

Implementation Of Corporate Law Norms: Analysis Of The Element Of The No Losses To The State As An Announcement Of Corporate Criminal By State-Owned Enterprises

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ABSTRACT

State-Owned Enterprises (SOEs) are recognized as one of the most important factors driving economic activities, and manage a very large amount of state finances, thus making the SOE environment vulnerable and frequent criminal acts, especially corruption/bribery. Law enforcement against criminal acts within SOEs is generally charged to directors or other leadership officials, not yet touching SOEs Corporations. This research uses normative juridical research methods that are descriptive prescriptive, using data and information from various literature sources which are then selected and classified based on useful material and are very relevant to the focus of this research. This study found indication of the inability of law enforcers to punish SOEs, because there is a strong perception that there is no State loss in cases involving SOEs, although based on the calculation of authorized agencies, it can be seen that there are real losses of SOEs. The absence of this element of State loss arises based on the set-off approach between the expenditure of fine costs (if convicted by the Court) by the treasury of SOEs and the receipt of these fine costs by the State treasury. Because there is no loss to the State, there is no unlawful act by SOEs. This research is important to be carried out with the aim of providing a different perspective, although there is a set-off approach, but in terms of criminal law norms, SOEs as legal entity, are legal subjects (*rechts persoon*) besides humans (*natuurlijk persoon*), which have the same rights and obligations as humans. Thus, it is feasible and can be charged with criminal liability, if it violates the legal norms stipulated in the Criminal Law applicable to the Corporation, through proving the elements of criminal acts and by applying Identification Theory, Imputation Theory and other corporate theories.

Keywords: Regulation of State Owned Enterprises, State Revenue and Expenditure Set-off, Corporate Crime, Criminal Law Subjects.

1.INTRODUCTION

The environment of State-Owned Enterprises (SOEs) is in the spotlight from various parties because it is prone and often occurs crimes, especially corruption with a large state loss value. This was stated by Indonesia Corruption Watch (ICW), a non-governmental organization whose mission is to monitor and report to the public about corruption that occurs in Indonesia. ICW, which monitors the trend of prosecuting SOEs corruption cases throughout 2016-2021, recorded 119 cases of corruption investigated by law enforcement officials with total state losses of Rp47.9 trillion, with the following case details can be seen in table 1 below :

Table 1

YEAR	2016	2017	2018	2019	2020	2021
Number of Cases / year	9	33	21	20	27	9
Total Cases	119					
Total State Losses	Rp47,9 triliun					
Bribes Amount	Rp106,9 miliar					
Money Laundering Amount	Rp57,86 miliar					

(Egi Primayogha, 2022).

Cases of corruption or criminal acts that occur within SOEs are resolved by making suspects Directors or leaders under the board of directors and ordinary employees / employees without ever making SOEs corporations suspects. The reason stated is because there is no state loss considering that SOEs's financial resources come from the state and if it is subject to a crime (fine), then the money will go to the state through the Ministry of Finance, or like going out of the right pocket into the left pocket. Criminal Law expert Andi Hamzah argued that it is impossible for the state (through law enforcers) to punish the state (SOEs). Thus, according to Andi Hamzah, the determination of SOEs as a suspect is inappropriate, considering that most of SOEs's financial resources are from the state as well, so that if proven to have committed a criminal act, only the management can be held criminally responsible (Teodosius Domina, 2017).

ICW in its report stated that all corruption actors came from the board of directors, middle-level leaders and SOEs employees (Egi Primayogha, 2022). In line with ICW, the Minister of SOEs who revealed the fact that out of 159 SOEs involved in corruption, 53 officials were declared suspects (Athika Rahma, 2021). Neither ICW nor the SOEs Minister

mentioned any SOEs corporations being corrupt actors or being made suspects in corruption cases within SOEs. Likewise, the anti-corruption agency of the Corruption Eradication Commission (KPK), expressed by La Ode Muhammad Syarif when he served as Deputy Chairman of the KPK, stated that the KPK is difficult to fine SOEs because SOEs finances come from the state, so the application of Perma No. 13 of 2016 is difficult to apply to SOEs because it is "tricky " (Kukuh S Wibowo, 2017). In the corruption case of the e-KTP mega project in 2011-2012, with state losses reaching Rp2.3 trillion, eight suspects including former Speaker of the House of Representatives of the Republic of Indonesia Setya Novanto have been sentenced to prison. The handling of the e-KTP case that is still running until now, there are several people who have been determined as new suspects but none of the SOEs Corporations have been made suspects, even though there are several SOE'S Corporations that are members of the e-KTP procurement project consortium, namely the State Printing Company of the Republic of Indonesia (PNRI), PT LEN Industri (Persero) and PT Sucofindo (Persero). (Elza Astari Retaduari, 2022).

