

Crude Palm Oil Corruption: A Discourse on the Imposition of Capital Punishment

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Abstract

The study aims to discuss on the corruption of Crude Palm Oil (CPO) export cases that have led to the scarcity of cooking oil at affordable prices in Indonesia. It is harmful for the public as the Crude Palm Oil (CPO) has been exported without a permit and does not meet the requirements of Domestic Market Obligation (DMO) and Domestic Price Obligation (DPO). The study is a normative legal research employing descriptive-qualitative upon data collected through a library study. The study shows that the case of crude palm oil (CPO) export corruption made the supply of cooking oil disrupted that led to economic and political instability. In response to this, the government conducted an investigation and found several suspects of corruption cases. While the legal process running, the discourse on the application of death penalty arose within the society. It was so because this corruption occurred during the pandemic. However, the use of the capital punishment in cases of corruption is restricted because it can only be used in specified circumstances, especially when the funds are intended for dealing with dangerous situations, national natural disasters, social unrest, economic and monetary problems, and corruption repetition.

Keywords: capital punishment; corruption; crude palm oil

1. Introduction

Cooking oil is one component of basic needs that is almost never abandoned by the people of Indonesia. This staple is used almost every day, it can even be said that people are dependent on the use of cooking oil. The biggest user of this staple is of course the food industry. The reason is, the role of cooking oil is never separated from the processing of various Indonesian culinary delights. This is because of the general public's perception that food processing using cooking oil will present an attractive food texture and add a savoury taste so that the experience of eating the food becomes more delicious and memorable. This later became one of the factors behind the high use of this staple food (Soegiantoro et al, 2019).

Cooking oil is a basic need made from crude palm oil (CPO) or better known as palm oil (Mba et al, 2015). Palm oil is a vegetable oil that is still raw and through special processing so that in the end it becomes fit for consumption. Not only Indonesia, palm oil is also one of the most popular vegetable oils in foreign countries (Cisneros et al, 2021). This is because palm oil has many advantages over other types of oil. Palm oil can be processed into various

products in various industries, such as the fuel industry (as a biodiesel mixture), the cosmetic industry (as a cosmetic mixture), the chemical industry, the animal feed industry, and the food industry which produces one of the basic needs of the community, namely cooking oil (Dey et al, 2021). Based on data from the Central Statistics Agency (BPS) on October 29, 2021, the most widely used cooking oil by the Indonesian people for their daily needs is palm cooking oil. Data from the Indonesian Palm Oil Association (IPOA) even mentions that there is a 6% increase in local consumption of Indonesian palm oil from 17,349 million tons in 2020 to 18,422 million tons in 2021. This fact shows how high palm cooking oil consumption is in Indonesia (Galih, 2022).

The large number of using cooking oil causes crude palm oil (CPO) to have a considerable influence on the country's economy because it contains high economic value. The Indonesian Consumer Price Index (CPI) also states that cooking oil has a major contribution to the economy because it is one of the goods that are consumed every day so that the weight of inflation is quite high (Jongwanich & Wongcharoen, 2019). The high public interest in the use of palm cooking oil goes linearly with the amount of palm oil production in the country.

Indonesia is a country known as a palm oil producing country and is the producer to export crude palm oil (CPO) (Gaskell, 2015). This country which is known for its natural wealth is able to supply up to 5 million tons of palm oil per year with optimal support for oil palm entrepreneurs since 1911 in North Sumatra. Judging from the collective data of Indexmundi.com, Indonesia is the largest CPO producing country in the world and in 2021, Indonesia's palm oil production reached 44.5 million tons with an average growth of 3.61% per year. The Indonesian Palm Oil Association (IPOA) noted that the production of crude palm oil (CPO) in 2021 reached 46,888 million tons, even as data from the Ministry of Agriculture in 2019 stated that the total area of oil palm plantations in Indonesia spread across 26 provinces in Indonesia reached 16.38 million. Hectares. However, it is very unfortunate when the fact that the abundant palm oil wealth in the country is not in line with the recent phenomenon, namely the scarcity and soaring price of cooking oil (The Indonesian Palm Oil Association, 2022).

