



STATE'S LOSSES IN THE CORRUPTION CRIMES OF MEMBERS OF THE BOARD OF DIRECTORS OF STATE-OWNED (PERSERO) OR REGIONAL GOVERNMENT-OWNED BANKS AND THEIR SUBSIDIARIES IN THE PROVISION OF CREDIT/FINANCING

Try Widiyono, Farhana

Fakultas Hukum Universitas Islam Jakarta, DKI Jakarta

Corresponding email. Author: t.widiyono@yahoo.com; th123fth@gmail.com

Paper received on: 16-01-2022; Revised on: 08-03-2022; Approved to be published on: 25-03-2022

DOI: <http://dx.doi.org/10.30641/dejure.2022.V22.033-048>

ABSTRACTS

Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Eradication of Corruption Crimes provides normative direction that one of the essential things that must be proven in corruption crime is the existence of "State's losses". Members of the Board of Directors of State-Owned Enterprise in the form of bank, in managing of the company, especially in the provision of credit or financing, are very afraid of being accused of corruption crimes. The legal relationship between the State as a legal subject with the companies having status as State-Owned Enterprises (the Persero) is the existence of majority share ownership or controlling shares by the State in limited liability companies with Persero status. Such a legal relationship has been regulated in various applicable laws and regulations that have and are sourced from theoretical and philosophical foundations such as corporate legal doctrines for example the legal doctrine of piercing the corporate veil, the doctrine of fiduciary duty law, and the Business Judgment role. Some legal problems arise, namely how is the legal relationship of the State with State Enterprises? And can the non-performing credit or non-performing bank financing affect the value of the State's participation in State-owned Bank /Region-Owned Bank? The legal research used in addressing the issues in question is normative legal research, and therefore the results obtained in this legal research are what they should be.

Keywords: State Losses; State Enterprises; Corruption; Board of Directors

INTRODUCTION

Handling corruption is ongoing and is one of the main focuses of the Indonesian government. Various efforts have been taken, both to prevent and eradicate corruption simultaneously by the holders of executive, legislative, and judicial powers. Corruption crime is not only detrimental to the state's finances but has also violated the social and economic rights of the community so that it is categorized as an extraordinary crime. Therefore, the handling of corruption has undergone a paradigm shift, from punishment and deterrence to an emphasis on returning assets resulting from corruption placed in other countries.¹ In a general

perspective, corruption is an extraordinary crime committed by educated, professional people who have power and authority or are often referred to as white-collar groups.²

In Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the formulation of the offense of corruption crime is regulated in article 2 paragraph (1) which states that "Every person (anyone) who unlawfully commits an act of enriching himself or another person or a corporation that can harm State's finances or the State's economy shall be sentenced to life

¹ Ulang Mangun Sosiawan, "Penanganan Pengembalian Aset Negara Hasil Tindakan Pidana Korupsi Dan Penerapan Konvensi PBB Anti Korupsi di Indonesia," *Penelitian Hukum De Jure* 20, no. 4 (2020): 588, <https://ejournal.balitbangham.go.id/index.php/>

[dejure/article/view/1343/pdf](https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1343/pdf).

² Suharyo, "Aspek Hukum Surat Keterangan Dokter Dalam Sistem Peradilan Pidana (Pemberantasan Tindak Pidana Korupsi Pada Era Covid 19)," *Penelitian Hukum De Jure* 20, no. 3 (2020): 365, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1275/pdf>.

imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of a minimum of IDR 200,000,000.00 (two hundred million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs). Furthermore, Article 3 of the Law states that “Every person with the aim of benefiting himself or another party or a corporation, utilizing abusing the authority, opportunity or facilities available to him (in his possession) because of the occupation and/or position that can be detrimental to State’s finances or the State’s economy shall be sentenced to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of a minimum of IDR 50,000,000.00 (fifty million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs).” Article 4 of the Corruption Crime Law expressly states that compensating for the State’s loss does not eliminate the corruption crime.

The word “can” in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes has a meaning that is considered not to provide certainty. Because the word “can” in the Corruption Crime Law can be used by law enforcers to carry out investigations, even though there is not necessarily a State’s loss. Therefore, the word ‘can’ in Article 2 (1) and Article 3 of the Corruption Crime Law is declared unconstitutional, and contradicts the 1945 Constitution in the decision of the Constitutional Court Number 003/PUU-III/2006 dated July 25, 2006.

The provision of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is one of the things that is very feared by members of the Board of Directors and/or employees of State-owned banks or Banks that are subsidiaries of the State-owned banks. Because, at any time they can be asked for information, as witnesses or investigated by the authorities, either the police or the Prosecutor’s Office in cases of corruption based on the above provisions. The members of the Board of Directors are afraid because the business opportunity which is the core business of a State-Owned Enterprise or a subsidiary of a State-Owned Enterprise is the main task that must be carried out by a State-Owned Enterprise or subsidiary of a State-Owned Enterprise, as an

agent of development with a high-profit target. It is very risky for them to become a suspect or defendant in a corruption case. Empirically, there have been many members of the board of directors of State-Owned Enterprises or subsidiaries of State-Owned Enterprises who have been ruled by the Court as having committed corruption crimes or are currently in the process of investigation either by the Police or at the Prosecutor’s Office.

Most Indonesians now understand their rights and obligations, therefore the demands for administrative convenience and acceleration are increasingly dynamic. Both the Central Government and Regional Governments have made efforts to make improvements in various sectors, but in practice, the interaction between the community and the government’s public service sector still raises problems because a comprehensive bureaucratic reform has not been completed, whether regarding institutions, business processes and human resources such as public services procedures for making investment/business (investment procedure), processes for access to justice, as well as government goods and services procurement.³

In addition, in terms of legal substance, as a country that still adheres to the civil law system or the continental European system (although some laws and regulations have also adopted the common law system or the Anglo-Saxon system), it is said that law is written rules while unwritten rules are not considered as the law. This system affects the legal system in Indonesia, namely: the legality principle in Article 1 Paragraph 1 of the Criminal Code; *Nullum Dilectum Nula Poena Sine Previalege*... “there is no criminal act that can be punished if there are no rules governing it”. In the current condition, there are no criminal laws and regulations that explicitly regulate that a corporation (legal entity) can be punished. Therefore, whether or not an act is subject to legal sanctions can be determined if the act has been regulated in laws and regulations.⁴

³ Fuzi Narindrani, “Penyelesaian Korupsi dengan Menggunakan Restoratif Justice,” *Penelitian Hukum De Jure* 20, no. 4 (2020): 606–607, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1425/pdf>.

