



## Illegal Fee Practice In The Tourism Sector In The Madura Area From The Prespective of Indonesian Society And Criminal Law

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**Abstract:** The Indonesian government, through Presidential Regulation No. 87 of 2016, established the Illegal Fees Eradication Task Force to conduct prevention, coordination, planning, data collection, and eradication of illegal fees. However, this regulation does not provide a clear limitation on what constitutes illegal fees. Furthermore, the Indonesian Criminal Code (KUHPidana) does not explicitly mention the crime of illegal fees collection. There is a significant gap between the understanding of illegal fees from the perspective of Indonesian society and that of criminal law. What the public around tourist areas especially in the Madura region identifies as illegal fees often does not fall within the scope of existing criminal regulations. In particular, four criminal provisions Article 368 paragraph (1) of the Criminal Code and Article 12 letters e, f, and g of the Corruption Eradication Law of 2001 bear similarities to illegal fees collection but remain inapplicable to many social practices labeled as such. This research adopts a juridical-normative method to analyze the compatibility between the prevailing legal rules, legal norms, and principles. The study explores how social perceptions of illegal fees differ from legal definitions, aiming to clarify the legal ambiguity and identify the limitations in the current regulatory framework related to illegal fees collection.

**Keywords:** Tourism, Illegal Fees, Criminal Law

### INTRODUCTION

Madura Island is one of the major islands off Java Island which belongs to East Java Province. There are also 126 islets scattered around Sumenep Regency. Having all its regencies immediately bordered by the sea gives the island undeniable coastal tourism potentials. Every regency on Madura has natural tourism potentials worth to be optimized. However, the scope of the tourism wealth on Madura covers not just natural tourism, but also historical, cultural, and religious tourism. Such tourism wealth probably is only a minor fraction of the whole tourism potentials yet to be massively explored. Constructive measures to manage and develop those potentials are required to come in alignment with the central government's goal to reinforce local wisdom and cultures as Indonesian local riches that must be preserved. (Arifin, 2017)

Sampang Regency as a region with the lowest community development index score in East Java in fact owns adequate tourism potentials. The Tourism, Culture, Youth, and Sports Service (hereafter just the Tourism and Culture Service) of Sampang divides tourism into three major categories natural, cultural, and archeological tourism each with immense potentials.(Nurhayati, 2010) However, the tourism sector in Sampang Regency has yet to give a significant contribution to the Locally Generated Income of the region. The main reason is the fact that tourism is yet to be considered by the stakeholders in the region as a strategic issue in regional development; many other programs and fields are regarded as possible development options and priorities. Moreover, the responses to and awareness of tourism of the society and business players as investors in the tourism sector are low.(Nurhayati, 2010) Therefore, efforts to attract investors from beyond Madura or even from overseas are one way to increase the local revenue of Sampang Regency, as well as other regencies on Madura, in order to improve Madura's community development index scores.

With regard to investments in the tourism sector, serious scrutiny must be applied to this thing: corruption potential in the tourism sector. One of the cases of corruption in the tourism sector is the extortion involved in the issuance of a permit for the development of a golf court in Lombok, West Nusa Tenggara, as a tourist area, in which the then incumbent Regent of West Lombok was implicated.(Prasetyo, 2021) Not only is it related to investments, the corruption potential in the tourism sector is also high given that the government confers a sum of tourism grant fund for the purpose of tourism recovery after the COVID-19 pandemic hit. For instance, the tourism grant fund allocated to business players and local governments in Bali was also subject to corruption.(Bisnis.Com, n.d.) Not only on big scale, as in extortion in the proposal for an investment permit and in tourism grant fund corruption, corruption also occurs on a small scale involving the base structure of society, that is, village governments. It takes the form of illegal fees collection. Illegal fees have been to date seen as normality in society. In every sector, it is as if illegal fees are nothing out of ordinary, which must be put to an end.

Some tourist destinations in Madura are indicated as practicing illegal fees collection. Preliminary information shows that indications of illegal fees practice occur around Lombang Beach in Sumenep,(Syaiful et al., n.d.) Jaddih Limestone Hill in Bangkalan,(Nusa Daily, n.d.) and Arosbaya Cave in Bangkalan.(Jatim Kabar Daerah, n.d.) This suggests that illegal fees practice has penetrated the tourism sector. However, if one is to ask the Police or the Illegal Fees Eradication Task Force of each of Bangkalan, Sampang, Pamekasan, and Sumenep Regencies for confirmation for this information, he/she would find out that reports on illegal fees at tourist destinations have been nonexistent. Some illegal fees collection cases the Police or the Illegal Fees Eradication Task Force has handled are those that took place in the marketplace or in other services.

