



The Meaning of Corporate Oversight of State-Owned Enterprises as Condition of Criminal Liability

Toni Hendarto¹; I Nyoman Nurjaya²; Prija Djatmika²; Abdul Madjid²

¹ Student at Faculty of Law, Brawijaya University, Malang, East Java, Indonesia

² Lecturer at Faculty of Law, Brawijaya University, Malang, East Java, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i11.2261>

Abstract

Indonesian Reform aims to eradicate corruption, collusion and nepotism in order to achieve a sense of public justice and a sense of peace that can be accounted for through legal arrangements so as to achieve a sense of justice, legal certainty and benefit for the society. One of the goals of the reform is to eradicate corruption with the enactment of Law No. 31/1999 jo. Law Number 20 of 2001 concerning Eradication of Corruption Crime. The goal in eradicating corruption in Indonesia is to restore financial losses to the state and the country's economy. At last, the Law on the Enforcement of Criminal Actions of Corruption is based on the fact that corruption is considered as an extraordinary crime, because corruption is not only a crime that harms state's treasure, but also can have impact on all development programs, threatening education quality, threatening development quality, falling quality of education, and poverty is not handled. If state money is corrupted, then programs to implement the state's goals will not working and results in the state's failure. In criminal law, there are two legal subjects, namely person and corporation. Humans here are said to have legal subjects because they have rights and obligations. Likewise with a corporation which is a business entity, both legal and non-legal entity which also has separate rights and obligations. Article 20 of the Law of the Republic of Indonesia Number 31 of 2009 states that if corruption is committed by or on behalf of a corporation, criminal prosecution or conviction can be made against the corporation and/or its management. The main punishment that can be imposed against a corporation is a fine with the maximum penalty being added by one third of the maximum penalty. In addition to fines, additional penalties may be imposed in the form of freezing part or all of the corporate's business activities, revocation of business licenses, dissolving and/or prohibiting the corporation, confiscation of corporate assets for the state, and/or takeover of the corporation by the state. This research is a legal research. It studies legal principles and legal norms in the laws and regulations related to corruption and corporations, by applying statutory approach, conceptual approach, and comparative approach.

Keywords: *Corruption; Corporation; Extraordinary Crime*

1. Introduction

State-Owned Enterprises (SOE) are business entities that contain two essential elements, namely the government element (public) and the business element (enterprise). Therefore, SOE is one of the public sectors that has special characteristics that are not shared by other public institutions, namely the nature of flexibility and initiative which can also play a role as a private company (Kristian and Gunawan, 2015). Furthermore, Wibisono in his book *Corporate Social Responsibility* states that “SOE is demanded to function as a national development tool and act as a social institution (public). This social role implies not only ownership and supervision by the public but also illustrates the concept of public purpose (the target is the community) and public interest (its orientation to the interests of the community). Thus it is realized that the position of SOE is like having two sides of a coin. On the one hand it acts as a business institution and on the other hand it acts as a social institution because it is an instrument of the state.”

The purposes and objectives in the establishment of SOE is stated in the Law Number 19 of 2003 concerning SOE, which consists as follows:

1. Providing contribution for the development of national economy in general and state's revenue in particular.
2. Earning profit.
3. Providing benefits in form of provision of qualified products and/or services to support the life-needs of the society.
4. Becoming pioneer in starting new business activities that have not been conducted by private sector and cooperatives.
5. Being active in providing counseling and aids to entrepreneurs in the low level, cooperatives, and the community.

SOE is a business entity whose capital is partly or wholly owned by the state. This business entity was established to pursue profits as state revenue and to stimulate national economy in its competition with private companies (Kristian, 2018). With the existence of SOE, it is expected that it can provide public goods and services and become a motivator for small businesses and economically weak groups to rise up and achieve a better standard of living.

Over time and human development, corporations have also become more complex. Corporations are no longer what they used to be, which still use a simple system. Various systems and methods in running the corporation are continuously being developed in order to get the maximum benefit. In the process of obtaining these benefits, sometimes corruption is carried out by corporations with criminal acts of corruption which include state-owned enterprises (SOE).

