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Omnibus Law Opportunities And Challenges Towards
Entrepreneurs And Labor : Comparative Review

June 27 2020

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*" Omnibus Law Opportunities And Challenges Towards
Entrepreneurs And Labor : Comparative Review law"*

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*" Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor
: Comparative Review"*

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Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

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UTILIZATION OF VILLAGE FUNDS ACCORDING TO LAW NO. 6 OF 2014 TO PREVENT CRIMINAL ACT OF CORRUPTION

M. Rohmidhi Srikusuma
103018111163

Abstract

It has been written in Law No. 6 of 2014 concerning Villages and one of the regulations regarding village financial resources that oversight needs to be strengthened because village funds, which are part of the scope of state finances, must be monitored by state finances to prevent corruption. Legally, in the utilization of village funds in the context of village development. The Ministry of Villages and Underdeveloped and Outermost Regions (Kemendes PDTT) has also made clear the priorities for the use of village funds through Minister of Village Decree No. 21 of 2016, so that the funds used appear transparent for development. The Village Law also guarantees citizens' participation to be actively involved in monitoring village development. Article 82 of the Village Law expressly states the community's right to obtain information and is actively involved in overseeing the implementation of development to avoid corruption. Liability for criminal sanctions in the management of the Village Fund can be carried out in the event of a criminal act of corruption. In the case of criminal acts of corruption, the types can be grouped into seven types of corruption, namely: (1) types of corruption that harm the country's finances; (2) bribery; (3) embezzlement in position; (4) extortion; (5) cheating; (6) conflicts of interest in procurement, and (7) gratuities. The government and the village community need to be active by preventing the misuse of funds. The research method used is doctrinal law through qualitative descriptive methods, which by using a constructive paradigm. This research belongs to the category of sociolegal research. Data collection used through interviews and literature studies. There are several techniques that can be used to determine the validity of the data, namely: triangulation techniques between data sources, checking the truth of information to informants that have been written by researchers (member checks) and discussing and seminar with peer themes in the department of study learning (peer debriefing). Therefore, the important role of the government both central and regional in making arrangements and utilization of village funds in order to prevent corruption. In utilizing village funds, it can be used for village development, as well as improving the welfare of village communities. Therefore, the Commission of Corruption Eradication (KPK) was formed to always focus on looking at various behaviors as an indication of corruption. Based on Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Eradication of Corruption.

Keywords: Village Fund, Law No. 6 of 2014, Corruption

A. Introduction

Villages or other names have been existed before the Unitary State of the Republic of Indonesia was formed. As proof of its existence, the Elucidation of Article 18 of the 1945 Constitution of the Republic of Indonesia (before the amendment) states that “In the territory of the Republic of Indonesia there are approximately 250”*Zelfbesturende landschappen* “and” *Volksgemeenschappen* “, such as villages in Java and Bali, Nagari in Minangkabau, hamlets, and clans in Palembang, and so on. These regions have an original composition and can, therefore, be considered as special regions.¹

In connection with the composition and administration of the Regional Government, after the amendment to the 1945 Constitution of the Republic of Indonesia, the Village arrangement or other names in terms of government refer to the provisions of Article 18 paragraph (7), which confirms that regulated in law “. That means that Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia opens up the possibility of a government structure in the Indonesian government system. The village has a village income source consisting of original Village income, revenue sharing from regional taxes and district/city levies, part of the central and regional financial balance funds received by the district/city, budget allocation from the State Budget and Revenue, financial assistance from Provincial Regional Revenue and Expenditure Budgets and Regency / City Regional Revenue and Expenditure Budgets, as well as non-binding grants and contributions from third parties.²

Based on Law No. 6 of 2014 concerning Villages, Villages are given the authority to regulate and administer their authority in accordance with the needs and priorities of the village. This means that the Village Fund will be used to fund the overall authority of the village in accordance with the needs and priorities of the Village Fund. However, given that the Village Fund is sourced from the Central Expenditure, to optimize the use of the Village Fund, the government is given the authority to set priorities for the use of the Village Fund to support the Village development program and the empowerment of the Village community. The fund use’s prioritization remains in line with the authority that is the village’s responsibility.³

