

## The Effectiveness of the Process of Investigating a Case of Illegal Levies in High School 2 of Ternate

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### ABSTRACT

Illegal levies on Ternate High School 2 occur because of the active role of the Ternate High School 2 schools and the length of the process of disbursing School Operational Assistance (BOS) funds from the central government to regions for unexpected expenditure needs and funds that are not unexpected included in the BOS funds budget. This illegal levies case has been followed up at the investigation stage after a closed case process was carried out by the North Maluku Regional Police Special Criminal Investigation Investigator and from the results of the title it was concluded that the criminal element had been fulfilled by allegedly violating Article 12 letter (e) of the Law Number 20 of 2001 jo. Law Number 31 of 1999 concerning Eradication of Corruption. In addition, illegal levies have become individual behavior and have become a system of providing services to the community, as if these illegal levies have become prevalent.

**Keywords :** effectiveness; illegal levies; investigation.

### INTRODUCTION

Education is the most important thing in our lives, this means that every citizen has the right to get it. Education in general has the meaning of a life process in developing each individual to be able to live and carry on life. So being an educated person is very important.

Departing from a solid and appropriate educational foundation, the noble ideals of a nation in various sectors and aspects of life can be realized, including discipline, work ethics, values, and morals of a nation. The success of education is the foundation for the economic and social development of society. Education is the key word in developing the knowledge and quality of people's abilities. This means that education is the main key in improving the quality of a nation. Support for the importance of the contribution of education in developing the nation of Indonesia as a great nation among the countries in the world, actually has been stated in the 1945 Constitution,

which mandates that education is a right and obligation for all Indonesian citizens. Therefore, education must be a top priority in the overall process of national development. Law Number 20 of 2003 concerning the National Education System, means that: National education is education based on the Pancasila and the 1945 Constitution of the Republic of Indonesia which is rooted in religious values, Indonesian national culture, and responsive to the demands of changing times.

Levies are receipts of education costs in the form of money and/or goods/services in basic education units that come directly from students or parents/guardians that are mandatory, binding and the amount and duration of collection is determined by the basic education unit. Levies made by education units organized by the community must fulfill the following conditions:

- a) based on investment plans and/or operations that are clear and set forth in strategic plans, annual work plans, and annual budgets that refer to the National Education Standards;
- b) investment planning and/or operations are announced transparently to education unit stakeholders, especially parents/guardians of students, school committees, and providers of basic education units;
- c) deliberated through a school committee meeting; and funds obtained are specifically booked by the basic education unit separately from the funds received from the organizers of the basic education unit and are kept in an account in the name of the basic education unit.

If fees at the school violate the above provisions, then it is certain that they are illegal fees. Another problem also arises in practice which is the object of this writing which allegedly extorted illegal payments in one school in Ternate. As for what is meant by illegal levies is an action carried out by a person or a civil servant or a state official by requesting payment of money to parents of students. The illegal levies have occurred at SMA Negeri 2 Ternate for each parent/student required to pay Rp. 120,000 (one hundred and twenty thousand) every month if their child wants to continue their education at the school. The act of collecting money from parents of students by the high school 2 Ternate is an act of extortion as stipulated in Article 12 letter e of Law Number 20 of 2001 concerning Prevention and Eradication of Corruption.

In principle, not all parents of students who send their children to school understand what the difference is between fees and contributions charged to them by the school or school committee. Usually parents only know if their children will be asked for school contributions from the committee whose amount has been determined by the school through the school committee. These two words are actually different, although in practice the term blurring often occurs.

School committees raise funds and other educational resources to carry out their functions in providing support for facilities and infrastructure as well as education supervision.<sup>1</sup> Fundraising and other educational resources in the form of assistance and or donations are not levies. Whereas the meaning of levies is the receipt of education costs in the form of money and / or goods / services at the education unit that comes directly from students or parents / guardians that are mandatory, binding, and the amount and period of collection is determined by the education unit.<sup>2</sup> While

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<sup>1</sup> Article 10 Minister of Education and Culture Regulation Number 75 Year 2016

<sup>2</sup> Article 1 paragraph (2) Regulation of the Minister of Education and Culture Number 44 of 2012

contributions are receipts of education costs in the form of money and / or goods / services provided by students, parents / guardians, individuals or other institutions to education units that are voluntary, non-coercive, non-binding and are not determined by the education unit in good quantity and the time period for giving.<sup>3</sup>

The problems that have been described above, make law enforcement in Indonesia still not felt maximally, even though the success of a law depends on the application of law from law enforcement officers, and vice versa the success of an application and law enforcement depends on whether or not a statutory regulation that underlies it. Based on this description, the authors are compelled to examine the first problem, how is the process of illegal levies in SMA Negeri 2 Ternate and second, what factors are driving so that illegal levies cases can be followed up to the investigation stage.