Criminal theory against law raises the concept of corporate crime. What is meant by corporate crime is an act in the form of doing or not doing, by an association or legal entity, through its organs, which brings profit to the legal entity or association, but is carried out in violation of legal rules which fall under the category of public order classified into a criminal act, which results in the form of harm to other people or to the wider community.

2. Methodology

Legal research discusses research on legal principles and legal norms in laws and regulations related to corruption and corporations (Raharjo, 2000). The approach used: statutory approach, conceptual approach, and comparative approach. The main issue that will be examined in this research are legal settlement and legal sanctions for corporate actions in committing corporate crimes, especially in SOE. Where at this time there is a vacuum in the legal norms regulating sanctions against corporations that commit criminal acts of corruption where the existing legal rules are made by the Supreme Court regarding the procedures for Corporate Crime Settlement, whose position is still deemed not in accordance with the hierarchy of statutory regulations.

3. Result & Discussion

3.1. Regulation and Legislations in Indonesia that Regulates Corporation as the Condition of Criminal Liability

In the world of criminal law, there are two legal subjects, namely person and corporation. Person here are said to have legal subjects because they have rights and obligations. Likewise with a corporation which is a business entity, both as legal and non-legal entity, which also has separate rights and obligations.

Article 20 of the Corruption Act states that if corruption is committed by or on behalf of a corporation, criminal charges or penalties can be made against the corporation and/or its management. The main punishment that can be imposed against a corporation is only a fine with the maximum penalty being added to one third. The process of providing a deterrent effect for corporations will also be very effective if the perpetrators are cumulatively charged not only by the Corruption Act, but also by the Money Laundering Law. In Article 7 of the Money Laundering Law, in essence, it is stated that the principal punishment imposed on corporations is a maximum fine of Rp. 100,000,000,000, - (one hundred billion rupiah). In addition to fines, additional penalties may be imposed in the form of freezing part or all of corporate business activities, revocation of business licenses, dissolving and/or prohibiting the corporation, confiscation of corporate assets for the state, and/or takeover of corporation by the state. The Corruption Eradication Committee (referred as KPK) argued that the legal process against corporations was hampered because the Criminal Procedure Code (KUHAP) had not specifically regulated the method of investigation and prosecution of corporation. The Criminal Procedure Code as a legal basis for prosecution by KPK only regulates legal subjects in the form of persons. The KPK is worried that if the legal basis is not clear, the corporations that being prosecuted have the potential to be released by the court judge for corruption crime (Sjawie, 2015).

In modern criminal law literature it has been reminded that in a socio-economic environment or in economic traffic, a criminal law offender does not always need to physically commit his crime. Since corporate actions are always manifested through human actions (directors, management), the delegation of management accountability into a corporate action (legal persons) can be carried out if these acts in social traffic are deemed as corporate actions. This is known as the legal concept of functional actor (*funcionele dader*). This concept was first introduced by Law No. 23/1997 on Environmental Management.

From the above explanation, it can be seen that in criminal law, legal subjects consist of persons and legal entities. In the criminal law both are recognized, that legal entities have the authority to carry out legal acts just like person. This is because the actions of legal entities are always manifested through human actions. In addition, both in criminal law, legal entities in carrying out legal actions work by means of their officials. In criminal law, because the actions of a legal entity are always manifested through human actions (who are members of the board of directors of a legal entity), the delegation of criminal responsibility lies with the person in charge, in this case represented by the board of directors.

The basis for consideration of corporate punishment, according to the Criminal Law Assessment Team of the National Legal Studies Agency, in the report on the results of the 1980/1981 Legal Studies, states that: "If the management is convicted, it is not enough to carry out repression against the offenses committed by or with a corporation because the offense is quite severe, or the harm caused to the society or its rivals is very significant". Thus, the conviction of the management alone cannot provide sufficient guarantee that the corporation will no longer commit acts prohibited by law. Based on the description above, it appears that corporate punishment is based on the purpose of punishment, both preventive (special) and repressive actions.

