

**LAW ENFORCEMENT IN ILLEGAL LEVIES BY PUBLIC OFFICIALS
ASSOCIATED WITH THE THEORY OF COST AND BENEFIT ANALYSIS****Miranti Putri Pratiwi**Padjadjaran University
JL. Raya Bandung, Sumedang KM. 21, Jatinagor, Bandung, West Java, 45363, Indonesia
Telp./Fax: +62-22-84288827 E-mail: miranti.ppratiwi@gmail.com*Submitted: Jul 23, 2020; Reviewed: Aug 30, 2020; Accepted: Dec 23, 2020***Abstract**

Public officials who carry out illegal levies are threatened with article 12e of Act 31 of 1999 as amended with Act 20 of 2001 concerning Amendments to Act 31 of 1999 concerning Eradication of Corruption. In practice, illegal levies are often carried out in relatively small amounts and are massive. Law enforcement of illegal levies performed by public officials is carried out with the establishment of the Saber Pungli Task Force based on Presidential Regulation (Perpres) 87 of 2016 concerning the Clean-Sweep Illegal Levies Task Force and it will be associated with the theory of Cost and Benefit Analysis. This research uses the normative legal research method by specializing in the approach by using national legal rules to find out law enforcement in cases of illegal levies performed by public officials. The results of this study indicate that law enforcement against illegal levies performed by public officials through the establishment of the Saber Pungli Task Force Team is in line and related to the application of the theory of Cost and Benefit Analysis that compares costs incurred by law enforcement with the benefits obtained through the calculation of losses carried out by illegal levies.

Keywords: *Illegal Levies; Law Enforcement; Public Officials***INTRODUCTION**

One obstacle in the implementation of public service activities is illegal levies. Simply put, illegal levies can be interpreted as the imposition of fees in the place that should not be charged. Most illegal levies are collected by officials or apparatus, although it is illegal and is classified as part of corruption, collusion, and nepo-

tism (*KKN*), in reality, this is common in Indonesia.¹

The practice of illegal levies in the bureaucracy is caused by the lack of control and supervision among government agencies. Although several internal and external supervision institutions have been established, the habit of illegal levies among bureaucrats has not diminished or

¹Mahmud Mulyadi, "Pungli: Antara Suap Atau Pemerasan", Paper in the Panel Discussion with the Topic: Perbedaan Suap dan Pemerasan? Dan Akibatnya Terhadap Kemudahan Berusaha di Indonesia", Surabaya, 04 March 2019, p.. 1.

been eliminated. In general, illegal levies are performed by public officials in the lower class category. The motive is to increase their income due to the low average of official salaries. The high-level bureaucracy does corruption to increase their income, then the low-level bureaucracy does it through illegal levies. Opportunities, lack of supervision, and low bureaucratic ethics are driving factors of illegal levies.²

President Joko Widodo issued the Presidential Regulation (*Perpres*) 87 of 2016 concerning the Clean-Sweep Illegal Levies Task Force (hereinafter mentioned as *Saber Pungli* Task Force) which was passed on 21 October 2016.³ This regulation is a form of impact anticipation caused by illegal levies. Illegal levies become one of the actions that are already familiar to the public. Eradication of illegal levies does not lie in the amount of loss caused, but rather the habitual roots that want to be eliminated.⁴

The characteristics of illegal levies carried out by civil society and public officials must be distinguished, this will have an impact on the provisions that will be applied between the two. Provisions on illegal levies carried out by civil society or

non-public officials are applied as a form of illegal levies offense regulated in article 368 paragraph (1) of the Criminal Code as quoted:

(1) Anyone with the intent to unlawfully benefit himself or others, force a person with violence or threat of violence to give something away, wholly or partly owned by that person or another person, or to make debt or write off a debt, threatened with illegal levies with a maximum jail sentence of nine months.