Philosophically, the use of village funds is to improve the welfare of village communities, which is in accordance with the village development goals mandated in Law Number 6 of 2014, which aims to improve the welfare of village communities and the quality of human life and poverty reduction, allocation of Village Funds more consider the poverty level.⁴

Article 80 of Law No. 6 of 2014 concerning Villages states that village development planning is carried out by involving the village community. This provision is further elaborated in PP No. 43 of 2014 concerning Regulation of the Implementation of Law No. 6 of 2014 concerning Villages, namely that community participation in the village development planning process is carried out through the implementation of Village Deliberations (Musdes) and Village Development Planning Deliberations (Musrenbang Desa).⁵

Efforts to monitor and watch over village development and village financial management are expected to encourage village government accountability so that it will have a positive impact on the village head and his apparatus in running the government. Thus, supervision does not mean that villagers do not trust the village government’s financial development and management processes. Village communities can carry out supervision and monitoring of village development and village budget management in three stages, namely

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1. Republic of Indonesia Law No. 6 of 2014 Regarding Villages
 2. Tim VisiYustisia, Law No. 6 of 2014 concerning Villages and Related Regulations, (Jakarta: Visimedia, 2015), p. 105
 3. S.D.S. Wiyanto, Agar Dana Desa Terkawal, (Jakarta: Sekretariat General of the Indonesian Ministry of Finance, 2014), p. 11
 4. VisiYustisiaTeam, Law No. 6 of 2014 concerning Villages and Related Regulations, (Jakarta: Visimedia, 2015),p. 270.
 5. Regulations of the Republic of Indonesia Article 80 Law No. 6 of 2014 concerning Villages.

the planning stage, the implementation phase, and the reporting and accountability stage.

Criminal liability in the management of Village Funds based on Government Regulation No. 8 of 2016 is not regulated. Sanctions regulated in PP RI No. 8 of 2016 are only administrative sanctions mentioned in Article 17 No. (3) and (4), namely: Article 17 No. (3): If the Minister has not received the documents as referred to in paragraph (1) or the regent/mayor has not yet received the documents referred to in paragraph (2), the Minister or regent/mayor imposes administrative sanctions in the form of delaying the distribution of Village Funds until receipt of the documents. Moreover, Article 17 No. (4): Further provisions on the procedure for imposing administrative sanctions, as referred to in paragraph (3) shall be regulated by Ministerial Regulation.⁶

Regarding village funds affairs, which is a hot topic for various groups, the Corruption Eradication Commission (KPK) has found several problems in managing village funds. The finding was obtained after the KPK conducted a study of the Village Law and a budget of Rp. 20,7 trillion in the 2015 Revised State Budget. The KPK found 14 findings in four terms, namely institutional regulation, governance, supervision, and human resources. ICW researchers, in the period 2010-2015, recorded 133 cases of corruption occurred in the village; 186 people were declared suspects and estimated to cost the state 205 billion rupiahs. According to ICW, from the number of suspects, the village head was the most. There were 122 village heads followed by 26 village officials, 14 from the village economic activities, 11 from other people, 7 from the National Community Empowerment Program (PNPM), 4 from farmers' groups, and 2 from partners.⁷

After analyzing these cases, ICW found the three most forms of corruption in the village: embezzlement of funds, misuse of the budget, and abuse of authority. Most often, it is embezzlement of funds because village officials see such significant funds tempted and do not know what they will do.⁸ Based on the explanation above, it will be explained how the utilization of village funds according to Law No. 6 of 2014 to prevent corruption.

C. Research Method

The research in this article uses a constructive paradigm. This type of research is doctrinal legal research, a legal research method conducted by examining the legislation, library materials, or secondary data. In this article, the research is analytical descriptive. This research belongs to the category of sociolegal research. Data sources used are as follows:

- (a) Primary data obtained directly through research in the field, including information from respondents relating to the object of research and practice that can be seen and related to the object of research.
- (b) Secondary data obtained from research studies and legal materials in the form of documents, archives, legislation, and various other literature. This secondary data is obtained from:⁹
 - 1) Primary Legal Materials
 - 2) Secondary Legal Materials

6. Endah Dwi Winarni, *Pertanggungjawaban Pidana Dalam Pengelolaan Dana Desa Berdasarkan PP Nomor 8 Tahun 2016 (Studi Kasus Di Desa Srikaton Kecamatan Jaken Kabupaten Pati)*, *Journal of Legal Sovereignty* Vol. 1. No. 1 March 2018, 271-282, pp. 278-279.

