

# The Existence Of Illegal Sweeping In The Constitutional Law Perspective

Dimas Dyonata Aswitok  
Faculty of Law  
Universitas Trunojoyo  
Madura, Indonesia

Yudi Widagdo Harimurti  
Faculty of Law  
Universitas Trunojoyo  
Madura, Indonesia

**Abstract**— *The establishment of state institutions with duties, functions and authority to eradicate corruption is nothing new in the institutional system existing in the Republic of Indonesia. However, the formation of these state institutions has the potential to gain overlap of authorities between one institution and the other state institutions which have the same duties, functions and powers, one of which is the Task Force Clean Sweep of Illegal Levies. This institution was formed as an effort to eradicate the practice of illegal levies in Indonesia, in which it is also part of the criminal act of corruption. Therefore, it is necessary to establish arrangement related to the existence of Department of Task Force Clean Sweep of Illegal Levies to overcome the corruption matters. In regards to this research, this thesis employed normative law research method by examining the rules of law that have been applied and related to the formation of Task Force Clean Sweep of Illegal Levies, by using statue approach, historical approach and comparative approach. The result of this research showed that the formation of new state institution that has function and authority to perform corruption eradication, e.g. Task Force Clean Sweep of Illegal Levies, must consider some aspects such as task, functions and the other quality. On the other hand, the arrangement of the Task Force Clean Sweep of Illegal Levies must minimize the potential for overlapping that will occur with other state institutions.*

**Keywords**— *Existence, Task Force Clean Sweep of Illegal Levies, Constitutional Law;*

## I. INTRODUCTION

Public services in Indonesia such as public services for making Vehicle Registration Certificates (STNK) in the One Roof System (SAMSAT), making Electronic Residence Identification Cards (E-KTP) at the Civil Registry (DISDUKCAPIL) and issuance of permits in the One-Stop Permit Services Board (BLPT) and other government agencies that provide public services are still considered poor. This can be seen from the rampant illegal levies (in Bahasa Indonesia it is more popular with the term *Pungli*) or mal-administrative actions amounted to 51% in 2016, according to a report from the Ombudsman of the Republic of Indonesia (ORI).

Illegal levies practice still often occurs because there is still no maximum supervision carried out by the internal supervision system implemented by each institution. Other efforts in taking action against illegal levies actions have

actually been made, for instance during the New Order administration, the government issued Presidential Instruction (INPRES) Number 9 of 1977 concerning Orderly Operations. The orderly operation itself was tasked in eradicating illegal levies, controlling stealth money, controlling local governments and departments, coordinated by the Minister for Ordering the State Apparatus and the Chief of Staff for the Command for Operations for the Restoration of Security and Order (KASKOKAMTIB). After the Reformation Era, an effort to eradicate illegal levies actions was also carried out, marked by the issuance of Presidential Instruction No. 5 of 2004 concerning the Acceleration of Corruption Eradication.

There are 12 instructions to bureaucratic leaders such as instructions to improve the quality of public services both in the form of services and licensing through transparency and standardization of services, which includes requirements, target time of completion, and tariff fees to be paid by the public to get these services in accordance with the laws and regulations. In 2011, the President issued Presidential Instruction Number 17 of 2011 concerning Actions to Prevent and Eradicate Corruption[1].

As aforementioned, many regulations have been issued to eradicate the practice of illegal levies, but the practice of illegal levies still continues. For the period of 2014-2016, there were 21070 reports related to illegal levies coming to the Presidential Staff Office (KSP) and 11.16% of them have not been followed up. While reports submitted to the Indonesian National Police (POLRI) numbered approximately 2230 reports, of which 70% had not been followed up. On October 11, 2016 the Metro Jaya Regional Police together with the Indonesian National Police Headquarters conducted red-handed operation (OTT) against officials in the Ministry of Transportation (KEMENHUB).

Based on the abovementioned events, the President instructed the establishment of the Task Force Clean Sweep of Illegal Levies (SATGAS SABER PUNGLI) through the Presidential Regulation (PERPRES) Number 87 of 2016 concerning the Task Force Clean Sweep of Illegal Levies[2]. The Task Force Clean Sweep of Illegal Levies consists of the Coordinating Ministry for Political, Legal

and Security Affairs (MENKO POLHUKAM), POLRI, Ministry of Home Affairs (KEMENDAGRI), Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), Ministry of Law and Human Rights (KEMENKUMHAM), National Intelligence Agency (BIN), Indonesian National Armed Forces (TNI), Financial Transaction Analysis Supervisory Center (PPATK) and ORI.