## RESEARCH METHOD

This type of research is an empirical legal research that is a research method that functions to see the law in the real sense and examine how the law works in society. Location of the study was conducted at SMA Negeri 2, Ternate and North Maluku Regional Police. In this research required legal materials in the form of primary legal materials and secondary legal materials. Data analysis method and approach method used are perspective method, where perspective method is analysis method which is given justification for the object being investigated whether right or wrong and what should be according to law. While the approach method used in this research is the statutory approach and the conceptual approach.

## RESULT AND DISCUSSION

### The Process of Illegal Levies in Schools

#### 1. The Role of the Principal and Teacher.

The crime of extortion is a phenomenon that is often encountered in the public service sector, the mode of operation is diverse and, among other things, extortion in order to benefit oneself or others by utilizing their positions. According to the principal of Ternate 2 High School, Zainuddin Idris said that the cause of illegal levies in educational institutions (schools) as happened in Ternate 2 High School was also due to the lengthy process of disbursing School Operational Assistance (BOS) funds from the central government to local governments. In addition, since 2016, all the process of disbursing BOS funds has been taken over by the North Maluku Provincial Education Official, making it quite difficult for school principals to immediately realize the budget that has entered the school bank account.<sup>4</sup> On several occasions, SMA 2 Ternate also used to make loans to third parties, this was due to funds not included in the BOS fund budget allocation, which amount was quite varied. In addition, according to the Headmaster of Ternate 2 High School, the loan was made after holding a meeting with the vice-principals and from the results of the meeting the vice-principal and the principal also agreed to make a third-party loan because of the absence of school cash and other needs in the form of electricity payments and school water and other needs. In 2015 these unexpected funds could be obtained from the school budget from the budget in Ternate City Government, but with the new regulations, since 2017 the budget has not been obtained anymore because for high school (SMA) has been under

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<sup>3</sup> Article 1 paragraph (3) Regulation of the Minister of Education and Culture Number 44 of 2012

<sup>4</sup> Interview on April 15, 2019.

supervision and responsibility Provincial Education Official and no longer included in the scope of supervision of district/city Education Official.<sup>5</sup>

## 2. The Role of School Committees

School committees are defined as independent institutions consisting of parents/guardians of students, community leaders and school communities who care about education where the function of the school committee is to improve the quality of education services.<sup>6</sup> In an effort to improve the quality of education, the School Committee can raise funds through creative and innovative efforts. However, the task of the School Committee is not just to raise funds, at least the task of the School Committee is based on the Minister of Education and Culture Regulation No. 75 of 2016 concerning School Committees namely "Raising funds is not the only task of the School Committee. School Committees must also be able to ensure the quality of education in schools is good and improved".

From the results of the author's interview with the Chairperson of the SMA 2 Ternate Committee, Habib Abdul Fatah said that the alleged illegal levies that occurred at SMA 2 Ternate in July 2017 to March 2018, namely for the number of Class X to Class XII students was 1066 students. However, as many as 107 students were released from committee fee payments on the grounds of outstanding students. Even so there are still 959 students still required to pay committee fees in the amount in accordance with what has been set at Rp. 120,000, - (one hundred and twenty thousand rupiahs) and if added to the amount per month the amount is Rp. 115,080,000.- (one hundred and fifteen million eighty thousand rupiahs), then the overall total contribution from the committee for the July 2017 to March 2018 period is Rp. 1,380,960,000 (one billion three hundred eighty million nine hundred and sixty thousand rupiahs) in which the amount of receipt of the committee contribution was justified by the headmaster of SMA 2 Ternate and the Chair of the SMA 2 Ternate Committee.

The method for collecting the committee's money is at the beginning of each new school year, the head of the school committee together with representatives of teachers and the principal and parents of students / guardians of students conduct joint meetings related to the discussion of committee fees. During the joint meeting, most of the meeting participants were charged the committee contribution amount of Rp. 120,000 (one hundred and twenty thousand rupiahs). The meeting was not merely discussing the committee fees, but there were also related to school uniforms and school facilities.<sup>7</sup>

Based on the results of the interview with the head of the Ternate 2 High School Committee, information was obtained that the amount of the committee fees referred to had been determined before the meeting between the parents of the students and the school and the school committee. The meeting at SMA 2 Ternate was based on invitation number 005/154/SMA.2 /2017 on July 18, 2017 which was held on Friday, July 21, 2017 at 15.00 at SMA 2 Ternate.