Unlike the extortion article which is often applied to the practice of non-public officials, illegal levies define as a levy that is carried out illegally and is not based on rules. Public officials who do this then lead to the practice of extortion crimes regulated in article 12 e Act 31 of 1999 as amended by Act 20 of 2001 concerning Amendments to Act 31 of 1999 concerning Eradication of Corruption (hereinafter mentioned as the Anti-Corruption Act). The elements in Article 12e of the Anti-Corruption Act differ from the elements in Article 368 Paragraph (1) of the Criminal Code in which the threat of violence is not listed as an element that must be proven, while the element of force should be proven. As for article 12e, the Anti-Corruption Act reads:

(e) public servants or state administrators who intend to benefit themselves or others unlawfully, or by

² Halim, (2004), *Pemberantasan Korupsi*, Jakarta: Rajawali Press, p. 46.

³ <https://saberpungli.id/tentang>, accessed in 03 March 2019 at 18.30 WIB.

⁴ *Ibid.*

abusing their power to force someone to give something, pay, or receive payment in pieces, or to do something for themselves;

The legal subject in Article 12e of the Anti-Corruption Act, namely ‘Civil Servants or State Administrators’ is a person who is given certain authority based on the Statutory Regulations so that he/she has a position and certain powers, so that it is narrowed in scope and slightly different from the legal subject in the Criminal Code which stating ‘whoever’.

According to the Head of the *Saber Pungli* Task Force Komjen Pol. Dwi Priyatno, the case of the Illegal Arrest Operations (hereinafter abbreviated OTT) case carried out by the *Saber Pungli* Task Force since a year after it was formed in 2016. It has conducted as many as 1.316 OTTs on a variety of illegal levies cases throughout Indonesia. Illegal levies cases that often occur in the fields of education, law enforcement, licensing, and staffing.⁵ In the subsequent developments in 2019, based on the results of an interview with one of the staff members of the West Java Provincial Government *Saber Pungli* Task Force Dwi Ismarianto stated that the total number cases carried out by the OTT at

the West Java Province level to date are 10.744 cases.

The handling of illegal levies cases is carried out starting with the preliminary case exposure where the *Saber Pungli* Task Force will submit the case to their respective departments whether the case will go to the general crime, special crime (corruption), or returned to the public official agency to give disciplinary punishment in the form of administrative sanctions to the perpetrator. Concerning OTT for public officials, the *Saber Pungli* Task Force of the West Java Provincial Government has conducted OTT on four public officials, including the Head of the Bandung City Licensing Office, the Head of the Village District, an individual in the National Land Agency (BPN), and an individual of BKD Health Office of Garut Regional Hospital. The case handling of the three public officials (the Head of the Bandung City Licensing Office, the National Land Agency (BPN) officer, and the individual in BKD Health Office of Garut Regional Hospital) was handed over to the investigators, categorized into corruption, and submitted to trial in the Special Court for Corruption. Whereas the Head of the Village District is subject to administrative sanctions in the form of disciplinary punishment regulated in Gov-

⁵<http://kabar24.bisnis.com/read/20171112/16/708273/ott-saber-pungli-dalam-setahun-1.316-kasus-ditangani>
accessed on ³⁰January 2018 at ^{18.30} WIB.

ernment Regulation 53 of 2010 concerning Discipline of Civil Servants, which caused the dismissal from the Head Village District position.

Based on the aforementioned data, this research is interested to find out whether the law enforcement process carried out by the *Saber Pungli* Task Force as an effort to eradicate illegal levies, especially those carried out by public officials are following the law, can achieve the ultimate goal of punishment itself? Furthermore, the amount of illegal levies is relatively small, is the budgetary cost of the law enforcement process balanced with the benefits obtained when taking action against illegal levies actors associated with the theory of Cost and Benefit Analysis (CBA)?

Cost and Benefit Analysis (hereinafter mentioned as CBA) is a systematic approach to consider weaknesses (costs) and strengths (benefits) for existing choices. The CBA method is used to assess the feasibility of a proposed policy. It converts policy impacts into monetary calculations based on the premise that each policy must have an economic impact. CBA on regulation or policy is an analysis of the costs and benefits that will result from the formation or making of a regulation or policy so that it can be estimated whether

the existence of the regulation or policy results in greater benefits compared to the costs incurred in the process of forming these regulations and policies.⁶

The cases of illegal levies performed by public officials in a relatively small amount which are then processed by law enforcement by criminal procedure and subject to articles regulated in the Criminal Code and the Anti-Corruption Act and must be examined in the District Court and Higher District Court of Corruption, it still needs to be investigated whether it is in line with the implementation of cost and benefit analysis.