The Task Force Clean Sweep of Illegal Levies is chaired by the Coordinating Minister for Political, Legal and Security Affairs (MENKO POLHUKAM) as the Person in Charge or Controller and Inspector General of Indonesian National Police (IRWASUM) acting as the Chairperson.

## II. RESEARCH METHOD

In this study, the type of research used by the author was normative law research. Normative law research employs normative law case studies in the form of products of legal behavior, for example reviewing draft laws. The main point of the review is that laws are conceptualized as norms or rules that apply in society and serve as a reference for everyone's behavior so that legal research focuses on an inventory of positive law, principles and doctrine of law, legal discovery *in concreto* cases, systematic law, the extent of legal synchronization, comparative law, and legal history[4]

There were 3 approaches used by the author, namely the Statue Approach, the Comparative Approach and the Historical Approach. The first is the approach to the law (Statue Approach), is done by examining all the laws and regulations relating to the legal issues being handled. The legislative approach is an approach using legislation and regulation[5]

The author uses several regulations, besides Presidential Regulation (PERPRES) Number 87 of 2016, the other regulations that are also used are the Criminal Code (KUHP), Law Number 20 of 2001 concerning Corruption Crimes, Presidential Instruction (INPRES) Number 97 of 1977 concerning Orderly Operations, *INPRES* Number 5 of 2004 concerning the Acceleration of Corruption Eradication and *INPRES* Number 17 of 2011 concerning Corruption Prevention and Eradication Acts.

The second approach is the *Comparative Approach*. According to W. Ewald in the *Critical Comparative Law* cited by Barda Nawawi Arief, who explains the comparison of law is basically a philosophical activity. Comparative law is a study or comparative study of intellectual conceptions that exist behind the main legal institutions or institutions of one or several legal systems[6]

The third approach is the *Historical Approach*. According to Johnny Ibrahim, the historical approach is intended because each legislation has a different historical background. By knowing the historical background of the legislation, the law enforcer will have the same interpretation of the legal issues that have been regulated in

the rules of the law[7]. In this approach, the authors compare one regulation with other regulations based on the history of the formation period.

Each establishment of regulations will have different conditions in each period, such as Presidential Instruction (INPRES) Number 97 of 1977 concerning Orderly Operations, *INPRES* Number 5 of 2004 concerning the Acceleration of Corruption Eradication, *INPRES* Number 17 of 2011 concerning Actions to Prevent and Eradicate Corruption. Law Number 20 of 2001 concerning Corruption and Presidential Regulation (PERPRES) No. 87 of 2016 concerning the Establishment of the Task Force Clean Sweep of Illegal Levies. The approaches used by the author are the methods used to address the problems of state administration relating to the authority possessed by the Task Force Clean Sweep of Illegal Levies. Furthermore, the legal materials used in this study include:

### 1. Primary Legal Materials

Primary legal materials used in the writing of this thesis were: the 1945 Constitution of the Republic of Indonesia, Act Number 20 of 2001 concerning Corruption, Presidential Instruction (INPRES) Number 97 of 1977 concerning Orderly Operations, *INPRES* Number 5 of 2004 concerning the Acceleration of Corruption Eradication, *INPRES* Number 17 of 2011 concerning Actions to Prevent and Eradicate Corruption, and Presidential Regulation (PERPRES) Number 87 of 2016 concerning the Establishment of the Task Force Clean Sweep of Illegal Levies.

### 2. The secondary legal materials used in writing this thesis were as follows: Legal Literature Books, Opinions from Experts, Articles and Papers, and Journals.

### 3. Tertiary Legal Materials

Tertiary legal materials are legal materials used to explain secondary legal materials related to the writing of this thesis, which are obtained from The Official Indonesian Dictionary, Legal/Law Dictionaries and encyclopedias.

## III. RESULTS AND DISCUSSION

Optimization is a step or process to make things better. Thus, it can be interpreted that optimization is a step or method used to optimize the actions of existing agencies or institutions and has the task, function, and authority to take actions to eradicate corruption.

Eradicating corruption in this case the illegal levies practices in Indonesia is increasingly complex and far from simple. Referring to the increasing number of bodies or institutions that are tasked with eradicating corruption in Indonesia such as the Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), Corruption Eradication Commission (KPK) and most recently the formation of *SATGAS SIBER PUNGLI* (The Task Force Clean Sweep of Illegal Levies), the action needed to eradicate corruption is

actually not by forming more institutions, but it should be done by optimizing the role of the authorized body or institution to eradicate existing acts of corruption.

