

The Proving Existence of Sting Operation in Corruption Criminal Act in Indonesia

Wasdar¹, Mohd. Din², M. Gaussyah³

¹(Law Faculty, Syiah Kuala University, Indonesia)

²(Law Faculty, Syiah Kuala University, Indonesia)

³(Law Faculty, Syiah Kuala University, Indonesia)

Abstract: Sting Operation, known as Operasi Tangkap Tangan (OTT) in Indonesia, conducted by the Corruption Eradication Commission (KPK) is a concrete effort to arrest corruptors. Cases revealed through OTT are increasing every year, where in 2018 there are 28 cases, in which of the cases, KPK named 108 people as suspects. Cases handled through OTT always convict the defendant guilty. However, the existence of OTT still becomes a polemic. This paper discusses the legal issues surrounding the OTT; First, whether the OTT object is equal to a caught red-handed or Tangkap Tangan (TT) object in the Criminal Procedure Code, and second, how the proof of evidence obtained through OTT is strong enough. This research is a normative juridical study using statutory approach. The result shows that the OTT object is the same as the TT object in the eyes of Criminal Procedure Code, only the difference lies in the OTT which begins by tapping as authorized by the Act to the KPK. The power of evidence obtained through OTT, such as wiretapping, becomes an accurate indication where the defendant could not object when the results are brought upon during the trial.

Keyword: Existence, Proving, Sting operations, Corruption

Date of Submission: 17-12-2019

Date of Acceptance: 31-12-2019

I. INTRODUCTION

The act of corruption is a serious crime in Indonesia. Result of such crime is clearly detrimental to state finances, loss of public trust to state apparatus, deterioration of public services, authority abuses and bribery practices. Strangely, even when a number of corruptors have been prosecuted and proved guilty the corruption behavior is still widely practiced.

So complex is the problem of corruption, various attempts have been made to prevent and give a deterrent impact for corruptors. In realizing the efforts, Indonesia has several regulations on the eradication of corruption. Such regulations be found in Law Number 28 of 1999 concerning State Administration Clean and Free from KKN (Collusion, Corruption and Nepotism), Law No. 31 of 1999 concerning Eradication of Corruption Acts, later amended by Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999, then Law No. 30 of 2002 concerning the Corruption Eradication Commission, Law No. 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, Law No. 15 of 2002 in conjunction with Law No. 25 of 2003 concerning Money Laundering Crimes, Inpres No. 5 of 2004 concerning the Acceleration of Eradication of Corruption and Presidential Decree No. 11 of 2005 concerning the Corruption TAS Team (coordinating team to eradicate corruption). These enacted laws are expected to be upheld at best in to prevent and eradicate any form of corruption.

Although the norms regarding corruption have been well implemented, cases of corruption are still difficult to overcome because the perpetrators use complex equipment/tools and are usually conducted by more than one person in such shady and organized method. Therefore, this crime is often called a white-collar crime. In a comprehensive context, it cannot be denied that corruption is a white-collar crime with actions that always has dynamic *modus operandi* from all sides so that it is said to be an invisible crime that is very difficult to obtain procedural proof, as it often requires a systemic approach to its eradication.

Corruption is one part of a special criminal law, in addition to having certain specifications that are different from general criminal law, such as the existence of deviations from the procedural law and when addressed from the set material. Therefore, criminal acts of corruption are directly or indirectly intended to reduce the minimum possible occurrence of budget misuse in the country's economy, so that it is expected that the economy and development wheels can be carried out accordingly which has the effect of increasing development and the welfare of the community in general. In preventing and eradicating corruption, the government established the Corruption Eradication Commission (KPK), which specifically has the authority to eradicate corruption, this can be seen in Law No. 30 of 2002 concerning the Corruption Eradication

Commission (KPK Law). One of the methods used by the Corruption Eradication Commission (KPK) to arrest corruptors is to carry out Operation Catching Hands (OTT). Meanwhile, OTT is not mentioned in the Criminal Procedure Code and the Anti-Corruption Law, and the KPK Law. OTT is the KPK's term for "catching" someone suspected of being a corruptor. This problem actually became chaotic when there were those who thought that OTT was illegal because it had no legality in the Criminal Procedure Code. Therefore, to answer the problem about the existence of the implementation of OTT by the KPK so far, the author considers it necessary to examine the object caught red-handed which will later be associated with the implementation of OTT so that the problem becomes clear.