Accordingly, it is interesting to conduct research on law enforcement against illegal levies performed by public officials associated with the theory of CBA with the title “Law Enforcement in Illegal Levies Case by Public Officials Associated With the Theory of Cost and Benefit Analysis”.

ANALYSIS AND DISCUSSION

Jimly Asshiddiqie stated that law enforcement is the process of efforts for the establishment or functioning of legal norms as a real guideline for behavior in legal relations of public and state life. Law

⁶Guidelines for Legal Drafting in Legislation, the Drafting Center for the Expertise of the House of Representatives of the Republic of Indonesia.^Accessed from www.dpr.go.id on 28 February 2020 at 14.00 WIB.

enforcement is a process to make legal wishes come true. The so-called legal wishes here are none other than the thoughts of the legislature which are formulated in the legal regulations and legislation. The formulation of the lawmakers' thoughts as outlined in the legal regulations and legislation will also determine how law enforcement is carried out.⁷ According to Barda Nawawi Arief, law enforcement is nothing but an effort to realize or apply legal provisions to real events. When dealing with criminal law, enforcement means efforts to realize or apply criminal law into concrete actions.

Paragraph (2) Article 286 Act 23 of 2014 concerning Local Government stipulates that "*Local governments are prohibited from making levies or other designations outside those stipulated in the Act*". This article is an effort to prevent the occurrence of illegal levies practices. It has damaged the order of the community, nation, and state life so that efforts to eradicate it are firm, integrated, effective, efficient, and able to cause a deterrent effect. Then as a follow-up of concerns about the practice of illegal levies, the Government through Presidential Regulation (*Perpres*) 87 of 2016 specializes in the prevention of

illegal levies through the establishment of *Saber Pungli* Task Force. This instruction on the supervision of illegal levies was also set forth by the Instruction of the Minister of Internal Affairs Number 180/3935/SJ concerning the Supervision of Illegal Levies in the Implementation of Local Government.

In carrying out its duties, principal, and functions, the *Saber Pungli* Task Force maintains four functions, i.e. Intelligence, Prevention, Enforcement, and Judicial. The Intelligence task force is tasked with mapping out agencies that are prone to illegal levies. In this section, the task force can collect data and information from various parties related to illegal levies. The next task force is Prevention, in which case the task force can make preventive and educative efforts. The third task force is the function in the Enforcement area, its authority is more on repressive efforts. This task force can receive reports from the public through existing information technology, social media, or direct complaints. Also, this task force can coordinate to plan and conduct OTT. The last task force is Judicial which is a decisive part of the whole task force. The decisive part in this case is to provide recommendations related to sanctions that will be given to illegal levies offenders.

⁷ Satjipto Raharjo, (2009), *Penegakan Hukum Sebagai Tinjauan Sosiologis*, Yogyakarta: Genta Publishing, p. 25.

The Judicial task force can assist the task of the judiciary body in efforts to eradicate illegal levies. One resort that can be done is to make arrests, hearings, and detention. Duties and functions of the working group of the judicial task force i.e. analyzing, evaluating, and case exposition will determine whether the case will be categorized as a general crime (*Pidum*), special crime (*Pidsus*) as corruption case, or in the administrative domain.⁸

First, concerning cases categorized as the general criminal domain (*Pidum*), the case is delegated to the Law Enforcement Working Group (*Gakum*) to conduct the case handling process as the mechanism in the general crime investigation process. Second, if the case is categorized in the special crime (*Pidsus*) domain, the case will be transferred to the Law Enforcement Working Group (*Gakum*) and followed up as is the mechanism in the special crime (*Pidsus*) domain. Last, in the administrative domain, the case will be delegated to the inspectorate division where the unscrupulous institution is suspected of practicing illegal levies is sheltered. In this case, the punishment will be provided in the form of administrative sanctions. For example, in the form of in-

ternal or verbal reprimand sanctions, postponement of training, postponement of salaries, removed from office, transfers, demotion, and firing.

