

The Nature of the Legal Liability of State-Owned Enterprise Boards of Directors for the Reimbursement of State Financial Losses in Corruption Crimes

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Abstract

Corruption within State-Owned Enterprises (SOEs) is a serious problem and a big challenge in state financial governance, because in the management of SOEs directors, it often has implications for abuse of authority that causes state financial losses and deprives the community of socio-economic rights. The Board of Directors of SOEs as an organ of the company has strategic authority in the management of company finances derived from the separated state wealth. Therefore, when the Board of Directors abuses its authority and causes state losses, the Board of Directors can be held judicially accountable, including through the mechanism of reimbursement of state financial losses. This study aims to analyze the nature of the juridical responsibility of the Board of Directors of SOEs related to the return of state financial losses in corruption crimes.

The type of research used in this study is normative legal research that is qualitative and supported by a case approach as supporting data. Normative legal research is a study that examines positive legal provisions, legal principles, legal principles, and legal doctrine in order to answer the legal issues faced. In this study, the problem approaches used include the statute approach, the conceptual approach, the case approach, and the comparative approach.

The results of the study show that the return of state financial losses is an important part of the eradication of corruption crimes because it is related to the recovery of state assets (asset recovery). In practice, the application of the penalty of money in lieu of state financial losses as stipulated in the Law on the Eradication of Corruption still shows inconsistencies. This is reflected in the case of PT Sang Hyang Seri (Persero) related to the fictitious subsidized seed project and PT Waskita Karya (Persero) Tbk related to the mark up and fictitious project. This study uses Aristotle's theory of justice and Gustav Radbruch's theory of legal purpose to analyze the accountability of the Board of Directors of SOEs for the return of losses. Therefore, the accountability of the Board of Directors of SOEs for the return of state losses should not only be oriented to formalistic justice, but must focus on substantive justice and proportionate recovery of state losses.

Keywords: Corporate Corruption, SOE Directors, State Financial Losses, Recovery

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1. Introduction

Corruption is not a new crime. In the historical dimension, corruption has existed, been born, grown and developed since the emergence of human civilization.¹ Corruption is a transnational organized crime, which is premium remedium, systemic and multidimensional, which means that corruption now no longer knows regional boundaries, so that corruption can no longer be classified as an ordinary crime, but has become an extraordinary crime.²

Corruption is an extraordinary crime that continues to develop and has a serious impact on the life of the nation and state. Corruption not only causes state financial losses but also damages the government system, weakens the national economy and hinders the realization of people's welfare.³ Romli Atmasasmita stated that corruption in Indonesia has developed into a collaboration between the public and private sectors so that corrupt practices are increasingly difficult to eradicate.⁴

Regulatory reforms to eradicate corruption in Indonesia have given birth to various legal instruments as a basis for prevention and enforcement. Law Number 31 of 1999 jo. Law Number 20 of 2001 is a positive law

¹ Dr. Lilik Mulyadi, S.H., M.H., *Kembang Setaman Crime of Indonesian Corruption in the Theory of Norms and Practice* (Jakarta: Kencana, 2022), p. 1

² Ibid, p. 6

³ Baharudin Lopa, *Corruption and Law Enforcement* (Jakarta: Kompas, 2001), p. 15.

⁴ Romli Atmasasmita, *Around the Problem of Corruption in National and International Aspects* (Bandung: Mandar Maju, 2004), p. 3

(ius constitutum) which is the main juridical basis in the eradication of corruption. In its implementation, this provision is strengthened by the existence of the Corruption Eradication Commission (KPK) as stipulated in Law Number 19 of 2019 which has the authority to prevent, coordinate, supervise, and prosecute corruption crimes. Thus, the legal system for eradicating corruption is not only repressive, but also preventive in realizing good governance.