⁴ Marulak Pardede, “Aspek Hukum Pemberantasan Tindak Pidana Korupsi Oleh Korporasi Dalam Bidang Perpajakan,” *Penelitian Hukum De Jure* 20, no. 3 (2020): 337, <https://ejournal.balitbangham.go.id/index.php/>

One of the prominent cases relates to the distribution of credit/financing. The distribution of credit/financing originally in the initial process of distribution was a legal act that was included in the field of civil law, namely the existence of an agreement between creditors and debtors. However, in the end, it experienced a shift into corruption crime, when credit/financing became non-performing loan/financing. This happened because the initial investigators and the investigators considered that the non-performing loan/financing indicated that there had been a state's financial loss. Indeed, not all the provision of credit /financing that is non-performing in its repayment have shifted to corruption crimes. Of course, investigators will look at other elements of corruption crime in the process of preliminary investigation and the investigation.

The debate on the elements of State' losses in corruption crimes over the existence of credit/financing losses that is non-performing is basic. Losses in credit/financing channeling may occur due to business opportunities that do not work as expected. The risk of failure to pay the installment of credit/financing by the customer has been included in the cost of interest or profit-sharing. This means that credit interest or profit-sharing in financing has included the risk of non-performing credit/financing and it has been calculated that there is a possibility that there will be a certain percentage that experiences problems or is non-performing.

Differences of opinion regarding losses for State-Owned Enterprises or subsidiaries of State-Owned Enterprises are only for granting credit/financing to certain debtors or losses in the reporting period. This is because State-Owned Enterprises or subsidiaries of State-Owned Enterprises suffer losses due to credit/financing that experiences problems or is non-performing, but overall, in the reporting period they still earn profits and there are no losses. In addition, such losses may occur simply because of certain unfavorable macro and microeconomic conditions, so that credit/financing becomes problematic or becomes non-performing.

Preliminary Investigators and Investigators in conducting preliminary investigations or investigations may only relate with one of the provision of credit/financing that is non-

performing that result in losses for the Bank. They do not at all relate with other provisions of credit/financing in the reporting period which provides very large benefits to the company. The loss in the provision of just one credit/financing is sufficient for the preliminary investigators and the investigators to conduct preliminary investigations or investigations.

However, cases of corruption crime in the provision of credit/financing that becomes non-performing are not considered to have occurred by the police or the prosecutor's office as the preliminary investigators or investigators of corruption crimes. At least there is no data on the existence of corruption crime committed by non-State-Owned Banks with the status of *Persero* or Banks owned by State-Owned Banks with *Persero* status (subsidiaries of State-Owned Banks). This is because the preliminary investigators and investigators consider that the losses of the State-Owned Bank and the losses of the subsidiary banks of the State-Owned Bank are the State's losses.

The basis of the investigators' thinking can be analyzed academically that the losses of State-Owned Banks and the losses of subsidiary Banks of State-Owned Banks are the State's losses because the state has a majority share in State-Owned Banks. Likewise, the definition of share ownership is expanded to include subsidiary banks of State-Owned Banks. Therefore, a legal problem arises, namely how is the legal relationship between the State and State Enterprises regulated?

RESEARCH METHOD

The research used in this article is normative legal research. Hadin Muhjadi and Nunuk Nuswardani⁵ stated, "normative legal research is research that examines legal issues from the point of view of legal science in depth against established legal norms". Piter Mahmud Marzuki⁶ stated, "legal research is a process to find the legal rules, legal principles, and legal doctrines in order to answer legal issues or problems faced."

In this paper, the problem approach used is more of a statutory approach, which is an

⁵ Hadin Muhjadi dan Nunuk Nuswardani, *Penelitian Hukum Indonesia Kontemporer* (Yogyakarta: Genta Publishing, 2012). Hal. 9

⁶ Piter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2007). Hal. 35

approach that is carried out by reviewing the Law on State-Owned Enterprises, the Limited Liability Company Law, the State Treasury Law, and several laws and regulations which regulate business entities related to objects of the research.

All legal materials obtained from literature research were then analyzed descriptively-qualitatively by building arguments based on the logic of deductive thinking. With the descriptive-qualitative method, the researcher will present and describe and relate all materials relevant to this research in a systematic, comprehensive, and accurate manner, in order to obtain answers to the problems being discussed.

The legal issues mentioned above are used as a central point for the process of searching for legal principles and legal doctrines in more detail in order to find legal norms that should be formed, so that this research provides answers to the legal issues above and provides legal solutions in the future, namely what should happen.

DISCUSSION AND ANALYSIS

Law can be felt and realized in the simplest form, namely laws and regulations. In a more complicated form, the form of law is controlled by several legal principles, doctrines, theories, or philosophies, which are universally recognized by the legal system. The independence and freedom of a person contain a broad aspect. One aspect is the right of a person to be treated fairly, non-discriminatory, and based on the law, especially when a person is alleged or suspected of committing an act of violation or crime. This means that the deprivation or restriction of the independence and freedom of movement of a person suspected of committing a criminal act, from the point of view of the Criminal Law, can be in the form of arrest, detention, and prosecution. It can be justified if it is based on the applicable laws and regulations, which existed before legal action was imposed on him.⁷

The development of society has also resulted in the birth of various acts that are considered detrimental to the public interest and are then designated as criminal acts. The criminalization

process also gives rise to demands to position criminal law in a position that is actually getting stronger so that criminal law actually functions as a secondary criminal law. The existence of a secondary criminal law is basically universal and accepted in many countries even in those with a common law system.⁸ In addition to requiring legal certainty and justice, legal settlements must also have expediency values. The expediency value must be an important indicator in law enforcement and settlement, namely the benefit for the perpetrators and more importantly the benefit for the community in general. So far, the focus of law enforcement is more on legal certainty but forgets about other legal goals, namely justice and benefit.⁹

Corruption is an extraordinary crime. Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes classifies corruption crimes in CHAPTER II which are divided into several types as regulated in Article 2 to Article 20, including those relating to additional penalties. In addition, there are other criminal acts related to corruption crimes as regulated in CHAPTER III article 21 to article 24. The classification in the Corruption Crime Law also points to the entry into force of the articles regulated in the Criminal Code, but the sanctions are emphasized in the corruption crime law.

A clearer description of the types or kinds of provisions regulated in the corruption crime law is outlined as follows.

