

Hint As A Means Of Verification And Inspection Decision In Subsidized Fertilizer Corruption (Case Study Case Number 45 / *Pid.Sus-TPK / 2016 / PN SMG*)

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Abstract. The Definitive Plan for Subsidized Fertilizer Needs (RDKK) is the first base for the formulation of subsidized fertilizer needs at the farmer group level. The fact that the planning and distribution of subsidized fertilizers up to the farmer level still contains serious problems and raises corruption-prone work areas. This journal aims to identify and explain the instructions as a means of proof and decision in the examination of the crime of corruption Subsidized fertilizer. The method used in this paper is descriptive qualitative approach with a normative Juridical. This study Refers to the corruption case Number 45/*Pid.Sus-TPK / 2016 / PN SMG*. In general, the narrative of the case contains the Defendants in the crime of corruption Subsidized fertilizer, who were charged with the primary indictment Article 2 paragraph (1) in conjunction with Article 18 of Act Number 31 of 1999 as Amended by Act Number 20 of 2001 in conjunction with Article 55 paragraph (1) 1 of the Criminal Code. The guideline is used as a means of proving and examining cases of Subsidized fertilizer corruption cases having a scheme: (1) Compiling sources of evidence in the form of witness Testimonies, letters and statements of the defendant (2) Interpreting the cues in the guidelines through the explanation of legislation related to the context of corruption, the view of legal experts, jurisprudence in the same case and (3) The panel of judges decides the case in accordance with the facts of investigation and trial so that the judge makes a decision of legal force,

Keywords: Instructions; Evidence; Corruption

1. Introduction

Planning and proper distribution of subsidized fertilizer allocation and in accordance with the allocation area is the hope of all parties. Definitive Plan of Group (RDKK) subsidized fertilizer formulation is first base subsidized fertilizer requirement at the level of farmers or farmer groups. RDKK describe the real needs of farmers in need of fertilizer in order to strengthen national food security.

The fact that the planning and distribution of subsidized fertilizers to the farmer level still contains a serious problem and bring work areas prone to corruption. There are a few things that is suspected to be the cause of the scarcity of subsidized fertilizers and the jump in the price of fertilizer at the farm level, namely (1) the market domestic fertilizer still dualistic, without being followed by supervision and the imposition of sanctions strictly, thus causing the permeation of fertilizer from the market subsidized to non-subsidized , (2) the rise of fertilizer exports illegally, with the increase in fertilizer prices in the world market and the weakening of the rupiah against the US dollar, (3) their sense of fanaticism farmer to the brand of fertilizer certain, and (4) there are

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many distributors of fertilizers that do not own fleet and warehouse on the third line,³ Are goods in the subsidized fertilizer procurement and distribution supervision receive government subsidies to the needs of farmers in the agricultural sector.⁴ Subsidized fertilizer have an important role in increasing the productivity of agricultural commodities in order to achieve national food security. Guarding and tackling the distribution of subsidized fertilizer in accordance with the appropriate zoning designation and allocation of the region is the institutional synergy opportunities and government institutions with retailers and farmers in the non-government sector. One effort that is more firmly using law instruments if enforcement occurs loopholes of corruption in the corruption of this subsidized fertilizer. Law enforcement, particularly the examination of a court, the Criminal Code requires the existence of evidence.⁵ In another chapter of the Criminal Procedure Code regulate the provision of guidelines, namely Directive is actions, events or circumstances, which is due to the correspondence, both between one another, as well as the criminal act itself, indicating that a crime has occurred and who was responsible.⁶

This article departs from the question of how the instructions as a Means of Verification and Inspection Decision in Subsidized Fertilizer Corruption?

Research methodology

The method used in this paper qualitative descriptive with normative juridical approach. According to Koko and Sri Endah, using juridical normative Researchers will be able to find the truth by using inductive method and criterion for measuring a fact in accordance with the proper legal studies.⁷ Data used is secondary data from the data source Case Files Case Number 45 / *Pid.Sus-TPK* / 2016 / PN SMG. The analysis technique used is descriptive analysis. Hope researchers with this paper can contribute ideas for law enforcement in subsidized fertilizer sector.