The current phenomenon of corruption does not only occur in government institutions, but has also penetrated State-Owned Enterprises (SOEs). Based on data from Indonesia Corruption Watch (ICW), corruption in SOEs from 2016 to 2021 there were at least 119 cases with total state losses reaching Rp47,926,674,165,808.00 (forty-seven trillion nine hundred and twenty-six billion six hundred and seventy-four million one hundred sixty-five thousand eight hundred and eight rupiah).¹ Even in 2024, there will be a corruption case of PT Timah which caused state losses of **Rp271,000,000,000.00 (two hundred and seventy-one trillion rupiah)**.²

The high rate of corruption in SOEs shows that the segregated management of state finances is still vulnerable to abuse of authority by the Board of Directors. In the context of state finance law, SOE capital derived from state wealth that is segregated remains part of state finances so that if there is abuse in its management, it can cause state losses.³

Abuse of authority by the Board of Directors of SOEs in the management of state finances is basically not only contrary to the principles of good corporate governance, but can also have criminal implications if the act is carried out unlawfully and results in state financial losses.⁴ From the perspective of administrative law and criminal law, abuse of power occurs when an authority is used not in accordance with the purpose of granting the authority or is used for the benefit of individuals or certain groups.⁵

SOEs have a strategic position in national economic development because in addition to being profit-oriented, SOEs also have the function of public services and community welfare. Therefore, the Board of Directors of SOEs not only acts as the manager of the company but also as the party responsible for managing state finances in a professional, transparent and accountable manner guided by the principles of GCG and the principles of fiduciary duty.⁶ The Board of Directors of SOEs as an organ of the company has the authority to carry out the management of the company based on the principles of fiduciary duty, duty of care, and duty of loyalty. However, this authority must be exercised in good faith, full of prudence, and solely for the benefit of the company.⁷

If the Board of Directors uses its authority in a deviant manner that results in state losses, then the action can be qualified as a form of abuse of authority that has implications for criminal liability for corruption.⁸ In the practice of law enforcement of corruption crimes, abuse of authority is often associated with Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 which focuses on the element of "abusing authority, opportunity, or existing means due to position or position".⁹ Therefore, the boundary between business judgment rule and abuse of authority is important to distinguish so that the Board of Directors of SOEs is not immediately punished for any losses arising from the company's business risks.¹⁰

In practice, various corruption cases involving the Board of Directors of SOEs show that there are large state losses, including PT Sang Hyang Seri (Persero) amounting to Rp112,425,232,905.42 and PT Waskita Karya (Persero) Tbk there are state losses of Rp1,435,832,531,558.00. In the case of PT Waskita Karya, based on the BPKP audit, Rp1,364,932,627,191.00 has been recovered by the corporation, resulting in a residual loss of Rp70,816,392,800.00. The two cases reflect the magnitude of the impact of state losses as well as the complexity in the implementation of the penalty of substitute money as stipulated in Article 18 paragraph (1) letter b of the

¹ Indonesia Corruption Watch, *Trends in Enforcement of Corruption Cases of State-Owned Enterprises (SOEs) 2016-2021* (Jakarta: ICW, 2022), p. 9.

² Attorney General's Office of the Republic of Indonesia, "Progress in the Handling of the Case of Alleged Corruption of PT Timah Tbk in 2024".

³ Henny Juliani, "The Accountability of SOEs Directors for Acts That Result in State Financial Losses," *Legal Issues*, Vol. 45, No. 4, 2016, p. 292..

⁴ Ridwan HR, *State Administrative Law*, Jakarta: Rajawali Pers, 2018, p. 315.

⁵ Philipus M. Hadjon et al., *Introduction to Indonesian Administrative Law*, Yogyakarta: Gadjah Mada University Press, 2011, p. 270.

⁶ Gunawan Widjaja, *The Responsibility of the Board of Directors for the Company's Bankruptcy*, Jakarta: RajaGrafindo Persada, 2005, p. 57.

⁷ M. Yahya Harahap, *Limited Liability Company Law*, Jakarta: Sinar Grafika, 2016, p. 343.

⁸ Henny Juliani, loc.cit.

⁹ Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption.

¹⁰ Hardianto Samosir, "Reconstruction of Business Judgment Rule in the Perspective of Legal Morality," *Journal of Ius Constituendum*, Vol. 8, No. 2, 2023, p. 220.

Law on the Eradication of Corruption Crimes.¹

In practice, there is a difference in the criminal application of compensation money, where in the case of PT Sang Hyang Seri the defendant only enjoyed a profit of Rp247,311,449.25 without being charged full compensation, while in PT Waskita Karya the application was carried out proportionally based on the remaining losses that have really not been recovered.

The difference in the application of the penalty of money in the two cases shows that there is an inconsistency in law enforcement against the Board of Directors of SOEs in corruption crimes. This condition is relevant to the perspective of Gustav Radbruch's theory of justice and Aristotle's theory of justice, which emphasizes that law must realize the value of justice, legal certainty, and the utility of law in a balanced manner.