7. KPK Republic of Indonesia, *Understanding to Eradicate Corruption*, (Jakarta: KPK, 2015), p. 32

8. KPK Republik Indonesia, *Memahami untuk Membasmi Tindak Pidana Korupsi*, (Jakarta: KPK, 2015), hlm. 32

9. Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Pengantar Singkat*, (Jakarta: PT Raja Grafindo Persada, 2003), p. 13

3) Tertiary Legal Materials

Data collection techniques used in this study include field research or interviews and literature studies. Analysis of the data used in this research is qualitative data analysis. The data in this study were analyzed using qualitative descriptive methods.

Several techniques can be used in this study to determine the validity of the data,

- a. Triangulation techniques between data sources, data collection techniques, and data collection.
- b. Checking the correctness of information to the informants that has been written by the researcher in the research report (member check).
- c. Will discuss and disseminate with peers in the department of study learning (peer debriefing), including corrections under the supervisors.

D. Discussion

1. The Definition of Corruption

Before discussing the criminal act of corruption, it will be explained in advance literally from the word crime and corruption. Etymologically, a criminal act or also commonly referred to as a criminal act is a term that contains a basic understanding in the science of criminal law, formed by awareness in giving certain characteristics to criminal law events. In legislation that uses the term criminal act (in Emergency Law No. 1 of 1951), and the term criminal act in the law on the eradication of corruption, subversion, narcotics, economic, etc. The criminal act is also often called *delict*¹⁰, which is an act that can be subject to punishment for violating the rules of criminal law.¹¹

The definition of a criminal act of corruption is an activity carried out to enrich oneself or a group, where the activity violates the law because it has harmed the nation and state.¹²

According to Law Number 31 of 1999 about Eradication of Corruption, the definition of corruption in article 2 paragraph (1), namely: Any person who unlawfully commits acts of enriching himself or others or a corporation that can harm the country's finances or the economy state, shall be liable to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of no less than 200,000,000.00 IDR (two hundred million rupiah) and a maximum of 1,000,000,000.00 IDR (one billion rupiah).¹³

Then further in Article 3 it is explained that "Anyone who has the purpose of benefiting himself or another person or a corporation, misusing the authority, opportunity or means available to him, because of a position or position that can harm the state finances or the economy of the country", is liable to life imprisonment or imprisonment of at least one (1) year and a maximum of 20 (twenty years) and or a fine of at least 50,000,000.00 IDR (fifty million rupiah) and a maximum of 1,000,000,000.00 IDR (one billion rupiah).¹⁴

From this understanding the elements of corruption can be described as follow:

- a. Acts against the law

10. Pipin Syarifin, *Criminal Law in Indonesia*, (Bandung: Pustaka Setia, 2000), p. 51

11. Indonesian Dictionary (KBBI), in <https://www.kbbi.web.id/delik>, Access 25 June 2020.

12. Marwan Mas, *Eradication of the Corruption Crime*, 1st Ed.(Bogor: Ghalia Indonesia, 2014), p.11.

13. General Explanation of the Law of the Republic of Indonesia Number 31 of 1999 about Eradication of Corruption Crimes

14. Republic of Indonesia Law Number 31 of 1999 about Eradication of Corruption

- b. Enrich yourself or other people or corporations
- c. Harm the country's finances or the country's economy
- d. Abuse the authority, opportunity or means available to him because of his position or position.¹⁵

2. The Utilization of Village Funds According to Law Number 6 of 2014 to Prevent Corruption

The Village Fund is one of the sources of Village Finance as stipulated in Law No. 6 of 2014 concerning Villages. Village Funds are funds sourced from the State Revenue and Expenditure Budget allocated for Villages that are transferred through the Regency / City Regional Revenue and Expenditure Budget and are used to finance governance, development implementation, community financing, and community empowerment. To increase the effectiveness and efficiency of the use of Village Funds, a special regulation regarding Village Funds was formed which is derived from Law Number 6 of 2014 concerning Villages, namely Government Regulation of the Republic of Indonesia Number 8 of 2016 concerning Second Amendment to Government Regulation Number 60 of 2014 concerning Village Funds are sourced from the State Budget.¹⁶