In addition to those preliminary data, there are also questionnaire data revealing that 61% of the respondents knew of illegal fees collection at tourist locations, whether they be in the form of parking fees or in the form of entrance fees. The three locations the respondents mentioned as showing some indications of illegal fees practice are 1) Jaddih Limestone Hill in Bangkalan, 2) Lombang Beach, and 3) Camplong Beach. According to the data from the interview with the Tourism and Culture Service of Bangkalan Regency, Jaddih Limestone Hill in Bangkalan has a high potential for illegal fees practice due to the existence of an internal conflict in the tourist location management that involves three parties, namely 1) local people living in the region through which the tourist location is accessed, 2) the company managing the limestone mine, and 3) the manager of the swimming pool at the Jaddih Limestone Hill tourist location.

Article 4 of Law No. 10 of 2009 on Tourism mentions the following aims of tourism: a) to boost the economic growth; b) to improve the people's prosperity; c) to eradicate poverty;

d) to tackle unemployment; e) to conserve the nature, environment, and resources; f) to nurture culture; g) to lift the image of the nation; h) to foster the love of the motherland; i) to reinforce the identity and integrity of the nation; and j) to strengthen the relationship between nations. Based on the provision above, there is a strong correlation between the community development index, tourism, and the legal awareness of the society toward zero corruption and illegal fees.

To increase the community development index positioning of Madura, one can provide sound education, including on anti-corruption, and improve a decent standard of living from sufficient income through tourism. Both can be realized if the people have common awareness to develop tourism as one of the focuses of community development and have legal awareness to be free from corruption and illegal fee practice.

Based on the background description above, this research is focused on the following problems: what are the perceptions of the Indonesian society and criminal law on the illegal fee practice in the tourism sector; and does the society see the illegal fee practice as in accordance with the provisions on illegal fee collection in Indonesia's criminal law?

## METHOD

This research uses the juridical-normative research method, that is, to find the coherent truth as to whether the rules of law is in agreement with the legal norms and whether the legal norms is in agreement with the legal principles. In this research, the perceptions on illegal fees of the Indonesian society and criminal law are to be examined. This work is based on the rules of law and legal doctrines, with an analysis of primary legal sources, including the Criminal Code and the Corruption Eradication Law of 1999 and 2001. Secondary legal sources such as books and journals on illegal fees, corruption, and legal enforcement are also used.

This research employs the *statute approach* (Marzuki, 2014) to investigate to a greater depth into the application of elements of acts indicated as illegal fee practice by the society based on regulations and laws, doctrines, and concepts in criminal law. The *conceptual approach* is not used in this research as this approach generally sees usage in research aiming to break down and analyze problems from a point of empty norm. (Yudiawan, 2019) The legal sources are derived from a literature study and analyzed using a deductive method from the general to the specific.

## RESULTS AND DISCUSSION

### Illegal Fees Collection from the Perspective of the Society

Based on the planned Nawa Cita Program, the government made a policy by signing Presidential Regulation No. 87 of 2016 on Illegal Fees Eradication Task Force. The Illegal Fees Eradication Task Force itself is authorized to perform prevention, data collection, coordination, planning, and execution of illegal fees eradication activities. (Permadi et al., 2018) However, this presidential regulation does not provide any limitation as to acts categorized as illegal fees collection. In the Criminal Code (KUHPidana), none of the crimes included is directly referred to as illegal fees collection.

Fitri Lestari in her research defines illegal fees collection as fees collection in a place the fees are not supposed to be imposed or collected. (Lestari et al., 2018) Arief Wijaya in a separate study states that *pungli*, short for *pungutan liar* or the Indonesian phrase for illegal fees collection, can be found in the Chinese dictionary, with *li* referring to profits and *pung* referring to presentation, giving the phrase *pung li* the meaning of presenting profits. (Wijaya, 2018) Not only do they offer two different definitions for illegal fees collection, Fitri Lestari and Arief Wijaya also differ in categorizing acts as illegal fees collection.