1. State's Financial Losses:

State's financial losses are regulated in Article 2 and/or Article 3 of the Corruption Crime Law. Article 2 paragraph (1) of the Corruption Crime Law basically states that "everyone can be categorized as a perpetrator of corruption crime if that person unlawfully commits an act to enrich himself or other parties or a corporation or company that is detrimental to State's finances or the state

⁷ Muhaimin, "Penetapan Tersangka Tidak Ada Batas Waktu," *Penelitian Hukum De Jure* 20, no. 2 (2020): 277, https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1165/pdf_1.

⁸ Yoserwan, "Fungsi Sekunder Hukum Pidana Dalam Penanggulangan Tindak Pidana Perpajakan," *Penelitian Hukum De Jure* 20, no. 2 (2020): 171, https://ejournal.balitbangham.go.id/index.php/dejure/article/view/979/pdf_1.

⁹ Muhaimin, "Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan," *Penelitian Hukum De Jure* 19, no. 2 (2019): 188, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/648/pdf>.

economy. For this act, the person is subject to life imprisonment or imprisonment for a minimum of 4 (four) years and for a maximum of 20 (twenty) years and a fine of a minimum of IDR 200,000,000.00 (two hundred million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs)". Then, Article 3 of the Corruption Crime Law basically states that, "everyone can be categorized as a perpetrator of corruption crime if the person with the aim of benefiting himself or other parties or a corporation or company abuses their authority, uses opportunities or facilities available to him because of occupation or position that can harm the state's finances or the state's economy, and he is subject to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of a minimum of IDR 50,000,000.00 (fifty million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs)."

2. The granting of Gift:
Everyone who commits a criminal act as regulated in Article 209 of the Criminal Code, which in essence is the granting of gifts, is given a sanction in the form of imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of a minimum of IDR 50,000,000.00 (fifty million rupiahs) and a maximum of IDR 250,000,000.00 (two hundred and fifty million rupiahs).
3. Promising of something for the purpose of influencing:
Everyone who commits a criminal act as regulated in Article 210 of the Criminal Code, which in essence is promising something to influence, is given a sanction in the form of imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and/or a fine of a minimum of IDR 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of IDR 750,000,000.00 (seven hundred and fifty million rupiahs).
4. The practice of Fraud:
Everyone who commits a criminal act as regulated in Article 387 (Practice of Fraud) or Article 388 of the Criminal Code, is given

a sanction in the form of imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and a fine of a minimum of IDR 100,000,000.00 (one hundred million rupiahs) and a maximum of IDR 350,000,000.00 (three hundred and fifty million rupiahs).

5. Embezzlement of money and/or securities:
Everyone who commits a criminal act as regulated in Article 415 of the Criminal Code may be subject to imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and/a fine of a minimum of IDR 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of IDR 750,000,000.00 (seven hundred and fifty million rupiahs).
6. Counterfeit:
Everyone who commits a criminal act as regulated in the provisions of Article 416 of the Criminal Code (counterfeit) shall be sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of a minimum of IDR 50,000,000.00 (fifty million rupiahs) and a maximum of IDR 250,000,000.00 (two hundred and fifty million rupiahs).
7. Decency crime:
Whoever commits a criminal act as regulated in the provisions of Article 417 of the Criminal Code (adultery) shall be sentenced to imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and a fine of a minimum of IDR 100,000,000.00 (one hundred million rupiahs) and a maximum of IDR 350,000,000.00 (three hundred and fifty million rupiahs).

Whoever commits a criminal act as regulated in the provisions of Article 418 of the Criminal Code (adultery) shall be sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of a minimum of IDR 50,000,000.00 (fifty million rupiahs) and a maximum of IDR 250,000,000.00 (two hundred and fifty million rupiahs). Anyone who commits a criminal act as regulated in the provisions of Article 419 (living together outside of marriage), Article 420, Article 423, Article 425, or Article 435 of the Criminal Code shall be sentenced to life imprisonment or imprisonment

for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of a minimum of IDR 200,000,000.00 (two hundred million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs).

8. The exploitation of Power:

Any person who gives a gift or promise to a civil servant (State's Civil Apparatus) by utilizing his power or authority attached to his occupation or position, or by the giver of the gift or promise it is deemed to be attached to his occupation or position, shall be subject to imprisonment for a maximum of 3 (three) years and/or a fine of a maximum of IDR 150,000,000.00 (one hundred and fifty million rupiahs).

9. Violation of Corruption Crime, Attempt and Assistance provisions:

Whoever violates the regulations or provisions of the law which expressly declare the violation of the provisions of the law as a corruption crime, the provisions stipulated in this law shall apply.

Whoever conducts an attempt, assists, or conspires to commit a corruption crime shall be subject to the same punishment as referred to in Article 2, Article 3, Article 5 to Article 14 of the Corruption Crime Law. Whoever outside the territory of the Republic of Indonesia assists, opportunities, facilities, or information for the occurrence of a corruption crime shall be subject to the same punishment as a perpetrator of a corruption crime in accordance with the provisions in Article 2, Article 3, Article 5 to Article 14 of the Corruption Crime Law.

As for additional punishment for a criminal act, a punishment may be imposed in accordance with the provisions in Article 2, Article 3, Article 5 to Article 14 of the Corruption Crime Law. The accused may be sentenced to additional punishment as referred to in Article 18 of the Corruption Crime Law. The additional punishment includes a. confiscation of movable or immovable property b. payment of compensation with a maximum amount equal to the amount of the property obtained from the corruption crime; c. closing all or part of the company for a maximum period of 1 (one) year; d. revocation of all or part of certain rights or the abolition of all or part of certain benefits, which have been or

may be granted by the Government to the convict. If the convict does not pay the compensation within 1 (one) year after a final court decision, his assets can be confiscated by the prosecutor and auctioned to cover the compensation. In the event that the convict's assets are insufficient, he shall be sentenced to imprisonment for a length of time that does not exceed the maximum threat of the principal sentence in accordance with the provisions of this Law and the length of the sentence has been determined in a court decision.

Corporations or legal entities are also objects of corruption crimes. Therefore, if a corruption crime is committed by or on behalf of a corporation, criminal charges and penalties can be made against the corporation and or its management. If a criminal charge is made against a corporation, the corporation is represented by the management. The principal punishment that can be imposed on corporations is only a fine, with the maximum sentence being added by 1/3 (one-third).