At the end of 2021, there is a shortage of cooking oil in the country. This scarcity has an impact on the price of domestic cooking oil soaring sharply. This incident is certainly felt directly by the people of Indonesia as users of palm cooking oil. Stocks are scarce and people are lining up in droves to buy cooking oil. This phenomenon is an irony considering that Indonesia is predicted to be the "largest palm oil producing country in the world" (Mahaputra & Saputra, 2022). For this problem, the Government is trying to find a way out in the hope of finding a bright spot, namely by issuing a number of policies. In the span of 11 - 26 January 2022, the Ministry of Trade has established four regulations for the distribution of palm oil to ensure the need for cooking oil and on 8 - 12 March 2022, the Ministry of Trade has revised the four regulations by issuing three regulations. Even though it has been trying to solve it through new policies, in reality, the polemic of the scarcity of cooking oil is still protracted and the Government continues to try to explore this problem to its roots.

In April 2022, the public was shocked by the news that the Attorney General's Office (AGO) had just named the Director General of Foreign Trade of the Ministry of Trade as a suspect in corruption in granting Export Approval (EA) for crude palm oil (CPO). The criminal act was not committed alone, but the Attorney General's Office also named 3 other suspects from the largest palm oil incentive group, including the Senior Manager of Corporate Affairs of Permata Hijau Group, Commissioner of PT Wilmar Nabati Indonesia, and General Manager

of General Affairs of PT Musim Mas. Furthermore, on March 17, 2022, the AGO again named a new suspect from the private sector, namely Lin Che Wei (LCW) alias Weibinanto Halim Djati (Reuters, 2022). The four suspects are suspected of having committed an offense by carrying out an agreement between the applicant and the licensee in the issuance of export permits which should have been rejected because they did not meet the requirements because they defined prices that were not in accordance with domestic sales prices. In addition, the suspect did not carry out his Domestic Market Obligation (DMO) obligations in distributing cooking oil domestically.

The actions of the four suspects not only resulted in state losses, but also made it difficult for the general public to obtain cooking oil because it was scarce and in the end resulted in an increase in the price of these basic necessities. Not to mention the presence of the Covid-19 pandemic which is still haunting the country. This causes the four perpetrators to potentially be sentenced to Section 2 or Section 3 of the Corruption Crime Act with the threat of life imprisonment or a minimum of four years and a maximum of 20 years (Muslimin & Putri, 2021). In addition, there is also a fine of at least Rp. 200 million and a maximum of Rp. 1 billion. The severity of the actions of the four suspects has also drawn bitter opinion from the public. The community demanded that the four of them be given the appropriate punishment in the form of the death penalty (Muthiariny, 2022). However, it should be remembered that the imposition of the death penalty is not arbitrarily imposed. There must be fulfilment of certain provisions in accordance with the laws and regulations as an act that can be sentenced to death (Monteiro, 2021).

This study aims to determine what punishment is considered the most appropriate for the corruptors of exporting cooking oil which has harmed many parties and the consideration of the death penalty which was echoed by the people. It also aims to analyze the causes and impacts of cooking oil export policies on the state and society as well as to examine the regulatory framework prepared by the government to mitigate its impacts. On the other hand, it also explores appropriate criminal penalties for perpetrators of corruption in the export of cooking oil in the midst of a pandemic that has resulted in a deteriorating community economy. The writing of this research is based on the problem of scarcity and the soaring high price of cooking oil which is motivated by the corruption of the Director General of the Ministry of Trade accompanied by parties who receive incentives from this dirty game by using policies created by the government to produce solely personal and group benefits. .