Some other research studies also limit illegal fees collection to acts under the category of position-related crimes. The research by Hatur Pandiangan, for instance, states that illegal

fees collection mostly is committed by government officials and categorized as Corruption, Collusion, and Nepotism.(Pandiangan, 2020) A more assertive opinion limiting illegal fees collection to position-related crimes is also contained in Yosua Panjaitan's research work, that illegal fees collection is an act performed by an individual or a state employee or a state administrator by means of collecting a sum of money not in accordance with or based on the regulation related to such collection.(Panjaitan et al., 2019)

In a different study, illegal fees collection is also linked to *premanist* action/act. Mulya Hakim Solichin in his work states that the act of collecting illegal fees is conducted by a *preman*, or a member of Indonesian organized gang, by virtue of extortion, minor deception, and minor embezzlement upon a community member or local government by faking identity as an official parking attendant or fees collector charging street vendors at the marketplace, bus station, or other public spaces some fee. He does not limit illegal fees collection to position-related crimes; a larger scope of actions can be categorized as illegal fees collection.(Solichin et al., 2018)

The absence of a clear standard delineating actions that can be categorized as illegal fees collection causes the perceptions of the society on illegal fees collection to vary. This research is supported by additional data from interviews, questionnaire survey, and field observation to measure the perceptions of the society on illegal fees collection. The measurement of the perceptions on illegal fees collection was conducted through questionnaire survey and observation to collect supporting data. The questionnaire survey was performed randomly on 320 respondents using the variables age (75% in the age range 15–21 years, 23% in the age range 22–27 years, and 2% aged beyond 28 years) and domicile (60% domiciled in Madura and 40% domiciled outside Madura). The measurement of the perceptions on illegal fees collection was restricted to only illegal collection of entrance fees into a tourist location, illegal collection of parking fees at the tourist location, and illegal collection of fees along the access path toward the tourist location.

According to the questionnaire survey results, 61% of the respondents are aware of the indications of illegal fees collection at tourist locations, whether they be in the form of illegal collection of entrance fees, illegal collection of parking fees, or illegal collection of fees along the access pathway toward the tourist locations. The three locations the respondents refer to as having indications of illegal fees collection are 1) Jaddih Limestone Hill in Bangkalan, 2) Lombang Beach in Sumenep, and 3) Camplong Beach in Sampang. According to the data from the interview with the Tourism and Culture Service of Bangkalan Regency, Jaddih Limestone Hill in Bangkalan has a high potential of illegal fee practice due to the presence of an internal conflict in its management, which involves three different parties, namely 1) local residents whose area is passed by the access path toward the tourist location, 2) the company managing the limestone mine, and 3) the manager of the swimming pool at the tourist location.

Camplong Beach in Sampang is also indicated as showing illegal fee practice, particularly on certain occasions such as Ied al-Fitr, New Year's Eve, and other holidays. As revealed by the Tourism and Culture Service of Sampang Regency, during the Ied al-Fitr holiday, there are approximately 11 entry points to the Camplong Beach area opened in addition to the official gateway, each being managed by local people. Meanwhile, no confirmation is available regarding illegal fee practice at Lombang Beach in Sumenep since the Tourism and Culture Service of Sumenep Regency reports that out of the 29 tourist destinations existing in Sumenep, 3 are managed directly by the service, namely 1) Slopeng Beach, 2) Lombang Beach, and 3) the Museum of the Palace of Sumenep. The service further states that among the most advanced Tourism Awareness Groups (Pokdarwis) some are run by the people living around the tourist locations of Lombang and Slopeng Beaches. Since these Tourism Awareness Groups operate multiple programs outside the tourism affairs of Lombang and Slopeng Beaches, and since the local people are not directly engaged in the management

of both of the tourist attractions, other supporting tourism options are provided by the local people around Lembang and Slopeng Beaches.

Based on the data provided above, both from the questionnaire survey on some respondents and from the interviews with the Tourism and Culture Services of the four regencies in Madura, it is confirmed that indications of illegal fees collection do exist around the tourist locations in Madura.

### **Illegal Fees Collection from the Perspective of the Indonesian Criminal Law**

Keeping in mind that there is no uniformity in qualifying acts as illegal fees collection across regulations and laws in Indonesia, this research attempts to delineate acts that can be categorized as illegal fees collection according to Article 368 paragraph (1) of the Criminal Code on extortion and Article 12 items e, f, and g of Law No. 20 of 2001 on Corruption Eradication. The results from the questionnaire survey, interviews, and field observation in locations indicated with illegal fee practice show that acts that are categorized as illegal fees collection by the respondents are entrance fees imposition not in accordance with the standard, arbitrary parking fees determination, and unofficial parking management as marked by the absence of parking ticket or stamp from the parking management party.

