

EXPORT CASE OF COOKING OIL RAW MATERIAL: MAFIA OR CARTEL?

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Abstract

The case of scarcity and high price of cooking oil hit a new phase with the enactment of 4 (four) suspects by the Attorney General's Office of the Republic of Indonesia on suspicion of corruption case in granting permits for CPO export facility for 2021-2022. The four suspects are the Director General of Foreign Trade of the Ministry of Trade, and 3 (three) businessmen. The President requested that this case be thoroughly investigated. The problem analyzed in this paper is whether the development of the case is more accurately pointed to the mafia or cartel. Some observers believe this case needs to be led to cartel crime. The development of cartel crime case is carried out by studying the provisions of Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The House of Representatives of Republic of Indonesia (DPR RI) through Commission III in the context of implementing the supervisory function needs to ask the Attorney General's Office to cooperate with the Food Task Force OF Indonesian National Police and the Indonesia Competition Commission (ICC/KPPU) in order to resolve this case. Furthermore, it is necessary to revamp the system so that the scarcity and price increase of cooking oil, which is detrimental to society and the country's economy, do not happen again.

Introduction

The Attorney General's Office of the Republic of Indonesia has named 4 (four) suspects in the alleged corruption case in granting permits for the 2021-2022 crude palm oil (CPO) export facility, i.e. IWW, the Director General of Foreign Trade of the Ministry of Trade, and three other suspects with the initials SMA, MPT, and PT from the private sector. (Republika, 20 April 2022,

1). SMA is the Senior Manager of Corporate Affairs of PT Pelita Agung Agrindustri/ Permata Hijau Group; MPT is the Commissioner of Wilmar Nabati Indonesia; while PT is the General Manager of PT Musim Mas. According to the Attorney General, Sanitiar Burhanuddin, the disclosure of this case began with the scarcity and price increase of cooking oil. In the investigation, the Attorney General concluded that there was



an agreement on the issuance of export permits which should have been rejected since they did not meet the requirements, which was having distributed CPO/RDB (refined, bleached, deodorized) not in accordance with domestic price or DPO (domestic price obligation) and did not distribute CPO according to DMO (domestic market obligation) 20%. (Media Indonesia, 20 April 2022, 1).

After the determination of 4 (four) suspects by the Attorney General's Office, the President of the Republic of Indonesia, Joko Widodo, explicitly stated that there was a game in the case of the scarcity of cooking oil. The President asked that this case should be thoroughly investigated. He was furious because the shortage of cooking oil led to a legal case involving official from the Ministry of Trade and high-ranking officials from cooking oil producers. Through a written statement. The Minister of Trade, M Lutfi, said that he had asked the officials in the Ministry to assist in the law enforcement process in this case. Meanwhile, the Coordinator of the Indonesian Anti-Corruption Society (MAKI) Boyamin Saiman appreciated the steps taken by the Attorney General's Office of RI in naming 4 (four) suspects in the alleged cooking oil case. Boyamin asked the Attorney General's Office to develop this case to find other names from the scope of the government and the private sector suspected of being involved. (Kompas.tv, 20 April 2022).

Deputy Attorney General for Special Crimes, Febrie Adriansyah, said that the suspects

were suspected of Article 2 and/ or Article 3 of the Corruption Eradication Law. The case is also directed at proving the state's economic loss. (Media Indonesia, 20 April 2022, 1) Article 2 of Law No.31 of 1999 concerning the Eradication of Corruption Crimes states that anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finance or the state economy, is sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a minimum penalty of Rp200,000,000.00 (two hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah). In the event that the criminal act of corruption is committed under certain circumstances, the death penalty may be imposed.

Meanwhile, the article 3 states that anyone who with the aim of benefiting himself/herself or another person or a corporation, abuses the authority, opportunity or facilities available to him/her because of a position that can harm state finance or the state economy, is sentenced to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a minimum penalty of Rp50,000,000.00 (fifty million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

Those articles in the corruption crime are linked to Law No.7 of 2014 concerning Trade (Trade Law) article 54 paragraph (1) letter a and paragraph (2) letter

a, letter b, letter e, and letter f, which states that the Government can limit the export and import of goods for the national interest with reason to protect national security or the public interest. The government can limit the export of goods on the grounds of ensuring the fulfillment of domestic needs; ensure the availability of raw materials needed by the domestic processing industry; anticipating a drastic increase in the price of certain export commodities on the international market; and/or maintain the stability of certain commodity prices in the country. According to the Attorney General, the Trade Law is only a means to act against the law, while other articles suspected will be investigated further in a short time. (news.detik.com, 19 April 2022).

The determination of the suspects in the cooking oil raw material export needs to be further developed to unravel the issues of the shortage and high price of cooking oil lately. Some developments need to be done to reveal the mafia or cartel behind this case. Based on it, the issues that will be studied in this paper is whether the development of the cooking oil case is more appropriately led to the mafia or cartel?

Mafia or Cartel?