Based on the background of these problems, this study examines problems related to the nature of the juridical responsibility of the SOE Board of Directors for the return of state financial losses in corruption crimes.

2. Research Methods

The type of research used in this study is normative legal research that is qualitative and supported by a case approach as supporting data. Normative legal research is a study that examines positive legal provisions, legal principles, legal principles, and legal doctrine in order to answer the legal issues faced.² This means that the research refers to the legal norms contained in national laws and regulations (national law) and international law as well as related cases as well as norms that apply and are binding on the community or also concern the prevailing customs in society.³

Normative legal research is essentially focused on providing answers to all research questions or problem formulations and summarily describing the results of the research, rather than answering the research hypothesis.⁴ In this study, the problem approaches used include the statute approach, the conceptual approach, the case approach, and the comparative approach.

3. Results And Discussion

3.1. The Financial Position of SOEs as State Finance

The issue of the financial status of State-Owned Enterprises (SOEs) as part of state finance is a conceptual debate in state finance law in Indonesia.⁵ Normatively, Article 1 number 1 of Law Number 17 of 2003 concerning State Finance states that state finance includes all state rights and obligations that can be assessed with money, including separated state wealth. Furthermore, Article 2 letter g of the same law emphasizes that state wealth separated from SOEs remains included in the scope of state finance.⁶

Similar provisions are also affirmed in Law Number 1 of 2004 concerning the State Treasury, which includes state wealth that is segregated as part of the management of state finances.⁷ Further strengthening is contained in the Constitutional Court Decision Number 48/PUU-XI/2013 and Number 62/PUU-XI/2013 which affirm that state capital participation in SOEs remains part of state finances.⁸

However, from a corporate law perspective, SOEs as a limited liability company are legal entities that have a separate legal entity, as the principle in Law Number 40 of 2007 concerning Limited Liability Companies.⁹ This gives rise to a dualism of meaning, namely between the public legal regime that considers SOEs as part of state finances and the private legal regime that views them as the company's assets separate from the state.¹⁰

This dualism has an impact on the criminal law on corruption, especially Article 2 and Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001, which requires the existence of state financial losses.¹¹ This

¹ Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption.

² Soerjono Soekanto and Sri Mamudji, *Normative Law Research A Brief Review* (Jakarta: Raja Grafindo, 2007), p.24

³ Friedman, Lawrence, *American Law*, W.W. Norton and co., New York, 1984, p. 6

⁴ Irwansyah, *Legal Research on Selected Methods & Practices of Article Writing (Revised Edition)* (Makassar: Mirra Buana Media), p. 103

⁵ Henny Juliani, "The Accountability of SOE Directors for Acts That Result in State Financial Losses," *Legal Issues*, Vol. 45, No. 4, 2016, p. 292.

⁶ Muhamad Sadi, "The Position of State Wealth Separated from SOEs in the Perspective of State Finance," *RechtsVinding Journal*, Vol. 7, No. 1, 2018, p. 98.

⁷ *Ibid.*

⁸ Constitutional Court Decision No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013.

⁹ Hardianto Samosir, "Reconstruction of Business Judgment Rule in the Perspective of Legal Morality," *Journal of Ius Constituendum*, Vol. 8, No. 2, 2023, p. 214.

¹⁰ Henny Juliani, loc.cit.

¹¹ Romli Atmasasmita, "The Concept of State Financial Loss in Corruption Crimes," *Journal of Business Law*, Vol. 26, No. 2, 2007, p. 15.

condition has the potential to cause debate in determining whether SOE losses can be qualified as state financial losses, so a clear boundary is needed between losses due to business risks and unlawful acts in SOE management.¹

3.1.1. State Financial Losses

In essence, state finance is a source of financing in order to achieve state goals that cannot be separated from the scope of its management. State finance is the lifeblood of national development and greatly determines the sustainability of the country's economy, both now and in the future.² According to Law Number 17 of 2003 concerning State Finance, state finance includes all state rights and obligations that can be assessed in money, including everything in the form of money and goods that can be used as state property and related to the implementation of these rights and obligations.³