Extortion is an act that harms one party in favor of the other. *Blackmail*, another term for extortion in English, is defined by Black's Law Dictionary as "*a threatening demand made without justification*", while extortion itself refers to an act to derive something in a manner that is against the law, such as pressure or coercion.(Alweni, 2019) In extortion, the core offence is to profit oneself or others, in a manner that is against the law, by coercing someone using violence or threats of violence to give something, which entirely or partially belongs to someone else, or to give a loan, or to erase receivables. The elements of extortion are as set out in Article 368 paragraph (1) of the Criminal Code on extortion, which reads:

"Whoever with the intention to profit him-/herself or others, in a manner that is against the law, by coercing someone using violence or threats of violence to give something, which entirely or partially belongs to someone else, or give a loan, or to erase receivables, is sentenced for extortion with nine years in prison."

According to Article 368 paragraph (1) of the Criminal Code, the elements of extortion that can be categorized as illegal fees collection are as follows:

1. Objective elements, including:
  - a. Coercion (*dwingen*);  
Coercion in the criminal act of extortion (*afpersing*) refers to the presence of a conflict between the desire of the perpetrator and the will of someone else. According to R. Sugandhi, an act of coercion means applying pressure to a person in such a way that the person does something against his/her will. This act of coercion must be followed by a consequence in the form of fear or anxiety, among others, that renders the person powerless and succumb to the will of the perpetrator.(Chazawi, 1995)
  - b. The coerced party is a person;  
The act of coercion is addressed to a person. There is no explanation as to the consequence of the act of coercion, whether the person coerced eventually surrender something or not, but one point is clear: the act of coercion must be aimed at a person.
  - c. The attempt to coerce is carried out using: 1) violence; or 2) threats of violence;  
The act of coercion, as explained earlier, is abstract or non-concrete. The act of applying pressure to someone else to do something against his/her will is unexplainable in more detail, except if the way in which the act of coercion is carried out is explained. In Article 368 paragraph (1) of the Criminal Code it is explained that an act of coercion is carried out using violence or threats of violence. As stated by R. Soesilo, using violence means using physical power or strength that is not insignificant in size unlawfully, for



instance by hitting, either bare-handed or armed, or by other means. It is likened to the act of violence, that is, by causing one to lose consciousness or power. To lose consciousness means to forget or be unaware of oneself; this means an individual is unaware of what happens to him-/herself. Meanwhile, to lose power means to be deprived of all strength or power, so he/she is unable to defend him-/herself even for a bit, but, being in such a state, he/she retains his/her awareness of what happens to him-/herself.(Soesilo, 1995)

Aside from violence, another way to commit extortion referred to is threats of violence. Violence and threats of violence are two different things. While violence is a physical act using significant physical power or strength aimed at someone, rendering him/her powerless, threats of violence are only threats of physical violence. In threats of violence, significant physical power or strength is yet to be manifested, and it will only be used if the perpetrator thinks that using threats of violence will not make the threatened powerless. Under threats of violence, there already occurs a state of powerlessness psychologically because the threatened believes that physical strength will come to use any time if he/she resists what the perpetrator wills.(Chazawi, 2016)

- d. The aims and effects of coercion are the other person: 1) surrendering something, 2) giving a loan, and 3) erasing receivables.

These aims are the constitutive effects desired and are indicators of the completion or incompleteness of an act of extortion. That is to say, an act of extortion is said to be complete if it is ended with the surrendering of something, or the lending of money, or the erasure of receivables. If the act of coercion that is carried out with violence or threats of violence is done but the party coerced has yet to surrender a thing or give a loan or erase receivables, then it can be categorized as an extortion attempt if the preconditions of the attempt are fulfilled.

The thing referred to in this criminal act is something movable and tangible. This thing must belong to someone else entirely or partially. There is no condition requiring that this thing must belong to someone who is coerced with violence/threats of violence, but it is without doubt that the thing does not belong to the perpetrator.

There are three effects mentioned in this article:

- 1) Surrendering something;

Surrendering something is an act on the part of the victim under coercion that takes the form of giving something by transferring the control over it to someone else. This act of surrendering is said to be complete if it is obvious that the control over the thing is absolutely transferred to the perpetrator.(Chazawi, 1995)

- 2) Giving a loan;

Giving a loan is simply understood as someone coerced either by violence or by threats of violence being compelled to loan some money out to the perpetrator. Certainly it is odd in that the act of coercion either by violence or by threats of violence is committed by binding the perpetrator to the victim in the civil relationship of money lending which beyond doubt puts the perpetrator into difficulty automatically. The last reason makes more sense, that is, to erase receivables.