2. Results and Discussion

The study was based on a corruption case Number 45 / *Pid.Sus-TPK* / 2016 / PN SMG. In general narrative about the defendant's case shows corruption of subsidized fertilizer, which is charged with the primary charge Article 2 (1) in conjunction with Article 18 of Act Number 31 of 1999 as amended by Act Number 20 of 2001 in conjunction with Article 55 paragraph (1) 1st Criminal Code. Subsidiary charges of Article 3 in conjunction with Article 18 of Act Number 31 of 1999 on Corruption Eradication, as amended by Act Number 20 of 2001 on the Amendment of the Act Number 31 of 1999 on Corruption Eradication in conjunction with Article 55 paragraph

³ Syafa'at, dalam Dudi S. Hendrwan, *Analisis Kebijakan Subsidi Pupuk: Penentuan Pola Subsidi dan Sistem Distribusi Pupuk Indonesia*, Jurnal Manajemen & Agribisnis, Vol 8 No 2, Oktober 2011, hlm 86

⁴ General Provisions Regulation of No. 47 Year 2018 on Retail Price of Subsidized Fertilizer Agriculture Sector of Fiscal Year 2019.

⁵ Article 183 the Code of Criminal Procedure

⁶ Article 188 paragraph (1) of the Penal Procedure Code

⁷ Koko Arianto Wardani dan Sri Endah Wahyuningsih, *Kebijakan Formulasi Hukum Pidana Mati Terhadap Pelaku Tindak Pidana Korupsi Di Indonesia*, Jurnal Hukum Khaira Ummah, Vol. 12. No. 4 Desember 2017, hlm 953.

(1) to 1 of the Criminal Code⁸,

2.1 Case Position⁹

The defendant is accused of committing corruption of subsidized fertilizer by selling subsidized fertilizer beyond the allotment and allocation of its distribution area. In this case, the victim is a group of farmers and farmers in the region allocation has been determined by the distributor. In addition the State finances disadvantaged because every ton of fertilizer subsidy, the government allocated Rp. 1,424,724, - per ton. While the total amount of fertilizer that was corrupted by Rp 205 160 256, - which is obtained by multiplying 144 tons X Rp. 1,424,724.

January 2012, Defendant R bint register *Fisa Tani* to resell subsidized fertilizer to CV AM (as the Distributor Urea Subsidized PT. Pupuk Kujang), hereinafter *Fisa Tani* was appointed as an authorized reseller of subsidized urea fertilizer by CV AM as Letter Purchase Agreement (SPJB) signed by AMI as owners FISA FARMER and Hj. AM as Owner CV. AM, with a sales area in the district. Jatibarang, Districts of Brebes. Tani physically Fisa never existed, because it was never established, but only a licensed License and status as an Authorized Reseller of subsidized urea fertilizer distributors CV. AM, however the defendant as the biological mother of AMI, using Fisa Farmers who are already registered as an authorized reseller of subsidized fertilizer, keep ordering subsidized fertilizer to CV. AM arguing for sale in the area of sales. CV AM sending subsidized urea fertilizer to farmers Fisa 16 tons in two time delivery is 14 April and May 28, 2012, all of which were sent to the Independent Farmers at the request of the defendant, given the Farmers Fisa not physically exist.

Around May 2012, the accused approached a person with YAN calls, messenger of HMK, SE, and asked whether the defendant can arrange subsidized fertilizer to be distributed in the area of Kendal. When the defendant agreed to meet subsidized fertilizer required by HM.K, SE, and then the defendant provide a mobile phone number defendant to YAN. The defendant sells subsidized fertilizer allocation and outside the region beyond the responsibility of retailers are prohibited and HM.K, SE is not a distributor appointed by producer and not the retailer designated by the distributor based on the applicable regulations, so HM.K, SE is not entitled to fertilizers subsidized.