In the case of this research, what is meant is of course an effort or method used to optimize the duties, functions, and authorities possessed by the Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), and Corruption Eradication Commission (KPK) in an effort to eradicate corruption in Indonesia.

While performance can be interpreted as the achievements or results achieved whose parameters can be seen from the vision, mission and objectives. Agencies or institutions to eradicate corruption in Indonesia such as the Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), and Corruption Eradication Commission (KPK), should be optimized to achieve success in efforts to eradicate corruption in Indonesia. So, if the existing agency or institution is optimal, there is no need to form a new *Ad Hoc* body. Corruption criminal practices in Indonesia have existed since the beginning of Indonesia's independence. Various efforts to eradicate corruption practices have been carried out since the New Order period until the Reformation period. The efforts to eradicate corruption have been marked by the formation of teams or institutions that have the task to eradicate criminal acts corruption such as the the Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), and Corruption Eradication Commission (KPK) until the latest is the formation of The Task Force Clean Sweep of Illegal Levies (SATGAS SUNGER PUNGLI).

During President Joko Widodo's regime, he instructed the establishment of The Task Force Clean Sweep of Illegal Levies through Presidential Regulation Number 87 of 2016 concerning the Task Force Clean Sweep of Illegal Levies. This was done by President Joko Widodo on the response to the practice of illegal levies done by the officials from the Ministry of Transportation of the Republic of Indonesia who were caught in a red-handed operation (OTT) conducted by the Metro Jaya Regional Police together with the National Police Headquarters.

The composition of the Task Force Clean Sweep of Illegal Levies itself is as follows: The Coordinating Ministry for Political, Legal and Security Affairs, the Indonesian National Police, the Ministry of Home Affairs, the Attorney General's Office of the Republic of Indonesia, the Ministry of Law and Human Rights, the National Intelligence Agency, the Indonesian Armed Forces, the Center for Analytical Supervision Financial Transactions, and Ombudsman of the Republic of Indonesia.

The Task Force Clean Sweep of Illegal Levies which has the authority to eradicate illegal acts has the function:

- a. Intelligence
- b. Prevention

- c. Law enforcement
- d. Justice.

Based on the functions owned by The Task Force Clean Sweep of Illegal Levies, then some functions of The Task Force Clean Sweep of Illegal Levies itself are also owned by the Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), and Corruption Eradication Commission (KPK). Hence, there has the potential for overlapping tasks, functions and authorities among these institutions, such as the potential overlapping with the Attorney General's Office. For instance, the authority of the prosecutor's office has the same authority in the intelligence and judicial fields where such authority is also owned by The Task Force Clean Sweep of Illegal Levies (SATGAS SABER PUNGLI). Besides the potential overlapping with the Prosecutor's Office, the potential overlapping of duties, functions and authority also occurs in Corruption Eradication institutions namely *KPK* which is located in the *KPK's* authority which is in eradicating criminal acts of corruption, where illegal levies themselves are part of corrupt criminal practices. Therefore, based on this, there is a similarity of authority between the *KPK* with The Task Force Clean Sweep of Illegal Levies (SATGAS SABER PUNGLI) in eradicating criminal acts of corruption. In addition, there are similarities in duties, functions and other authorities that are also held, namely in the prevention of corruption. Moreover, there are similarities in duties, functions, and other authorities with other corruption eradication institutions such as the Attorney General's Office (KEJAGUNG), the National Police (POLRI) and the Corruption Eradication Commission (KPK) with the *SATGAS SIBER PUNGLI*, namely the enforcement function that is also owned by the three institutions.

The Task Force Clean Sweep of Illegal Levies (SATGAS SABER PUNGLI) consists of: the Coordinating Ministry of Legal and Security Politics, the Republic of Indonesia's Police, the Ministry of Home Affairs, the Attorney General's Office of the Republic of Indonesia, the Ministry of Law and Human Rights, the National Intelligence Agency, the Indonesian Armed Forces, the Center for Financial Transaction Analysis and the Ombudsman of Republic of Indonesia.