2. Method

This research is a normative legal research conducted by examining the rules of legislation. Normative legal research uses secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The three data used are obtained through secondary data, namely primary legal materials such as Law No. 31 of 1999 concerning the Eradication of Corruption, Law No. 7 of 2014 concerning Trade, and Decree of the Minister of Trade No. 170 of 2022 concerning Determination of the Amount of Distribution of Domestic Needs and Domestic Sales Price, and other supporting laws and regulations. In addition, secondary data used in terms of secondary legal materials, such as scientific journals and research results that discuss the issue of appropriate punishment for the cooking oil mafia.

The approach used in this research is the statute approach, the conceptual approach and the case approach. The statutory approach is carried out by reviewing the laws and

regulations related to the legal issues that are being discussed or studied. Furthermore, the conceptual approach comes from the views and doctrines that develop in legal science, while the case approach is carried out by examining cases related to legal issues that are used as topics of discussion in a writing. This research is then analyzed qualitatively, which is based on the legal norms contained in the laws and regulations which are analyzed and described according to the position of the case which is used as an approach in the study. The data that has been collected is then classified systematically to analyze the appropriate punishment for the people behind the scarcity of cooking oil.

3. Discussion and Analysis

3.1. Regulatory Framework in Overcoming the Scarcity

The problem of scarcity of palm cooking oil has made the government take the initiative to issue several policy regulations. However, these policy regulations have also experienced ups and downs (Eldeeb et al, 2015). These regulations include the Minister of Trade Regulation Number 1 of 2022 concerning the Provision of Simple Packaged Cooking Oil for Community Needs in the Financing Framework by the Palm Oil Plantation Fund Management Agency. This regulation was enacted on January 11, 2022 and stipulates the Highest Retail Price (HRP) of Cooking Oil at Rp. 14,000. Furthermore, there is the Minister of Trade Regulation Number 2 of 2022 concerning Amendments to the Regulation of the Minister of Trade Number 19 of 2021 concerning Export Regulation Policy. This regulation was enacted on January 18, 2022 and contains changes to export arrangements for a number of goods, including crude palm oil; refined, bleached, and deodorized palm oil; and used cooking oil. In addition, there is also Minister of Trade Regulation Number 3 of 2022 concerning Provision of Packaged Cooking Oil for Community Needs in the Financing Framework by the Palm Oil Plantation Fund Management Agency. This regulation was enacted on January 18, 2022 and requires palm oil entrepreneurs to distribute cooking oil by subsidizing the price difference from funds from the Palm Oil Plantation Fund Management Agency.

Furthermore, on January 26, 2022, a regulation was issued requiring all entrepreneurs to comply with Domestic Price Market Obligations and Domestic Market Obligations (Rifin, 2020). This rule is contained in the Minister of Trade Regulation Number 6 of 2022 concerning the Determination of the Highest Retail Price for Palm Cooking Oil. However, in the end, this regulation has been revoked. On the other hand, there is also the Minister of Trade Regulation Number 8 of 2022 concerning the Second Amendment to the Regulation of the Minister of Trade Number 19 of 2021 concerning Export Policies and Regulations which was stipulated on February 8, 2022. This regulation describes in detail the export approval of a number of goods, including palm oil and its derivatives. And on March 16, 2022, a regulation was issued that revoked the previous regulation regarding the highest retail price of bulk cooking oil. The latest regulation states that the retail price is between Rp. 14,000 and Rp. 15,500 as stated in the Regulation of the Minister of Trade Number 11 of 2022. And finally on March 17, 2022, the Minister of Trade Number 12 of 2022 was issued the Third Amendment to the Regulation of the Minister of Trade Number 19 of 2021 concerning Export Policies and Regulations where this regulation amends the previous regulation.

However, these policies do not show a glimmer of light. Scarcity still occurs everywhere. The government then suspects another policy that is considered to have the potential to be the cause of the scarcity of cooking oil, namely the 30% Biodiesel Mandatory

Program (B30) which is regulated through the Minister of Energy and Mineral Resources Regulation No. 32 of 2008 concerning the Provision, Utilization, and Trading Administration of Oil fuel (Farobie & Hartulistiyoso, 2022). Basically, the B30 program is an incentive program for entrepreneurs who mix biodiesel with diesel fuel which can be obtained from the state through the Palm Oil Plantation Fund Management Agency. Currently, there are at least 27 corporations that have received these incentives and have the potential to increase in the future.