Conviction resistance for SOs Corporations involved in corruption crimes will make law enforcement difficult. Therefore, SOEs Corporations that cause state losses must be dealt with strictly (Bia/sf, 2022). Based on Law Number 1 of 2023 concerning the Criminal Code, it expressly states that Corporations (including SOEs) are the subject of Criminal Acts. Responsibility for criminal acts by the Corporation shall be imposed on the Corporation, administrators who have the position of function, order-giver, control holder and/or beneficial owner of the Corporation. Thus, under the New Criminal Code, SOEs can be held criminally liable for criminal acts committed.

So far, literature reviews and discussions related to SOEs corporations as subjects of criminal law that can be held criminally responsible, are widely outlined in various scientific articles, journals, theses, theses, dissertations and others, using conceptual approaches and statutory approaches, based on the principles and theories of corporations, legislation, and other legal sources, analyzing what law enforcement models are effective for corporations SOEs, what are the inhibiting factors of law enforcement against SOEs corporations and most discuss law enforcement against SOEs Corporation officials as the party most responsible for corruption crimes in SOEs Corporations, without involving SOEs Corporations.

Themes or topics that discuss the issue of corruption, especially in the SOEs environment, are very interesting to analyze because they involve very large state financial losses. However, criminal responsibility for criminal acts, especially corruption within SOEs, is fully imposed on the directors and management below and no one makes SOEs corporation a criminal suspect. Materials, data and information related to the processing of criminal acts of corruption against directors and board of directors are very widely available both in mass media, University / college repository platforms, journal management platforms, google scholar and others so that a lot of research is carried out with the subject of research is the directors and management.

Theoretical and conceptual approaches related to the SOEs corporate criminal liability legal model are discussed because in the law enforcement process various weaknesses are found such as non-uniformity in state financial definitions, disparity in verdicts and others (Kharisma et al., 2021). A somewhat different approach through criminology is used to criminalize corporations in the criminal act of corruption which is associated with different interpretations of the meaning of state finance and state losses (Iqbal, 2013). Law enforcement against corruption crimes against SOEs directors is considered inappropriate, but in reality it is carried out because the position of SOEs corporations is in two intersecting regimes, namely the public law regime and private law (Salsabila, 2020). Law enforcement officials are expected not to stop thoroughly investigating corruption cases only to SOEs administrators, but also to see whether SOEs also benefits from corruption (Aldy, 2021)

There is a lot of literature or scientific papers that discuss law enforcement for criminal acts of corruption both against directors / administrators and SOEs corporations, but never before that discusses what legal basis is used by law enforcement officials to equate SOEs losses associated with fines to be paid by SOEs and the income of SOEs fines to the state treasury, which situation is simplified to "no state loss", which is then used as a basis for not making SOEs a suspect/defendant of a criminal offence.

This research was conducted to complement previous studies and research that examined the punishment of SOEs Corporations only limited to discourse based on normative aspects and conceptual approaches that SOEs Corporations can be subject to punishment using

certain penal models with the aim of returning state losses in particular and for the sake of legal expediency in general.

The reluctance to punish SOEs corporations is not only from the perspective of state financial problems that will be used to pay fines imposed on SOEs corporations, which is then met with state revenues from fines imposed on SOEs Corporations and simplified to the absence of state losses, also due to lack of understanding of knowledge in the field of corporate law which is the basis / basis for the operation of the Corporation SOEs and the absence of a legal basis supporting the determination of the encounter of the issuance of fines with the receipt of fines as a state of no loss

This research is expected to answer the fundamental question of what is the legal basis for determining no state losses from the encounter of SOEs corporate fines with state revenues from SOEs corporate fines and what principles, theories and legal bases can be used to strengthen the punishment of SOEs corporations is a necessity, equal and no different from the punishment of Privately Owned Enterprises (POEs) corporations when involved in bribery cases that harm state finances. The research is also to answer what factors cause law enforcement's reluctance to apply punishment for SOEs Corporations and what are the implications of SOEs Corporation's criminal hesitancy in law enforcement against corruption.

By answering these questions, it is hoped that a deeper understanding will be obtained that the punishment of SOEs Corporations can be carried out in accordance with applicable legal provisions as well as the punishment of POEs corporations that commit criminal acts so that it will provide guidance and support to Law Enforcement Officers to carry out action against SOEs corporations indiscriminately and provides the same sense of justice as the POEs corporation.

Public doubts about law enforcement against SOEs corporations for corruption within SOEs that only make directors and administrators or SOEs officials as suspects cannot be separated from the performance of Law Enforcement Officers who distinguish the treatment between SOEs corporations and POEs corporations. In SOEs corporations, it is focused on the absence of state losses because SOEs finances are state finances so that fines imposed if SOEs corporations are guilty will be taken from the State Treasury to be deposited into the State Treasury as well. Meanwhile, in POEs corporations, if it can be proven that the involvement of the POEs corporation in the actions of the directors can be subject to

criminal acts. The Constitutional Court affirmed that SOEs finances are state finances, but the Court also stated that the paradigm of state financial supervision in SOEs must be based on the Business Judgement Rules paradigm, not just based on the paradigm of state financial supervision in government administration or Government Judgement Rules (GJR) and based on good faith. The judicial process that will determine the criminal conviction (Nano Tresna Arfana, 2020)

Doubts about the punishment of SOEs corporations involved in criminal acts within SOEs are not only related to aspects of legal norms but also related to bureaucratic factors and the absence of technical guidelines specifically regulating the punishment of SOEs corporations if it is proven that SOEs officials or directors are involved in corruption or bribery. The handling of corruption crimes committed by SOEs Corporations tends to be ambiguous and different in treatment from the treatment of POEs Corporations, so that the handling of state losses due to corruption is less than optimal.