In order to pursue property originating from corruption crimes, investigators and/or informants usually relate it to the Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. This is to pursue the property where the property resulting from the crime is hidden and/or used to be returned to the State and/or confiscated and returned to the State-Owned Enterprises/ Regional Government-Owned Enterprises or subsidiaries of the State-Owned Enterprises/ Regional Government-Owned Enterprises. The pursuit of property from corruption crimes is carried out against any person who places, sends, transfers, spends, pays, grants, entrusts, takes abroad, changes form, exchanges for currency or securities or performs other actions on Assets that he knows or reasonably suspects to be the results of a criminal act to conceal or disguise the origin of the Assets shall be punished for the crime of Money Laundering, including concealing or disguising the origin, source, location, designation, transfer of rights, or actual ownership of the Assets that he knows or reasonably suspected to be the results of a criminal act and also the person receiving or controlling the placement, transfer, payment, grant, donation, deposit, exchange, or use of Assets which he knows or reasonably suspects to be the results of a criminal act.

The guilty plea system changes criminal justice from one seeking to determine whether the state has reliably defended its burden of evidence to another seeking to determine whether a defendant, regardless of guilt or innocence, is able to withstand pressure to plead guilty.¹⁰

While classifying law as a norm, and limiting legal science to the cognition of norms (a function distinct from making and applying the law), the law is separated from nature. Legal science as cognitive normative science is separated from all cognitive science which attempts to explain natural events in terms of causal law. Even legal science is separated from cognitive science whose task is to investigate the causes and effects of these natural events which are interpreted with legal norms, described as legal actions. There is no objection to such a classification as the sociology of research, particularly the sociology of law. Legal developments ultimately intersect with social change, social change can change the basics of legal values. Social change can be sourced from inside and outside. Sources of social change from inside, such as population growth, population decline, the discovery of new technologies, conflicts, or perhaps a revolution. Changes from outside such as natural disasters, cultural influences, wars, and so on.¹¹

This research is limited to corruption crimes that harm the State's finances as regulated in Article 2 paragraph 1 and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The word "can" in Article 2 paragraph (1) and Article 3 of the Law on the Eradication of Corruption Crimes has a biased meaning which contradicts the 1945 Constitution. This is as contained in the decision of the Constitutional Court (MK) Number 003/PUU-III/2006 dated July

¹⁰ Kate Fitz-Gibbon Asher Flynn And, "Bargaining With Defensive Homicide: Examining Victoria's Secretive Plea Bargaining System Post-Law Reform," *Melbourne University Law Review* (2011): 915, <https://www.semanticscholar.org/paper/Bargaining-with-defensive-homicide%3A-Examining-plea-Flynn-Fitz-Gibbon/997d68a5ca777993baa3f85827663fbc1b18d71c>.

¹¹ Bambang Hermawan Winda Apriani Zarona Harahap, Asep Syarifuddin, "Pengaruh Perubahan Sosial Dalam Perkembangan Hukum Di Indonesia," *Jurnal Lex Suprema* III, no. 1 (2021): 560, <https://jurnal.law.uniba-bpn.ac.id/index.php/lexsuprema/article/view/462/pdf>.

25, 2006, which removed the word "can" in Article 2 paragraph (1) and Article 3. In this provision, it must be interpreted that a corruption crime as a formal crime turns into a material offense that requires the existence of effects, namely the element of state financial loss which must be considered in a real/certain way. Therefore, the element of an offense related to "detrimental to the State's finances" must be understood to have actually occurred or is real in the Corruption Crime Law, therefore it is not an estimate.

The Criminal Code still adheres to the adage that legal entities cannot be punished with the assumption that corporations cannot be held accountable because if there is a crime committed by the board of directors of a corporation, it is definitely an act outside the articles of association of the corporation concerned. Therefore, in such a case those who shall be responsible are the directors individually or jointly with other directors, but it is not the corporation that must be responsible (*ultra vires doctrine*). Criminal acts committed by corporations are classified as unusual crimes but can have a severe impact on economic and financial losses for the State and society. However, the current Criminal Code does not regulate acts against corporate law, therefore it needs to be regulated in special criminal regulations.¹²

State's losses are closely related to State's finances. Law Number 17 of 2003 concerning State's Finances Article 1 number 1 essentially states that State's Finances are all rights and obligations of the State that can be valued in money, and all/everything either in the form of money or in the form of goods that can be used as a property of the State in connection with the implementation of these rights and obligations. The general explanation of the State finance law, among others, states that the object of State's Finances includes all State's rights and obligations that can be valued in money, including policies and activities in the fiscal, monetary fields and management of separated State's assets, as well as everything in the form of money, or in the form of goods that can be used as State's property in connection with the implementation of these rights

¹² Diana Yusyanti, "Tindak Pidana Pembakaran Hutan dan Lahan Oleh Korporasi Untuk Membuka Usaha Perkebunan," *Penelitian Hukum De Jure* 19, no. 4 (2019): 467, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/851/pdf>.

and obligations. Furthermore, the details of State's finances are mentioned in Article 2, among others in letter g which essentially states that "*State's assets/regional assets which are managed by the state/region itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in State Enterprises/regional administration-owned companies. Therefore, it can be concluded that the State's finances include, among others, State's assets, including assets separated in State Enterprises/regional administration-owned companies*".

In connection with the emphasis of the government position, M.Mc. Mullan stated that a government official is said to be corrupt if he receives money as an incentive to do something that can actually be done in his duties and position, even though he is not allowed to do such things while carrying out his duties. J.S. Nye argues that corruption is behavior that deviates from or violates regulations and the normal obligations of the role of government agencies by doing or seeking status influence, and prestige for personal interests (family, group, colleagues, friends).¹³

The State's assets separated in State Enterprises/regional administration-owned companies include securities, receivables, goods, and other rights that can be valued in money that have been separated by the State into State ownership shares in State Enterprises/regional administration-owned companies. State-owned shares in State Enterprises/regional administration-owned companies separated by the State originate from capital which is issued and fully paid up by the State to the company. The expenditure of State's money that issues capital in State Enterprises/regional administration-owned companies and fully pays up comes from State's money sourced from the separated State's Budget/Regional Budget.

The separation of State's money to pay up capital in State Enterprises/regional administration-owned companies is carried out by the President as the Head of Government holding the power of managing State's finances who delegates it to the

Minister of Finance as the Chief Financial Officer (CFO) and Fiscal managers and Government Representatives in the ownership of separated State's assets and to the Ministers/Heads of Institutions. The explanation of the State Finance Law, among others, states that in the relationship between the government and State Enterprises, regional administration-owned companies, private companies, and public fund management bodies, it is stipulated that the government can provide loans/grants/capital participation to and receive loans/grants from State Enterprises/regional administration-owned companies after obtaining approval from the House of Representatives/Regional House of Representatives.