- 3) Erasing receivables

Erasing receivables has a more logical meaning. That is to say, someone commits an act of coercion by violence or threats of violence to erase receivables for him-/herself or someone else; someone coerces someone else so that he/she no longer be indebted to the one he/she coerces or to others.

2. Subjective elements, including:

- a. Intended to profit oneself or others;

One's purpose of coercing someone else to do something to him/her is to profit him-/herself or others. Profiting oneself or others is the will of the perpetrator, although there is no need to prove whether at the time of extortion the perpetrator is actually profited or not. According to this article, profiting oneself or others is the purpose of extortion; as long as the one coerced has completed surrendering something or giving a loan or erasing receivables, then the act of extortion is declared completed whether or not it is proved that the perpetrator or someone else managed to derive profits. By profiting it means increasing the amount of wealth of oneself or others. Making profits is the intention of the perpetrator, and it is not required to be manifested in practice. (Chazawi, 1995)

- b. In a manner that is against the law.

The act of coercion is committed consciously by the perpetrator. That is to say, the act committed is an act that violates the law.

After knowing the explanation of the elements referred to in Article 368 paragraph (1) of the Criminal Code, a question then arises: Are the acts indicated as illegal fees collection that occur in some tourist locations categorized as extortion? Based on the results of the interviews and field observation, some acts indicated as illegal fees collection at tourist locations are as follows: 1) imposing an entrance fees into the tourist locations illegally; 2) imposing parking fees illegally; and 3) imposing fees other than the entrance fees into the tourist locations. Can these three acts be categorized as extortion as referred to in Article 368 paragraph (1) of the Criminal Code or as what is generally known as illegal fees collection?

The imposition of unofficial entrance fees, unofficial parking fees, and other fees toward tourist locations by installing portals along the way toward the tourist locations is indeed inconvenient to the visitors to the tourist locations. However, according to the results of the field observation at the tourist locations, no coercion or violence or threats of violence are applied by local people/the managers of the tourist locations. An act of coercion does manifest itself, for instance, when visitors must pay some sum of money for them to go through a portal toward a tourist location, or the portal will never be opened and they will not be allowed to enter the tourist location.

Referring to the elements of crime in Article 368 paragraph (1) of the Criminal Code, the element of coercion has been manifested, but it is not committed by violence nor by threats of violence. Hence, another element in Article 368 paragraph (1) of the Criminal Code is not manifested. The elements in Article 368 paragraph (1) of the Criminal Code as explained above are cumulative elements, meaning that all the elements must be fulfilled for the manifestation of an act of extortion. Since the element violence or threats of violence in Article 368 paragraph (1) of the Criminal Code is not manifested in some acts indicated as illegal fees collection at tourist locations in Madura, those acts are not categorized as extortion; however, lay people refer to them as illegal fees collection.

Another form of illegal fees collection is as referred to in Article 12 item e of Law No. 20 of 2001 on Corruption Eradication, which reads:

"A state employee or a State administrator who with the intention to profit him-/herself or others in a manner that is against the law, or by abusing his/her power, forces someone to give something, make a payment or receive a payment with a deduction, or do something for him-/herself."

The elements of crime in Article 12 item e of Law No. 20 of 2001 on Corruption Eradication are as follows: (Effendi et al., 2020)

1. State employee or State administrator;

The meaning of state employee according to Article 1 point 2 of the Corruption Eradication Law of 1999 is as follows. (Effendi et al., 2020)

Referred to as a State employee is:

- a. A State employee as referred to in the Employee Affairs Law;
- b. A State employee as referred to in the Criminal Code;
- c. An individual who receives a salary or a wage from the State or local finance;
- d. An individual who receives a salary or a wage from a corporation that receives an assistance from the State or local finance; or
- e. An individual who receives a salary or a wage from another corporation that uses capital or facilities from the State or community.

An explanation of those categorized as state employees according to the provision above is provided below.

- a. State employee as referred to in the Employee Affairs Law;

The Employee Affairs Law referred to when the bill of the Corruption Eradication Law was passed is Law No. 8 of 1974 on the Principles of Employee Affairs. Article 1 item a of Law No. 8 of 1974 reads:

“State employees are those who upon fulfilling the requirements set in the applicable laws and regulations are hired by an authorized official and assigned tasks in a government position or assigned other State tasks that are determined based on the laws and regulations and are paid a salary based on the applicable laws and regulations.”