Corporations are subject of criminal law the same as natural person, but it should be remembered that not all criminal acts can be committed by corporations and not all criminal sanctions as formulated in article 10 of the Criminal Code can be imposed on corporations. What may be imposed on the corporation

is criminal fines. In addition to fines, actions can also be taken against corporations to restore conditions as before the damage caused by the crime by a company. In accordance with developments, compensation can also be imposed on corporations as a new type of crime. The compensation can be in the form of compensation for the victim. In addition, sanctions in the form of additional penalties can also be imposed, namely the closure of all or part of the company for a maximum of 1 (one) year as regulated in Article 18 paragraph (1) letter c of Law No. 31 of 1999 concerning Eradication of Corruption Crime. Subsequently, various special criminal provisions were born, which regulate corporations as legal subjects, by formulating various criminal sanctions for corporations, namely in the forms of cumulative-alternatives, alternatives, and singular.

A corporation as a legal entity (*rechtspersoon*) cannot be subject to the same liabilities as an individual (*natuurlijkpersoon*). In theory, corporations can commit any offense, but there are limitations. Based on this, corporations cannot be held accountable for all kinds of offenses, but there must be restrictions, namely personal offenses which by nature are committed by persons, so they cannot be accounted for to the corporation. In connection with what is mentioned before, a corporation that commits a criminal act is provided with fines and additional penalties and a number of actions (Wijaya, 2008). Although corporations can be held accountable personally, there are some exceptions, namely in cases which by nature cannot be committed to corporations, for example, rape, perjury; in cases where the only punishment can be imposed on the corporation, for example, imprisonment or capital punishment; the complete or partial closure of the convicted company for a certain time; revocation of all or part of certain facilities that have been or can be obtained from the government by the company for a certain period of time; and the last is in placing the company under interdiction for a certain time. Especially regarding witnesses of closure or termination of company activities, it is necessary to consider the consequences that may arise in relation to the roles of the company or corporation as an employer. Because if this sanction is imposed on a corporation, the one more affected will be the employees or workers of the company itself than the employers or the company owners.

In the last amendment to the Law on Corruption Eradication, the drafters of the law expanded the reasons for prosecution by including the Corporation as the legal subject. In the context of eradicating criminal acts of corruption, such legal policies need to be welcomed. However, in the formulation of the crime itself, it needs to be reviewed, especially crimes against the corporation itself. In this case, it needs attention. If we look at the formulation of articles that regulate the principal crimes that can be imposed against the corporation, only 1 type of principal crime can be imposed, namely fines. Although in this case the management of the corporation can also be subject to criminal either alternatively or cumulatively together with the corporation itself, this does not mean that the problem ended there considering the corporation has been incorporated in the law so that it cannot be separated from criminal liability. It is an irony in the criminal law enforcement system if a director is solely responsible for the actions of a corporation he leads, while the results obtained from the criminal act itself flow into the corporate treasury which in the future will be enjoyed together.

The determination and application of criminal rules against corporations in Indonesia has been regulated in Article 20 of Law Number 31 Year 1999 which has been amended by Law Number 20 Year 2001. Criminal liability adopted in Article 20 paragraph (1) of the Corruption Law is cumulative-alternative in nature, with the words "corporation and/or management" in the formulation of Article 20 paragraph (1), prosecuting and imposing a crime in the event that a criminal act of corruption is committed by or on behalf of a corporation can be committed against "corporations and management" or against "corporations" only or "management" only. To answer this question, the form of liability that can be given is to use various liabilities and strict liability. Furthermore, in Law Number 20 of 2001 also regulates the state's right to file a civil suit against the convict's property which is preserved or hidden and only discovered after the court's decision has permanent legal force. The preserved or hidden property is suspected or should be suspected of originating from a criminal act of corruption. Civil suits are filed against the convict and/or their heirs. To carry out the lawsuit, the state can appoint a proxy to represent the state. Another amendment stated in Law Number 20 of 2001 is the maximum imprisonment and fines for criminal acts of corruption which value is less than Rp. 5,000,000.00 (five million rupiah). This

provision is intended to eliminate the sense of injustice for perpetrators of criminal acts of corruption in the case that the value corrupted is relatively small. The form of the formulation of corporate criminal liability adopted by Law Number 31 of 1999 as amended by Law Number 20 of 2001 can be formulated as:

1. *Various liability* or substitution liability or delegated. Means that a person could be liable to an act conducted by other person. In this case can be seen in the provision of Article 20 Paragraph 1 concerning the imposition of criminal sanction towards corporation.
2. *Strict liability* or strict criminal sanction or flawless criminal liability, which in this case the provision can be seen in Article 20 Paragraph (1) of the Law No. 31 of 1999 concerning the Eradication of Criminal Act of Corruption.

