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**ENVIRONMENTAL DAMAGE CAUSED BY CORRUPTION
CASES INVOLVING TRADE AND INVESTMENT: ROCK TO
BOTTOM VIEW**

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Abstract

The era of globalization and free trade today, has had an impact on the increasingly no borders of the state. Globalization read as transnationalisation raises the movement of money and human capital which requires the state to be able to carry out political direction and policies. The effect of trading is certainly connected with environment in which the capital of the money is invested. In some countries that have conducted free trade, it appears that it has a significant impact on environmental damage with two causes. The first is the absence of standards for sustainable trade. According to World Bank, countries actually suffer losses on their trade and lose their gross domestic product (GDP). For example, India suffered losses of 6 per cent and China 9 percent. Second, occurrence of corruption tailed trade and the environment; it is often found that policy makers smuggling their authority to obtain permits and or concessions on investment objects in certain locations. In Indonesia, the Corruption Eradication Commission began investigating cases were considered a tangle of environment and corruption. The most authentic example in Indonesia is the inactive Governor of Southeast Sulawesi, for nickel mining concessions to PT Anugrah Harisma Barakah (AHB) on Kabaena Island. Focusing on the issue of trade and the environment that contains corrupt practices in it, the authors conducted a normative study of these problems to seek solutions and/or formulas for an environmental trade approach that occurs not only in Indonesia but internationally in general.

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1. Introduction

In historical records, there has been a global shift of perception in how a country as an actor conducts its economic growth from the simplest model of barter to cross-border trade to transnational trade with existing investment models (direct and indirect investment), which direct countries to open opportunities, and also for more accessible trading mechanisms and investment.

From the intention to expand trade to the cross-country stage, free trade was initiated. However, the concept of such trade was apparently not spared from corrupt practices. Allegedly practices such as bribery, tax evasion, giving and receiving illegal permits or concessions as well as other illegal transnational practices (illegal logging and illegal wildlife trafficking) have occurred to such an extent that it even sometimes leads to money laundering. Corrupt trade practices not only weaken the economy but also results in environmental damage.

The orientation for such corrupt practices is to maximise profits without consideration for the consequences that may lead to losses for the communities involved and the country, on a larger scale. In many countries, promoting transactional trade means having to deal with losses which subvert the countries' expectations in gathering more revenue and income to their own each countries. The initiations of trade or investment were to get more income and also opening the and also opening jobs opportunity, nevertheless, the condition is different in implementation. Various issues regarding practice that deviating from the law, such as the making of permits also obtained in corrupt ways. The deviate permit causing not only the giving bribes to the authority parties and other illegal corrupt acts, moreover are not promote the environmental sustainability.

Some practices of trade and investment that are corrupted can be seen from the entry of entry permits in a country or in a region under the state (province or district), there are even practices where officials give permits or concessions that are not permitted or violate regulations there is. The permits or concession also sometimes leads to over granting permits that only bring benefits to companies who have permits. UNDOC stated that "... experts point out how corruption impetus environmental crime including illegal trade in endangered species, water supply, oil exploitation, forestry, fisheries and the management of toxic and hazardous waste materials"

The World Bank in 2001 stated that "Corruption is disliked for its detrimental effects on economic growth and development. It inhibits the provision of public services, increases inequalities and stifles investments to such an extent that the World Bank has declared it as the single greatest obstacle to economic and social development."

The Indonesian public has long suspected existing cases of natural resources corruption. Based on the Indonesia Corruption Watch notes from 2010-2017, many cases have been noted in the natural resource sectors as follows: plantation – 45; forestry – 22; mining - 23 (Cases collected are handled by the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi (KPK)*), Police and Attorney (which was recorded based on the status that has reached the investigation even to the determination of the suspect).

Meanwhile, in 2018, a corruption case was initiated against former Southeast Sulawesi Governor Nur Alam. Nur Alam proved to be detrimental to the state to the tune of Rupiah (RP). 1.5 trillion (Gabrillin, 2018). According to the panel of judges, this illegal activity had enriched him by RP. 2.7 billion. Nur Alam was also accused of receiving gratuities from Richcorp International Ltd. According to prosecutors, the

money from Richcorp was related to the permit issued to PT AHB. The sale of nickel by PT AHB was sold to Richcorp International. Corrupt trade and investment practices in the natural resources sector occur not only in Indonesia, but also in other countries such as in Africa where foreign investment is mostly engaged in gas and minerals. Ownership tends to be controlled from the outside, which later became known as Africa's extractive industry despite its returns to results that are largely known as the "resource curse" and the "Dutch Disease". Concentration in the petroleum sector in Africa cannot be separated from such corrupt phenomena as:

- a. The governance crisis in the Gulf of Guinea is fuelled by oil corruption
- b. Large power and control by governments, discretionary power, lack of accountability
- c. Lack of transparency and disclosure (of contracts and revenues)
- d. Link to land tenure and land governance
- e. Weak legal and policy frameworks
- f. Lack of adequate capacity of professionalism of the government agencies responsible for addressing environmental crime and
- g. The role of Multinationals (Layers of corporations and technical financial reporting).