The criminal act of corruption in the SOEs sector, all are charged with responsibility to its officials, both directors and administrators under the board of directors, in contrast to the indiscriminate punishment of the POEs Corporation, imposed on officials and also the POEs corporation itself. Some SOEs involved in corruption cases and whose officials are named as suspects can be seen in Table 1 below.

Tabel 2

NO	SOEs	CASES	SUSPECTS
1	PT Angkasa Pura II (Persero)	Bribe, 96,700 SGD for the baggage handling system procurement project worth Rp86 billion.	1. Andra Y Agussalam: former Finance Director 2. Taswin Nur, staff of PT Industri Telekomunikasi Indonesia (INTI)
2	PT PLN (Persero)	Corruption of several projects in PLN	3 former President Directors of PLN: Eddie Widiono, Nur Pamudji, and Sofyan Basir.
3	PT Pelabuhan Indonesia II (Persero)	Abuse of authority in the procurement of Quay Container Crane (QCC)	Richard Joost Lino, former President Director
4	PT Krakatau Steel (Persero)	Bribes for the procurement of goods and services	1. Wisnu Kuncoro, director PT KS

			2. Alexander Muskita, Private
5	PT Garuda Indonesia (Persero) Tbk.	Bribes for engine and aircraft procurement	1. Emirsyah Satar, former President Director 2. Soetikno Soedarjo, Private

(Tommy Kurnia, 2019)

There is hesitancy that law enforcers will punish SOEs Corporation because it concerns the issue of the authorized capital of SOEs Corporation which is considered as state wealth. The reluctance or hesitation of Law Enforcement Officials to make SOEs corporations as suspected perpetrators of criminal acts (especially corruption) is a reflection of the subjective acceptance of the opinions of criminal law experts who provide legal opinions for fields that are not their expertise related to the presence or absence of state losses, which is a special aspect in the financial sector, which causes the legal opinions given are not entirely appropriate.

2. LITERATURE REVIEW

2.1 Corporate Punishment

The concept of corporate punishment is a criminal law concept that has not long emerged and is accepted as a conception of criminal law. Although this concept has appeared for the first time in England in the 19th century, in other countries the concept of corporate punishment was only accepted in the 20th century (Schoultz & Flyghed, 2020; Alcadipani & de Oliveira Medeiros, 2020; Tombs & Whyte, 2020). Schoultz & Flyghed (2020) further said that corporations involved in corruption crime problems, not infrequently the actions they show to the public in the form of self-defense, which are shown to protect the image and legitimacy of the corporation, including in denying the actions they do. In some cases of corporate involvement in corruption crimes, in the context of its punishment there are also many kinds of polemics that arise over the state's partiality in determining the punishment of corporations involved in corruption cases (de Bunt, 1994; Griffin & Spillane, 2016; Jaspers, 2020).

Crimes involving corporations, globally are also known as white collar crime (F. Chan & Gibbs, 2019). In recent years, crimes involving corporations in Sweden have not only been shown through increasing trends, but also various polemics have emerged in the process of

determining punishment, which are considered incompatible with the negative impact caused by crimes committed by corporations (Schoultz & Flyghed, 2020). Crimes committed by corporations usually arise in the form of financial manipulation, accounting fraud, food fraud, cartels, bribery, and environmental damage, are crimes that involve many corporations, where the sanctions set are not a few that emphasize administrative punishment (van Erp, 2018). Therefore, the preparation and enforcement of criminal law in the context of convicting corporate criminal acts must emphasize the results of interactions involving all aspects, between the state and society (Lindsey & Pausacker, 2020).

2.2 Corruption

Corruption is an act of corruption or theft committed by public officials, both politicians and public servants, as well as other parties involved in actions that are unnatural, illegal in using public trust to obtain unilateral benefits (Dincer & Johnston, 2020; Doshi & Ranganathan, 2019). However, Castro et al. (2020) said that corruption crimes in addition to involving the state apparatus, also involve many private parties in some cases. Private involvement in corruption cases has significantly had a negative impact on economic growth in 175 countries which experienced a decline of around 17% (Gründler & Potrafke, 2019). In addition to the economic impact, corruption has also caused a decrease in public trust in the political system and leaders, so that the context significantly affects the quality of democracy towards a more negative direction (Kubbe & Engelbert, 2018). Given the negative impact of corrupt behavior, this behavior is often categorized as extraordinary crime (Pabalik et al., 2020).