In cases which are then included in the administrative domain, if conducted by the state civil apparatus or public officials, the *Saber Pungli* Task Force will first look at the value of confiscated evidence. The Task Force will assess whether the handling of a case will charge the state with a greater cost than the evidence allegedly obtained by the perpetrator. This will pertain to the return of state money to the state treasury and will be concluded based on the results of the case discussion conducted by the Law Enforcement Working Group (*Gakum*).

Article 8 of Presidential Regulation 87 of 2016 states that ministries/institutions and local governments carry out the eradication of illegal levies in their respective work environments, in doing so, ministries/institutions and local governments form a unit to eradicate illegal levies. This unit is part of the internal supervisory unit or other work units in their respective work environments. Furthermore, the agency will notify the handling report to the *Saber Pungli* Task Force as stated in the regulation that the eradication of illegal levies units in each

⁸Interview with Dr. (Cand) Uyun Saepul Uyun, S.H., M.H., The Head of Corruption Sub-Unit, Sat Reskrim Polrestaes Bandung, 06 March 2019 in Kota Bandung.

ministry/institution and local government in carrying out their duties has to coordinate with the *Saber Pungli* Task Force.

The *Saber Pungli* Task Force has its authority to determine whether the illegal levies committed by individuals or persons constitute the domain of general crime, special crime, or limited to the administrative domain as explained above. The law enforcement carried out by the *Saber Pungli* Task Force is the initial stage before an investigation is carried out by the Police. This initial stage is the beginning of illegal levies settlement whether it will be categorized in general crime, special crime (corruption), or administrative domain.

The law enforcement process, which only been applied within the domain of the criminal justice sub-system, later becomes the entry point in the handling and settlement of illegal levies while it is not always included in the domain of the court after the formation of the *Saber Pungli* Task Force. Based on the description above, that the settlement of illegal levies can be done with administrative processes and sanctions on the relevant institution or agency with the establishment of the Task Force for illegal levies in each relevant institution or agency.

Illegal levies are regulated in the Criminal Code (*KUHP*) and constitute illegal levies offenses regulated in the Anti-Corruption Act so that it is included as a criminal offense that carries the threat of criminal sanctions. However, after the establishment of the *Saber Pungli* Task Force, illegal levies can be subject to administrative sanctions. It is said that policy or action that is not entirely based on law is something that can be justified as long as the policy or action is not contrary to the law. So, the essence of law implementation does not only include law enforcement, but also maintenance of peace, because it is a process of harmonizing the values of the method and real behavioral patterns aimed at achieving peace in the society.

In the process of law enforcement, it is expected to have an optimal result, so that criminal law functions effectively to preventing prohibited acts and if those rules are violated, law enforcement officials can carry out their functions effectively. The efforts to realize optimal criminal law enforcement cover a variety of ways and approaches. Every method and approach used will have implications for the results to be achieved. One approach that can be used to realize optimal crimi-

nal law enforcement is an economic (analytical) approach.⁹

The economic analysis relates to the principle of efficiency if it is linked to imposing sanctions for perpetrators of crimes, the first thing to consider is what forms of sanctions are available that will be imposed on the perpetrator. Then, from the existing forms of sanctions, it analyzed which are the most efficient in terms of the principle of costs and benefits as it is very important with efforts to tackle crime. The problem of dealing with crime is closely related to the budget allocation available, while the analysis of costs and benefits is also related to how much resources must be allocated to counter the crime.

CBA of a regulation or policy is an analysis of the costs and benefits that will result from the formation or making of a regulation or policy so that it can be estimated whether the existence of the regulation or policy results in greater benefits compared to the costs incurred in the process of establishing the regulations or policy.¹⁰ If the losses due to criminal acts (after being cashed) and the costs that must

be incurred by the government to tackle the crime through law enforcement officers are greater than the number of profits derived by the perpetrators from committing criminal acts, then the optimization of law enforcement will not be realized. Therefore, what needs to be done is to use other instruments in preventing the crime from happening. In other words, the actions to be banned and the costs of law enforcement when violations occur are greater than the benefits to be obtained, it should not be prohibited and dealt with by criminal law instruments.¹¹

One of the purposes of the *Saber Pungli* Task Force is to establish an early warning system where it prioritizes prevention rather than enforcement. In compiling the budget, the work mechanism pattern of Task Force itself emphasizes the soft treatment side in the form of social sanctions. Thus, more budget is given at the prevention stage than at the enforcement stage.¹²

Referring to the principle of rationality in the economic analysis of the law

⁹Mahrus Ali, (2008), *Penegakan Hukum Pidana Yang Optimal (Perspektif Analisis Ekonomi Atas Hukum)*, Jurnal Hukum Nomor 2 Vol. 15, Yogyakarta: UIL, p. 223-238.