Many parties narrate this case by suspecting the existence of the mafia. For example, researcher at the Center for Anti-Corruption Studies at Gadjah Mada University (Pukat UGM), Zaenur Rohman, who considered

that the determination of the four suspects could be an entry point for dismantling the cooking oil mafia. According to him, mafia means networking, so it is impossible to move alone, yet they involve actors from the private sector, state administrators, and the apparatus. Zaenur suspects that there are many other companies involved in the cooking oil mafia. (Media Indonesia, April 20, 2022, 1) During the Commission VI Working Meeting of the House of Representatives of RI with the Minister of Trade, the Minister even showed evidence of the existence of a cooking oil mafia in the form of receipts and based on information from the Director General of Foreign Trade of the Ministry of Trade, the suspect candidates will soon be announced. (finance.detik.com, 20 April 2022).

In the Big Dictionary of Indonesia Language, mafia is defined as a secret organization/society engaged in crime (criminal). (kbbi.kemdikbud.go.id, 20 April 2022). According to Khudori, a member of the Food Security Council Working Group, if we refer to that definition, it is inappropriate to use the word "mafia" in the case of shortage and price increase of cooking oil. According to him, the condition is more accurately called a cartel, i.e., the cooperation of a number of competing companies to coordinate their activities, so that they can control the amount of production and the price of an item/service to gain profits above a reasonable level. Classically, a cartel can be carried out through

three things, namely price, production, and marketing area. As said by Khudori, for cooking oil, the cartel behavior of producers was punished by the Indonesia Competition Commission (ICC/KPPU) in 2012. At that time 20 cooking oil factories were found guilty of committing price cartel and violating Article 4, Article 5, and Article 11 of Law Number 5 of 1999 concerning Anti-Monopoly and Unfair Business Competition. As a result of this practice, the community lost Rp1.27 trillion for branded packaged cooking oil and Rp374.3 billion for bulk cooking oil. However, at the level of appeal and cassation, this verdict was annulled because the ICC/KPPU's indirect evidence was not recognized in the procedural law of the general court. (Bisnis.com, March 24, 2022).

Still, based on the opinion written by Khudhori, according to the Indonesia Competition Commission, there are currently 4 giant cooking oil producer groups that control 46.5% of the market. They control upstream and downstream businesses: from plantation, CPO processing to cooking oil factory. With this oligopolistic market, they are free to dictate the market. Therefore, it is not surprising that even though on February 1, 2022 the Government has set 3 policies to overcome the shortage and price increase of cooking oil, i.e., to raise the mandatory domestic market obligation (DMO) of CPO, mandatory domestic price obligation (DPO). and maximum

retail price (HET) of cooking oil, the state remains powerless to control the availability and price of cooking oil. The policy should be able to collect 720,612 tons from 3.5 million tons of CPO export, with this amount the market should be flooded with cooking oil. However, it did not happen. Cooking oil was actually "lost in the market" due to the market structure of the cooking oil industry was far from perfect. As soon as the maximum retail price was revoked or the price of packaged cooking oil (basic and premium) was released to the market as of March 16, 2022, the packaged cooking oils suddenly flooded in the market. It means that when the triple policy (DMO, DPO, and HET) goes into effect on February 1, 2022, there are parties holding stock. (Bisnis.com, March 24, 2022).

By considering the reviews, Commission III of the House of Representatives in carrying out its supervisory function needs to ask the Attorney General's Office to cooperate with the Food Task Force of the Indonesian National Police, and Indonesia Competition Commission (ICC/KPPU) so that these crimes can be further investigated and developed related to cartel crime. The prohibition of cartel as regulated in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition means that business actors are prohibited from entering into agreement, with their business competitors, which intend to influence the price by regulating

the production and or marketing of goods and or services, which may result in monopolistic practices and or competition of unhealthy business.

Closing

The issue of shortage and price increase of cooking oil hit a new phase with the enactment of 4 (four) suspects by the Attorney General's Office of RI, namely IWW, Director General of Foreign Trade of the Ministry of Trade and 3 (three) businessmen from the private sector. The four were involved in the alleged corruption case in granting export permits for crude palm oil (CPO) 2021-2022 with evidence of agreement documents between the applicant and the permit giver for export approval and export approval documents to qualified exporters. Many parties appreciate the step taken by the Attorney General's Office and hope that this will become an entry point for cooking oil case that are detrimental to society and the country's economy. President Joko Widodo also requested that the case be thoroughly investigated.

At this time, the case of alleged corruption in granting permits for CPO export facility is still being studied and developed by the Attorney General's Office. Based on the results of the analysis, the development of this case needs to be directed towards a cartel. This is because even though a policy related to cooking oil has been issued, it cannot work well. The Attorney General's Office needs to cooperate with the Indonesia Competition

Commission (ICC/KPPU) and other related institutions to develop this case. Thus, the articles that need to be studied are not only the provisions in Law No.31 of 1999 concerning the Eradication of Criminal Acts of Corruption and Law No.7 of 2014 concerning Trade, but it can also be developed by using Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

Through the implementation of the supervisory function, Commission III of the House of Representatives of RI needs to ask the Attorney General's Office to cooperate with the Food Task Force of the Indonesian National Police, and the Indonesia Competition Commission as well. It is expected that the collaboration will further reveal this case thoroughly. Furthermore, after law enforcement is carried out, it is necessary to improve the system so that the scarcity of cooking oil, which is detrimental to society and the country's economy, does not recur.

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