Month May 2012 HM.K, SE via a driver, take the subsidized fertilizer in Tani Mandiri 5 times, namely: (1) May 2012 32,000 kg with a price of Rp 1,875, - / Kg. (2) May 2012 32,000 kg with a price of Rp 1,900, - / Kg. (3) May 2012 32,000 kg with a price of Rp 1,900, - / Kg (4) in May 2012 as many as 32,000 kg with a price of Rp 1,900, - / Kg (5) May 2012 16,000 kg with a price of Rp 1,900, - / Kg. Wherein each time the accused making subsidized urea fertilizer directly accept payments for a total of Rp 272.8 million,

2.2. Discussion

Article 2 (1) in conjunction with Article 18 of Act Number 31 of 1999 as amended and

⁸ Case Case No 45 / *Pid.Sus-TPK* / 2016 / PN SMG

⁹ *Ibid.*,

supplemented by Act Number 20 of 2001 in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code, its elements are as follows: (1) Every person; (2) It is against the law; (3) Perform the action enrich themselves or another person or a corporation; (4) that can be detrimental to the State finances or the economy of the State; (5) For those who do, have done and or participate in the commission of that offense;

3.2.1. Proof element of the offense of Corruption Subsidized Fertilizer

The element of "Everyone"

Under the provisions, the definition of "every person" is an individual or a corporation.¹⁰ The indictment prosecutors filed as a defendant in this case is defendant establish *Tani Mandiri*, conducted in the name of the accused husband. In 2007 the defendant to register *Mandiri Tani* to become an authorized reseller of subsidized fertilizer to CV AM, with a sales area in the village *Kalipucang*, district. *Jatibarang*, Districts of Brebes. On 12 July 2007, CV AM secrete *Mandiri Tani* as a retailer with independent grounds farmer selling subsidized fertilizer outside the area of responsibility.

December 2008, the defendant filed a Fisa establishment Tani, who is assigned to his son defendant is AMI. January 2012, the defendant to register *Fisa Tani* to be subsidized fertilizer retailers to distributors, which in turn *Fisa Tani* was appointed as an authorized reseller of subsidized fertilizer, with a sales area in the district. *Jatibarang*, Districts of Brebes. Later in the trial the judges argued, the defendant has fulfilled the law as a subject in corruption expressed in the words of any person referred to in the formulation of Article 2 of Act Number 31 of 1999 in this case there is no error in persona.

The element of "Unlawful"

Actions of the defendant as the owner of Independent Farmers, an unlawful act but the defendant has the opportunity and the means and responsibilities set out in legislation, it is not appropriate subject to Article 2 (1) of Act Number 31 of 1999 because the judges assess more precisely apply the provisions of Article 3 of Law 31 of 1999 which case the defendants are charged in this case is the one that runs his capacity as Director of UD Ambassador Metal. The formulation in this position is in Article 3 instead of Article 2. Based on these considerations, the Panel of Judges for unlawfully element is not fulfilled defendant should be acquitted of the primary charge.

Because the primary charge is not met then declared the primary charge is not proven legally and convincingly by law, the defendant was released from the primary charge. The next consideration subsidiary charges are in violation of Article 3 Jo Article 18 of Act Number 31 of 1999 as amended by Act Number 20 of 2001 in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code, whose elements are as follows: Each person; With the intention of enriching himself or another person or a corporation; Abusing authority, opportunity or means available to him because of the position or positions; Which could harm the state finance or economy of the State; Who do, who have committed or who was involved in the crime;

¹⁰ Article 1 paragraph 3 of Law No. 31 of 1999 on Corruption Eradication, as amended and supplemented by Law No. 20 of 2001 on the Amendment of UU Number 31 of 1999 on Corruption Eradication

Elemental analysis in chapter indictment as follows:

- The element of "Everyone"; The judges argued against this element of every person, has been considered in the primary charges, then by taking over these considerations, thus this element has been fulfilled.
- Elements "With Beneficial Interest Yourself Or Someone Else Or A Corporate"

