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Criminal accountability of state owned enterprises in criminal acts of corruption

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Abstract. State-Owned Enterprises (BUMN) (hereinafter referred to as BUMN) are one of economic actors that contribute to the development of state finances. SOEs as corporations can run a variety of businesses such as health services, implementation of banking services, industry players, the transportation sector, services in the field of providing goods and services, and so on. In addition to contributing in the form of profits from its business sector, State-Owned Enterprises (BUMN) also contribute in the form of paying taxes to the state. Business fields managed by BUMN are basically profit-oriented, so that all business activities of State-Owned Enterprises (BUMN) are directed towards the goal of achieving profit. The separation of criminal responsibility is very important to explain, bearing in mind that in Article 20 paragraph (2) of the Corruption Crime Law, it is only formulated that: "-alone or together". The formulation of the article with the sentence "...acting in a corporation..." shows that corporations are subjects of criminal law. It is this doctrine of the corporation as a legal subject that influences the development of corporate criminal responsibility as the perpetrator of corporate crime at this time.

Keywords. criminal; state

Introduction

State-Owned Enterprises (BUMN) (hereinafter referred to as BUMN) are one of economic actors that contribute to the development of state finances. SOEs as corporations can run a variety of businesses such as health services, implementation of banking services, industry players, the transportation sector, services in the field of providing goods and services, and so on. In addition to contributing in the form of profits from its business sector, State-Owned Enterprises (BUMN) also contribute in the form of paying taxes to the state. Business fields managed by BUMN are basically profit-oriented, so that all business activities of State-Owned Enterprises (BUMN) are directed towards the goal of achieving profit. (Natun, 2019)

BUMN management should be carried out based on the principles of *good corporate governance*, so that it can reduce the potential for criminal acts. Every criminal act committed by an individual or corporate legal subject, such as BUMN, bears criminal responsibility. There is a problem in terms of the limits of liability carried out by corporations, because corporations are the embodiment of a group of people, which are considered different from individual legal

subjects. There is a principle of *Societas delinquere non potest* which means that legal entities/associations cannot commit crimes. Corporations are considered to be imaginary and different from individuals. Corporations are considered to have no intention (*mens rea*) to commit a crime. But in reality, BUMN in legal relations with other parties and the government raises state finances.

Research Problem

Accountability of State-Owned Enterprises (BUMN) as a result of criminal acts of corruption which are detrimental to state finances.

Research Method

This research is a normative legal research. (Michael, 2022)

Results of Method and Discussion

State-owned enterprises (BUMN) (BUMN) As a Subject of a Criminal Act

State-Owned Enterprises (BUMN) are essentially legal entities like corporations in general, which are established based on law. As a legal subject a State-Owned Enterprise (BUMN) is the result of embodiment or personification, whose capital comes from the State Revenue and Expenditure Budget (APBN) funds, which are separated. As a legal entity a State Owned Enterprise (BUMN), it is a legal subject as well as an individual legal subject. As a legal entity, a State-Owned Enterprise (BUMN) also has rights and obligations and can take legal actions just like humans do. As legal subjects, legal entities are slightly different from individual subjects, namely they cannot enter into marriage, but can act legally, especially in the field of civil law. (Abduh & Hanifah, 2020)

As a legal entity established with separated capital from the government, State-Owned Enterprises (BUMN) have characteristics that cannot always be treated the same as people (*natuurlijk person*), especially in carrying out their business activities. SOEs operate on the authority granted by laws and regulations, while individual legal subjects in running their business originate from their personal will. Likewise in terms of accountability, BUMN is responsible to the state, while individual legal subjects are responsible to themselves.

Characteristics of Criminal Acts of State Owned Enterprises (BUMN)

State-Owned Enterprises (BUMN) as economic actors engaged in various business fields that are profitable, of course, cannot be separated from various risks that may occur, including the occurrence of criminal acts in the economic sector. Criminal acts in the economic sector committed by BUMN can be categorized as crimes classified as *extraordinary crimes*. The character of crimes committed by State-Owned Enterprises (BUMN) is organized and involves various parties. Crimes committed by State-Owned Enterprises (BUMN) contain economic motives, and are committed by people who have high intellectuals.