This is confirmed in law No. 1 of 2004 concerning State Treasury, Article 41 paragraph (1) which essentially states that "the (Central) Government can make long-term investments in order to obtain or gain economic, social and/or other benefits. Furthermore, the said investment can be made in the form of shares, debt securities, and direct or other investments. Investments made by the central government in state/regional/private companies are stipulated by government regulations. Capital participation made by regional governments in state/regional/private companies or the like is stipulated by regional regulations (Perda). Therefore, it can be concluded that the government in paying up capital in State Enterprises/regional administration-owned companies must first obtain approval from the House of Representatives/Regional House of Representatives.

State-Owned Enterprises are regulated in Law Number 19 of 2003 concerning State-Owned Enterprises. Article 1 number 1 provides limitations regarding State-Owned Enterprises, which are business entities whose entire or most of the capital is owned by the State through direct participation originating from separated State's assets. Furthermore, Article 9 of the Law on State-Owned Enterprises states that State-Owned Enterprises consist of Persero and Perum (Public Company). Article 1 number 2 states that a State-Owned Enterprise (SOE) whose status is a Persero is a State-Owned Enterprise (SOE) in the form of a limited liability company whose capital is divided into shares where all or at least 51% (fifty-one percent) of the shares are owned by the Republic of Indonesia whose main goal is to pursue profit.

¹³ Ulang Mangun Sosiawan, "Peran Komisi Pemberantasan Korupsi (KPK) Dalam Pencegahan dan Pemberantasan Korupsi," *Penelitian Hukum De Jure* 19, no. 4 (2019): 520, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/760/pdf>.

This is confirmed by Government Regulation Number 12 of 1998 concerning Limited Liability Companies (PERSERO) which has been amended by Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises.

The establishment of a *Persero* is proposed by the Minister to the President accompanied by basic consideration and relevant matters after being reviewed together with the Technical Ministers and the Minister of Finance. All the provisions and principles that apply to limited liability companies as regulated in Law Number 40 of 2007 concerning Limited Liability Companies shall apply to the *Persero*. Therefore, the above description has clearly provided an answer to the question of how the legal relationship between the State and State Enterprises is, namely the relationship between the State and State Enterprises/regional administration-owned companies is a shared ownership relationship. As a share ownership relationship, it will be subject to the laws and regulations governing the company. In the case of a limited liability company, it is subject to the laws and regulations applicable to the limited liability company.

Limited Liability Company, hereinafter referred to as Company, is a legal entity which is a capital partnership, the establishment of which is based on an agreement, to carry out business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in the Law. The Company's organs are the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. The word "limited" in a Limited Liability Company has given a description of one of the characteristics of a Limited Liability Company, namely that the shareholders have limited liability for the "shares" given to them. Meanwhile, the responsibilities of the Board of Directors must be carried out based on 3 (three) principles that are interwoven in one system, namely the principle of fiduciary duty, the principle of duty of care and skill, and the principle of the standard of care. The principle of duty of care and skill and the principle of the standard of care are essentially further implementations of the principle of fiduciary duty.

The Board of Directors is appointed and dismissed based on the General Meeting of

Shareholders. The actions of the Board of Directors in managing the company are not only based on the provisions of the Limited Liability Company Law and or the Articles of Association of the company concerned. Legal relations and communication between the Board of Directors and shareholders are carried out through the General Meeting of Shareholders. Likewise, the responsibility for the management of the Board of Directors is stated in the General Meeting of Shareholders, either in the Annual General Meeting of Shareholders or in the Extraordinary General Meeting of Shareholders.

Henry Campbell Black stated, "Fiduciary duty. A duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person. It is the highest standard of duty implied by law¹⁴." Another opinion states, "Limited Liability Company is the cause for the existence (*raison d'être*) of the Board of Directors." Therefore, it is not wrong to say that between the Limited Liability Company and the Board of Directors there is a fiduciary relationship that creates "fiduciary duties" for the Board of Directors¹⁵. Chatamarrasjid stated that the Board of Directors must start from the foundation that the duties and positions obtained are based on two basic principles, namely trust given to them by the company (fiduciary duty) and duty of skill and care.¹⁶

The duty of the Board of Directors is to manage the company. The duty is the duty of management and the duty of representation (representing the company). I.G. Ray Widjaya divided the duties of the Board of Directors into 3 (three) tasks, namely: task-based on trust (fiduciary duties, trust, and confidence); task based on skill, prudence, and diligence (duties of skill, care, and diligence) and task based on the law (statutory duties).¹⁷

The Fiduciary duty principle concerns all the duties of the Board of Directors. This means the Board of Directors must have a duty of care and skill, good faith, honesty, and loyalty to the

¹⁴ Henry Campbell Black, *Black's Law Dictionary*, Sixth Edit. (St. Paul: West Publishing Co, 1990). Hal. 675

¹⁵ Fred B.G. Tumbuan, *Tugas dan Tanggung Jawab Direksi Perseroan Terbatas, Materi Pendidikan Singkat Hukum Bisnis* (Jakarta, 2000). Hal. 3

¹⁶ Chatamarrasjid, *Menyingkap Tabir Perseroan* (Bandung: Citra Aditya Bakti, 2000). Hal. 39

¹⁷ Rai.I.G Widjaya, *Hukum Perusahaan* (Jakarta: Megapoin, 2000). Hal. 220

company. The duty of care requires the Board of Directors to be careful. This means that the Board of Directors must follow the applicable procedures and with rational considerations.

Officials who due to their mistakes, omissions, or negligence cause the State to have to pay compensation may be subject to action in accordance with applicable regulations. In accordance with the principle of justice, it is carried out quickly, simply and at low cost and in accordance with the principle of legal certainty for the convicted parties, therefore officials/law enforcement officers do not act arbitrarily, because all actions must be accounted for, both to victims or their families, society and the State. The imposition of sanctions on officials/law enforcement officers who commit procedural errors makes the public aware for law enforcers to be careful and more professional in carrying out their authority. Law enforcers who violate the law are seen as the same as people who violate the law, equality before the law. This makes learning and creates prevention efforts for law enforcement officers not to apply the law in a deviant manner and makes law enforcement officers to be careful and to comply with applicable legal procedures to ensure that the rights of the accused are fulfilled.¹⁸

Business Judgment Rule. Munir Fuady¹⁹ limits this doctrine, namely, “A director, commissioner or other employees of the company or the main shareholder is not allowed to take the opportunity to seek personal gain when the action he takes is actually an act that should be carried out by the company in carrying out its business”. This doctrine places directors on the proportion of actual humans, where their efforts may fail. Failures accepted under this doctrine are human failures. Therefore, it is appropriate if a director is not generalized to be responsible for errors in making decisions (*mere errors of judgment*), without considering the human element.