Corruption cases do not only occur in the world of government politics but also occur in many business or corporate cases (Rama, 2012). Because corruption cases occur due to misuse of public office for personal interests or groups of people (Arifin & Hikma, 2020). In general, the causative factors of corporate corruption are caused by poor corporate governance (Castro et al., 2020). In addition, other factors that cause companies to be categorized as committing acts of corruption include corporate misconduct, management fraud and illegal company behavior (Vevere & Brante, 2020). The complexity of corruption is seen as a concept that runs dynamically, hierarchically, and a cultural system that can be viewed in various points of view (Podolnii & Podolnaya, 2016). The worst act of corporate corruption highlighted is corruption committed by state-owned corporations with funding sources from the state (Lopes Júnior et al., 2018). This has an effect on state development,

especially in developing countries that feel a much greater effect because state enterprises are one of the sources of state income (Odriozola & Etxeberria, 2021). The complex actions of this corruption case in the corporate world are one thing that must be accounted for in the eyes of the law (Solana-Ibáñez & Caravaca-Garratón, 2021). Therefore, many corporate cases are criminalized in corruption cases.

2.3 State-Owned Enterprises

State-Owned Enterprises (SOEs) are one of the economic actors in the national economic system, in addition to private business entities and cooperatives (Fajar et al., 2020). SOEs as a government-owned company has characteristics such as capital derived from the government (Wu & Xu, 2021), higher asset turnover (K. K. Y. Chan et al., 2018), subject to regulation and underlying government (Iswari et al., 2019). These three main characters of SOEs make their existence increasingly calculated as a source of state income and support the national economy (McIver et al., 2017). The existence of SOEs is not only on internal but also external effects which have a major effect on global economic business that can be taken into account. Not only common in developing countries, but also plays an important role in developed countries (Torres & Fyke, 2013). Because SOEs serves as a driver of national development strategies based on the belief that SOEs is able to correct market failures and support governments that are constrained by fiscal (Kim, 2018). Thus, in general it can be seen that SOEs is part of the realization of a form of economic democracy that will continue to develop gradually and sustainably for a country.

SOEs' position in the government structure makes it necessary to continue to maintain existence. However, the presence of SOEs and implementation still captures various problems that certainly disturb state regulations (Yu, 2014). Many SOEs portraits are considered inefficient by state bureaucrats who have corruption tendencies (Tkachenko et al., 2017). In fact, the problems faced by SOEs are also related to the professionalism of human resources, organizational systems, organizational culture, corporate governance, organizational strategy, and management empowerment which must be more responsive to changes in the market environment and internal threats such as corruption (Sari et al., 2018). The threat of this problem comes as a consequence and strategic responsibility of SOEs as the majority shareholder (Benito et al., 2016). So that the state's authority in directing the policies of each SOEs is firm to maximize public services, balance large

private forces, and help develop small businesses and cooperatives (Isharyanto et al., 2021). However, this business will still threaten SOEs as a state-owned corporation to experience problems and fraud due to the results of forced status as a national company according to the government regime (Huat, 2016).

2.4 State Finance, State Wealth and SOEs Wealth

State Finance is closely related to the wealth of SOEs. State Finance is regulated in Law Number 17 of 2003 concerning State Finance, namely all rights and obligations of the State that can be assessed with money, as well as everything in the form of money and goods that can be made State property in connection with the implementation of rights and obligations. The wealth of the State is all forms of biological and non-biological wealth in the form of tangible and intangible and intangible objects, both movable and immovable, which are controlled and / or owned by the State (DJKN, 2014).

State Wealth and State Finance are interconnected in relation to SOEs, namely that SOEs are one form or subject of wealth owned by the State derived from purchases or acquisitions at the expense of the State Budget. In Law Number 19 of 2003 concerning SOEs, Article 1 point 1 defines SOEs as business entities whose entire or majority of capital is owned by the State through direct participation derived from the assets of the Separated State. In the same article in point 10, it is further explained the definition of Separated State Wealth, namely state wealth derived from the State Budget to be used as state capital participation in the Company and / or Public Companies and other limited liability companies.

From the perspective of State financial losses in relation to the losses of SOEs due to unlawful acts by directors or other BUMN administrators who have the potential to receive legal sanctions in the form of fines by the Corruption Court, then there is a misperception among law enforcement, that SOEs are the State so that the fines to be paid by SOEs are fines that will also be issued by the State and will later be received also by the State treasury through the State Treasurer institution, so that in the end it will be considered that there is no state loss by using the set-off approach system (meeting of State expenditures and revenues)

2.5 Corporation Theories

The status of SOEs corporations as legal entities, is a legal subject (rechtspersoon) that has rights and obligations like humans (natuurlijk person), thus SOEs corporations can also be held criminally responsible for crimes committed by directors or administrators of the corporation. Some of the theories and concepts of corporate law that strengthen the inevitability of punishment against SOEs corporations will be described below.

Identification Theory. This theory postulates that the actions of certain people who have a directing mind (alter ego), are considered corporate actions. This was stated by Nmeihra who expressed her opinion that liability for corporate crime is identified with someone who has control over the company's activities and that person is responsible for crimes or mistakes committed by companies under his supervision (Nmeihra, 2023). Prija Djatmika added that a corporation can commit crimes through individuals acting for and on behalf of the corporation who have high positions or play key to corporate decision-making. The attribution of administrator error is the fault of the corporation. (Prija Djatmika, 2023).