It is this character of crime for State-Owned Enterprises (BUMN) that distinguishes between crimes for State-Owned Enterprises (BUMN) as corporations and conventional crimes committed by individual legal subjects in general. The greater the profits obtained, the potential for crime in an effort to gain profits and even then the more diverse the *modus operandi*. However, the crimes of State-Owned Enterprises (BUMN) are not carried out for the benefit of State-Owned Enterprises (BUMN), but are carried out by unscrupulous organs of State-Owned Enterprises (BUMN) under the name of State-Owned Enterprises (BUMN). Most of the

perpetrators of crimes committed by State-Owned Enterprises (BUMN) hide behind institutions to gain personal benefits or for the interests of their groups.(Suhartono, 2020)

Slightly different from or groups of people who have special relations and connections with bureaucrats. This kind of crime is then classified into the type of white collar crime. The definition of *white-collar crime* according to Shutherland: "...is a violation of criminal law by the person of the upper socioeconomic class in the course of his occupational activities" (white-collar crime is a crime committed by someone who has an upper class socioeconomic level who related to his position.

The characteristics of corporate crime as a *white collar crime* as well as being an *extraordinary crime* are crimes that have the potential to degrade economic stability and the integrity of the state financial system, so that it can endanger the foundations of social, national and state life. White-collar crime is a form of crime that occurs as a result of collusion between corporate executive organs and government bureaucrats. The perpetrators of white-collar crimes work together to gain corporate benefits and unscrupulous government officials who have the authority to make decisions, with the mode of abuse of authority they have.(Wibisana, 2016)

The mode of abuse of authority can also be carried out by unscrupulous organs of State-Owned Enterprises (BUMN) which are authorized based on statutory regulations. Therefore, State-Owned Enterprises (BUMN) as well as corporations in general, if they commit a crime, they should be held accountable for the crime they committed. Requests for accountability can be made to State-Owned Enterprises (BUMN) as legal entities (*rechts person*), or to those appointed to its management (organs of the corporation) who obtain authority from the corporation to carry out the responsibilities and authorities of the corporation. This character is what distinguishes the perpetrators of crimes committed by individuals (*natural person*). (Erny Herlin Setyorini, 2018) Thus in corporate crime there is accountability for State-Owned Enterprises (BUMN) as institutions and personal accountability by unscrupulous organs who run State-Owned Enterprises (BUMN), which obtain authority based on statutory regulations.

Criminal Acts By SOEs That Are Harming State Finances

These forms of criminal acts for State-Owned Enterprises (BUMN) include fraud, embezzlement, and practices of corruption, collusion, and nepotism, which ultimately harm state finances, and or harm the country's economy. The criminal dimension of corporate crime in Indonesia continues to grow in line with developments in the national economy and internally. Forms such as *defrauding (not reporting company profits truthfully)*, *defaruding the public (fixing prices and misrepresenting products)*, *defrauding the government (avoiding taxes)*, *endangering the public welfare (causing pollution)*, *endangering employees (not caring about work safety)*, and *illegal intervention in the political process*, are increasingly varied and developing with increasingly sophisticated work and operational systems making it very difficult to legally identify and record them.(Michael & Princes Elsa Nafatilopa, 2022)

BUMN is a corporation that has the potential to contribute to state financial revenues to finance national development. Along with the development of SOEs as *profit-oriented* institutions, the forms of transactions carried out between SOEs trigger various modus operandi that can result in losses to state finances. State finances according to Law Number 17 of 2023 concerning State finances are all rights and obligations of the state that can be valued in money, as well as everything both in the form of money and in the form of goods that can be owned by the state in connection with the implementation of these rights and obligations.(Listiyani et al., 2020)

National financial losses committed by BUMN are interpreted in Indonesian positive law as Corruption Crimes, as stipulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.(Aristanto, 2020)