In the establishment of a State Enterprise, the State only pays up the shares issued in the

State-Owned Enterprise (SOE) with the share price specified in the articles of association. Such payment of shares is State’s money which is separated as regulated in the State Finance Law and the State Treasury Law as discussed above. Therefore, juridically and formally, as long as the price of the share that has been subscribed and fully paid up by the State does not decrease, the State does not suffer a loss.

For state-owned banks and subsidiary banks of State-Owned Enterprises (SOEs) and regional government-owned banks, even though these banks gain profits and the price of shares that have been subscribed and fully paid up has not decreased, there are many directors and/or employees of the banks concerned who became suspects of corruption cases. This is suspected to be due to the interpretation of losses to these banks based on the existence of 1 (one) or more credit-granting transactions which become non-performing which should be suspected as violating the law. Therefore, the element of a violation of the law regulated in the corruption crime law is more dominant and the concept of the notion of “State’s loss” is biased.

The State Treasury Law has also regulated the mechanism for compensating State’s losses. The general explanation of the law emphasizes the universally applicable principle that whoever is authorized to receive, keep and pay or deliver money, securities, or property of the State is personally responsible for all deficiencies that occur in its management. The obligation to compensate State’s financial losses by the State’s financial managers in question is an element of reliable internal control.

Article 35 of the State Treasury Law essentially states, “Every State’s official and civil servant (State’s Civil Apparatus) who is not a treasurer who violates the law or neglects his obligations, either directly or indirectly, which harms State’s finances, is obliged to compensate for the loss in question, namely every person who is tasked with receiving, keeping, paying, and/or delivering money or securities or property of the State is a treasurer who is obliged to submit an accountability report to the State’s Audit Agency”. Furthermore, Article 67 Paragraph (1) of the State Treasury Law is quite clear. Paragraph (2) states, “The compensation for State’s losses for the management of the public company and limited

¹⁸ Yuliyanto, “Problematika Tata Cara Eksekusi Ganti Kerugian Dalam Perkara Pidana,” *Penelitian Hukum De Jure* 19, no. 3 (2019): 355–356, https://ejournal.balitbangham.go.id/index.php/dejure/article/view/693/pdf_1.

¹⁹ Munir Fuady, *Doktrin-doktrin Modern Dalam Corporate Law Eksistensinya Dalam Hukum Indonesia* (Bandung: Citra Aditya Bakti, 2002). Hal. 224

liability company whose all of or at least 51% (fifty-one percent) of the shares are owned by the Republic of Indonesia shall be determined by the State's Audit Agency (BPK), as long as it is not regulated in a special law".

This is the legal basis and the ground for the State's Audit Agency (BPK) to conduct an audit of State's losses, including the amount of compensation. However, the limits and scope of authority of the State's Audit Agency (BPK) are regulated in Article 3 of the State Treasury Law which states that the audit of State's financial management and responsibility is carried out by the State's Audit Agency (BPK) whose variable includes all elements of State's finances as referred to in Article 2 of Law Number 17 of 2003 concerning the definition of State's Finance in point g which relates to State's participation in State Enterprises/regional administration-owned companies (Persero) and region-owned companies as described above.

Therefore, the concept of State's losses in State Enterprises/regional administration-owned companies that suffer losses in one or more provisions of credit/financing is biased. On the other hand, there is an opinion that interprets the State's loss as only if State's participation in the form of shares in State Enterprises/regional administration-owned companies has decreased. However, there are other parties who are of the opinion that the State's loss is interpreted as when the State Enterprise/regional administration-owned company suffers a loss in one or more transactions carried out. Therefore, the latter sees the state's losses in State Enterprises/regional administration-owned companies without considering the losses or gains in the reporting period, including the consolidated balance sheet. This means that even in the annual reporting period the A State Enterprise experiences a very large profit, but if there are 1 (one) or more transactions that experience losses, then the loss is considered as State's loss (after fulfilling the formulation of other offenses). This does not affect the value of the shares regulated in the Company's Articles of Association, as State's money which is set aside for the establishment of state-owned banks as regulated in the State Finance Law and the State Treasury Law. This is very different if the loss is such that it affects the decline in the value of the shares regulated in the company's articles of

association. This means that the notion of State's losses has shifted to "possible income" if the credit/financing is performing.

Even though the State does not suffer losses on State's money set aside in the form of State's shares in State Enterprises, the legal logic has shifted that if there is a provision of credit/financing transaction carried out by the board of directors which then becomes non-performing, this is considered to have harmed the state. If this is done to benefit oneself or others and there is an element of violating the law, then it is considered to have been qualified as a violation of a corruption crime.

In the event that it is reasonably suspected and/or deemed to have harmed the state, the State as a shareholder should hold the board of directors accountable at the annual or extraordinary General Meeting of Shareholders. Therefore, if it turns out that based on the results of the internal audit and audit of the State's Audit Agency (BPK) they have made a detrimental transaction, the General Meeting of Shareholders (GMS) can reject the responsibility of the Board of Directors. If during the audit, it turns out that it is eligible to suspect that a crime has been committed, the state, through the State Minister of State-Owned Enterprises (SOEs), can report it to the authorities, although the authorities may conduct an investigation based on the development of the case and/or based on reporting of other parties.

Legal basis, line of thought and legal logic as described above regarding State's losses on the management of the board of directors of State Enterprises apply *mutatis mutandis* to Banks whose shares are directly owned by regional governments.

While the description above deals with Persero companies, it is actually very different with companies owned by a subsidiary of a Persero/Subsidiary of a State-Owned Enterprise (SOE) or a subsidiary of a region-owned company. The difference is the state's financial losses as stipulated in the Corruption Crime Law.

SOEs in carrying out their business development can establish subsidiaries/joint ventures through capital participation. SOEs can also make capital participation in existing subsidiaries/joint ventures. The SOEs' capital participation can be done in the form of money or goods within the limits regulated by law. SOEs

whose business is in the banking sector is subject to the single presence policy set by the Financial Services Authority and also may not have subsidiaries engaged in the non-financial sector. In addition, there are provisions of the Decree of the Minister of SOEs Number SK-315/MBU/12/2019 of 2019 concerning Structuring Subsidiaries or Joint Ventures within State-Owned Enterprises.