A strategy is needed to prove the crime of corruption with modus operandi adjustment. The KPK has the authority in handling cases of criminal acts of corruption, such as carrying out OTT. Cases that have to involve the OTT process mostly occur in bribery-related corruption. In the context of criminal law, bribery is a simple crime but difficult to prove. Often time, bribe givers as *causa proxima* and bribe recipients always carry out silent operations and to the best of their ability, eliminate evidence indicating that the crime has been committed. In proving criminal cases, there is a postulate that reads "*in criminalibus probantiones bedent esse luce clariores*", which means that in a criminal case, the evidence must be brighter than light. It can be translated that to prove someone's offense is not only based on suspicion, but the evidence must be clear and accurate.

In general, the process of proving criminal cases has been regulated in Article 183 through Article 189 of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). However, specific acts of corruption are regulated separately in Article 12B in conjunction with Article 26A in conjunction with Article 37 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Eradication of Corruption Crimes. The making of such regulation shows that the legislators believe that the proving process plays an important role in the criminal justice. The expansion of the evidence available in the Criminal Procedure Code is listed in Article 26A of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Eradication of Corruption Crime which states the legal evidence in the form of instructions as referred to in Article 188 paragraph (2) of Law No. 8 of 1981 concerning Criminal Procedure Law. Specific to corruption, it can also be obtained from, the following:

- a. Evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices or something similar.
- b. Documents, i.e. any data or information that can be seen, read and or heard that can be issued with or without assistance or facilities, whether contained on paper, any physical object other than paper, or recorded electronically, in the form of text, sound, images, maps, designs, photos, letters, signs, numbers or perforations that have meaning.

The expansion of the evidence is due to the authority of the Corruption Eradication Commission (KPK) to conduct wiretapping and recording of talks in the process of investigation and prosecution of corruption acts as stipulated in the provisions of Article 12 paragraph (1) letter a of Law No. 30 of 2002 concerning the Corruption Eradication Commission which states that the KPK in the context of conducting investigations and prosecution has the authority to conduct wiretapping and sound recording to find preliminary evidence that the person suspected of having committed or will commit a criminal act of corruption can be charged with anti-corruption law.

Based on the data and the facts, OTT is one of the most effective ways today to provide clearer evidence. This can be seen in the 2017 performance report of the KPK. For example, there were 19 cases that were the result of OTT, which exceeds the number from previous year. Of the 19 cases, the KPK has assigned 72 suspects with various profiles, ranging from law enforcement, legislative members to regional heads. This number does not include suspects that were determined later based on the results of case development.

Meanwhile in the KPK performance report 2018, there were 28 cases which were the result of sting operations. The number of arrests also exceeded the previous year and is the most throughout the history of KPK. Of the 28 cases, the Commission has named 108 people as suspects, which exclude those determined later from the results of the case development. In regards to sting operation, sometimes KPK seizes only a small amount of bribe money. However, when the development is carried out, there are more than a few parties that can be held accountable, which indicates a bigger number of profiles involved.

Based on the above explanation, it appears that the implementation of OTT is as intended in Article 5 and Article 12 of the Corruption Law, at least according to the achievement and performance data where there occur 152 cases of bribery. Based on that evidence, this study's statement of the problem is whether the OTT's object of proof is the same as the one in the case of being caught red-handed, and how the evidence's proving power obtained from the results of OTT is easier and more effective to convince judge in making decision, as it is known that cases related to OTT always successfully indict the defendants.

This research is to get an in-depth picture of the problems that have been raised in the statement of problem. The results of this research are expected to provide benefits as a reference for other studies. In addition, the authors hope that the study results to be an input or reference for law enforcement in carrying out the process of proving criminal acts of corruption.

II. RESEARCH METHODOLOGY

The type of research used in this study is normative legal research (*juridismorfik*), which focuses on examining the application of rules or norms in positive law. Therefore, this study uses the statutory approach. The legislative approach is carried out by examining all laws and regulations related to the legal issues raised. The approach examines the laws and regulations relating to the proving objectivity of sting operations in the context of corruption in Indonesia. The legal materials used in this study are primary legal materials and secondary sources. Primary sources are the laws and regulations in the handling of corruption cases, including the Corruption Act, the KPK Law, and the Criminal Procedure Code. Whereas the secondary sources are opinions of experts in books and journals. After the data is collected, then it is analyzed. Data analysis is conducted by a review and breakdown of data, so that the data can provide meaning that is useful in providing the answers.