Further set out in Article 2 paragraph (1) of the same Law, “State employees consist of Civil Servants and members of the Armed Force of the Republic of Indonesia.” According to this provision, it can be concluded that state employees according to the Employee Affairs Law are civil servants and members of the Armed Force of the Republic of Indonesia.

In fact, Law No. 8 of 1974 has been amended by Law No. 43 of 1999, which was revoked and replaced by Law No. 5 of 2014 on State Civil Apparatus. In the State Civil Apparatus Law the term *state employee* (*pegawai negeri*) is no longer recognized, and the term used is *State Civil Apparatus* (*Aparatur Sipil Negara*). Article 1 point 2 of the State Civil Apparatus Law reads:

“State Civil Apparatus Employees, hereafter referred to as SCA Employees, are civil servants and government employees with a work contract who are hired by an employee development official and assigned tasks in a government position or assigned other State tasks and are paid a salary based on laws and regulations.”

The formulation of the definition of SCA Employees is similar to the formulation of the definition of state employees in the previous law, albeit with some modification to the terminology.

- b. State Employee as referred to in the Criminal Code;

The Criminal Code regulates state employee affairs in Article 92 paragraphs (1), (2), and (3). Article 92 of the Criminal Code reads:

- (1) Among those referred to as state employees are those who are selected in a selection that is organized based on general regulations; and those who for reasons other than selection become members of a law-maker board; governance or representation formed by or on behalf of the government;
- (2) Among those referred to as state employees are judges, including all referee judges; among those referred to as judges are those running the authority to preside over government administration, as well as chief justice and members of the religious court;
- (3) All people belonging to the armed force are considered state employees.

According to Sugandhi’s translation, Article 92 does not provide a definition of state employee, but an extension of state employee. Elements of state employee are: 1)



hiring by a public institution; 2) assuming a general position; and 3) performing part of government or government division tasks.

- c. An individual who receives a salary or a wage from the State or local finance; Other state employees not referred to in the SCA Law fall under this provision, including members of the Indonesian National Armed Force (TNI).
- d. An individual who receives a salary or a wage from a corporation that receives an assistance from the State or local finance; or
- e. An individual who receives a salary or a wage from another corporation that uses capital or facilities from the State or community.

The state employee elements listed in items c, d, and e are an extension of the definition of state employee seen from the source of salary received rather than from the job or responsibility. For instance, a driver with a government institution who receives a salary from the State Budget (APBN) is a state employee according to the provision above although he/she is of the contract employee status.

Such is the meaning of state employee according to the Corruption Eradication Law of 1999 with systematic interpretations across various existing laws and regulations. The next definition to be explained is that of State administrator, given that State administrators are also subjects of this crime in addition to state employees. According to the elucidation of Article 5 of the Corruption Eradication Law of 2001:

“Referred to as state administrators in this article are state administrators as referred to in Article 2 of Law No. 28 of 1999 on Clean and Corruption, Collusion, and Nepotism-Free State Administrators. This definition of State administrators applies also to the subsequent articles in this law.”

According to Article 2 of Law No. 28 of 1999, counted as State administrators are:

- a. State administrators with the State’s supreme institution;
- b. State administrators with the State’s high institutions;
- c. Ministers;
- d. Governors;
- e. Judges;
- f. Other State administrators according to the provisions of the applicable laws and regulations;
- g. Other officials with strategic functions in relation to State administration according to the provisions of the applicable laws and regulations.

Article 2 that is referred to in the elucidation of Article 5 of the Corruption Eradication Law of 2001 in fact does not contain a definition of State administrator, but it lists parties that are categorized as State administrators. The definition of State administrator itself is provided in Article 1 point 1 of the same law, which reads: “*State administrators are State officials who run an executive, legislative, or judicative function and other officials whose main functions and tasks are related to State administration according to the provisions of the applicable laws and regulations.*”

- 2. With the intention to profit oneself or others;  
There is an element of intentionality for the purpose of profiting oneself or others. This means that the act is aimed at earning profits, and there is no need to prove whether the profits are actually earned or not.
- 3. In a manner that is against the law;  
This formulation of the first form of extortion is one of a few formulations in the Corruption Eradication Law that mentions going against the law as an element of crime. Therefore, the element of going against the law in this act must be proven. Discussion of this element of going against the law has been presented in the first form of corruption.