The government regulation explained that the regulation regarding Village Funds sourced from the National Budget was intended, among others, to increase the effectiveness and efficiency of the use of Village Funds by improving the stages of Village Fund distribution. The acceleration of the distribution of Village Funds to Villages must still pay attention to aspects of accountability.¹⁷ Given the current allocation of village funds focused on rural infrastructure development and community empowerment, it turns out that in the implementation of the management of village funds many corrupt practices occur. Whether intentionally or unintentionally (due to a lack of understanding of how to use and administrative reports) by village officials and anyone related to the use of village funds.¹⁸

The budget allocation for the Village Fund is set at 10% (ten percent) of the total Transfer Funds to the Regions and will be met in stages according to the ability of the APBN. In the transition period, before the Village Fund reaches 10% (ten percent), the Village Fund budget is met through the reallocation of the Central Expenditure of the Village-based program. The ministry / agency proposes a budget for the Village-based program to the Minister to be determined as a source of the Village Fund. In the event that the Village Fund has been met by 10% (ten percent) of the total Transfer Funds to the Regions, the budgeting fully follows the State General Treasurer fund budgeting mechanism that has been regulated in accordance with statutory provisions.¹⁹

Source of Village Funds proposed by ministries / agencies and those stipulated by the Minister will be placed as a non-ministerial / institutional Central Expenditure as a Village Fund reserve. The Village Fund Reserves are proposed by the Government in the framework of discussing the Draft State Budget and the Draft State Budget Law. The Village Fund Reserves that have been approved by the House of Representatives will be determined as Village Funds which are part of the Transfer to Regional and Village Budget. The

15. Ikhwan Fahrojih, et al, *Understand and Fight Corruption*, (Jakarta: Yappika and Malang Corruption Watch (MCW), 2005), p. 10

16. Tri Novita Sari Manihuruk, *Law Enforcement for Village Fund Corruption in Kampar District*, *Journal of Legal Ideas*. Vol. 1 No. 1 (2019): 22-45, p. 23.

17. Tri Novita Sari Manihuruk, *Law Enforcement for Village Fund Corruption in Kampar District*, *Journal of Legal Ideas*. Vol. 1 No. 1 (2019): 22-45, p. 23.

18. Bunga, Marten, Aan Aswari and Hardianto Djanggih, "The Conception of Rescuing Village Funds from Corruption", *Journal of the Holrev Faculty of Law*, Vol. 2, Number 2, 2018, p. 449-459.

19. C. Basri, *Villages Not Ready to Manage Large Village Funds*, (Jakarta: Ministry of Finance Republic of Indonesia, 2014), p. 27

mechanism was adopted so that the fulfillment of the Village Fund could still be seen from the transfer of the Central Expenditure to the Village Fund in the form of a Transfer Fund to the Regions. In addition, the mechanism also gives a strong commitment to the Government and the House of Representatives to empower villages more.²⁰

The amount of the Village Fund determined in the APBN is allocated to the Village in 2 (two) stages. In the first stage, the Minister allocates Village Funds to regencies / cities in accordance with the number of Villages based on a variable population, area and poverty rate in a certain weight. The calculation results are then multiplied by the construction expensibility index as an indicator that reflects the level of geographical difficulty. In the second stage, based on the amount of the Village Fund for each district / city, the regent / mayor allocates the Village Fund to each Village. The regent / mayor is given the authority to determine the variable weight of the village geographical difficulty level as one of the calculation variables according to the characteristics of the region. The level of geographical difficulty is indicated by factors such as the availability of basic services and the conditions of infrastructure and transportation.²¹

Juridically, the use of village funds is for village development. The Ministry of Villages and Underdeveloped and Outermost Regions (Kemendes PDRT) has also clearly stipulated the priority of the use of village funds through Permendesa Number 21 of 2016. The objectives of the making of Permendesa No. 21/2016 include:

1. As a reference for the Village in determining programs and activities for the implementation of the Authority for Originating Rights and the Village-Scale Local Authority funded by the Village Fund;
2. As a reference for Regency / City Governments in preparing Technical Guidelines for the Use of Village Funds;
3. As a reference for the Government in monitoring and evaluating the use of the Village Fund.