Imputation Theory. This theory affirms corporate responsibility for unlawful actions committed by employees of a corporation within the scope of duties for the benefit of the corporation (Edi Setiadi and Rena Yulia, 2010). This is corroborated by Benefit Test Theory, which postulates that if a corporation benefits from an action, then the corporation is seen as related to that action. (Andreas N. Marbun, 2023). Based on the Corporate Culture Model, Corporations can also be held liable if express and implied corporate policies affect the way the corporation works. If a person's actions have a rational basis, that corporation authorizes or permits such acts. Thus, mistakes are seen from the daily culture of the corporation (Prija Djatmika, 2023). In the Reactive Corporate Model, the corporation is given a disclaimer that the Corporation can only avoid liability if it can prove that the corporation has established adequate procedures to prevent all crimes committed by company personnel or organs (Budi Suhariyanto, 2023).

2.5. Legal Basis of Corporate Responsibility

The regulations or laws governing liability by the Corporation can be seen in table 2 below.

Table 2

No	Regulation	Article	Explanation
1	Civil Code, Burgelijk Wetboek voor Indonesie, (Staatsblad Year 1847 Number 23)	Article 1367 Paragraph (1) A person is not only responsible for damages caused by his own actions, but also for damages caused by the actions of those for whom he is responsible or caused by goods under his control	The Board of Directors is responsible for the actions of the people they are responsible for and the directors are the alter egos of the corporation so that the corporation must also be responsible for the actions of the directors.
2	Law Number 40 of 2007 concerning Limited Liability Companies	Article 155. The provisions regarding the responsibility of the Board of Directors and/or the Board of Commissioners for their errors and omissions stipulated in this Law do not reduce the provisions stipulated in the Law on Criminal Law.	This article regulates criminal provisions for the Board of Directors and/or the Board of Commissioners who commit errors or omissions. The Board of Directors is the alter ego of the corporation so the corporation must also be responsible for the actions of the directors
3	Law Number 31 of 1999 concerning the Eradication of Corruption	Article 20 paragraph (2) Corruption is committed by a corporation if the crime is committed by people either based on employment relationships or based on other relationships, acting within the corporate environment either alone or together.	Corporations are liable for criminal acts committed by persons acting because of employment or other relationships
4	Law Number 1 of 1946 concerning the Regulation of Criminal Law (KUHP)	Article 55 (1) Convicted as a criminal offender: 1. those who do, who command to do, and who participate in doing deeds; 2. Those who by giving or promising something by abusing power or dignity, by violence, threats or misdirection, or by giving opportunity, means or	Corporations may be held criminally liable on the basis of participation offenses as provided in this Article 55.

		information, deliberately encourage others to do the deed. (2) With respect to the advocate, only the act that is deliberately encouraged is taken into account, along with its consequences.	
5	Law Number 1 of 2023 concerning the Criminal Code	Article 46 Criminal Acts by Corporations are Criminal Acts committed by managers who have a functional position in the organizational structure of the Corporation or persons based on employment relationships or based on other relationships who act for and on behalf of the Corporation or act in the interests of the Corporation, within the scope of business or activities of the Corporation, either individually or jointly.	Regulates the attribution of criminal acts to corporations for criminal acts committed by persons with certain qualifications.
6	Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporation	Article 3 Criminal acts by the Corporation are criminal acts committed by persons based on employment relationships, or based on other relationships, either individually or jointly acting for and on behalf of the Corporation inside and outside the Corporate Environment	Regulates the attribution of criminal acts to corporations for criminal acts committed by persons with certain qualifications.

3. METHODS

At a time when Indonesia is trying hard to recover the economy that was devastated by the Covid-19 pandemic, during and after the pandemic, financial resources are needed to finance the country's development, one of which is through the return of state wealth lost due to corruption which shows an increasing trend to date so that law enforcement is needed against perpetrators of corruption crimes not only against directors or officials of SOEs and POEs corporations which involved

bribery, but also included SOEs corporations, which had not been done to date.

This research was conducted qualitatively, through literature research by analyzing journals, scientific papers, laws and regulations, cases that occurred and other literature related to the research theme on literature data collected and observed and analyzed to provide a deeper understanding to provide a different perspective from law enforcement's perception that there is no state loss in criminal acts that harm SOEs, does not necessarily exempt SOEs corporations from criminal responsibility, in other words, SOEs corporations can also be punished in the hope that state financial losses due to corruption can be returned to the state to support development for the welfare of the community.

The research materials used used secondary data, namely (1) primary legal materials in the form of Law number 40 of 2007 concerning Limited Liability Companies which were partly amended by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 1 of 2023 concerning the Criminal Code, Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, and other related laws and regulations, and (2) Secondary legal materials in the form of books, journals or magazines written by legal scholars, criminal theories of court decisions, online news, and corporate theories and expert opinions, Internet sites related to the problem.