Judges in question "with purpose" is a desire in mind every inner actors who has the sole purpose to obtain a desired in this case the benefits in the form of material and immaterial for himself or another person or a corporation. Law Corruption does not provide an explanation of the meaning of "with purpose" is. Penal Code also does not explain the meaning of "intentionally", therefore the judges look for in the Criminal Code Explanation Memory (Memorie van Toelicting).¹¹ Intentionality is willed and realize the occurrence of an action and its consequences, someone new is deemed to have committed the crime deliberately when he really intends to do the crime and find out about our intentions and his own actions "intentionality" itself can be seen in a series of actions he did. The phrase "in order" implies intent, desire or intention that is the desire to benefit themselves or others, or a corporation. In Criminal Law Doctrine "intention or desire" to commit a new criminal offense is strafbaar feit if it has been done by people who have no intention or desire that can be seen in a series of actions that he did, whether the implementation was completed or not. profitable¹² is to give advantages (benefits, avail). The phrase "Profitable Yourself Or Someone Else Or A corporation", is an alternative that the action it can also be profitable to himself, others or a corporation, thereby eliminating the need of his actions profitable cumulatively, but it is sufficient if actions have been advantageous alternative. It is not necessary all the elements in the elements to be proved. Elements of enriching himself or another person or a corporation "is judged from the fact that occur or are related to the behavior of the accused in accordance with the authority possessed, because of the position or positions¹³, Based on the position of the above cases, the defendant met the elements "with the intention of enriching himself or another person or a corporation" refers to the consideration of the judges in the previous paragraph.

The element of "Abusing authority, opportunity or means at its disposal Because Position or Positions"

Corruptors who are not civil servants or private individuals can only be guilty of corruption by means of abusing the opportunity or means exist for any position¹⁴, Observance of the aforementioned elements of "misuse of authority, opportunity or means available to him because of the position or position", clearly intended that the perpetrator must have the position to carry out an offense in accordance with the position or status, thus understanding the position here should be interpreted as a certain position.

Panel of Judges it is a form of negligence of the defendant who has the task to it or in

¹¹ Memorie van Toelicting in the Decision of the Supreme Court, No: 03 / Pid.Sus / TP.Korupsi / 2014 / PN.PTK, p 92.

¹² General Dictionary Indonesian Ministry of Education and Culture Publisher Balai Pustaka, Third Edition, 2006.

¹³ Decision of the Supreme Court dated June 29, 1989 No. 813 K / Pid / 1987

¹⁴ R.Wiyono, 2009, *Pembahasan UU Tipikor*, Edisi Kedua, Sinar Grafika, Jakarta, hlm 51-52.

other words, the defendant did not carry out the obligations that should be done and that such negligence is a form of abuse of authority, as well as legal norms contained in the Cassation Decision 847 K / PID / 2004 describes negligence for not doing prudential banking is an abuse of authority in corruption¹⁵, Actions of the defendant can be qualified as "misuse of authority, a chance for the title of", and thus the element of misuse of authority, the opportunity available to him because of the position or positions have been met.

The element of "Can Harm the State Treasury or the State Economy"

Based on the explanation of Article 3 of Act Number 31 Year 1999 on Eradication of Corruption, the word "may" in the provisions of article 3 of the synonymous with the explanation of article 2, paragraph 1 of Act Number 31 of 1999, that the word "may" before "the phrase" financial harm or state economy shows that corruption is an offense Formal, namely the existence of corruption is quite the fulfillment of the elements of actions formulated not by the occurrence and effect.

The conjunction "may" can mean a state of financial harm "should not" simply means that the potential could result in losses to the state.¹⁶ The word "may" implies not required to state financial losses, but the possibility of losses to the state, the accused does not need to imagine the possibility of such loss¹⁷,

In proving the elements can harm the State's financial or economic state needs to put forward their jurisprudence as follows: (1) "That the amount of loss due to the actions of the defendant State need not definite amount, enough of the tendency of the losses of the State"¹⁸, (2) "..... the state loss occurs or not should be carried out by experts in state finances, the country's economy, as well as experts in the analysis of relations with the loss of one's actions"¹⁹, The considerations above, thus the element "that could harm the state finance and economy" has fulfilled the defendant himself.

The element of "Doing, The Telling Doing And Yang Participate Doing"

This element was the alternative that if the defendant has fulfilled one of the qualifications these actions then these elements are considered to have been met overall. Inclusion (Deelneming) consisting of people who do (Pleger, dader), people are told to do (*Doenpleger*), people who are participating (*Madepleger*) and people who deliberately persuade (*Uitlokker*) all of which are criminal²⁰ ;

According to R. Susilo who punished as people do here can be divided into four kinds:²¹

- People who do (pleger). This man is one who alone has committed to perform all elements or elements of criminal events. In the event pidan done in his example, he must also fulfill the elements "satutus as civil servants".
- People told to do (doen plegen) is here at least two people who ordered (doen

¹⁵ Vide Varia Justice No. 321 in August 2012.