The Ministerial Decree (Kepmen) essentially states that the Ministry of SOEs shall review the going concern of Subsidiaries and Joint Ventures whose performance is not good and make the best decisions based on the assessment, by involving the Board of Directors of SOEs. The moratorium and review also apply to affiliated companies that are consolidated into SOEs, including their subsidiaries and derivatives. However, the decision and moratorium are excluded for the establishment of subsidiaries/joint ventures in order to participate in tenders and/or to carry out projects for SOEs that have the business field of construction services and/or toll road business.

Based on this description, it is clear that the establishment of a SOE subsidiary refers to Article 7 of Law No. 40 of 2007 concerning Limited Liability Company with all the restrictions regulated in the applicable regulations, with the process of establishing a subsidiary in a SOE is the same as the process of establishing a Limited Liability Company in general which is essential:

- a). The Company is established by 2 (two) or more legal subjects with a Notary Deed made in the Indonesian language;
- b). Each founder of the Company is required to subscribe shares at the time the Company is established;
- c). The Company obtains the status of a legal entity on the date of the issuance of the decision of the Ministry of Law and Human Rights regarding the ratification of the Company's legal entity;
- d). If after ratification as a legal entity the shareholders become less than 2 (two) people, then no later than 6 (six) months after the situation the shareholder must transfer part of their shares to other people or the Company issues new shares to other people;
- e). If the time period has been exceeded and the shareholders remain less than 2 (two) people, the shareholder is personally responsible for all engagements and the Company's losses can be requested to be dissolved at the request of the interested party or the district court.

The definition of "person" according to the explanation of Law No. 40 of 2007 concerning Limited Liability Company is an individual, either an Indonesian citizen or a foreigner or an Indonesian or foreign legal entity. This confirms that as a legal entity, the Company is established based on an agreement, 2 (two) or more persons, either between person and person, between person and entity and between entity and entity. In addition, a Limited Liability Company is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in the law and its implementing regulations.

Proof of State's losses in a subsidiary of a A State Enterprise needs to prove that there is a State's loss by examining the flow of establishment of the State's subsidiary associated with the provisions governing State's finances, namely Law No. 17 of 2003 concerning State Finance Law No. 1 of 2004 concerning State's Treasury. As described above, the establishment of a subsidiary of a A State Enterprise does not involve State's intervention or State's finances, except for a permit or approval for capital participation in a subsidiary of a State Enterprise that obtains permission from the shareholders of the State Enterprise as regulated in the articles of association of the State Enterprise, in this case, the State is represented by Ministry of SOEs as shareholders.

In Article 1 of Law No. 40 of 2007 concerning Limited Liability Company, the basic definition related to the company is given, namely that the Company's organs are the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. The General Meeting of Shareholders hereinafter referred to as the General Meeting of Shareholders, is the Company's Organ which has the authority that is not granted to the Board of Directors or the Board of Commissioners within the limits specified in this law and/or the articles of association. The Board of Directors is a Company's Organ that is authorized and fully responsible for the management of the Company for the benefit of the Company, in accordance with the purposes and objectives of the Company and represents the Company, both inside and outside the court in accordance with the provisions of the articles of association. The Board of Commissioners is the Company's Organ in charge

of carrying out general and/or specific supervision in accordance with the articles of association and providing advice to the Board of Directors.

Furthermore, Article 3 regulates the accountability of the shareholders, which essentially states that the shareholders are not personally responsible for the engagements made on behalf of the Company and are not responsible for the loss of the Company in excess of the shares owned. These provisions become invalid if: a. the requirements of the Company as a legal entity have not been met; b. The shareholders, either directly or indirectly, in bad faith take advantage of the Company for their personal interests; c. The shareholders are involved in unlawful acts committed by the Company; or d. The shareholders, either directly or indirectly, unlawfully take advantage of the Company's assets, resulting in the Company's assets being insufficient to pay off the Company's debts".

The conception of the establishment of a limited liability company is an act of agreement between the "founders" on the one hand and the "company" on the other, where the legal relationship occurs because of the "inclusion" of the founders into the company, then it has legal consequences that the authority of the shareholders which is granted by the company is a right that is attached to the individual, that is the owner of the company's shares so that the rights of the shareholder cannot be transferred to other parties, including the Board of Directors and the Board of Commissioners. In the event that there is a dual-status of a person as a shareholder and as a manager/director in the same company, the actions of the Board of Directors in managing the company will still apply professionally according to the legal doctrine and provisions for the management of the Board of Directors.

The authority of shareholders whose funds are managed by the Board of Directors of a company is regulated in Article 66 of the Limited Liability Company Law, which confirms that the Board of Directors shall submit an annual report to the GMS after being reviewed by the Board of Commissioners within a period of no later than 6 (six) months after the Company's financial year ends. The annual report must contain at least: the balance sheet at the end of the last financial year in comparison with the previous financial year, the profit and loss statement for the financial year

concerned, the statement of cash flows, and the statement of changes in equity, as well as the notes to the financial statements. In the GMS forum, shareholders are entitled to obtain information relating to the Company from the Board of Directors and/or the Board of Commissioners, as long as it relates to the agenda of the meeting and does not conflict with the interests of the Company.

Shareholders may also request an investigation if there is a criminal act within the company as regulated in Article 138 of the Limited Liability Company Law which is carried out with the aim of obtaining data or information in the event that there is an allegation that: a. The Company commits an unlawful act that is detrimental to shareholders or third parties, or b. a member of the Board of Directors or the Board of Commissioners commits an unlawful act that is detrimental to the Company or its shareholders or third parties.

The investigation as referred to is carried out by submitting a written application along with the reasons to the district court whose jurisdiction covers the domicile of the Company. The application as referred to may be submitted by: a. 1 (one) or more shareholders representing at least 1/10 (one-tenth) of the total shares with voting rights; b. other parties who based on laws and regulations, the articles of association of the Company or an agreement with the Company are authorized to submit an application for investigation; or c. prosecutor's office for the public interest.

The application as referred to is submitted after the applicant first requested data or information from the Company at the General Meeting of Shareholders (GMS) and the Company did not provide such data or information. Applications to obtain data or information regarding the Company or application for the investigation to obtain such data or information must be based on reasonable reasons and in good faith.