This can be caused by the perpetrator of the criminal offense regulated in the Law. No. 31 of 1999 as amended by Law no. 20 of 2001 is a person or human and corporation/legal entity. The two forms or formulations of criminal liability can complement each other, so that the inclusion of corporations as legal subjects of criminal acts is a step forward from the legislators. With corporations as legal subjects of criminal acts, it will provide hope and optimism for efforts to investigate corruption as thoroughly and effectively as possible. Through legislation, today's corporations are accepted as legal subjects and are treated the same as other legal subjects, namely person (natural). Thus corporations can act like humans in general. In this Law the corporate accountability arrangements are contained in Article 1, Article 2, Article 3, and Article 20 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Criminal Act of Corruption. As far as the process in the criminal justice system is concerned, Law No. 31 of 1999 has regulated criminal acts committed by corporations, which are stated in the provisions of Article 20, among others are as follows:

1. In the case of corruption crime is committed by or on behalf corporation, then the charges or the imposition of penalties can be given towards corporation and/or the management.
2. Criminal Act of Corruption is deemed to be done by a corporation if the crime is conducted by personnels, either by work relationship or based on other kind of relationship, act in the environment of the corporation and represented by the management.
3. In the case criminal charges is given towards a corporation, then the corporation is represented by its management.
4. The management that act as the representatives of the corporation as referred in Paragraph (3) can be represented by other person.
5. Judge has the rights to order the management of the corporation to be presented before the court.
6. In case of criminal charges is given towards corporation, then the court order for the corporation to present before the court and letter of the order must be delivered to the management in its resident or its office.
7. Principal penalties that can be imposed towards corporation is only in form of fines, with maximum fines added with one third of it.

In addition to the aforementioned principal penalties, additional penalties are also regulated against corporations that commit acts of corruption as stipulated in Article 18 Paragraph (1) letters a and c, which reads: letter a: "Confiscation of movable property which is tangible or intangible or immovable property which is used for or obtained from a criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as from the goods that replace these items". Letter c: "The closure of all or part of the company for a maximum period of 1 (one) year". As already stated in Article 20 paragraph (2) of Law Number 31 Year 1999, it is stipulated when a corporation commits a criminal act of corruption, namely: if the criminal act of corruption is committed

by people based on a work relationship or other relationship; acting in a corporate environment; either individually or collectively. Article 20 contains several provisions, namely: first, an indicator of when a criminal act of corruption occurs by a corporation as reflected in Article 20 paragraph (2). Second, regarding the law of the procedure, but there is still little information, namely the case for the imposition of a penalty in accordance with Article 20 paragraph (1), and the law of procedure in Article 20 paragraph (3), paragraph (4), paragraph (5), and paragraph (6)). And third, regarding the imposition of criminal responsibility in Article 20 paragraph (7). So that the Law on the Eradication of Criminal Act of Corruption adheres to the teachings or theory of corporate responsibility identification as well as the aggregate theory. The theory of identification is shown from the phrase: "in the event that a criminal act of corruption is committed by or on behalf of a corporation, then penalties and criminal charges can be made against the corporation and or its management" as regulated in Article 20 paragraph (1) of Law Number 31 of 1999 and the phrase "if the criminal act is committed by person either on the basis of a work relationship or on the basis of other relationships" in Article 20 paragraph (2) of Law Number 31 Year 1999.

3.2. The Essence of Oversight in Corporate Crimes

According to Kamus Besar Bahasa Indonesia (KBBI), '*Kesalahan*' basically consist of the word '*salah*' (Wrong) as the root words that get a prefix and a suffix. Wrong itself can be interpreted as untrue (incorrect), wrong (erroneous), deviating from what it should be, missed (not hitting the target), failed, crippled (flawed), and misdoing (Kamus Besar Bahasa Indonesia (KBBI)). Meanwhile, the prefix and the suffix itself indicates the adjective in the word "oversight", so it can be said that the word 'oversight' is a synonym to the word "wrong/mistake" which indicates an error against an act committed either by individuals or by groups. Oversight itself according to KBBI can be interpreted as matters of wrongdoing, mistakes and omissions. An example is that the corporation made a mistake so it must be held responsible. The sentence shows that the act committed by the corporation is a wrong act so that the corporation is specifically responsible for the wrongdoing it has done. The word 'oversight' referred to here can be in the form of criminal acts of corruption.