While the field of activities for priority use of village funds in 2016 based on Permendesa Number 21 of 2016 there are only 2 (two) fields of activity namely the field of Development and Empowerment of Village Communities. In order to realize an orderly, transparent, accountable and quality Village Fund management, the Government and regencies / cities are given the authority to be able to impose sanctions in the form of delaying the distribution of Village Funds in the event that reports on the use of Village Funds are not delivered late. In addition, the Government and district / city may also impose sanctions in the form of reducing Village Funds if the use of these funds is not in accordance with the priority of the use of Village Funds, general guidelines, technical guidelines for activities, or depositing money in the form of deposits for more than 2 (two) months.²²

In Article 81 paragraph (4) it is stated that local scale village development is carried out by the village itself. While the implementation of sectoral programs that enter the village is informed to the village government to be integrated with village development. On the other hand, this law presents a considerable risk because many villages do not have experience in managing substantial funds. The potential risks that are quite apparent are the misuse or irregularities in the use of funds (fraud) by certain parties and also the existence of vertical and horizontal conflicts at the village level. Abuse / deviation occurs because of 3 conditions commonly referred to as "*Fraud Triangle*"²³ namely: *opportunity*, *pressure* due to attitude or character (*rationalization*), and in the management of the Village Fund the three conditions are very likely to occur, for this reason, both the government and the village community need to actively prevent

23. J.T. Wells, Corporate Fraud Handbook: Prevention and Detection, 3rd edition, (New Jersey: Hoboken, John Wiley & Sons, Inc., 2011), p. 112.

the occurrence misuse of funds and the occurrence of conflict by jointly guarding the village development process.

The Village Law guarantees the participation of citizens to be actively involved in the process of supervision and monitoring of village development. Article 82 of the Village Law expressly states the right of communities to obtain information and is actively involved in overseeing the implementation of development. Findings from the results of supervision and monitoring, including complaints about the implementation of village development, can be communicated by the community to the village government and the Village Consultative Body (BPD). The involvement of the village community in overseeing and monitoring village development, can also be done by providing responses to the annual report on the implementation of village development in the Village Conference.²⁴

Liability for criminal sanctions in the management of the Village Fund can be carried out in the event of a criminal act of corruption. In the case of criminal acts of corruption, the types can be grouped into seven types of corruption, namely: (1) types of corruption that harm the country's finances; (2) bribery is bribed; (3) embezzlement in office; (4) extortion; (5) cheating; (6) conflicts of interest in procurement, and (7) gratuities. The types of corruption above are part of the way how to understand the meaning of corruption. The notion of corruption has actually been stated explicitly and clearly in Law Number 3 of 1971 concerning the eradication of corruption. In the Act, the notion of corruption mostly refers to the Criminal Law Act (Book of Criminal Law) that was born before this country became independent. But until now the public's understanding of corruption is still lacking.²⁵

In order to understand the notion of corruption in depth and comprehensively it is not easy. Therefore, the KPK was formed to focus on looking at various behaviors as indications of corruption. Based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption, Corruption shows that the habit of corrupt behavior which has been considered by the public as normal and normal even though it is included in the form of criminal acts of corruption.²⁶

D. Closing

The existence of Law No. 6 of 2014 concerning Villages provides a strong basis for village communities to participate and trustfully lead in village development. It was explained in this Law that a large amount of money had never been released before in the management of village finances, both in the government budget or in the village's authority to manage the resources in his village. In this law there is also a considerable risk, because many in the villages do not have experience in managing substantial funds. It results in a potential risk that is quite visible with the misuse or deviation of the use of funds (fraud) from certain parties. Misuse or deviation that occurs due to the 3 conditions commonly referred to as "Fraud Triangle", namely: the opportunity (opportunity), the pressure (pressure) and because of the attitude and character (rationalization). It is extremely vulnerable to occur when managing village funds, so it is better to prevent them.

Therefore, the KPK was formed to focus more closely on behavior as an indication of corruption. Based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption, this is done as an effort to prevent.

24. Regulations of the Law of the Republic of Indonesia Article 82 Number 6 of 2014 concerning Villages.

25. The Corruption Eradication Commission of the Republic of Indonesia, Understanding to Eradicate Corruption, (Jakarta: KPK, 2015), p. 1

26. General Explanation of the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption.

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