4. Coercing someone to give something, make a payment or receive a payment with a deduction, or do something for him-/herself;

An alternative act forbidden in this formulation is to coerce someone to give something, make a payment or receive a payment with a deduction, or do something for him-/herself. The act of coercion (*dwingend*) refers to suppressing the will of another person that goes against the will of the one applying pressure. The elements that must be fulfilled in an act of coercion are as follows: a) there are opposing wills, namely the will of the coercing party against the will of the coerced one; b) the victim succumbs under pressure following the will of the coercing party and subdues his/her own will involuntarily; and c) the coerced party is powerless to take a stand and do as he/she wills, and this powerlessness is psychological. Psychologically, the victim is coerced to fulfill the will of the coercing party due to an unpleasing effect that he/she will suffer. The question is, when is this crime declared completed? Is it when the act of coercion is applied or is it when the constitutive effect of the act of coercion (giving something, making a payment or receiving a payment with a deduction, or doing something for the perpetrator) is fulfilled? If it is based on the formulation of Article 423 of the Criminal Code, then this criminal act is not a formal crime, meaning that the act of coercion is not declared completed if the act of coercion is not followed with a real consequence of coercion, that is the coerced party making a payment or receiving a payment with a deduction or doing something for the coercing one. (Chazawi, 2016)

To the coercing person, the coerced one must pay something although he is not obliged to make such a payment. This payment is made because of the presence of an element of coercion. An alternative effect of the act of coercion is receiving a payment with a deduction. The party coerced eventually agrees under such pressure to pay to the coercing party involuntarily with a deduction to his/her salary that is set by the coercing party. The last alternative is doing something for the coercing party. The party coerced eventually performs a work or a deed for the coercing party although there is no obligation for him/her to do so.

5. Power abuse.

This element is akin to the element “authority abuse” in other forms of corruption. Because the subjects of this crime are state employees or state administrators, then the subjects of this crime have the authority or power that can be abused to earn profits. Power abuse here does not refer to an act, but a means that supports the act of “coercion” as described earlier.

The main difference between Article 368 paragraph (1) of the Criminal Code and Article 12 item e of the Corruption Eradication Law of 2001 lies in the subjects of crime. In Article 12 item e of the Corruption Eradication Law of 2001, the subjects of crime are very specific, namely state employees or State administrators. (Sowikromo, 2017) The second difference is that, in the formulation of Article 12 item e of the Corruption Eradication Law of 2001, there is no element of violence or threats of violence in the act of coercion committed, but the act of coercion is committed by abusing power.

In relation to some acts considered by the respondents as illegal fees collection at tourist locations, the subjects of the acts do not meet the requirements. In some tourist locations in Madura that show some indications of illegal fees practice, these acts are commonly committed by local people. At Jaddih Limestone Hill in Bangkalan, for example, the respondents pointed out some indications of illegal fees practice at several points. The acts committed are keeping a portal along the access pathway to a tourist location, imposing a parking fee, and charging an entrance fee. According to local people and the Tourism and Culture Service of Bangkalan Regency, these acts involve three different parties: people whose area are passed by the access pathway toward the tourist location, people living around the tourist location, and the manager of the swimming pool at Jaddih Limestone Hill in Bangkalan. These three are the acts of the

people and private persons (manager of the swimming pool) and are not the decision of the village apparatus. Therefore, the subjects of illegal fees collection are personal people not counted as subjects of crime as set out in Article 12 item e of the Corruption Eradication Law of 2001.

Given that the element of subject in this crime is an absolute element, if this element is not fulfilled, there is no need to discuss the entire elements altogether because the crime concerned is automatically unfulfilled. Therefore, it is firmly confirmed that the acts indicated as illegal fees collection by the respondents are not the illegal fees collection referred to in Article 368 paragraph (1) of the Criminal Code, and neither are they the illegal fees collection referred to in Article 12 item e of the Corruption Eradication Law of 2001.