III. DISCUSSION

The Existence of Proof of OTT Conducted by KPK

As stated earlier, corruption is a special crime and classified as very difficult in its proving, this is due to the sophisticated modus operandi played by the perpetrators, in addition to diverse type of the act. The acts of corruption are the form of bribery, embezzlement, extortion and fraudulent acts that lead to conflict of interest in procurement and gratification. These sorts of acts eventually can harm state finances. In order to convict corruptors, law enforcers, especially the KPK, need to work optimally. In law enforcement, proving is a component that plays an important part in the process of disclosing the crime of corruption in court. The hearing will reveal facts that determine whether a charged person is proven guilty or not. One form of evidence carried out by the KPK is through sting operations (OTT). OTT is carried out as an effort to concretize the results of the previous investigation, where the perpetrators and the place where the criminal act took place can easily be revealed by obtaining information from the public and/or by conducting wiretapping.

Proof of corruption, although still using formal law in the Criminal Procedure Code, in certain circumstances applies special proving law as an exception. As for the evidentiary deviation law in the criminal law of corruption, there are two main things: regarding materials that can be used to form evidence (Article 26A of Law Number 20 Year 2001), which this study discusses, and the evidentiary system (Article 37 of Law Number 20 Year 2001).

One of the things that distinguishes from ordinary evidence is that KPK in its duties, authorities and obligations can conduct wiretapping. To concretize the matter, then KPK conducts OTT (in general criminal offenses the term is called "caught in the act"). The wiretapping can only be done at the investigation phase, so when there has been obtained initial evidence that, for instance, the certain person or parties are indisputably suspected of being involved in corruption, legally this must be clearly disclosed so that the corruption act can be intervened. From internal perspective, all of the wiretapping done must be checked and be done on the basis of an investigation.

If examined with most OTT cases, the operations carried out by the KPK are certainly based on information from the public of the alleged corrupt behavior and by using a wiretapping system as initial basis to make arrests. In presenting evidence at court, it is common that wiretap becomes very important evidence, though the results of wiretapping are not the only means of evidence; as it is known that in criminal procedural law there is a minimum of two pieces of sufficient evidence for an investigation to be carried out. The legal basis used by KPK in conducting wiretapping is the Article 12 (a), which reads;

"In carrying out the tasks of investigation and prosecution as referred in Article 6 letter c, the Corruption Eradication Commission has the authority to: a. tapping and recording conversations;"

The provision of above article clearly states that KPK has the authority to conduct wiretapping or interception in corruption cases. This can also be seen from Law Number 7 of 2006 concerning the United Nations Anti-Corruption Conference Article 50 which states that in eradicating corruption cases observations can be made on electronic communications. Hence, the view that that wiretapping is illegal and without authority can be concluded as baseless.

Furthermore, wiretapping is closely related to the implementation of OTT the KPK has been conducting. In fact, in carrying out such operations the Commission uses Article 111 paragraph (1) of the Criminal Procedure Code, which reads:

"In the case of being caught red-handed, everyone has the right, while everyone who has the authority in the task of order, peace and public security is obliged to arrest the suspect to be submitted along with or without evidence to the investigator"

The above article is a reference for KPK to be able to carry out OTT, that which KPK has the authority to conduct especially in corruption cases. The article also negates the opinions of OTT being illegal, violates the law, disrespect one's privacy, violates human rights and so on.

In regard to the issue of human rights when associated to the OTT process, such as the wiretapping process, it can simply be interpreted as a violation of human rights because it enters a person's area of privacy. However, if understood carefully by referring to the constitution, for instance, indeed all citizens have the right as there is the human rights term to communicate. When there are intercepts (wiretapping), there are certain parties entering the citizen's communication network and indeed it is seen as a violation of human rights. However, it can be held as a very general construction of thought. It should also be noted that there are also exceptions in the constitution, if then actions taken are to protect greater human rights. It is possible for necessary tool to be used so that the crime is revealed, noting that authority must be set in the law. In the KPK's own legality regarding wiretapping as mentioned above, the rules on wiretapping can be seen in Article 12 of the Law on Corruption Eradication Commission, which clearly regulates the authority that KPK can conduct wiretapping or recording, with by doing so, the cases being investigated can open up information, for instance, that a large number of officials collude with certain private sector to seize management of certain projects, then receive money and other kind of things.