The literature study process begins by classifying data sources that are relevant to the problems discussed in this study which focuses on the corporate aspects of perpetrators of corruption crimes. After classifying data sources, proceed to search and explore statutory provisions that are in accordance with the classification of data sources and identify theories or norms of criminal law and corporate law. Finally, an analysis of literature documents was carried out which was then used to analyze the problems in this study.

All data and legal facts found through literature studies are further reduced by classifying data, selecting data relevant to research, and verifying data from selection results so that they can be used as valid literature sources.

4. RESULT :

Indonesia Corruption Watch (ICW) monitoring of SOEs corruption case enforcement trends throughout 2016–2021, shows that the SOEs environment is very prone to corruption. The number of corruption cases investigated by law enforcement officials reached 119 cases with 340 suspects. At least 9 cases were recorded in 2016, 33 cases in 2017, 21 cases in 2018, 20 cases in 2019, 27 cases in 2020, and 9 cases in 2021. SOEs Minister Erick Thohir stated that since taking office as Minister in 2019, there have been 159 SOEs who have stumbled into cases of alleged corruption. Of those, 53 officials were named as suspects

From the data above, it can be seen that law enforcement against corruption crimes has been carried out but only charged to individual SOEs officials, while SOEs as an institution incorporated by the Government rarely becomes a suspect or sentenced to a crime, on the contrary, private owned legal entities (corporations) have been very many convicted of bribery / corruption cases in various sectors of business activities.

From the data above, it can be seen that law enforcement against corruption crimes has been carried out but only charged to individual SOEs officials, while SOEs as an institution incorporated by the Government rarely becomes a suspect or sentenced to a crime, on the contrary, private owned legal entities (corporations) have been very many convicted of bribery / corruption cases in various sectors of business activities.

The conviction of SOEs officers or directors is easier to prove the elements of mens rea in SOEs officers / directors than SOEs Corporation because the purpose of criminal acts is considered more profitable or for the benefit of SOEs officers, while SOEs Corporation Himself is considered not to benefit from the criminal acts that occur. In addition, if the suspect / defendant is a SOEs Corporation, then the source of fine payments imposed on SOEs Corporation is taken from state finances which will later be deposited into the state treasury through the Ministry of Finance, which is then simplified to a situation of "no state loss".

Corruption crimes that are very detrimental to state finances and society at large, are imposed solely on individual perpetrators through imprisonment and fines of a certain value, sometimes with additional criminal seizure of assets or payment of substitute money. Punishment

for individuals only has an insignificant effect in terms of efforts to return state finances when viewed from the aspect of the ability of perpetrators to hide the proceeds of crime which is very difficult to trace by law enforcement through existing legal instruments.

It is now widely recognized that the subject of law has evolved from only human individuals (natuurlijk persoon) to include legal entities (rechts persoon). Thus, corporations already have rights, obligations and responsibilities that are equal to humans so that it is time to be charged with criminal responsibility if proven to have committed any criminal act, including corruption.

For SOEs corporate punishment, various legal instruments and corporate theories are available, namely Identification Theory, Imputation Theory, Benefit Test Theory, Corporate Culture Model and Reactive Corporate Model that can be used by law enforcers to criminalize SOEs corporations to recover state financial losses, while protecting the interests of people who are victims of SOEs corporate activities which deviates from the provisions of the law and causes great harm to society.

5.DISCUSSION

Imposing criminal responsibility on individual officials without involving the SOEs Corporation where the official works has an impact on weak efforts to recover significant state losses and the purpose of punishment is ineffective because it only has a deterrent effect on individual SOEs officials, but has no impact on SOEs Corporations at all itself, which can easily repeat the crime of corruption, even though it has replaced the corrupt official with a new official. Unlike the case if the SOEs Corporation is convicted, it will automatically have an impact on all SOEs organs including the board of directors or management of SOEs not to repeat the corruption crimes committed by previous officials.

SOEs, in this study is limited only to SOEs which is a public company, is a limited liability company whose entire or part of its capital comes from separated state assets, whose capital is divided into shares whose entire or at least 51% shares are owned by the government (on behalf of the state). As a limited liability company, SOEs could theoretically be subject to criminal prosecution, but in practice it is still a discourse and no SOEs has been convicted of corruption crimes. One of the contributing factors is because Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations does not

regulate the punishment of SOEs Corporations. Criminal Law expert Andi Hamzah argued that it is impossible for the state (through law enforcers) to punish the state (SOEs). Thus, according to Andi Hamzah, the determination of SOEs as a suspect is inappropriate, considering that most of SOEs's financial resources are from the state as well, so that if proven to have committed a criminal act, only the management can be held criminally responsible.