Based on the description above, it can be concluded that in the establishment of a subsidiary of a State Enterprise there is no State's intervention except for a permit or approval of capital participation in a subsidiary of a State Enterprise which is regulated in the articles of association of the State Enterprise. However, in the practice of litigation, the loss of a subsidiary of a State Enterprise will be highlighted by law enforcers

for an investigation to obtain facts and evidence that the loss is a State's loss. Therefore, based on formal juridical analysis, losses of subsidiaries of State Enterprises (Persero) and subsidiaries of region-owned companies are not appropriate to be brought into the realm of corruption crime, because there is no State's loss.

CONCLUSION

The legal relationship of share ownership has been regulated in the limited liability company law. Juridically and formally, the provision of credit or financing of a Bank with the status of a limited liability company/Persero (a bank with the status of a State Enterprise/regional administration-owned company) in terms of providing credit/financing which then becomes non-performing does not affect the value of State's participation in a Bank with a limited liability/Persero status. However, the legal logic has shifted that if there is a provision of credit/financing transaction carried out by the Board of Directors which then becomes non-performing, this is considered to have harmed the state. Legal basis, line of thought, and legal logic as described above related to State's losses on the management of the Board of Directors of State Enterprises apply *mutatis mutandis* to Banks whose shares are directly owned by regional governments.

For a subsidiary of a State-Owned Enterprise or a subsidiary of a region-owned enterprise whose shares are partly owned by a State-Owned Enterprise or a region-owned enterprise, the treatment regarding State's financial losses should be different from the case of a State-Owned Enterprise or a region-owned enterprise, because it is not direct ownership of the state. Therefore, the financial loss in a subsidiary of a State-Owned Enterprise or a subsidiary of a region-owned enterprise is a financial loss for the company concerned or the State-Owned Enterprise or the region-owned enterprise, and not the state's loss.

SUGGESTION

The determination of the limits on State's losses must be formulated in laws and regulations so that the interpretation of the definition of State's losses can be different. The provision of credit/financing that becomes non-performing and the Bank in question which in the reporting period

gains profit formally and juridically do not affect the State's money set aside in the form of shares in Banks with Persero status, which means that there is no State's loss. But in practice investigators, based on legal logic, consider it a State's loss.

ACKNOWLEDGMENT

The researcher would like to express gratitude to Allah the Almighty so that the writing of this scientific paper can be completed properly, then among others to Muhaimin as a Junior Researcher in the Legal Field for suggestions regarding improvement of the substance of writing and the use of Mendeley tools in writing scientific papers.

BIBLIOGRAPHY

- Asher Flynn And, Kate Fitz-Gibbon. "Bargaining With Defensive Homicide: Examining Victoria's Secretive Plea Bargaining System Post-Law Reform." *Melbourne University Law Review* (2011): 915. <https://www.semanticscholar.org/paper/Bargaining-with-defensive-homicide%3A-Examining-plea-Flynn-Fitz-Gibbon/997d68a5ca777993baa3f85827663fbc1b18d71c>.
- Chatamarrasjid. *Menyingkap Tabir Perseroan*. Bandung: Citra Aditya Bakti, 2000.
- Fuady, Munir. *Doktrin-doktrin Modern Dalam Corporate Law Eksistensinya Dalam Hukum Indonesia*. Bandung: Citra Aditya Bakti, 2002.
- Hadin Muhjadi dan Nunuk Nuswardani. *Penelitian Hukum Indonesia Kontemporer*. Yogyakarta: Genta Publishing, 2012.
- Henry Campbell Black. *Black's Law Dictionary*,. Sixth Edit. St. Paul: West Publishing Co, 1990.
- Muhaimin. "Penetapan Tersangka Tidak Ada Batas Waktu." *Penelitian Hukum De Jure* 20, no. 2 (2020): 277. https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1165/pdf_1.
- . "Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan." *Penelitian Hukum De Jure* 19, no. 2 (2019): 188. <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/648/pdf>.

- Narindrani, Fuzi. "Penyelesaian Korupsi dengan Menggunakan Restoratif Justice." *Penelitian Hukum De Jure* 20, no. 4 (2020): 606–607. <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1425/pdf>.
- Pardede, Marulak. "Aspek Hukum Pemberantasan Tindak Pidana Korupsi Oleh Korporasi Dalam Bidang Perpajakan." *Penelitian Hukum De Jure* 20, no. 3 (2020): 337. <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1280/pdf>.
- Piter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana, 2007.
- Sosiawan, Ulang Mangun. "Penanganan Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Dan Penerapan Konvensi PBB Anti Korupsi di Indonesia." *Penelitian Hukum De Jure* 20, no. 4 (2020): 588. <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1343/pdf>.
- . "Peran Komisi Pemberantasan Korupsi (KPK) Dalam Pencegahan Pemberantasan Korupsi." *Penelitian Hukum De Jure* 19, no. 4 (2019): 520. <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/760/pdf>.
- Suharyo. "Aspek Hukum Surat Keterangan Dokter Dalam Sistem Peradilan Pidana (Pemberantasan Tindak Pidana Korupsi Pada Era Covid 19)." *Penelitian Hukum De Jure* 20, no. 3 (2020): 365. <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1275/pdf>.
- Tumbuan, Fred B.G. *Tugas dan Tanggung Jawab Direksi Perseroan Terbatas, Materi Pendidikan Singkat Hukum Bisnis*. Jakarta, 2000.
- Widjaya, Rai.I.G. *Hukum Perusahaan*. Jakarta: Megapoin, 2000.
- Winda Apriani Zarona Harahap, Asep Syarifuddin, Bambang Hermawan. "Pengaruh Perubahan Sosial Dalam Perkembangan Hukum Di Indonesia." *Jurnal Lex Suprema* III, no. 1 (2021): 560. <https://jurnal.law.unibabpn.ac.id/index.php/lexsuprema/article/view/462/pdf>.
- Yoserwan. "Fungsi Sekunder Hukum Pidana Dalam Penanggulangan Tindak Pidana Perpajakan." *Penelitian Hukum De Jure* 20, no. 2 (2020): 171. https://ejournal.balitbangham.go.id/index.php/dejure/article/view/979/pdf_1.
- Yuliyanto. "Problematika Tata Cara Eksekusi Ganti Kerugian Dalam Perkara Pidana." *Penelitian Hukum De Jure* 19, no. 3 (2019): 355–356. https://ejournal.balitbangham.go.id/index.php/dejure/article/view/693/pdf_1.
- Yusyanti, Diana. "Tindak Pidana Pembakaran Hutan dan Lahan Oleh Korporasi Untuk Membuka Usaha Perkebunan." *Penelitian Hukum De Jure* 19, no. 4 (2019): 467. <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/851/pdf>.

HALAMAN KOSONG