The third form that can be categorized as illegal fees collection is as set out in Article 12 item f of the Corruption Eradication Law of 2001, which reads:

*“A state employee or a State administrator who when performing a task requests for a payment to, receives a payment from, or deduce a payment to another state employee or state administrator or to the general cash account as if that other state employee or state administrator or the general cash account is indebted to him/her although it is known that such is not a debt.”*

The elements of crime contained in this formulation are as follows:

1. State employee or state administrator;  
This element has been explained previously.
2. When performing a task;  
The meaning of “when performing task” is that the act forbidden in this formulation is committed in relation to the scope of the work of the subject of crime. This act is not counted if it is committed outside the job of the subject of crime.
3. Request for, receive, or deduce a payment;  
Unlike in prior formulations, the act forbidden in this formulation has three alternatives, namely requesting for a payment, receiving a payment, or deducing a payment. In the previous formulation, the act forbidden is coercion, while in this formulation it takes the form of requesting for, receiving, or deducing a payment. A request does not carry an element of coercion within, but it comes with a concrete verbal act in desire of something from the victim, in this case a payment or a payment deduction.(Effendi et al., 2020)
4. To another state employee or state administrator or to the general cash account;  
The subject in this crime acts upon a state employee or state administrator or upon the general cash account in relation to his/her job field. This means that the victim asked to make a payment or receive a payment or deduce a payment is a state employee or state administrator within the job scope or related to the job field of the requester.
5. As if that other state employee or state administrator or the general cash account is indebted to him/her;  
Unlike the first form that has an element of coercion in the act, in the second form of extortion there is another element that leans toward deception as marked with the words “as if”. The words as if can be translated as denoting that the state employee or state administrator or the general cash account requested to make a payment, receive a payment, or deduce a payment is considered as indebted to the state employee or state administrator requesting. Who thinks so? It is the perpetrator him-/herself who thinks that way, with a spurious narrative that the state employee or state administrator or the general cash account is indebted to him/her.
6. It is known that such is not a debt.

An element of offence attached to this crime is that the perpetrator is aware that the debt is non-existent, but he makes up a story as if it exists, so he requests for a payment, receives a payment, or deduce a payment. Based on the explanation of the elements above, the element

of subject as an absolute factor in a crime in the case of this act is clearly not manifested because according to this formulation the subjects, both the perpetrator and the victim, must be state employees or State administrators.

The fourth form that can be categorized as illegal fees collection is as set out in Article 12 item g of the Corruption Eradication Law of 2001, which reads: *“A state employee or as State administrator who when performing a task requests for or receives a work or an item handover as if it is due to him/her whereas it is known that such is not a debt.”*

The elements of crime included in this act are as follows:

- a. State employee or state administrator;  
This element has been explained previously.
- b. When performing a task;  
This element has been explained previously.
- c. Requests for or receives a work or an item handover;  
This element has been generally explained previously, but it takes a different form of act. In the third formulation, the act takes the form of requesting for or receiving a work or an item handover. In this form of act, what is requested is not a payment, but a job or an item handover.
- d. As if it is due to him/her;  
This element has been explained previously.
- e. It is known that such is not a debt.  
This element has been explained previously.

Based on the explanation which mostly has been provided for the previous set of elements of crime, an absolute element remains to be unfulfilled, namely the element of subject. Therefore, the whole explanations of elements of the act indicated as illegal fees collection by the society turn out to have yet to fulfill the elements of extortion in the Criminal Code and of extortion committed by state employees or State administrators.

Illegal fees collection from the perspective of the society is different from it is from the perspective of the Indonesian criminal law. At least four forms of crime set out in Article 368 paragraph (1) of the Criminal Code and Article 12 item e, Article 12 item f, and Article 12 item g of the Corruption Eradication Law of 2001 that have formulations close to the concept of illegal fees collection have been explained, but they are inapplicable in the case of acts indicated by the society as illegal fees collection. Therefore, it is deemed necessary for the government to formulate with clarity acts that can be categorized as illegal fees collection.

## CONCLUSION

In this research it is concluded that the acts indicated as illegal fees collection at a tourist location that takes the form of a) installation of a portal along the access pathway toward the tourist location, b) imposition of an unofficial parking fee, and c) collection of an unofficial entrance fee are not counted as acts categorized as extortion (illegal fees collection) referred to in Article 368 paragraph (1) of the Criminal Law and Article 12 items e, f, and g of the Corruption Eradication Law of 2001. The elements contained in the four formulations are not fulfilled in the acts indicated as illegal fees collection at the tourist locations. These acts are illegal fees collection from the perspective of the society, although they are not normatively.

Some suggestions that can be offered based on the results of this research are as follows: A clearer regulation is required to delineate acts that can be categorized as illegal fees collection;

There are many unlicensed tourist attractions. As a result, the tourism management at those locations does not run optimally. This leads to the society's perception of illegal fees practice because of ticket pricing that is not in accordance with the standard and the presence of fees outside the official ones imposed at those tourist locations.

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