The existence of criminal responsibility requires a condition that the maker is able to take responsibility. It is impossible for someone to be held accountable if he is not able to be responsible. The questions that arise are when a person is said to be able to be responsible, and what is the measure to state the ability to be responsible. In the Criminal Code, there is no provision regarding the meaning of the ability to be responsible. Related to that is Article 44 which states that "whoever commits an act that cannot be held accountable to him, because mentally undeveloped or mentally disabled by illness, is unpunishable". Article 44 and from several opinions of legal scholars, Moeljatno concluded that for the ability to be responsible there must be:

1. The ability to differentiate deeds, between good and bad, as well as knowing which one is in accordance to the law and which one is against the law;
2. The ability to determine his own will according to his conscience on the good and bad deeds.

First is the rationale factor, which is the ability to distinguish between what is permissible and what is not. The second is the feeling or desire factor, that is, being able to adjust his behavior with the realization of what is permissible and what is not. As a consequence, certainly a person who is unable to determine his will according to the conviction of the good and the bad of the act, has no fault. Such a person cannot be accounted for. According to Article 44, the inability is due to a defective mental development in its growth.

The issue of accountability and in particular criminal liability has a close relationship with several broad issues. It can be questioned, among other things, whether or not human freedom to determine his will, among others is determined by indeterminism and determinism. Here it is questioned, actually

humans have the freedom to determine their will or not. Will is an activity of the human mind which in turn is related to his responsibility for the actions. This problem arises as a result of disagreements between classical (and neo-classical) and modern schools. The classical school prioritizes individual freedom with the consequence of receiving free will from individuals. This stand on individual freedom is questioned by the modern school which proves through psychology and psychiatry that not every human act can be accounted for to it, for example to a person with mental disorder.

Criminal law recognizes two forms of error, namely by intention (intentional) or *dolus*, and by negligence (unintentional) or *culpa*. Most of the articles in the Criminal Code make mistakes in the form of deliberate use of various formulations, in addition to several criminal acts committed by negligence, for example in Articles 359 and 360 of the Criminal Code which are often applied in traffic accident cases. Some forms of the errors include:

a. Intention (Dolus)

Dolus in Dutch language is called '*opzet*' and in English is called as '*intention*' which in Indonesian can be interpreted intentionally or by intention. First of all, it should be noted that the Civil Code (KUHP) does not formulate what is meant by *opzet*. However, the definition of *opzet* is very important, because it is used as an element of some criminal incidents in addition to events that have a *Culpa* element. The Criminal Code itself does not explain the meaning of intention and negligence. Van Toeliching's memory explains that deliberation is *willens en watens*, which means wanting and realizing or knowing or, somewhat completely, someone who does an action on purpose must have intention to his action and must realize or know the possible consequences of his actions.

Regarding negligence, it is merely argued that negligence or *Culpa* is the opposite of *Dolus* on the one hand and the opposite of coincidence on the other. It seems that the opposite word is not quite right, because the opposite of white is not always black. This element of willfulness and negligence only applies to crimes and not to offenses. Regarding the meaning of willing, the intention can be directed to 1) the act which is prohibited; 2) the effect which is prohibited; and 3) the condition which constitutes an element of a criminal act. An intention that only directed at the prohibited actions is called formal intention, whereas intention that aimed at the consequences is called as material intention. Legal science recognizes several types of intentions, namely (Erlangga, 2014):

1. *Dolus premeditatus*, that is a planned *Dolus*, hence formulated with the term "initiated with plan" (*meet voorbedachte raad*), therefore it requires some time to contemplate deeply, and the proofing is concluded from the objective condition;
2. *Dolus determinatus* and *dolus indeterminatus*, the first is an intention with a defined purpose, for instance to cause certain person's death. While the latter is an intention without certain purpose or just with unclear objective (*random*), for instance gun-shooting to a group of people, poisoning water reservoir;
3. *Dolus alternativus*, is an intention to achieve certain objectives or another objective (*the alternative*) as well as other effect;
4. *Dolus indirectus*, is an intention in performing certain action that cause unknown consequences by the perpetrator, for instance in a fight, a person hit the opponent without intention to kill;
5. *Dolus directus*, is an intention aimed not only to the act, but also to the effect;
6. *Dolus generalis*, is an intention where the perpetrator aimed for certain effect, and to achieve that, he has done some actions, for instance to commit murder, he begins by strangling his opponent, then throws the opponent to the river, because he thinks his opponent is already dead.