3.2. Seeking Out the Perpetrators: Proof of a Systematic Crime

As an embodiment of the government's efforts to fix this problem, the authorities immediately carried out investigations to find the cause of this problem. The government's efforts ended in a very sad fact. The cause of the scarcity of cooking oil is the corruption of the raw material for cooking oil, namely crude palm oil (CPO), which was carried out by the Director General of Foreign Trade of the Ministry of Trade, Indrasari Wisnu Wardhana. After the facts were revealed, the Attorney General's Office (AGO) again named three parties suspected of being involved in this particular crime, namely Stanley MA as Senior Manager Corporate Affairs of Permata Hijau Group, Master Parulian Tumanggor as Commissioner of PT Wilmar Nabati Indonesia, and Picare Tagore Sitanggang. As General Manager of General Affairs of PT Musim Mas. These corporations are part of the companies that receive the 30% Biodiesel Mandatory Program incentives (B30). The determination of these three companies was then followed by the naming of another suspect from the private sector, namely Lin Che Wei (LCW) or who is often known as Weibinanto Halimdjati. This determination is related to the Ministry of Trade's policy regarding the determination of Domestic Market Obligation (DMO) and Domestic Price Obligation (DPO) for companies wishing to export CPO and its derivative products (Novindra et al, 2019). The determination of the first four suspects was carried out on April 19, 2022. At that time, the Director General of Foreign Trade of the Indonesian Ministry of Trade Indrasari Wisnu Wardhana (IWW) and three bosses of the biodiesel incentive group from the Palm Oil Plantation Fund Management Agency (the largest group of companies enjoying palm oil incentives) were declared suspects. Meanwhile, Lin Che Wei is suspected of conspiring with the suspect Indrasari Wisnu Wardhana to issue an export permit that does not comply with the law.

There are several aspects that indicate the Attorney General's Office to finally decide to name these four cooking oil corruption suspects. On May 31, 2022, the government issued a policy that regulates the domestic market obligation (DMO) and domestic price obligation (DPO) policy for crude palm oil (CPO). However, in fact the implementation of this policy is not in accordance with written regulations, where exporting companies that do not meet the DPO still get export approval from the government. In fact, when a company wants to submit an export application, the DMO must be confirmed and researched first (Sneddon, 2021). This means that there is a misappropriation of obligations by the related exporting companies. In particular, Lin Che Wei, he is suspected of having participated in determining policies related to the distribution of cooking oil at the Ministry of Trade of the Republic of Indonesia, namely the policy regarding the circulation of procedures regarding the distribution of cooking oil. In fact, he is a person who was recruited by the Ministry of Trade without a decree and without a special contract to participate in determining policies related to CPO and cooking oil export permits. This is clearly very dangerous. He does not even have a structural position in the Ministry of Commerce. Lin Che Wei is directly affiliated and allegedly received wages or funds from the three companies involved in this case after the successful export approval (PE) of CPO and its derivatives, including cooking oil.

This irresponsible action certainly causes losses in various aspects with a quite fantastic amount (Choiruzzad et al, 2021). The Indonesian Anti-Corruption Society said that if it was calculated from the total direct cash assistance for cooking oil disbursed by the government for the community, it was estimated that the loss could potentially reach Rp5.9 trillion. Not only material losses, this cunning act also caused inflation in Indonesia. Based on data from the Central Statistics Agency (BPS), there was an inflation of 0.95% month on month (mom) or an annual basis of 3.47% year on year (yoy) in April 2022. One of the causes of inflation is the increase in cooking oil prices due to the scarcity of this basic need.