Corporation, a legal entity is a legal subject other than humans who have rights, obligations and responsibilities in traffic and legal transactions. Corporations have become one of the elements of the ecosystem of economic activity whose existence can no longer be ignored. Various provisions of criminal law, both special criminal law and general criminal law, regulate the provision of criminal sanctions for perpetrators of crimes, both human and corporate. The prosecution of SOEs resulted in the return of state financial losses which was certainly greater than if only convicted of corrupt officials. Given that a corporation has very large assets that can be used to pay fines imposed by the court. The Court may also order to confiscate SOEs's assets in the event that SOEs's financial capacity is unable to recoup the amount of the fine imposed by the Court. The seizure of SOEs assets is easier to carry out because the actual position of SOEs assets can be traced easily, both on the spot to the field, and through tracing SOEs's financial statements, it is clearly seen the financial position and assets of SOEs that can be confiscated for the repayment of penalty obligations.

SOEs as well as companies that are subject to the Limited Liability Company Law, have various obligations as stipulated in SOEs's Articles of Association and/or the Limited Liability Company Law. These obligations include conducting regular meetings with the Board of Commissioners and holding annual general meetings of shareholders, making a list of shareholders, special lists, minutes of GMS, and minutes of meetings of the Board of Directors, making annual reports, financial documents of the Company and others. From the company's liabilities, the recording of SOEs's assets and finances is complete and the data can be accounted for and used to track SOEs's financial capabilities in carrying out SOEs activities and other legal acts.

The imposition of responsibility for SOEs is possible with available legal instruments is a long-established norm and theory in the field of criminal law, which has always been applied to individual officials, but never to SOEs Corporations. This is different from the treatment of POEs

Corporations which are easily used as suspects, so this treatment should also be applied to SOEs corporations so that SOEs Corporations are more careful in carrying out their corporate activities in accordance with the principles of good corporate governance against the provisions of applicable laws and regulations, which if violated, can lead to the imposition of criminal sanctions on officials and SOEs corporation.

The application of criminal sanctions to SOEs is carried out on the basis of juridical factors that form the basis of criminal law, including the norms and rules of criminal law of inclusion (delneeming) regulated in Article 55 paragraph 1 of the Criminal Code, the criminal theory of deterrent effects and the main theory of corporations, namely vicarious liability, criminal imposition without fault, due to legal actions committed by SOEs administrators / officials, As a result, SOEs as an institution is partly responsible for the mistakes of its managers and officials.

Even President Joko Widodo imposed a rule that all SOEs commissioners must be responsible if the SOEs company he supervises suffers losses due to the commissioner's fault or negligence. This obligation is contained in Article 59 paragraph 2 of Government Regulation Number 23 of 2022 concerning Amendments to Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of Bodies.

The conviction of SOEs officers or directors is easier to prove the elements of mens rea in SOEs officers / directors than SOEs Corporation because the purpose of criminal acts is considered more profitable or for the benefit of SOEs officers, while SOEs Corporation Himself is considered not to benefit from the criminal acts that occur. In addition, if the suspect / defendant is a SOEs Corporation, then the source of fine payments imposed on SOEs Corporation is taken from state finances which will later be deposited into the state treasury through the Ministry of Finance, which is then simplified to a situation of "no state loss".

The hesitancy over the conviction of SOEs Corporation reflects government policy that focuses more on criminalizing SOEs Corporation officials than SOEs Corporation itself. The punishment of SOEs Corporations involved in corruption crimes should be carried out strictly considering that SOEs corporations aim to be profit oriented, so that they are believed to be able to recover state losses due to corruption.

The reality of law enforcement against State-Owned Enterprises (SOEs) corporations involved in criminal cases is doubted by various groups of corporate practitioners, although in principle, theory and legal norms, there is not a single legal provision (including Supreme Court Regulation Number 13 of 2016) that prohibits it. Even though there are so many SOEs involved in criminal acts, especially corruption, which should be defendants for criminal acts committed by SOEs directors. The reason stated is because there is no state loss considering that SOEs's financial resources come from the state and if it is subject to a crime (fine), then the money will enter the state through the Ministry of Finance, or like "out of the right pocket into the left pocket".

Termination of cases involving SOEs as suspects/defendants and assigning criminal responsibility only to directors) on the grounds that there is no state financial loss as if equating three different facts/data, namely firstly state losses due to criminal acts by corporations, second, fines imposed by judges, which will be removed from SOEs' accounts/treasuries and paid to the state treasury, and third, state revenue for fines paid by SOEs. Simplification of the situation as if it were a set-off (compensation) or debt encounter in the civil realm. This simplification of the issue violates corporate law norms that due to their status as legal subjects, SOEs corporations can be subject to criminal liability as widely reviewed in various journals, dissertations, theses, and others.