Theoretically, the form of mistake in terms of intentional action can be divided into three features, namely deliberate intent, deliberate intent with certainty, and deliberate conscious possibility.

The development of thought in this theory is also followed in the practice of court of thought in theory. It is also followed in the practice of courts in Indonesia. In some of his decisions, judges made decisions not only deliberately as certainty, but also following other features. In the author's opinion, this kind of judicial practice is very close to the value of justice because the judge makes a decision according to the level of crimes committed by the defendant.

b. *Culpa* or negligence

The meaning of the word *Culpa* or negligence is a mistake in general, but *Culpa* in legal science has a technical meaning, which is a kind of error as a result of not being careful so that accidentally something happens. The Criminal Code does not confirm what the meaning of negligence is while Vos states that *culpa* has 2 (two) main elements among others, namely the possibility of estimating consequences and not being careful about what is done or not done. The second form of error is neglect or *Culpa*. The official statement from the creator of the Criminal Code regarding the issue of why *culpa* is also punishable, even though lightly, is that it is different from deliberate action or *Dolus* which defies prohibition by committing an act that is prohibited. Some experts provide the following definitions or conditions for *Culpa*:

According to Ali, Simons, and Hussainey (2010) there are two conditions must be met:

1. Being careless;
2. Lack of estimation to what consequences might happen.

According to Van Hamel in Lamintang (2010) there are two conditions must be met:

1. The absence of the required estimation;
2. The lack of adequate circumspection.

Forms of negligence:

- 1) Intentional negligence (*bewuste*), a person conducts an act which bad result is already known but still commit it;
- 2) Unintentional negligence, when the perpetrator has no imagination to the effect caused by his act, which logically should be imaginable.

Negligence means that the defendant did not intend to violate the statutory prohibition, but he did not heed the prohibition. He is being ignorant, absent minded, and careless in doing the actions. So, in his negligence the defendant did not heed the prohibitions so that he was not careful in committing an objective causal act which gave rise to a prohibited situation.

The analysis of fault in criminal law is that the definition of error is the overall condition that provides the basis for personal reproach that related to the mental state of the perpetrator and the realization of the element of offense because an act of wrongdoing is accountable according to law. In addition, the elements of error are the ability to be responsible for the perpetrator, in the sense that the perpetrator's mental is in a healthy and normal state. There is an inner connection between the perpetrator and his actions, whether intentional (*Dolus*) or due to negligence (*Culpa*). There is no excuse that can forgive mistakes. The form of the error is *Dolus* which is not formulated in the Criminal Code but is used as an element as a criminal incident in addition to incidents that have *Culpa* elements. *Culpa* or negligence is some kind of mistake as a result of the perpetrator's carelessness so that something can happen accidentally.

Mistakes are basically all the conditions that provide the basis for personal reproach against the perpetrator of the criminal law, relating to the mental state of the perpetrator and the manifestation of elements of the offense for his actions. The elements of mistake are including, the mistake is accountable according to the law, the ability to be responsible for the perpetrator, in the sense that the offender's

mental is in a healthy and normal state, there is an inner connection between the perpetrator and his actions, whether intentional (Dolus) or due to negligence (Culpa), there is no excuse for forgiveness that can erase mistakes. The form of mistake is dolus and culpa.

3.3.State-Owned Enterprise (SOE) as a Corporation that Regulated in the Legislation in Indonesia

A criminal act committed by a corporation so that it is charged with criminal liability is the development of a new theory of theories that imposes civil liability on legal entities. Therefore, there are pros and cons among experts regarding legal entity/corporate punishment. However, a trend or tendency that universally clear is that more and more countries in the world are adopting, regulating, and accepting the imposition of criminal acts by these legal entities/corporations. Corporate crime in the Criminal Code is still not regulated. In recent developments, especially in the economic and environmental fields, legal entities can be involved directly or indirectly in acts that violate the law which result in losses to the interests of the public or the state.

