
| RESEARCH ARTICLE

Law Enforcement against Illegal Levies as a Form of Abuse of Authority through Saber Pungli

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| ABSTRACT

This study aims to analyze law enforcement against illegal levies as a form of abuse of authority through illegal levies. The research method used is normative and sociological legal research methods. The results showed that illegal fees are included in the category of occupational crimes. The government's efforts to optimize the eradication of extortion practices were later strengthened by the signing of the Presidential Decree No. 87 of 2016 concerning the Task Force to Clean Up Illegal Levies (Satgas Saber Pungli). The Saber Pungli Task Force consists of law enforcement officers, namely the Police, the Attorney General's Office, the Ministry of Home Affairs, the Ministry of Law and Human Rights, the Financial Transaction Reports and Analysis Center, ORI, State Intelligence Agency, and Indonesian National Army Military Police who have the authority to eradicate illegal extortion practices effective and efficient by optimizing the utilization of personnel, work units, and infrastructure, both at the ministerial/institutional and regional government levels.

| KEYWORDS

Enforcement, illegal, authority, extortion, law

| ARTICLE INFORMATION

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1. Introduction

The State of Indonesia is a country of law, contained in Article 1 paragraph (3) of the 1945 Constitution. This shows that the Indonesian state has the rule of law and law enforcement as the state organizer and is part of a good government. A good government is a government that can carry out all the functions of government. Good *governance* is closely related to the term government or state organizer. The United Nations development program (UNDP), in a policy document entitled "Governance For Sustainable Human Development (1997)", defines governance as follows:

"Governance is the exercise of the economic, political, and administrative authority to manage a country's affairs at all levels and means by which state promote social cohesion, integration, and ensure the well being of their population."

(government is the exercise of authority/power in the economic, political, and administrative fields to manage various state affairs at every level and is an instrument of state policy to promote the condition of welfare, integrity, and social cohesiveness in society)"¹

In the Preamble to the 1945 Constitution, it has been emphasized that the national goals of an independent and sovereign Indonesian state include realizing a just and prosperous Indonesian society based on: the One True Godhead; Just and Civilized Humanity; Unity of Indonesia; A People Led by Wisdom in Consultative/Representative Affairs; and Realizing Justice for All Indonesians. This lofty goal can be realized if it is carried out by organizers who have integrity, dedication and professionalism in public service. This is expressly stated in the explanation of the 1945 Constitution, which states that what is very important in terms of the life of the state is the spirit of state organizers and government leaders.²

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In the administration of public services, the very strong orientation to power so far has made the bureaucracy even further away from its mission of providing public services. The bureaucracy and its officials established themselves more as a ruler than as public service. As a result, bureaucratic attitudes and behaviors in the implementation of public services tend to ignore the aspirations and interests of society. The development of a paternalistic culture has contributed to the worsening of the public service system through the placement of political and bureaucratic interests as the dominant variables in the implementation of public services. This kind of thing often disturbs the sense of justice in a society that feels unnaturally treated by the public bureaucracy.³

As is known that the government bureaucracy has the function of regulating, governing, providing facilities, and providing services to the community with the aim that the general interests of administrative services can be fulfilled through a series of rules that are the same for all parties. To carry out this function, the bureaucratic system has been arranged in a structure that is intended to provide solutions that best support and facilitate the performance of government officials in achieving this structure, including the existence of a division of labor, delegation of authority, and the principle of impersonality that does not vary in service delivery. One of them is about public services provided by the government to the community.⁴

The concept of authority in legal studies, especially administrative law and corruption crimes, are two interrelated legal aspects. According to the tradition of legal science, the link point of "administrative law" is between the norms of government law and criminal law, so it can be said to be "intermediate law". Criminal law contains norms that are so important for the life of society that the enforcement of such norms can be enforced through criminal sanctions. Therefore almost every legal norm of government under administrative law is terminated "*In cauda venenum*" with a number of criminal provisions, literally *In cauda venenum* means there is poison in the tail/tail in every act of policy.⁵

But in practice, public services are not spared from corruption, collusion, and nepotism. One of them is the illegal levies (hereinafter referred to as pungli) which are rampant in society. This is evidenced by data on alleged illegal levies that occur throughout Indonesia based on data from the Ombudsman of the Republic of Indonesia in 2016 with details in the following areas; Education amounts to 49%, Land amounts to 11%, Law Enforcement (Gakkum) amounts to 8%, Population Administration (Admuduk) amounts to 7%, Excise & taxes amount to 7%, Personnel amounts to 6%, Transportation amounts to 5%, Licensing amounts to 4%, Health amounts to 3%.