The latest case involves PT Perikanan Indonesia, suspected of committing a criminal act of corruption in the procurement of floating net cages with a work contract value of IDR 45.4 billion. In this case, investigators from the Aceh High Prosecutor's Office found work that did not match specifications, payment before the work was completed, and there were indications of overpayment. For this alleged corruption, the Aceh High Prosecutor's Office has confiscated eight floating cages along with nets, one unit of fish feed barges, Rp36.2 billion in cash and others. This case was finally stopped from being investigated on the grounds that PT Perikanan Negara is SOEs, so this case is the state against the state so there is no state loss, what happened was an administrative error and this error has been taken over by the Ministry of SOEs (Antara, 2022). La Ode Muhammad Syarif when he served as Deputy Chairman of the KPK said that the KPK found it difficult to fine SOEs because SOEs's finances came from the state, so the application of Supreme Court Regulation Number 13 of 2016 was difficult to apply to SOEs because it was "tricky" (Kukuh S Wibowo, 2017). Meanwhile, Indonesia Corruption Watch (ICW)

monitors that the SOEs environment is highly prone to corruption, especially in the financial sector. ICW stated that state losses from 2016 – 2021 amounted to Rp. 47.9 trillion (Egi Primayogha, 2022). Meanwhile, the SOEs Minister revealed the fact that from 2019 - 2022 there were 159 SOEs involved in corruption, 53 officials were declared suspects (Athika Rahma, 2021).

From the literature found by the researcher, the analysis of the punishment of SOEs Corporations is only based on normative reasons under the SOEs Law, not analyzing SOEs Corporations as a subject of law that can be criminalized. The conviction of SOEs Corporation will also meet public expectations for the return of state finances corrupted by SOEs Officials through their power and position in SOEs Corporation.

Penalties for Corporations including SOEs are made possible by using various legal instruments and corporate theories, namely Article 1367 of the Civil Code which states that states that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his control, Article 55 paragraph (1) of the Criminal Code which regulates the participation (Delneeming) and Article 155 of Law Number 40 of 2007 concerning Limited Liability Companies regarding the responsibility of the Board of Directors and / or the Board of Commissioners for errors and omissions that do not reduce the provisions stipulated in the Law on Criminal Law, as well as the implementation of various corporate theories namely Identification Theory, Imputation Theory, Benefit Test Theory, Corporate Culture Model, and Reactive Corporate Model. These corporate theories attribute the criminal liability of SOEs corporate administrators to SOEs corporations.

From the description above, it is clear that the reason for the absence of state losses as a consideration for not criminalizing SOEs corporations can no longer be maintained because corporate crimes have fulfilled the requirements of unlawful acts and the perpetrators can be held accountable. In addition, SOEs in the form of a limited liability company (legal entity) is subject to and bound by legal instruments and various corporate theories so that law enforcers do not need to worry about law enforcement to SOEs involved in criminal acts of corruption committed by state officials or administrators of the corporation

6.CONCLUSION

This study identifies the factors that cause SOEs Corporations not to be convicted in corruption crime cases due to a misperception that the state (through law enforcement institutions) cannot punish the state (through SOEs Corporations), assuming punishment in the form of fines to be paid by SOEs Corporations will be taken from the state finances and the proceeds of the fine payment will go to the state as well (through the Ministry of Finance), like exiting the right pocket into the left pocket, so it is considered ineffective or even more magnifies state losses. This has caused doubts from law enforcers to make SOEs Corporation a suspect of corruption.

This research builds a different perception from the perception of law enforcement and criminal law experts that SOEs Corporation as a legal subject (Recht Persoon) who has rights and obligations as a natural person (Natuurlijk Persoon), can still be tried as perpetrators of corruption crimes either alone or together with SOEs Corporation officials, based on various criminal law instruments regulated in the Limited Liability Company Law, and various laws and regulations governing criminal provisions for Corporations, and are strengthened by the main theories of corporations such as Identification Theory, Imputation Theory, Benefit Test Theory, Corporate Culture Model and Reactive Corporate Model. Punishment of corporations has often been carried out to POEs Corporations involved in corruption or bribery / gratification.

This research also proves the fact that the losses suffered by the state are not as large as the losses suffered by the general public who are customers / consumers of the SOEs Corporation , whose funds are deposited into the SOEs corporation but misused for the benefit of unscrupulous leaders of the SOEs corporation. These customer funds are arbitrarily treated as state assets so that when losses occur and assets are confiscated, criminal actors (corruptors) are used to compensate for state financial losses, not to compensate for community losses.

Thus, efforts to handle corruption/bribery or other criminal acts committed by SOEs administrators can be extended to the SOEs corporation itself, so that the purpose of reimbursing state financial losses can be better achieved than just punishing SOEs administrators, as well as providing a deterrent effect to other SOEs administrators to always work in good faith for the benefit of SOEs and in accordance with the aims and objectives of the establishment of SOEs.

The study conducted in this study provides a progressive criminal perspective to SOEs Corporations, by offering the concept of punishment using the main theories of corporate law, namely Identification Theory, Imputation Theory, Benefit Test Theory, Corporate Culture Model and Reactive Corporate Model. These Corporate legal theories are used to support criminal law norms regulated in various regulations as outlined in Table 2.

This research is still limited to literature research, has not been equipped with empirical data from previous research and interviews with corporate law practitioners and law enforcers both judges, prosecutors and the ministry of law and human rights are still needed so that further research is still needed that is more comprehensive, detailed equipped with relevant data so as to provide a deeper understanding of the inevitability of punishment for SOEs administrators and SOEs corporations.

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