Legal violations that can be committed by corporations can be classified into six types, namely: violations of administrative law, environmental pollution, financial, labor, manufacturing, and unfair trade competition, which include criminal acts of corruption in it. In Indonesia, regulations on corporations in committing criminal acts still only exist in environmental crimes which regulate sanctions against environmental crimes. While corruption committed by corporations has no legal rules yet. The Supreme Court only makes arrangements for handling procedures for non-corporate crime, as outlined in the Supreme Court Regulation Number 13 of 2016 concerning Procedures for the Management of Criminal Cases by Corporations (Perma No. 13 of 2016), which, when viewed from its content, still does not clearly and firmly regulate crimes against corporations, and their position in Perma No. 13 of 2016 is still not included in the legislative hierarchy. Perma No. 13/2016 is a complement to procedural law in ensnaring corporations in corporate criminal acts, so that the procedural law exists and is clear. In Article 4 paragraph (1) and paragraph (2) it is stated that:

“(1) Corporation can be subject to criminal liability according to the regulation on corporate crime in the Law that regulates corporation.

(2) In imposing penalties to corporation, judges are allowed to try the crimes of the corporation as stated in paragraph (1), among others:

- a. The corporation obtains advantage or benefit from the crimes, or the crime is committed on behalf the corporation’s interest;
- b. The corporation let the crimes happen; or
- c. The corporation did not take the necessary measures for preventing the act, mitigating more severe impact, and ensuring compliance towards the applying laws and regulation to prevent crimes.”

Conclusion

The existence of SOEs that have suffered losses in carrying out their business actually needs to be seen as a whole and comprehensively by the business losses of existing SOEs, because losses can arise from the business aspect or losses caused by mismanagement in the management of business by the SOE. SOE’s losses may due to business risks, and SOE’s losses may also due to illegal actions which result in the loss in the SOE’s wealth. SOE’s losses due to actions against the law are called state losses. Meanwhile, SOE’s losses that arise due to risks in running its business are called business risks, such as losses caused by a decrease in Rupiah exchange rate.

Based on that explanation, that the meaning of an oversight in a corporate crime is a wrong act committed against the law which results in a decrease in the wealth of a group of people and/or an organized wealth of both a legal entity and non-legal entity, resulting in the emergence of an obligation to

be responsible. The wrong action is carried out with the ability to be responsible, done in the form of deliberate (*dolus*) or negligence (*culpa*) of a person who made a mistake. Such actions also require that there is an inner connection with the offender's actions and the wrongdoing that is committed does not have the element of amnesty.

References

- Aly, D., Simon, J., & Hussainey, K. (2010). Determinants of Corporate Internet Reporting: Evidence From Egypt. *Managerial Auditing Journal*, 25(2), 182–202. <https://doi.org/10.1108/02686901011008972>
- Erlangga, Y. (2014). **Panduan Pendidikan Anti Korupsi**. Jakarta, Esensi, Erlangga Group.
- Indonesia, Law Number 31 Year 1999 Regarding Corruption Crime
- Indonesia, Supreme Court Regulation Number 13 Year 2016 regarding the Procedure for Handling Corporations Criminal Actions.
- Kamus Besar Bahasa Indonesia (KBBI) Kamus versi online/daring (in the network), <https://kbbi.web.id>, accessed on April 20 2020 at 6.35 WIB.
- Kristian. (2018). **Sistem Pertanggungjawaban Pidana Korporasi**. Bandung, Sinar Grafika.
- Kristian and Gunawan, Y. (2015). **Tindak Pidana Korupsi**. Bandung, Refika Aditama.
- Lamintang, P.F. (2010). **Hukum Penintensier Indonesia**. Jakarta, Sinar Grafika.
- Raharjo, S. (2000). **Ilmu Hukum**. Bandung, Citra Aditya Bakti.
- Sjawie, H. F. (2015). **Pertanggungjawaban Pidana Korporasi Pada Tindak Pidana Korupsi**. Jakarta, Prenada Media Group.
- Wijaya, F. (2008). **Peradilan Korupsi Teori dan Praktik**. Jakarta, Maharini Press.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).