With the increasing cases between environmental damage and corrupt practices, Transparency International undertook to provide the data on environmental losses spread in five hotspots are:

1. The Caucasus, which includes Azerbaijan, Georgia, Armenia, Turkey, Russia, and Iran
2. The Mountains of Southwest China, which includes China and Myanmar
3. The Guinean Forest of Western Africa, which includes Liberia, Cote D'Ivoire, Ghana, Togo, Benin, Guinea, Sierra Leone, Cameroon, and Nigeria, as well as four islands in the Gulf of Guinea
4. Sundaland, which includes Malaysia, Singapore, Brunei, Indonesia, Thailand and the Nicobar islands
5. The Tropical Andes, which includes Venezuela, Argentina, Chile, Peru, Ecuador, Columbia and Bolivia (Transparency International, 2006).

These five hotspots prove that the environmental damage experienced by these countries on average are still having problems with corrupt practices related to taking action on environmental decisions. The result of corrupt practices is massive environmental damage and loss of biodiversity which not only affects the country but also the world.

2. Problem Statement

By looking at the various cases of environmental damage, it was found that the tendency of such violations come from either a lack of density in the form of calculation of negative environmental impact and even corrupt behavior that turned a blind eye to the damaging effect by giving permission or concession to certain parties. Based on these conditions, it is necessary to assess the implementation of sustainable trade and investment within the context of corrupt practices so that the threat of endangering the environment and natural resources can be prevented.

3. Research Questions

Based on the above problem, the following research questions emerged;

- 3.1.** What practices can countries use in balancing sustainable trade and investment?
- 3.2.** Is the concept of trade and investment already adequate in covering environmental protection?

4. Purpose of the Study

This paper is intended to uncover the correlation among countries in implementing urgent practices for adequate standards for sustainable trade and investment together strongly aligned with anti-corruption measures by applying international and national regulations.

5. Research Methods

In finding solutions to the problems above, the authors used normative legal research methods by collecting data derived from the literature, legislation, and articles. It also used comparison studies/ analysis with other practices and cases in other countries.

6. Findings

6.1. Countries which implemented practices for urgent need of standards for sustainable trade and investment

The issue of world trade liberalization surfaced especially since the signing of the Uruguay Round and after the WTO (World Trade Organization) in 1994 which replaced the position of the General Agreement on Tariffs and Trade (World Bank, 2018). According to the World Bank, global poverty can be overcome by an increase in trade as it has been shown that countries open to international trade exhibit a faster rate of development, innovation, improved productivity leading to a higher income and more opportunities for their people. Specifically, lower-income households benefit from open trade as more affordable goods and services are accessible to consumers. Indeed, active participation with the world economy through trade and global value chains has helped drive economic growth and reduce poverty both locally and globally.

Many countries are seriously developing their economy by opening trade routes based on the advantages of their products and services. This liberalization then directs not only the form of import export but also the form of investment both directly and indirectly to the destination country.

The purpose of trade, which is indeed to open a relevant economic opportunity, unfortunately also opens up a negative "door" of illegal acts and / or corrupt acts. However, this association is yet to be conclusively proven as Chang and Musila (2015) opine. They found a lack of empirical evidence coupled with the theoretical perspectives to establish a positive association between the two as some studies did uncover a positive association between trade openness and economic growth, but this was contradicted by other studies which found no association, or even a negative association (Zahonogo, 2016).

Samuel P. Huntington (1968) stated that corruption is needed to grease the wheels of development and therefore, it is necessary. Huntington's statement may have been suitable during his time, when there

were still "obstacles" in the process of getting investment into a country, especially if the country still adhered to closed protectionism. Guillaumemo and Sekkat (2005) cited Huntington (1968) who argued that sometimes an inefficient bureaucracy will obstruct investment and that some "speed" or "grease" money is required to overcome such hurdles to business. In essence, the "grease the wheels" hypothesis states that bribery can have 'positive' consequences in that it saves the inconvenience of an inefficient bureaucracy, which would lead to rising efficiency; hence, investment and eventually, growth.