¹⁶ Andi Hamzah in the Decision of the Supreme Court, No: 03 / *Pid.Sus* / *TP.Korupsi* / 2014 / PN.PTK, p 100.

¹⁷ MA Lamintang Decision, No: 03 / *Pid.Sus* / *TP.Korupsi* / 2014 / PN.PTK, p 100.

¹⁸ The Supreme Court decision No: 813.K / *Pid* / 1987 dated June 29, 1989 in the matter on behalf of the convicted person: Ida Bagus Putu Wedha

¹⁹ Constitutional Court Decision No. 003 / *PUU-IV* / 2006

²⁰ Article 55 paragraph (1) 1st Book of the Criminal Justice Act.

²¹ R. Soesilo, 1988, *Kitab Undang-Undang Hukum Pidana*, POLITEIA, Bogor, hlm 72-74..

plegen) and were told (pleger). So it's not the person himself who commit criminal act, but he told other people told (pleger) it must only be a tool or instrument only, meaning he can not be punished for not accountable for his actions, for example in cases as in article 44 of the Criminal Code.

- People who are participating (medepleger) is "participating" in the sense of the word "jointly". At least there must be two people are the ones who make or pleger and people participating (medepleger) the criminal event. Here are asked, that the two men were all acts of implementation, so do the elements or an element of the criminal event. There should not be such as only preparatory acts or acts that are only just help, because if so, then the person who helped it does not make "medepleger" but punished as "help do" (medeplichtige) pursuant to Article 56.
- People who are in administration, one taking power, the use of violence. By deliberately persuade committing such crimes or (uitlokker) that one must deliberately persuade others, was persuaded to be put on one of the streets such as the provision, one wearing power etc. mentioned in the article it means not wearing any other way.

Meanwhile, according to the Criminal Code Moeljatno essay, article 55 paragraph (1) 1st Criminal Procedure Code states:²² Shall be punished as the author (dader) something those who commit criminal acts, who have done and are involved in the act; That the words of those who do, are told to do and are involved in the act is the alternative nature.

Thus the corresponding facts obtained in the hearing of witness testimony - the witness, expert opinion from BPK Representative of Central Java, as well as the letter and statement of the accused and the evidence presented at the hearing, confirmed that the defendant has fertilizer subsidy from the Government, which should enjoyed by Farmer or Farmer Group.

Researchers look at the elements of proof groove article charged in the corruption investigation of subsidized fertilizer found that: *"Instructions" as one type of evidence for the criminal case has been determined only be obtained from the evidence in the form of: (a) testimony of witnesses; (B) a letter; (C) description of the accused.* The views M. Yahya Harahap, deciphering a clue is a signal that can be drawn from an action, event or situation which has earlier signaled "rapprochement" between one another, or gesture had had a rapprochement with the criminal act itself and of gesture the corresponding bore or make a manual that forms the "reality" the occurrence of a crime and the defendant culprit²³, Thus the instructions in this case, is the rapprochement description of each witness to one another, and conformity statements of witnesses with documentary evidence, as well as the conformity of witness testimony with the testimony of the defendant, and on the conformity of the witness' testimony can be drawn actions, events or circumstances as a guide that the defendant as the perpetrator of the participants of the criminal act against her.

3. Closing

²² Moeljatno the Supreme Court of the Republic of Indonesia Number: 03 / Pid.Sus / TP.Korupsi / 2014 / PN.PTK, p 104.

²³ Discussion Problems Applying the Code of Criminal Procedure, 1989: 839

3.1 Conclusion

Instructions used as a means of proof and the case investigation of corruption cases subsidized fertilizer has the scheme as follows: (1) To compile source of evidence in the form of witness statements, letters and testimony of the defendant (2) interpret the cues in the guide through an explanation of legislation related to the context of corruption, views of legal experts, yurisprudensi in the same case, and (3) the judges decide the case according to the facts of investigation and trial that the judge take legally binding decisions, based on the rapprochement between the facts and the evidence in proving the elements contained in article accused.

3.2 Recommendation

Construction law in corruption during the trial or yurespidensi other cases can be considered as a method of interpreting cues in the guide through an explanation of legislation related to the context of corruption, legal expert views, yurispredensi in the same case.

4. References

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