Furthermore, based on data from the Task Force for Clean Sweep of Illegal Levies (Saber Pungli), there were receipts of Reports Via Sms, as many as 23,532 Reports, Call Center 193 As many as 2,370 Reports, Email Saberpungli.id, As many as 6,648 Reports, Web Applications, As many as 3,001 Reports, Postal Letters, As many as 1,073 Reports, Direct Complaints, As many as 256 Reports. a. Task Force saber pungli: 1 b. UPP K/L: 52 c. Provincial UPP : 34 d. Upp Regency/City: 496 Hand-Catching Operations During the Period 28 October 2016 to 31 March 2019 have been Implemented in A total of 15,283 Cases, With the Number of Suspects of 25,500 People And Total Evidence Amounting to Rp. 322,372,491,564,-⁶

Illegal levies (Pungli) are acts of profit-taking outside the provisions of the law carried out by officials (Oknum) as recipients and people who need services in general as givers. Illegal levies (Pungli) are rarely followed up and even often covered up, but this fact has become an open secret. The act of illegal levies (Pungli) certainly greatly interferes with the course of the development process in various fields. In general, illegal levies are the imposition of fees or levies on premises or activities that should have no costs/additions, so it can be interpreted as the activity of collecting fees or forcibly asking for money by someone to other parties, and it is a criminal practice or criminal act that is rooted in the behavior of some Indonesian people.⁷

2. Discussion

2.1 Illegal Levies (Pungli) as a Form of Abuse of Authority of Office

Abuse of authority (*detournement de pouvoir*) is a concept of state administrative law that causes many misunderstandings in interpreting it. In practice, *detournement de pouvoir* is mixed with arbitrary deeds (*willekeur/abus de droit*), abuse of means and opportunity against the law (*wederrechtelijkheid, onrechtmatige daad*), or even extending it with any act that violates any rule or policy and in any field. With the use of this broad and free concept, it will easily become another weapon of abuse of authority and precisely the government's freedom of action in the face of concrete situations (*freies ermessen*).

The concept of *detournement de pouvoir* itself in administrative law is not interpreted the same by experts and the practice of its application by administrative courts and criminal courts (corruption). *Detournement de pouvoir*, according to Winarsih Arifin and Farida Sumargono in the French-Indonesian dictionary (Dictionnaire Francais-Indonesia), *the detourne* is deviant, rotating, indirect, taking a deviant path to achieve the goal. Whereas *Detournement* is deviant, defection, misappropriation, and embezzlement. *Pouvoir* is an ability or power according to law.⁸

Jean Rivero and Waline, in relation to "*detournement de pouvoir*" with "*Freiss Ermessen*", abuse of authority in administrative law can be interpreted in 3 (three) forms, namely:⁹

1. Abuse of authority to commit acts that are contrary to the public interest or to benefit personal, group or class interests.
2. Abuse of authority in the sense that the officer's actions are properly aimed at the public interest but deviate from what purpose such authority is granted by other laws or regulations;
3. Abuse of authority in the sense of abusing procedures that should have been used to achieve certain goals but have used other procedures to be carried out.

Wet Sjachran defines abuse of authority or "*detournement de pouvoir*" as the conduct of an official that is not in accordance with but still within the environment of the provisions of the legislation. In principle, the abuse of authority can occur in the bound type of authority and can also occur in the type of free authority (discretion). Indicators or benchmarks of abuse of authority in the type of bound authority are the principles of legality (the objectives that have been set out in the legislation), while in the type of free authority (discretion), it uses the parameters of the general principles of good governance because *the wetmatigheid principle* is not adequate.¹⁰

The term authority or authority is aligned with *authority*; authority or authority is the power of law, the right to rule or act, and the rights or powers of public officials to comply with the rule of law within the scope of carrying out public obligations. Law No. 30 of 2014 concerning Government Administration distinguishes between authority and authority, according to Article 1 numbers (5) and (6), namely: "Authority is the right that is obtained by government agencies and/or officials or other state administrators to make decisions and/or actions in the administration of government". "The authority of government, hereinafter referred to as authority, is the power of government agencies and/or officials or other state administration to act in the realm of public law".