In addition to state losses, the scarcity and high cost of cooking oil also causes to mass losses in the community (Saraswati & Anjani, 2021). There are several losses that are felt by the people, including the scarcity of cooking oil, forcing people to buy cooking oil at a price higher than the Highest Retail Price. The Research Institute for Demographic and Poverty Studies (IDEAS) estimates that the community will have to bear a loss of Rp 3.38 trillion as a result of this phenomenon. On the other hand, scarcity also causes panic buying. Panic buying is the act of buying goods on a large scale because there is a phenomenon that makes the goods scarce in the market so that people flock to buy these goods in large quantities because there is fear or concern that it will be difficult to find these goods in the future. The scarcity of cooking oil in the market has led to panic buying in the community, where people buy cooking oil in excess quantities and cause many other people to have no opportunity to get these basic needs. Furthermore, one of the users of cooking oil with a large enough scale is Micro, Small and Medium Enterprises (MSMEs), especially food traders who have to process using cooking oil. The high price of oil has implications for limiting the purchase of these basic needs. As a result, a feeling of dilemma arises for MSME actors because they are forced to choose between increasing prices or reducing the quantity of their merchandise.

3.3. Capital Punishment Discourses on CPO Corruption

The crime of corruption is determined as an extraordinary crime which in an effort to combat corruption requires a special criminal law outside the general rules of criminal law regulated in the Penal Code (Santoso, 2020). Corruption is an extraordinary criminal offense and must be resolved before other cases. In this case, the acts of corruption began when the cooking oil export company involved did not heed the policies made by the government (Wardhani & Rahadian, 2021). This case began at the end of 2021 when there was a shortage and an increase in cooking oil prices in the market. During this scarcity, the government through the Ministry of Trade adopted a policy of setting the Domestic Market Obligation (DMO) and the highest retail price. However, in practice, cooking oil export companies do not comply with the government's policy.

In this case, the Attorney General's Office has named four suspects. The four are suspected of being under Section 2 and/or Section 3 of the Anti-Corruption Act (Saragih & Medaline, 2018). Section 2 point (1) of the Anti-Corruption Law states that any person who unlawfully commits an act of enriching himself or another person or a corporation that is detrimental to state finances or the state economy, shall be sentenced to imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah). Furthermore, in Section 3 it is stated that any person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of a position that can harm state finances or the state economy, is sentenced to life imprisonment, or imprisonment at minimum of 1 (one)

year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).

According to the Attorney General's Office, the suspects committed a violation by making an agreement between the applicant and the licensee regarding the issuance of export permits. Second, the AGO also considers that the export permit should be rejected because it does not meet the requirements, namely that it has defined the price not according to the domestic sales price. Then, exporters are considered not to distribute cooking oil domestically as required by the Domestic Market Obligation (DMO), which is 20% of total exports (Hidayat & Glasbergen, 2018). The four suspects in the cooking oil mafia case have been detained by the Attorney General's Office. As a result of this case, the Minister of Trade Muhammad Lutfi was under pressure to resign.

In addition, the question arises whether the perpetrators of corruption can be subject to the death penalty as stipulated in Section 2 point (2) of the Anti-Corruption Act? The chairman of the IM57+ Institute, Mochamad Praswad Nugraha, believes that the suspects in the cooking oil mafia case will escape the death penalty provision in Section 2 point (2) of the Anti-Corruption Law. Because he argues that the cooking oil case cannot be linked to a certain crisis situation due to the Covid-19 pandemic, such as the social assistance case. The cooking oil crisis is different from the provision of the Covid 19 social assistance which was indeed used to overcome the Covid crisis because cooking oil and Covid-19 are two different things, so they cannot be included in the classification of corruption related to disasters (Saubani, 2022).