From this description, it can be understood that in essence OTT is the same as the situation of being caught red-handed in Article 1 paragraph 19 of the Criminal Procedure Code, but the term OTT is specifically intended for crimes of corruption. More can be seen in Article 1 paragraph (19) KUHAP as interpreted in Article 111 paragraph (1), which reads:

"Caught red-handed is the arrest of a person when he is committing a crime, or immediately after a while the crime was committed, or shortly after being called upon if the public is the person who committed it, or if a moment later he is found the object allegedly has been used to commit that criminal offense which shows that he is the culprit or is participating in committing or helping to carry out the crime. "

As the article states, there are four situations in which a person is said to be caught red-handed: (1) someone is caught while committing a crime; (2) the arrest of a person immediately after a while the crime is committed; (3) the arrest of a person is then called upon by the general public as the person who did it; and (4) if a moment later, a person who commits a criminal offense is found the object allegedly used to commit the crime. Moreover, the Criminal Procedure Code actually does not only regulate the conditions of a person considered being caught red-handed. The Criminal Procedure Code itself provides coverage to the perpetrators. Not only the material actor (*dader materiele*) but also other participants whether the person who gives the order, participates in the act or party/person who proposes certain assistance.

The term OTT was created by law enforcement officials to facilitate the mention and when we look again at the actual name of the arrest operation itself, it is an operation to eradicate corruption. Hence object of study in OTT is the same as the object that was caught red-handed in the Criminal Procedure Code, which generally describes four categories of perpetrators allegedly committing a crime. It is just that in conducting OTT, law enforcement authorities are authorized to conduct wiretaps in revealing the alleged corruption, this is done given the difficulty in disclosing the modus operandi corruption crimes because of covert and evidence that are intentionally to be removed. With the existence of OTT, it is easier for KPK to prevent and take action in carrying out their duties to prove corruption. Moreover, the wiretapping conducted by the KPK is only in the process of investigation, which aims to determine whether there is a criminal offense.

However, it is also important to understand that KPK, in gathering information especially in the OTT case, is not only fixated by using wiretapping, the Commission also has other sources of information such as reports from the public. Moreover, the wiretapping done is only one of the evidences, and therefore the need for other evidence that has a connection to support it. In the course of cases that have been processed by the KPK, many suspects are determined during the process of developing OTT cases. So far it has also been seen that corruption cases obtained through OTT have always been valid and the perpetrators convicted. Formally, the OTT process carried out by the KPK has been officially tested by a judicial institution, which then proves that the OTT has strong legality and this dismisses opinions stating that the OTT violates the constitution.

The Power of Evidence Obtained through OTT in Corruption Cases

As it is known that the process of verification carried out jointly by three parties: judges, prosecutors and defendants who may be accompanied by legal counsel, all of these aspects have been determined and regulated by the Act. The entire legal provisions governing all aspects of proving is what is called the law of

proof. When examined from its location within the juridical framework, the evidentiary aspect is somewhat unique as it can be classified in the formal procedural law/formal criminal law or material criminal law. When examined more deeply, however, there is a polarization of thought in the aspects of the evidence being categorized into material criminal law because it is influenced by the approach of civil law, therefore it is included in the category of material civil law and formal civil law (civil procedural law). However, after the Criminal Procedure Code comes to effect, the evidentiary aspect appears to be regulated in the provisions of the Formal Criminal Law.

As a codification of procedural law, general evidentiary law is contained in the Criminal Procedure Code. In addition, to complement or as an exception to the general evidentiary law, it is also possible in the evidentiary law regarding specific / certain criminal acts formed outside the codification, such as corruption.