## 3. The Role of Parents/Guardians of Students

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<sup>5</sup> *Ibid.*

<sup>6</sup> Interview on April 17, 2019.

<sup>7</sup> *Ibid*

School and community cooperation in school-based management can be seen from the existence of a committee in an educational institution consisting of parents/guardians of students who take part in the education and teaching policy in schools. The relationship between the school and the community is essentially a very instrumental tool in fostering and developing the personal growth of students in schools. In addition, the community is also a school component that plays a very important role in the success of educational activities. An active and caring community towards educational activities is indispensable in developing education in a positive direction to build a better nation and state. School committees are often used as an extension of the principal to commit extortion. The types of fees in SMA 2 Ternate are based on the author's interview with the students' parents, Sarmin Kalam and Ali Tara, including:<sup>8</sup>

- 1) "Uang SPP/committee";
- 2) "Uang Sampul Raport";
- 3) "Uang Bimbingan Belajar";

The actual meeting mechanism must be preceded by a deliberation before completing a policy not implemented in a meeting with the school committee. Parents / guardians of students only come to hear the determination of the amount of the committee contribution of Rp. 120,000 (one hundred and twenty thousand rupiahs) and parents/guardians of students are also asked to sign the minutes/list of attendance of the meeting.<sup>9</sup>

Some of the parents / guardians of students actually know that the act of extortion is an act that is against the law. There are some parents / guardians who do not agree with the determination of the amount of the contribution fee. However, parents / guardians of students cannot refuse and accept the decision because of concerns over the survival of their children in one of the favorite schools in Ternate.<sup>10</sup>

Based on the author's observations, there are several factors that cause the practice of extortion in schools can occur. For this reason, several strategies are needed to be implemented immediately to stop the practice of extortion in schools, including:

- a) Schools creatively look for other sources of funds besides sources of funds from parents of students for school financing.
- b) Maximizing the school committee to supervise the performance and use of the budget requested by the school to the parents of students as a form of transparency.
- c) Instilling the work culture to all education providers by prioritizing norms in understanding the meaning of work, attitudes towards work or what is done, attitudes towards work environment, attitudes towards time, attitudes towards tools used for work, work ethics, and behavior while working or make a decision.<sup>11</sup>

Through these strategies, the practice of extortion or forms of corruption in schools can be eliminated. So that all people can enjoy education services by placing equal rights to

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<sup>8</sup> Interview on April 21, 2019.

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> **Error! Reference source not found.**

become noble people who are intelligent, civilized and moral and beneficial to the nation and state.

### **Factors Supporting the Settlement of Illegal Levies in the Investigation Stage by the Police**

#### **1. There are no case interventions**

Illegal levies are acts of corruption in the form of extortion, which then involves two or more legal actors so that they can be convicted under the Corruption Eradication Act. The investigation process carried out by the police in handling a criminal act of extortion can be described as follows:

##### a) Report

Indonesian Police Chief Regulation Number 14 of 2012 concerning Management of Criminal Investigations, there are rules stating that an investigation of a criminal offense is carried out based on a police report and an investigation warrant. After the police report is made, the report will be subject to an examination as outlined in the "Minutes of Examination (Berita Acara Pemeriksaan) of the Reporting Witness".

Based on the case of the author of the analysis, the alleged illegal levies at SMA 2 Ternate, reports or complaints about the alleged illegal levies have been made by Muhlis Mukaram and Basir Umahuk addressed to the North Maluku Regional Police Dirreskrimsus. In addition, several witnesses have been investigated in connection with the alleged illegal levies or illegal collection from SMA 2 Ternate in connection with the payment of committee money at the school.

##### b) Investigation

Illegal levies in SMA 2 Ternate have entered the Investigation stage based on an investigation warrant Number: SP. Investigation/194/XII/2017 criminal element allegedly violating Article 12 letter (e) of Law Number 20 Year 2001 Jo. Law Number 31 of 1999 concerning Eradication of Corruption.

The elements of Article 12 letter (e) of Law Number 20 Year 2001 Jo. Law Number 31 of 1999 concerning Eradication of Corruption Crimes that occurred in SMA 2 Ternate from 2017 to 2018, namely as follows:

##### a) Subjective Elements. The Subjective element is an element that is always attached to a criminal offense consisting of:

###### 1) Civil Servants or State Administrators;

Based on Article 1 paragraph (3) of Law Number 5 Year 2014 concerning State Civil Apparatus, it explains that "civil servants are Indonesian citizens who fulfill certain requirements to be appointed as ASN employees on a permanent basis by civil servants to occupy government positions". Thus this element has been fulfilled.

