries, defendant Edy Prabowo is sentenced to prison for five years and criminal fines and different criminals namely paying replacement money and revocation of the right to be elected to public office. This form of criminal liability for bribery perpetrators violates Article 12 paragraph (1) letter an of the Criminal Act of Corruption.

The application of criminal enforcement for bribery perpetrators and export licensees under the provisions of the Corruption Act for state organisers is considered not yet maximal because the minimum illegal conviction period is five years. As a state organiser bound by Law No. 28 of 1999 on State Organizers Who Are Clean from Collusion, Corruption, and Nepotism; and refer to incriminating considerations, the prior criminal conviction is not imposed within the minimum limit because it will affect acts of corruption by other state organisers.

The policy of the formulation of the death penalty for corruptors should be arranged with signs that the death penalty is threatened as a criminal punishment for certain corruption cases that are considered very reprehensible and very detrimental and damaging to the lives of the wider community (national / State); Especially done by state organisers.

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