¹⁰Guidelines for Legal Drafting in Legislation, the Drafting Center for the Expertise of the House of Representatives of the Republic of Indonesia.^Accessed from www.dpr.go.id on 14 April 2020 at 20.00 WIB.

¹¹ David D. Friedman, "Should the Characteristics of Victims and Criminals Count? Payne v Tennessee and Two Views of Efficient Punishment", Article in Boston College Law Review, Vol. 34, 1993, p. 732-733. To learn more about the criminal sanction, especially in the criminal law analysis, read Robert Cooter, "Prices and Sanctios", Article in Columbia Law Review, Vol. 84, 1984, p. 1524-1531.

¹²Interview with Iwan Arto Koesomo, S.H., M.H., member of *Saber Pungli* Task Force Kejaksaan Negeri Kota Bandung on 4 March 2020 in Kejaksaan Negeri Kota Bandung.

which describes that rational actors always calculate the costs and benefits to be obtained when committing a criminal act of corruption. If the benefit or profit is greater than the cost or loss, they will commit a criminal act of corruption and vice versa. Because humans are rational beings, as a preventive measure is when someone commits a criminal act of corruption, then the criminal sanctions imposed must exceed the seriousness of the criminal act of corruption, in other words, the losses/costs to be borne by the perpetrator must be greater than the benefits obtained by committing a crime.¹³

One of the factors that influenced the *Saber Pungli* Task Force Team in determining the imposition of actions or sanctions against reported illegal levies is the fees. The amount of fees in carrying out illegal levies is very relative, no matter how small it is, illegal levies are legal acts and must have legal consequences. However, taking action against reported illegal levies must not be detrimental to the state even though enforcement of illegal payments has its budget.

One example of the use and absorption of the budget based on research results at the Prosecutor's Office as one of the Criminal Justice Sub-Systems, it is

said that the charged budget for the Prosecutor's Office in the prosecution of special criminal cases including criminal acts of corruption is Rp. 100.000.000.00 for just one case. Unlike the general crime case, the Prosecutor's Office has a budget of Rp. 3.500.000.00 for every single case in the prosecution stage. In arresting the suspect, the *Saber Pungli* Task Force at the Attorney General's level has a maximum budget of Rp. 3.000.000.00 for one activity. Overall, the actions were taken by the Task Force in the enforcement stage, the Law Enforcement Working Group by the Task Force possess a maximum budget of Rp. 90.000.000.00 for one year for all cases. This budget includes the act of arrest, the whole process up to submission to the agency of origin for administrative sanctions.

In addition to the prevention efforts in enforcing illegal levies carried out by public officials, another thing that needs to be improved is increasing the possibility of criminal offenders to be arrested, processed, and then punish. Because in doing so the ultimate goal of justice can be realized. When the possibility of a law enforcement process is high, law enforcement will be optimal, because there will be fewer people commit the same crime, and as such, not many costs must

¹³ *Ibid.*

be spent to exterminate the crime and finance the operationalization of law enforcement.

According to Iwan Arto¹⁴, the purpose of enforcement and control of illegal levies carried out by civil society and public officials is a deterrent effect. By implementing the application of social sanctions in addition to administrative sanctions that have been given at the time it was revealed, the *Saber Pungli* Task Force will publish related cases of the reported illegal levies. Later, it will be caused in the more orderly manner of related public services, where other public officials are less likely to do so due to intensified social sanctions.

The implementation of administrative sanctions is directly related to the position of a public official in an institution/agency that will affect the responsibilities of the position carried by the public official. Thus, when a public official whose main purpose is to obtain profits outside of the earning by commits illegal levies, accordingly they must receive adverse administrative sanctions. Later on, public officials tend not to carry out these actions with the possibility that they will get a higher degree of sanctions and exceed the gained profit. Therefore, public

officials will bear all the costs of their actions.