###### 2) With the intention of;

The crime of extortion carried out by the Principal is based on intention. Perpetrators know that illegal levies are a crime but the perpetrators still want to do extortion that must still occur (*whiten and whileans*). Thus this element has also been fulfilled.

b) Objective Element. The objective element is the element that is attached to the actions of the actor consisting of:

1) Benefit yourself or others;

This element is an alternative form of element which means that it is not necessary to have to benefit oneself, but if it benefits others, then the perpetrator can be held liable for criminal actions. In the case of illegal levies, individual school principals have benefited themselves from illegal levies where the funds in the levies have been allocated in BOS funds. For this reason, these elements have been fulfilled.

2) Unlawfully or by abusing power;

This element is also an alternative form of elements which means that the perpetrators need not have to abuse their power but enough with the perpetrators' actions against the law so that criminal liability can be held. In that case, the principal made a illegal levy through the school committee where the levies had no legal basis, then the results of the levies were used by unscrupulous principals and the results were shared with several rogue teachers. Thus, this element has also been fulfilled.

3) Forcing someone to give something, pay, or receive payment in pieces, or to do something for himself.

The elements of this article are also an alternative form of elements which means that it is not necessary that all parts of this element are fulfilled, meaning that only one of them is fulfilled so that the perpetrators can be asked for criminal responsibility. In the case of the authors of the analysis, the school in this case unscrupulous school principals through school committees have forced the parents of students which the nature of forced it is by having issued Decree Number: 800/126/SMA.2/2017 dated July 17, 2017 and published Decree Number: 156/Committee/SMA.N2/2017 dated July 24, 2017 concerning the determination of the amount of contribution that is mandatory to be paid if the child of parents/guardians have attended SMA 2 Ternate so that parents can only follow what has been decided based on the principal's decision letter and the school committee's decision letter.

With the fulfillment of all the elements of the above crime, then the person of the Headmaster of SMA 2 Ternate can be held liable for criminal charges of extortion. In the context of a criminal act of corruption the act has violated the law as regulated and threatened based on Article 12 letter (e) of Law Number 20 Year 2001 Jo. Law Number 31 of 1999 concerning Eradication of Corruption Crimes with a minimum penalty of four (4) years in prison and a maximum of twenty (20) years in prison and a minimum fine of Rp. 200,000,000 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000 (one billion rupiahs).

## **2. Witness Openness in Providing Information**

In carrying out the task of investigation to uncover a crime, the investigator has the authority as stated in Article 7 paragraph (1) of the Criminal Procedure Code Jo. Article 16 paragraph (1) of Law Number 2 of 2002 concerning Policing. The main purpose of

an investigation is to search for and gather evidence that with evidence can make light of a criminal act that occurred and in order to find the suspect.<sup>12</sup>

Based on the statement of the Director of Special Criminal Investigation of North Maluku Regional Police in the investigation process in the case to gather evidence and to be upgraded to the next process is very difficult. This is because the teachers in SMA 2 Ternate who were questioned as witnesses by the investigators did not provide full and clear information or in other words were not open in the investigation process. This makes it very difficult for investigators to continue and make light of a criminal act in the case of extortion that occurred in SMA 2 Ternate.<sup>13</sup>

### 3. Documents

The function of the investigator is almost similar to that of a researcher in search of facts. For this reason, investigators must have the ability to obtain data and documents which are then reviewed and used to draw conclusions about a criminal act. Investigators must be able to dig up data or documents as much as possible from the documents used to find out the legal steps that can be taken next.

The basic rules regarding how a document is collected for the purposes of investigation include:<sup>14</sup>

- 1) If possible get the original documents;
- 2) Make a copy of the document as a working paper for the investigator to analyze the document;
- 3) The original documents are stored separately and safely;

Based on the analysis of the case above, the data and documents that the author obtained was only based on the investigator, in which the investigator also found it difficult to obtain other documentary evidence in accordance with the provisions in Article 184 of the Criminal Procedure Code regarding evidence, one of which was letter evidence. Based on this, the investigator was constrained in conducting the next stage of the investigation in terms of deepening the role of the perpetrators of illegal levies to look for criminal acts (*actus reus*) as well as motives for criminal acts (*mens rea*).

### CONCLUSION

Based on the descriptions above, the answer to the main problem is that the occurrence of illegal levies at SMA 2 Ternate is due to the active role of the school on the grounds that the process of disbursing BOS funds from the central government to the regions is long for unpredictable expenditure needs and funds. not included in the BOS budget. Furthermore, from the results of the police investigation, it was found that the practice of extortion has fulfilled the elements of the criminal act of corruption as stipulated in Article 12 letter (e) of Law Number 20 Year 2001 Jo. Law Number 31 of 1999 concerning Eradication of Corruption Crime.

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