However, it also does not become a justification for its implementation because as we know that corruption breeds more corruption which will eventually destroy the country (Pellegrini, 2018). Criticism and rejection of corruption were reinforced by economists Daniel Kaufmann and Shang-Jin Wei (1999) in their work entitled "Does Grease Money Speed Up the Wheels of Commerce?" criticized Huntington's premise that when corruption levels increase, so does the behavior of corrupt officials and politicians, and that as corrupt practices become more profitable, they will also increase regulation and tighten regulatory mechanisms to enhance the benefits of their corruption. The World Economic Forum's Global Competitive Index which collects data from various countries is testimony to this.

The description of the consequences of corrupt actions then creates heightened awareness of these actions, which has taken several forms such as the birth of Corruption Perceptions Index (CPI) since 1995, as the annual ranking of countries by their perceived levels of corruption, determined by expert assessments and opinion surveys" (Transparency International, 2016). The usefulness of the CPI generally defines corruption as "the misuse of public power for private benefits" which will then be given from countries where their position is against the country's corruption rate.

Majeed in his article quoted Tanzi (as cited in Majeed, 2014), claimed that corruption had become rampant with trade liberalisation as bribery is expected to obtain foreign contracts or privileged access to markets, or specific gains such as tax incentives. Unethical politicians and firms reap great benefits from such practices as such politicians, in order to remain in office, accept bribes to fund their campaigns, while firms seeking business opportunities give bribes to get special business privileges. Hence, both politicians and firms work together to sustain each other's activities within a corrupt relationship.

With this in mind, corrupt practices related to environmental activities is indeed more prevalent, especially for countries that have abundant natural resource wealth but are still weak in escort and legal supervision. The manifestation of this corruption is the misuse of program funds and bribery in the issuance of permits and licenses for resource exploitation. Weak governments, according to experts, are the main facilitators of environmental crime. Such ongoing corrupt practices result in great economic losses and environmental degradation. Data from the World Bank (2018) show that countries actually suffer losses on their trade by calculating gross domestic product (GDP) as a benchmark. For example, India suffered losses of 6 per cent and China 9 per cent from the degradation of its environment. When the target is focussed only on profits, the numbers become meaningless when considered against the backdrop environmental function loss where the environment often suffers permanent damage both to the ecosystems and habitats including the surrounding communities who end up as the innocent victims of these corrupt practices.

The emergence of the concept of sustainability in environmental protection is pivotal, as it is incorporated into national legislations as a green constitution. However, such a green constitution is still "penetrated" by the entry of corrupt practices so that the objectives of development aligned with

environmental protection are difficult to attain. It is hoped that in the implementation of trade or investment, the formula must include valuation of the environment as the main point by "not tolerating" corrupt practices. If countries look into the environmental law instruments, there is existing awareness of the mainstreaming of the "Polluter Pays" principle that internalizes environmental costs into economic calculations. This approach requires the inclusion of costs of environmental damage in the cost of a production process. In essence, the party that causes the degradation of the environment is responsible for the social costs and economic costs that arise.

6.2. The concept of trade and investment which adequately covers environmental protection

Various corruption cases starting from the beginning of the issuance of permits or concessions to other forms of depletion of natural wealth and their contents emphasise the role of the government and also stakeholders to target attention to their policies and legal arrangements.

In handling corruption cases the legal enforcer creates the mechanism in the form of regulations and policies. Indonesia itself applies preventive standards in cases of corruption by focusing on prevention. Prevention can also be carried out by making an approach to encourage all agencies and communities to increase anti-corruption awareness and their participation in preventing corruption in their respective environments. Second, proactive investigations can be conducted to recognize and predict the vulnerability of corruption and the potential problems causing corruption periodically to be submitted to the agencies and the community concerned. Thirdly, institutions and communities can be encouraged to anticipate vulnerability to corruption and potential problems causing corruption in their respective environments.

In addition to prevention efforts, we can also classify developments from the dimension of the living law; we can examine the development of human rights concept. For example, in the tangle of human rights development, there are 3 (three) generations of human rights, namely: first generation- development of civil and political rights; second generation - development of social rights; and third generation- development of solidarity / collective rights (Gómez Isa, 2008).

By looking at the above developments, it can be concluded that in the beginning of the formation were the handling of the environment itself "grew" from what is required for environmental standards. However, currently infiltration of corruption is also included which can cause degradation and damage to the environment and existing ecosystems.