Authority as a concept of public law consists of at least 3 (three) components, namely influence, legal basis and conformity. The component of influence is that the use of authority is intended to inflict the conduct of legal subjects. This component is intended so that state officials do not exercise their authority beyond the purposes prescribed by laws and regulations. The basic component of the law is that authority is always to be able to be designated its legal basis. This component implies that every act of government or state official must always have a legal basis for acting. The component of conformity implies the existence of standards of authority, namely general standards (all types of authority) and special standards (for certain types of authority).¹¹

In line with the main pillar of law enforcement, namely the principle of legality (legaliteits beginselen or wetmatigheid van bestuur), on the basis of this principle that the authority of government comes from the legislation. In the literature of administrative law, there are two ways to obtain government authority, namely attribution and delegation and mandate. Attribution refers to the original authority on the basis of the provisions of constitutional law. Attribution is the authority to make ¹²*decisions (besluit)* that are directly sourced to the law in a material sense. Another formulation says that attribution is the formation of a certain authority and its grant to a particular organ.

H.D Van Wijk gives an understanding of attribution, delegation and mandate as follows:¹³

1. Attribution is the granting of governmental authority by lawmakers to organs of government. Juridical authority of accountability depends on the beneficiary of the authority to perform the mandate or delegation.
2. Delegation is the delegation of governmental authority from one organ of government to another. On the delegate, the delegated work is left in part or all of the authority to the delegate recipient to act on its own behalf. The delegation is accompanied by the handover of authority; therefore, in the event of an abuse of authority, then the person responsible is the delegator.
3. A mandate occurs when an organ of government allows its authority to be exercised by another person. The accountability of the mandate stems from the question of authority because the authority remains with the mandans (authorizers) while the mandataries (recipients of authority) are only delegated to the authority to act for and on 'behalf of the mandans'. In the absence of a handover of authority to the mandate, the juridically responsible remains with the mandans (authorizers).

Illegal levies are the designations of all unofficial forms of levies, which have no legal basis; hence the act of levy is referred to as illegal levies or levies. Illegal levies, like other crimes, are generally crimes against legal norms that must be interpreted or should be taken into account as very detrimental to the victim. Like other crimes, they are generally crimes against legal norms that must be interpreted or should be taken into account as very detrimental to the victim. This must not be allowed to continue without a legal settlement of the criminal act. Therefore, any criminal act committed by anyone must be strictly acted upon regardless of

status, even though the perpetrators are law enforcement officers. Illegal levies are levies that are carried out for the personal benefit of an officer and or aim at the interests of a particular individual or community group. Illegal levies can also be interpreted as unofficial administrative costs usually associated with licensing for the personal benefit of the perpetrator, especially among Civil Servants (bureaucrats).

Illegal levies or better known as levies, are crimes that are already familiar to the ears of the Indonesian people. In the Criminal Code, there are no rules regarding criminal acts of illegal levies or levies, but they can be impliedly found and understood in the formulation of corruption crimes in Article 12 letter e of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes derived from Article 423. Where article 12, letter e states that;

"Sentenced to imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah): civil servants or state organizers who, with the intention of benefiting themselves or others unlawfully or by abusing their power to force a person to give something, pay, or receive payment with deductions or to do something for himself."

Illegal levies are the activity of asking for a certain amount of money or goods that are carried out unorganized, not officially licensed and carried out in secret by law enforcement officials. On the other hand, an illegal levy is an act committed by a person or a Civil Servant or State Official by means of requesting payment of an amount of money that is not in accordance with or is not based on the regulations relating to such payment. So it can be interpreted as the activity of collecting fees or asking for money forcibly by a person or group of people to other parties, and this is a criminal crime practice.¹⁴

Illegal levies belong to the category of crimes of office, where in the concept of the crime of office, it is spelled out that the official, in order to benefit himself or others, abuses his power to force a person to give something, to pay or receive payment with deductions, or to work something for himself. In the formulation of corruption in Article 12 letter e of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes derived from Article 423 of the Criminal Code referred to in Article 12 of Law Number 31 of 1999 as a corruption crime, which is then reformulated in Law Number 20 of 2001 (Corruption Crime), explaining that the definition of illegal levies is an act committed by civil servants or organizers with the intention of benefiting oneself or others unlawfully, or by abusing one's power to force someone to give something, to pay, or to receive payment with deductions, or to do something for himself.