The application of the death penalty for perpetrators of corruption known in Indonesian law is very different from what was adopted by China. The enforcement of the death penalty in Indonesia is imposed only on perpetrators of criminal acts of corruption. It is imposed only if the corruption committed is related to "certain circumstances," i.e., it is carried out on funds earmarked for handling dangerous situations, national natural disasters, overcoming the effects of widespread social unrest, overcoming the economic and monetary crisis, and the repetition of corruption (Lukito, 2015). Whereas in China, the formulations of Sections in the Chinese Criminal Code are very adequate to be able to ensnare the death penalty because it includes the quality and quantity of the corrupted so that it becomes an indicator in imposing the death penalty regardless of "certain circumstances" as regulated in the criminal law of corruption in Indonesia. In Section 383 points (1) and (2) of the Chinese Criminal Code, a death penalty can be filed if the perpetrator commits bribery or accepts bribes of more than 50,000 yuan, which is considered a "serious case" so that the perpetrator is threatened with the death penalty (Gong et al, 2019). The serious cases in question are corruption cases committed by state officials and cases that receive attention and are disturbing to the public. This is certainly different from the "certain circumstances" contained in Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

Nevertheless, the Institute for Criminal Justice Reform (ICJR) views that the death penalty will make it difficult to recover state losses from the case because if the death charge is used, then the provisions of Article 67 of the Penal Code will apply which essentially prohibits additional crimes, such as fines and compensation for people who have been prosecuted or sentenced to death (Yulianto, 2022). So that the state will lose the opportunity to obtain maximum state compensation from the perpetrators. In fact, this effort is very important to be used as a source of funds for future recovery. Moreover, the death penalty can

only be imposed on individuals, not on corporations (Wibowo, 2018). The process of developing the investigation has the potential to be less focused on ensnaring a number of corporations involved in the case but instead only focuses on ensnaring individuals involved with the death penalty. Eradication of corruption will be much more effective when maximizing preventive measures through improving the government system (Abd Aziz et al, 2015). Meanwhile, law enforcers, especially the Attorney General's Office, should maximize their law enforcement processes, such as investigating potential money laundering, pursuing beneficial owners, not just the perpetrators, to seeking recovery and confiscation of assets.

4. Conclusion

Based on the discussion above, it can be seen that the cause of the scarcity of cooking oil which ended in soaring oil prices was due to corruption in the raw material for cooking oil, namely crude palm oil (CPO) which was carried out by the Director General of Foreign Trade of the Ministry of Trade, Indrasari Wisnu Wardhana accompanied by several other parties, including Stanley MA as Senior Manager Corporate Affairs of Permata Hijau Group, Master Parulian Tumanggor as Commissioner of PT Wilmar Nabati Indonesia, Picare Tagore Sitanggang as General Manager of General Affairs of PT Musim Mas, and Lin Che Wei (LCW) or Weibinanto Halimdjati from the private sector. As a result, this dirty game caused state losses of up to Rp5.9 trillion and inflation in Indonesia. In addition to state losses, the community also bears the impact, including having to buy cooking oil at the Highest Retail Price (HET), experiencing panic buying and making it difficult for MSMEs to carry out trading activities. In this case, the most likely criminal threat to be applied in accordance with Section 2 point (1) and Section 3 is life imprisonment and a maximum of Rp. 1.000.000.000,00 (one billion rupiah). In terms of the threat of the death penalty in accordance with Section 2 point (2) of Law number 31 of 1999 that in applying the death penalty for corruption cases it is limited because it can only be applied in certain circumstances, namely if the funds are intended for handling dangerous situations, national natural disasters, social unrest, economic and monetary crises, and repetition of corruption.

This study recommends that it is necessary to review the imposition of capital punishment for perpetrators of corruption, because capital punishment can only be determined if the funds are intended for handling national natural disasters or social crises. Therefore, the effort that must be made by the government in this case is to thoroughly review the related cases and punish them to the maximum in accordance with the applicable laws and regulations because it is possible that there are not only a few companies that are suspected of being involved by the Ministry of Trade. It is not impossible that they have a group of people who help them carry out their actions. So it will be much more effective when law enforcers maximize their law enforcement processes, such as investigating potential money laundering, pursuing beneficial owners and also seeking asset recovery for the state.

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