Based on the translation of the duties, functions and authority possessed by the Task Force Clean Sweep of Illegal Levies (SATGAS SIBER PUNGLI), this institution has the potential to overlap with existing corruption eradication institutions such as the Attorney General's Office (KEJAGUNG), *POLRI* and *KPK*. In addition, the organizational structure of The Task Force Clean Sweep of Illegal Levies which also consists of *KEJAGUNG RI* and *POLRI* as well as the red-handed operation (OTT) conducted by The Task Force Clean Sweep of Illegal Levies in the operation of loading and unloading labor/*tenaga kerja bongkar muat* (TKBM) *Samudera Sejahtera* Cooperative (Komura) in the Palaran Container Port Area, Samarinda,

with an initial arrest of Rp.5000000 (five million rupiahs) then Rp.6000000000 (six billion rupiahs). In addition, from the results of development then the overall total becomes Rp.256000000000 (two hundred and fifty six billion rupiah). Referring to the amount of money, the results of the development of red-handed operation (OTT) conducted by the Task Force Clean Sweep of Illegal Levies (SATGAS SIBER PUNGLI) which reach above Rp.1000000000 (one billion rupiah) should be the authority of the Corruption Eradication Commission (KPK). It is based on the authority of the *KPK* as contained in Article 11 of the *KPK* Law which states, "In carrying out the tasks referred to in article 6 letter c, the *KPK* has the authority to conduct preliminary investigation, investigation, and prosecution of acts criminal corruption which includes:

- a. Involving law enforcement officials, state administrators, and other persons who are related to corruption acts committed by law enforcement officials or state administrators;
- b. Getting attention that unsettles the community; and / or
- c. Concerning state losses of at least Rp. 1000000000 (one billion rupiahs)[8].

Based on letter c of Article 11 of Law Number 30 of 2002 concerning the *KPK* which states that the authority to eradicate corruption by causing losses to the state is Rp.1000000000 (one billion rupiah), then the practice of illegal levies should also constitutes a part of corrupt criminal practices where the practice of illegal levies causes losses to the state of up to hundreds of billions of rupiahs, precisely Rp.256000000000 (two hundred and fifty six billion rupiahs) that occur on red-handed operation (OTT) conducted by *SATGAS SABER PUNGLI* (The Task Force Clean Sweep of Illegal Levies) against *TKBM Samudera Sejahtera* Cooperative (Komura) should be the authority of the Corruption Eradication Commission (KPK) and not from the *SATGAS SABER PUNGLI*, because of overlapping duties, functions and authorities between the *SATGAS SABER PUNGLI* and the *KPK* for red-handed operation (OTT) reach figures above Rp. 1000000000 (one billion rupiah).

Related to the existence of *SATGAS SABER PUNGLI* (The Task Force Clean Sweep of Illegal Levies), the right way to use is by dissolving or eliminating the existence of The Task Force Clean Sweep of Illegal Levies as the efforts to eradicate illegal levies as part of corruption (TIPIKOR) in Indonesia. Besides, this effort is to optimize the role of the existing corruption eradication agency such as the Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), and Corruption Eradication Commission (KPK) to eradicate corruption in Indonesia, including the practice of illegal levies. In addition, for red-handed operation (OTT) both conducted by the Corruption Eradication Commission (KPK) and The Task Force Clean Sweep of Illegal Levies are also equally targeted to the regions, then if The Task Force Clean Sweep

of Illegal Levies is dissolved, it can save the state budget used for red-handed operation (OTT) instead of involving both the *KPK* and The Task Force Clean Sweep of Illegal Levies. Considering the cost of financing at red-handed operation (OTT) by the *KPK* and The Task Force Clean Sweep of Illegal Levies are both charged to the state budget.

As for the other reasons related to the dissolution or elimination of the existence of *SATGAS SABER PUNGLI* (The Task Force Clean Sweep of Illegal Levies) which has duties, functions and authorities in the case of eradication of *PUNGLI* (illegal levies) in Indonesia where the practice of illegal levies itself is one form of corruption as contained in Article 12 letter e of Law Number 31 of 1999 regarding the eradication of criminal acts of corruption (TIPIKOR) which states "public servants or state administrators who intend to benefit themselves or others unlawfully, or by abusing their authority compel someone to give something, pay, or receive payment in pieces or to do something for themselves"[9].

Based on the explanation in the article, illegal levies can be categorized as one part of corruption. Hence, since illegal levies is a form of corruption, for the tasks, functions and authorities to eradicate corruption in Indonesia one of which is owned by the Corruption Eradication Commission (KPK). In addition, because the *KPK*'s authority is in terms of eradicating corruption while illegal levies as explained above is one form of corruption, the practice of illegal levies in terms of eradicating it for duties, functions and authority is owned by *SATGAS SABER PUNGLI* (The Task Force Clean Sweep of Illegal Levies), also owned by *KPK*. In other words, *KPK* has the authority to eradicate illegal levies.