This is strengthened in Article 1 number 22 of Law Number 1 of 2004 concerning the State Treasury which states that state/regional financial losses are a lack of money, securities, and goods that are real and definite in amount as a result of unlawful acts, either intentional or negligent.⁴ The phrase "real and definite amount" indicates that state losses must be concrete, calculable, and not speculative, so that the proof in corruption criminal cases must be based on the results of a valid and accountable audit.⁵

In the context of corruption, state financial losses are an important element that must be proven, as stipulated in Article 2 and Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001.⁶ Both articles contain elements of "unlawfully" and "may harm the state finances or the state economy". The element of "unlawful" in the development of doctrine is not only interpreted formally, but also materially, that is, any act that is contrary to the sense of justice, propriety, and social norms of society can be qualified as unlawful.⁷

Regarding the element of "can harm the state's finances" it shows that the crime of corruption does not require losses that have actually occurred, but there is enough potential for real losses that can be proven rationally.⁸ This shows that the corruption criminal law has a preventive and repressive character in order to protect state finances from abuse of authority.⁹ Therefore, the measurement of state losses is not only administrative, but also has juridical implications in determining the criminal liability of corruption perpetrators.¹⁰

3.1.2. State-Owned Enterprises as Criminal Law Subjects

Corporations in the development of modern criminal law have been recognized as the subject of criminal acts, including in the criminal act of corruption as regulated in Law Number 31 of 1999 jo Law Number 20 of 2001.¹¹ This recognition is based on the reality that business entities can be used as a means of committing crimes and causing losses, including to state finances.¹²

SOEs as legal entities in the form of companies have the character of a private entity (separate legal entity), which means that they are legally separate from the state as shareholders.¹³ However, SOEs still have a public dimension because their capital comes from state wealth that is separated and carries out the functions of public services and national economic interests. This condition gives rise to dual character which has an impact on the complexity of legal liability, especially when there is a state financial loss due to the actions of its administrators.¹⁴

¹ Genta Arief Gunadi et al., "The Role of Stakeholders in the Fulfillment of the Principles of Business Judgment Rule (BJR) of SOE Directors," *Tambusai Education Journal*, Vol. 7, No. 2, 2023, p. 18455.

² M. Suparmoko, *State Finance in Theory and Practice*, Yogyakarta: BPFE, 2011, p. 12.

³ Law Number 17 of 2003 concerning State Finance.

⁴ Law Number 1 of 2004 concerning the State Treasury.

⁵ Indriyanto Seno Adji, "State Financial Losses as an Element of Corruption Delique," *Journal of Law & Development*, Vol. 39, No. 1, 2009, p. 23.

⁶ Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption.

⁷ Romli Atmasasmita, *Around the Problem of Corruption in National and International Aspects*, Bandung: Mandar Maju, 2004, p. 15.

⁸ Evi Hartanti, *The Crime of Corruption*, Jakarta: Sinar Grafika, 2014, p. 35.

⁹ Adami Chazawi, *Criminal Law on Corruption in Indonesia*, Jakarta: RajaGrafindo Persada, 2016, p. 42.

¹⁰ Henny Juliani, "The Accountability of SOE Directors for Acts That Result in State Financial Losses," *Legal Issues*, Vol. 45, No. 4, 2016, p. 292.

¹¹ Sutan Remy Sjahdeini, "Corporate Accountability in Corruption Crimes," *Journal of Business Law*, Vol. 26, No. 1, 2007, p. 8.

¹² Mahrus Ali, "Corporate Criminal Liability in the Development of Indonesian Criminal Law," *Journal of the Legal Pulpit*, Vol. 25, No. 2, 2013, p. 290.

¹³ M. Yahya Harahap, *Limited Liability Company Law*, Jakarta: Sinar Grafika, 2016, p. 343.

¹⁴ Henny Juliani, "The Accountability of SOE Directors for Acts That Result in State Financial

From the perspective of corporate criminal liability, there are several theories used to attribute faults to corporations, namely the theory of identification, vicarious liability, and strict liability. The identification theory places the actions of managers who have authority as the actions of the corporation itself.¹ Meanwhile, the vicarious liability theory emphasizes that corporations can be held accountable for the actions of their employees in the scope of work.² As for strict liability, it allows for liability without having to prove the element of fault in full, as long as the act has caused consequences that are prohibited by law.³

As a form of strengthening law enforcement, the Supreme Court has issued Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, which provides guidelines for law enforcement officials in determining corporate wrongdoing, including the criminal mechanism against corporations and their management.⁴ This PERMA also emphasizes that corporations can be sentenced to criminal charges in the form of fines, forfeiture of profits, corrections due to criminal acts, and the closure of certain businesses under certain conditions.⁵