There is no explanation regarding the criminal act of corruption as referred to in Article 2 of the Corruption Crime Law, in the corporation it can certainly lead to multiple interpretations and makes it difficult to determine when a corporation is seen as a legal subject that commits a criminal act of corruption, whether it is a State-Owned Enterprise (BUMN) or not as a corporation or organ that has the authority to run a corporation, which is detrimental to state finances. In addition, it will also be difficult to explain who should be responsible for criminal acts of corruption in relation to these State-Owned Enterprises (BUMN).(Fitri Irawan et al., 2022)

Criminal Accountability of State-Owned Enterprises (BUMN) in Corruption Crimes

Accountability is essentially the ability of a person or legal subject to be accountable for the actions committed. Criminal liability of State-Owned Enterprises (BUMN) is the ability to be held accountable for actions that violate criminal laws and regulations. The criminal responsibility of State-Owned Enterprises (BUMN), is basically a logical consequence of Owned Enterprises as legal subjects. In the case of a State-Owned Enterprise (BUMN), must be held criminally responsible, relating to criminal acts of corruption, then the State-Owned Enterprise (BUMN) must comply with the Law on the Eradication of Corruption Crimes.

Related to the accountability of State-Owned Enterprises (BUMN) as perpetrators of corruption, raises the question, if the corporation only benefits or is enriched by the actions of its management or other people, but is not related to the actions of State-Owned Enterprises (BUMN), whether the State-Owned (BUMN) can and must be criminally responsible. This is further related to whether or not a State-Owned Enterprise (BUMN) can be submitted as a suspect in corruption. If this is indeed the case, then the next problem is who should be the suspect and must be held accountable for the actions of the State-Owned Enterprise (BUMN), and there are many other questions related to State-Owned Enterprises (BUMN) as legal subjects for perpetrators of corruption.

Criminal Accountability of State-Owned Enterprises (BUMN) which are detrimental to State Finances

Paradigm shifts in criminal liability by corporations that cause losses to state finances are specifically regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (hereinafter referred to as UU Corruption Crimes), Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 15 of 2002 concerning Money Laundering Crimes, and so on.(Alifyansyah et al., 2019)

In criminal acts of corruption, a distinction must be made between acts committed by State-Owned Enterprises (BUMN), and criminal acts committed by organs that run State-Owned Enterprises (BUMN). The importance of separating the perpetrators of these crimes is related to the limits of criminal liability of State-Owned Enterprises (BUMN) as corporations, and criminal acts committed by organs or management of State-Owned Enterprises (BUMN). In the Elucidation of Article 20 paragraph (1) of the Corruption Crime Eradication Law, it is stated that: "What is meant by "administrators" are corporate organs that carry out the management of the corporation concerned in accordance with the articles of association,

including those who in fact have authority and participate in making decisions. corporate policies that can qualify as criminal acts of corruption.

Conclusion

The separation of criminal responsibility is very important to explain, bearing in mind that in Article 20 paragraph (2) of the Corruption Crime Law, it is only formulated that: -alone or together". The formulation of the article with the sentence "...acting in a corporation..." shows that corporations are subjects of criminal law. It is this doctrine of the corporation as a legal subject that influences the development of corporate criminal responsibility as the perpetrator of corporate crime at this time.

Law Number 1 of 2023 regulates corporate responsibility, which means that it includes the responsibility of BUMN. Regulations regarding Corporations are contained in Articles 46 to 56. Criminal acts by Corporations as referred to in can be accounted for, if:

- a) included in the scope of business or activity as specified in the articles of association or other provisions applicable to the Corporation;
- b) unlawfully benefiting the Corporation;
- c) accepted as Corporate policy;
- d) Corporations do not take the necessary steps to prevent, prevent a greater impact and ensure compliance with applicable legal provisions in order to prevent criminal acts from occurring; and/or
- e) Corporations allow crime to occur.

Article 49 stipulates that liability for criminal acts by corporations is imposed on corporations, administrators who have functional positions, give orders, control holders, and/or corporate beneficial owners.

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