Basically, the matter of evidence is limitedly regulated in the provisions of Article 184 paragraph (1) of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions, and statements of the accused. Although the lead evidence is mentioned in the fourth order, it does not imply that this evidence has a inferior effect to reconstruct the event than the evidences in which orders are above it. Proving system do not recognize the power of proof based on the order. One thing to note that the power of influence or strength of evidence in article 184 paragraph (1) of the Criminal Procedure Code is the similar: one is not superior than the other. This is also indicated in the provisions concerning the minimum of proof in the article 183 of the Criminal Procedure Code, especially in the clause "at least two valid proofs" which shows that the value or strength of influence of each evidence is the same. One piece of evidence can be the lead and the other can be in the form of other types. For example, the defendant's statement or witness's statement is sufficient to meet the judge's conviction that a criminal act has indeed taken place and the defendant is the guilty.

Although basically the influence of each evidence is the same, but it could be the judge's judgment. This is because in exercising his/her right to judge evidence, judges may be presented with many pieces of evidence. This causes the power of influence in forming different judges' beliefs. In fact, that belief is very important in the effort to reconstruct the event being handled.

Based on Article 184 of the Criminal Procedure Code, what is meant by valid evidence is (a) witness statement, (b) expert statement, (c) letters, (d) leads and e) defendant's statement. The expansion of the evidence available in the Criminal Procedure Code is listed in Article 26A of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Eradication of Corruption Crime, which states that the legal evidence in the form of leads as referred to in Article 188 paragraph (2) of Law No. 8 of 1981 concerning Criminal Procedure Law, specifically for corruption, can also be obtained from:

- a. Evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices or something similar.
- b. Documents, i.e. any data or information that can be seen, read, and/or heard that can be issued with or without assistance or facilities, whether contained on paper, any physical object other than paper, or recorded electronically, in the form of text, sound, images, maps, designs, photos, letters, signs, numbers or perforations that contain meaning.

Based on the above provisions, it can be understood that the known evidence so far are only five types of evidence as stated in Article 184 of the Criminal Procedure Code. After there are other provisions regulating new evidence in the special criminal law that is evidence obtained from electronic information as an extension of lead evidence as stated in Article 26A of the UUPTPK and as stipulated in Article 1 paragraph (1) and paragraph (4) shows that voice recordings can be classified as electronic information or electronic documents based on Act Number 11 of 2008 concerning Electronic Information and Transactions. Formally it can be concluded that the use of electronic information as evidence has equal value of other evidences.

In OTT process carried out by the KPK, the evidence of electronic information obtained through wiretapping is a very important evidence to determine that a person can be named a suspect whom can then be investigated. Many big cases are revealed through the results of wiretapping and are concretized with sting operations. Some officials have been exposed through OTT in alleged corruption cases including Akil Mochtar, then Chair of the Constitutional Court, who allegedly accepted bribes for two dispute cases of in Gunung Mas district elections, Central Kalimantan, and Lebak, Banten. Another case, for example, is the case of Lutfi Hasan Ishaq, which was known in chronology that Ahmad Fathanah was identified to have spoken with him regarding the imported beef arrangement. The conversations took place on January 9, 2013 long before they were arrested. The transcript of this conversation between identified cellphone numbers on January 9, 2013, was shown in the Corruption Court. The case was convicted by a panel of judges at the Corruption Court.

In the case of M. Akil Mochtar, the panel of judges in the cassation decision adjudicated as stated in the ruling No: 336 K / Pid. Sus / 2015 Date. 23 February 2015 which states: "receiving a memorandum of appeal filed by the Public Prosecutor, Improving Decision No. 63 / PID / TPK / 2014 / PT.DKI, Criminal imprisonment: life and fines: Rp10,000,000,000, -Course costs: Rp2,500-." Akil Mochtar was proven that he

out has been officially tested by a judicial institution, which proves that the Operation has strong legality, and this immediately defies opinions stating that OTT violates the constitution.

The expansion of evidence available in the Criminal Procedure Code is listed in Article 26A of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which states that legal evidence is in the form of leads. After there are provisions governing new evidence in a criminal act of corruption obtained from electronic information, KPK can conduct wiretapping to arrest the persons alleged of corruption. Evidence from electronic information has power that is strong enough to prove the defendant guilty. Recordings obtained from wiretapping are carried out with a strict examination and full caution. The results of the recording are analyzed by a competent team of experts to be explained as a guide during the trial in order to convince the judge in giving a verdict to the defendant.

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Wasdar. " The Proving Existence of Sting Operation in Corruption Criminal Act in Indonesia." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 12, 2019, pp. 20-26.