#### IV. CONCLUSIONS AND SUGGESTIONS

Based on the abovementioned explanation, there are few things that can be concluded:

1. *SATGAS SABER PUNGLI* (The Task Force Clean Sweep of Illegal Levies) has the authority to eradicate illegal acts, and has the functions of intelligence, prevention, prosecution and justice. Thus, the Task Force Clean Sweep of Illegal Levies has a function that is also owned by the Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), and Corruption Eradication Commission (KPK). Therefore, this institution has the potential for overlapping authority with existing corruption eradication institutions in Indonesia, such as *KEJAGUNG RI*, *POLRI* and *KPK*. In the organizational structure of the Task Force Clean Sweep of Illegal Levies which also consists of the *KEJAGUNG* of the Republic of Indonesia and *POLRI*, this can also increase the potential for overlapping tasks, functions and authorities possessed by the Task Force Clean

Sweep of Illegal Levies with KEJAGUNG RI and POLRI in eradicating the practice of illegal levies, where the practice of illegal levies itself is part of corruption.

2. In the case of red-handed operation (OTT) conducted by *SATGAS SIBER PUNGLI* (The Task Force Clean Sweep of Illegal Levies), overlapping duties, functions and authority occur where the largest catch of The Task Force Clean Sweep of Illegal Levies is Rp.256000000000 (two hundred fifty six billion rupiah) should have been the authority of the Corruption Eradication Commission (KPK) as mandated in letter c of Article 11 of the *KPK* Law which states that the *KPK* has the authority to carry out preliminary investigations, investigations and prosecutions of corrupt acts that “involve state losses of at least Rp. 1000000000 (one billion rupiah)”. In other words, money from red-handed operation (OTT), which reaches Rp. 1000000000 (one billion rupiah) or more, is not the authority of *SATGAS SABER PUNGLI*, but the authority of the *KPK*.

Based on consideration of the conclusions above, the suggestions that can be submitted are as follows:

1. The practice of illegal levies is part of the practice of corruption (TIPIKOR), thus, it is better to optimize the role of existing corruption eradication institutions, such as the Attorney General’s Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), and Corruption Eradication Commission (KPK) in eradicating corruption in Indonesia.
2. Considering that there is an overlap between the duties, functions, and authority of *SATGAS SABER PUNGLI* (The Task Force Clean Sweep of Illegal Levies) with the existing corruption eradication institutions such as the Attorney General’s Office of the Republic of Indonesia (KEJAGUNG RI), Indonesian National Police (POLRI), and Corruption Eradication Commission (KPK), as well as the red-handed operation (OTT) conducted by the *SATGAS SABER PUNGLI* with *KPK*, therefore, the existence of *SATGAS SABER PUNGLI* should be dissolved by the President.

#### ***References***

- [1] Abdul kadir Muhammad, "Hukum dan Penelitian Hukum" Cet.1 Bandung . Citra Aditya Bakti. 2004.
- [2] Barda Nawawi Arief, "Perbandingan Hukum Pidana Edisi Revisi" Penerbit Raja Jakarta: Grafindo Persada. Cetakan Ke-8. 2010.
- [3] Inu Kencana Syafie dan Azhari, "Sistem Politik Indonesia", Bandung, PT Refika Aditama. 2006
- [4] Johny Ibrahim. "*Teori dan Metodologi Penelitian Hukum Normatif*" Edisi Revisi. Malang: Bayupedia Publishing. 2007.
- [5] Peter Mahmud Marzuki. "Penelitian

Hukum". Jakarta: Kencana. 2010.

- [6] Trias Palupi Kurnianingrum, "Pembentukan Satuan Tugas Sapu Bersih Pungli" *Info Singkat Hukum*, Vol.VIII, Oktober, hlm.2.
- [7] Yudi Widagdo Harimurti, "Politik Hukum Pembentukan Lembaga Negara Yang Tidak Diatur Dalam UUD Negara Republik Indonesia **Disertasi**, program studi ilmu hukum Fakultas Hukum Universitas Brawijaya 2016
- [8] <https://jatim.antaranews.com/lihat/berita/194659/saber-pungli-madiun-tangkap-oknum-pns-kare>