Corruption certainly violate the rules of environmental law and criminal provisions for anti-corruption. To overcome this condition, the state needs to incorporate strategies in the anti-corruption framework through transparent and accountable policies as well as laws specifically bridging the environment and anti-corruption policies.

The key here is elaborating the implementation that experts have concluded by emphasizing the need for countries to integrate anti-corruption strategies such as transparency and accountability in laws and policies on the environment. One of the advances in international integrations is the birth of the United Nations Convention against Corruption (UNCAC, 2003), which accommodates provisions for corruption prevention, effective law enforcement, international cooperation and asset recovery (United Nations Office on Drugs and Crime, 2004).

One of the provisions of chapter II of UNCAC can be used to prevent corruption in environmental issues. One of the most relevant provisions is article 5, especially paragraph 1:

“which requires countries to "develop and implement or maintain effective coordinated anti-corruption policies that promote community participation and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”

This is in line with conditions in countries where this illegal practice is often found that policy makers conduct “illegal smuggling” to obtain permits and/or concessions on investment objects in certain locations. Furthermore, United Nations Office on Drugs and Crime (UNODC, 2012) stated:

“...briefly elaborate on the links between environment and corruption. Often violations in the natural resources sector cannot take place without the connivance or complicity of public officials. Land conversion, deforestation and illegal mining mostly happen due to huge bribes changing hands from business to government officials. This happens at different levels too, ranging from forest rangers or policemen, to customs officials and local civil servants, all the way up to politicians and senior government officials. Countries suffer because, firstly, law enforcement in the natural resources sector is weak. Added to this, enforcement against corruption linked to environmental crimes is even more poorly understood and rarely acted upon...”

Indonesia, which has already established the Corruption Eradication Commission, has been acted on several cases considered to be criminal acts of corruption related at the environment. One good example in Indonesia is the case of the inactive Governor of Southeast Sulawesi.

More detailed assessment or calculation and covering all aspects need to be included in the application of environmental protection along with other aspects. UNCAC in article 13 (1) about participation also parallel with risk mitigation that The UNCAC Strategy for Safeguarding against Corruption in Major Public Events (2013):

“The prevention of corruption needs to be integrated into a broader risk management strategy for the whole of the initiative and must involve the active participation of all major stakeholders. From an event management point of view, the development, monitoring and constant refinement of a proper risk management plan for the event constitute a fundamental prerequisite to its overall success.”

This principle can be applied to the environmental sector where a general assessment of the risk of corruption in this sector is needed to be developed by stakeholders and adequate anti-corruption policies. Specific assessments may be carried out in sectors that are known to be vulnerable to corruption when policymakers target sectoral enforcement officials and stakeholders. Legislation, procedures and law enforcement can be assessed with a view to reforming the legal framework to better prevent violations.

More unique parameters can be mentioned as compelling environmental valuations. To be more effective in combating corruption in the environment and natural resources, experts can carry out integrated collaboration that combines increased collaboration between non-governmental organizations, together with the private and public sectors.

Some provisions of UNCAC will be appropriate if it is included in every environmental regulation. It should not be only in the rules, but also in the prevention clause and also for trials of corruption related to the environment. In addition, the UNCAC instrument can also be integrated with various existing

regulations such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and also the Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and Their Disposal (Basel Convention) to accommodate international cooperation and return of assets on the environment and their habitat.

7. Conclusion

There is a need for trade or investment that leads to economic strength without corruption. Even though the principles of environmental protection have been inserted in regulation forms, such as the principle of prevention, the precautionary principle, the principle of intergenerational equity, the principle of environmental participation in matters, the principle of free prior and informed consent of indigenous people, and the polluter pays principle which becomes the basis for enforcement on the environment, these should be considered and implemented in the particular state policy on trade and investment. Emphasis on the state responsibility in enforcing its policies must consider the alignment of the environment. Attention is drawn to countries where the dogmatic belief of prioritizing economic interests at the application level reveals a high number of violations of environmental damage and are a great loss to the country involved. By increasingly globalizing environmental protection, the state must be able to create standards for the environment and also environmental elements such as acts of corruption that can ignite the number of illegal actions in handling the environment.

Changes in the trend of the goals of trade and investment that affect the environment and natural resources certainly cannot be separated from other perspectives; one of the issues that emerges is a corruptive act that makes large losses for countries to be combated with a comprehensive approach. The presence of UNCAC can work hand in hand with international and national conventions and regulations that are pro-environment and which requires collaboration from stakeholders.

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