The practice of levies in the bureaucracy is caused by the weak supervision and supervision among government agencies; although a number of internal and external supervision agencies have been formed, the culture of levies among the bureaucracy has not diminished, let alone eliminated. In general, levies are carried out by low-class public service officers. The motive is to increase income because the official salary of the average bureaucrat is still relatively low. If a high-level bureaucracy can commit corruption to increase its income, then a low-level bureaucracy through levies. The existence of opportunities, weak supervision and low bureaucrat ethics are the driving factors for the proliferation of corrupt behavior through levies.¹⁵

The position of the people in the process of public services is very vulnerable to being a victim of levies because of low bargaining power. People are forced to give up some extra money because of the absence of effective oversight agencies to force bureaucrats who often carry out levies. The public also did not get a bona fide complaints agency because of the low public trust in the image of the bureaucrats. In addition, community complaints often do not receive an adequate response from the inspectorate as an internal supervisor. On the other hand, the community often contributes to the flourishing of the practice of levies by getting used to giving money without being able to be critical in rejecting payments outside of official fees. The culture of giving people smooth things with bureaucrats is difficult to eliminate because it has been going on for a long time. The practice of levies is a form of corruption, generally carried out by parties who have important positions in the government, including public service implementers.¹⁶

The phenomenon of pungli cases involving government officials is like a time bomb that keeps popping up to the public. In response to these conditions, President Joko Widodo then instructed the establishment of the Pungli Clean Sweep Task Force (Saber) through Presidential Regulation No. 87 of 2016 concerning the Task Force for Clean Sweeping Illegal Levies. The urgency of the formation of the Pungli Saber Task Force is carried out as a firm and concrete step from the government to restore public trust, provide justice and legal certainty, and is a follow-up to the legal reform policy planned by President Joko Widodo's earlier. The establishment of the Pungli Saber Task Force was carried out because the internal supervision in the implementing agencies of public services was considered weak and opened up space for pungli practices to occur.¹⁷

The practice of illegal levies has basically damaged life in society, nation and state. The establishment of the Pungli Saber Task Force is a firm and concrete step from the government to restore public trust, provide justice and legal certainty and is a follow-up to the legal reform policy planned by the President, assessing the urgency of the levy must be resolved immediately due to

losses suffered by the state due to criminal acts, so that on October 20, 2016, a coordination meeting was held with all governors throughout Indonesia at the State Palace. The follow-up carried out by all regions in Indonesia is to form a Pungli Saber Task Force team in each Regency/City.

2.2 Law Enforcement against the Practice of Illegal Levies (Pungli) through Saber Pungli

The negative impacts that often arise due to the practice of illegal levies have given rise to an effort to eradicate it decisively, integratedly, effectively, efficiently, and able to cause a deterrent effect on the perpetrators of the practice of levies. In its mode of operation, the perpetrator is usually followed by acts of violence, threats of violence, complicating the process, buying time, and asking for compensation for those who are in a weak position or who are being served. That is why levies tend to lead to acts of extortion and coercion which in criminal law are prohibited acts or criminal acts. Based on records from United Nations documents on anti-corruption efforts, the levies are unofficial levies, requests, recipients of any payments, gifts or other benefits, directly or indirectly, by public officials or elected representatives of a state, from private or public companies, including transnational corporations or individuals from other countries associated with the intent to perform or not perform a task that relates to an international commercial transaction.¹⁸

Based on Law Number 31 of 1999 and Law Number 20 of 2001, levies are categorized as a mode or a form of corruption. Although the Criminal Code (KUHP) is not explicitly explained levies, the equivalents for levies are Article 368 of the Criminal Code, Article 418 of the Criminal Code, and Article 423 of the Criminal Code concerning fraud, extortion and abuse of authority.

Law enforcement against the practice of levies has basically been contained in several laws and regulations. Although actually in the Criminal Code (KUHP), none of the articles found regarding the criminal act of illegal levies or illegal levies. So that it is implied in the Criminal Code if the act of extortion is carried out by means of forced violence (thugism), then the perpetrator can be entangled with Article 368 of the Criminal Code, which threatens the perpetrator with the crime of extortion and can be sentenced to a maximum of 9 (nine) years. Meanwhile, if the pungli action is carried out by a civil servant, it can be acted upon in accordance with the provisions of Article 423 of the Criminal Code with the threat of imprisonment for a maximum of 6 (six) years. Enforcement for civil servants who are proven to have committed levies, in addition to being regulated in Article 423 of the Criminal Code, can also be followed up by Article 12 letter e of Law No. 20 of 2001 concerning Corruption Crimes, with the threat of a minimum prison sentence of 4 (four) years and a maximum of 20 (twenty) years.¹⁹