According to Becker¹⁵, a person's decision to commit a crime is based on calculating the benefit-cost analysis of the crime itself. If the expected benefit of crime exceeds its expected cost, then as a rational economic actor, individuals will tend to commit crimes. Conversely, if the calculation of an individual shows that the expected cost exceeds the expected benefits of a crime, then the person concerned will not commit the action.

The wanted doctrine to be developed is that law enforcement is solely for formal law enforcement. Every law enforcement should not put aside the material law aspect. This is the hope, but it never manifested. The realization of this aspect can be seen from another perspective, namely the consideration of cost and benefit analysis. The model of law enforcement that does not consider cost and benefit are wasteful in using state funds to handle a case whose rate of occurrence in the field is very massive with relatively small nominal costs. Hence, analysis from

¹⁴ *Ibid.*

¹⁵Becker, G.S., *Crime and Punishment: An Economic Approach*, Journal of Political Economy, 1968, p.. 1-13. Accessed from <https://feb.ugm.ac.id/en/research/lecturer-s-article/artikel-dosen/826-penegakan-hukum-dan-pencegahan-tindak-kejahatan-dalam-tinjauan-ilmu-ekonomi>.

this point of view looks at the efficiency side.

CONCLUSION

The process of law enforcement against illegal levies carried out by public officials submitted to the *Saber Pungli* Task Force established under Presidential Regulation (*Perpres*) 87 of 2016 concerning the Clean-Sweep Illegal Levies Task Force. It performs three types of actions: through special crime measures (Corruption), general crime, or through an administrative process by returning unscrupulous perpetrators to the relevant agencies. These enforcement factors see the size of the cost of the losses incurred by the perpetrators of illegal levies. Law enforcement through this process is in line with the theory of cost and benefit analysis which states that losses due to criminal acts and costs that must be incurred by law enforcers to deal with criminal acts turned out to be greater than the number of profits derived by perpetrators from committing a criminal act, therefore the optimization of law enforcement will not be realized.

The advice that can be given is that the handling of an action that is included in a criminal act does not have to always be in the court domain. Crime as *ultimum*

remidium can be the last alternative in handling an action by considering the costs and benefits obtained in handling a case for the creation of optimal and efficient law enforcement.

BIBLIOGRAPHY

- Becker, G.S. (1968). *Crime and Punishment: An Economic Approach*, Journal of Political Economy. [Accessed from <https://feb.ugm.ac.id/en/research/lecturer-s-article/artikel-dosen/826-penegakan-hukum-dan-pencegahan-tindak-kejahatan-dalam-tinjauan-ilmu-ekonomi> on 14 March 2020].
- David D. Friedman. (1993). "Should the Characteristics of Victims and Criminals Count? *Payne v Tennessee* and Two Views of Efficient Punishment", Article in Boston College Law Review, Vol. 34.
- Halim. (2004). *Pemberantasan Korupsi*. Jakarta: Rajawali Press.
- Mahmud Mulyadi. "Pungli: Antara Suap Atau Pemerasan", Paper in the Panel Discussion with the Topic: *Perbedaan Suap dan Pemerasan? Dan Akibatnya terhadap Kemudahan Berusaha di Indonesia*. Surabaya, 04 March 2019.
- Mahrus Ali. (2008). *Penegakan Hukum*

- Pidana Yang Optimal (Perspektif Analisis Ekonomi Atas Hukum)*. Jurnal Hukum Nomor 2 Vol. 15, Yogyakarta: UII.
- Drafting Center for the Expertise of the House of Representatives of the Republic of Indonesia. *Guidelines for Legal Drafting in Legislation*. [Accessed from www.dpr.go.id on 28 February 2020 and 14 April 2020].
- Satjipto Raharjo. (2009). *Penegakan Hukum Sebagai Tinjauan Sosiologis*. Yogyakarta: Genta Publishing.
- Anonym. <https://saberpungli.id/tentang>, [Accessed on 03 March 2019].
- Anonym. <http://kabar24.bisnis.com/read/20171112/16/708273/ott-saber-pungli-dalam-setahun-1.316-kasus-ditangani> [Accessed on 30 January 2018].