Over time, in 2004, the Government issued Presidential Instruction No. 5 of 2004 concerning the Acceleration of the Eradication of Corruption. There are 12 instructions to bureaucratic leaders, among which are instructions to improve the quality of public services, both in the form of services and licensing, through transparency and standardization of services which include requirements, target completion times, and fee rates that must be paid by the public to obtain these services in accordance with laws and regulations and abolish levies. In 2011, the President again issued Presidential Instruction No. 17 of 2011 concerning Action to Prevent and Eradicate Corruption in 2012. Several things have begun to be implemented to support the policy, such as the implementation of a transparent system in police and prosecutorial institutions and a *whistle blower* and *justice collaborator system*.²⁰ Unfortunately, even though there is a clear rule of law, law enforcement of the practice of levies is still difficult to implement. One of them is against perpetrators of Corruption Crimes with the mode of carrying out Illegal Levies (Pungli) when their law enforcement efforts are carried out by applying the provisions of Article 12 letter e of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented in Law No. 20 of 2001, but in practice; it is argued that public prosecutors have difficulty in proving the existence of "coercive elements" carried out by criminal offenders. The obstacles and difficulties faced make law enforcement officials who handle Corruption Crime cases with the mode of committing illegal levies (Pungli) must think more critically to make breakthroughs in layering the new articles that are alleged to the perpetrators, no longer limited to Article 12 letter e as mentioned above.

The government's efforts to optimize the eradication of pungli practices were then strengthened by the signing of Presidential Regulation No. 87 of 2016 concerning the Task Force for Clean Sweeping Illegal Levies (Satgas Saber Pungli). The background of the formation of the Pungli Saber Task Force is not only intended to provide a deterrent effect and strict sanctions for the perpetrators of pungli but also as a real step because of the non-optimal function and duties of internal supervision agencies in each government agency. The Pungli Saber Task Force consists of law enforcement officials, namely the Police, the Attorney General's Office, the Ministry of Home Affairs, the Ministry of Law and Human Rights, the Center for Financial Transaction Reporting and Analysis, ORI, the State Intelligence Agency and the Indonesian National Army Military Police have the authority to eradicate pungli practices effectively and efficiently by optimizing the use of personnel, work units, and infrastructure at both the ministry/agency and local government levels.²¹

It is undeniable that the formation of the Pungli Saber Task Force reaped pros and cons in society. Those who agreed really appreciated the formation of the Pungli Saber Task Force to optimize the eradication of pungli practices that have disturbed the community. However, on the other hand, the formation of the Pungli Saber Task Force is considered unnecessary because it will

only burden the state budget, so it would be better to strengthen internal supervision in each agency. Apart from these pros and cons, although it is a good idea, the formation of the Pungli Saber Task Force needs to be observed because Indonesia already has a supervisory agency like Ombusman. Do not let there be an overlap of authority. As is known, Ombusman is an institution that has the authority to supervise the implementation of public services as stated in Article 6 of Law No. 37 of 2008 concerning the Ombusman of the Republic of Indonesia. For this reason, it is recommended that integrated coordination is necessary so that there is no overlapping authority in supervising public service institutions.²²

In addition to the establishment of the Pungli Saber Task Force, efforts to optimize the eradication of pungli practices in government agencies are carried out based on the Circular Letter of the Minister of State Apparatus Empowerment and Bureaucratic Reform (SE Menpan RB) No. 5 of 2016 concerning the Eradication of Illegal Levy Practices in the Implementation of Duties and Functions of Government Agencies. There are several important points contained in the SE Menpan RB, as follows;

First, strict enforcement for the state civil apparatus involved as perpetrators of the levy. This strict enforcement can be in the form of direct dismissal without going through a judicial process for government employees who are clearly proven to be caught carrying out levies that were not previously regulated in the ASN Law and the Civil Servants' Disciplinary Regulation.

Second, improve the internal supervision system to prevent levies from occurring. In this connection, it is necessary to improve and improve the internal supervision function of each agency, considering that the internal supervision of government agencies has a central and strategic role in efforts to accelerate the eradication of corruption. In relation to their duties and functions, internal supervisors are supposed to act as monitors and supervisors, as well as evaluate the performance of government agencies. The weak internal supervision function of each agency can be a space for easy practice.

Third, open up cheap and easy access for the public to submit complaints and complaints and respond quickly to these complaints. This policy will not run without the participation of the public, which can be done through the website, hotline channels, and so on. Therefore, public awareness to participate in the eradication of levies is a very important element.

3. Conclusion

Illegal levies belong to the category of crimes of office, where in the concept of the crime of office, it is spelled out that the official, in order to benefit himself or others, abuses his power to force a person to give something, to pay or receive payment with deductions, or to work something for himself.

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