3.1.3. Analysis of the Nature of Juridical Responsibility of SOE Directors for the Return of State Financial Losses in Corruption Crimes

The discussion on the accountability of the board of directors of State-Owned Enterprises (SOEs) for the return of state financial losses in corruption crimes is basically closely related to the position of the board of directors as an organ of the company that has the authority to carry out the company's management. The Board of Directors is not only responsible for the sustainability of the company's business, but also for the management of state finances which are separated in the form of state capital participation in SOEs. Therefore, when the board of directors abuses its authority and causes state losses, the liability that arises is not only administrative or civil, but can also develop into criminal liability for corruption. In this context, the case of PT Sang Hyang Seri (Persero) and PT Waskita Karya (Persero) Tbk is a concrete example of how the abuse of authority by the directors of SOEs raises serious problems related to accountability for the return of state losses.

In the case of PT Sang Hyang Seri (Persero), corruption occurred in the implementation of the Public Service Obligation (PSO) program in the form of procurement and distribution of subsidized seeds to farmers. The program is a form of government assignment to PT Sang Hyang Seri as a state-owned enterprise in the agricultural sector to support national food security.⁶ In its implementation, the company obtains subsidized funds from the government based on the number of seeds distributed to the farming community. However, in practice, it was found that there was a non-real or fictitious distribution of seeds carried out through the use of fake administrative documents in the form of Delivery Orders (DO), Transportation Cover Letters (SPA), and sales invoices that were not in accordance with the actual conditions. These documents are still used to apply for the disbursement of subsidy funds to the government so that the state suffers financial losses.

Based on the results of the investigative audit of the Financial and Development Supervisory Agency (BPKP), the state's losses in the case reached Rp112,425,232,905.42 (one hundred and twelve billion four hundred and twenty-five million two hundred and thirty-two thousand nine hundred five rupiah forty-two cents). During the trial, it was revealed that the defendant as the President Director of PT Sang Hyang Seri was aware of the practice of distributing non-real seeds based on the company's internal reports and the results of the Internal Supervisory Unit (SPI) examination, but did not take any termination or preventive action. In fact, the defendant still used the fictitious distribution report as the basis for submitting the disbursement of subsidy funds to the government. In addition, the defendant was also proven to have obtained a *tantiem* of Rp247,311,449.25 (two hundred and forty-seven million three hundred eleven thousand four hundred and forty-nine rupiah twenty-five cents) derived from the company's profits during the implementation of the program.

In his demands, the Public Prosecutor requested that the defendant be sentenced to 7 years in prison, a fine of Rp100,000,000.00 (one hundred million rupiah), and an additional penalty in the form of payment of compensation of Rp247,311,449.25 according to the profits received by the defendant. However, the Panel of Judges only imposed a prison sentence of 4 years and a fine of Rp100,000,000.00 without charging the defendant compensation. The judge considered that the main profit from the activity went to the account of PT

Losses," *Legal Issues*, Vol. 45, No. 4, 2016, p. 292.

¹ Sutan Remy Sjahdeini, "Corporate Accountability in Corruption Crimes," *Journal of Business Law*, Vol. 26, No. 1, 2007, p. 8.

² Eddy O.S. Hiariej, "The Direction of Corporate Criminal Policy in Corruption Crimes," *Indonesian Journal of Legislation*, Vol. 13, No. 1, 2016, p. 41.

³ Mahrus Ali, *loc.cit.*

⁴ Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

⁵ Eddy O.S. Hiariej, *op.cit.*

⁶ Decision of the Corruption Court at the Central Jakarta District Court Number 14/Pid.Sus/TPK/2014/PN. JKT. PST.

Sang Hyang Seri as a corporation, while the *tantiem* received by the defendant was considered a right of office based on the company's provisions and the regulations of the Minister of SOEs.

When analyzed using Gustav Radbruch's theory, the verdict shows a clash between three basic values of law, namely justice (*gerechtigkei*t), legal certainty (*rechtssicherheit*), and legal utility (*zweckmaigkeit*). Gustav Radbruch stated that law must be able to create a balance between the three values. However, in law enforcement practice, there are often clashes so that one value becomes more dominant than the other. In the case of PT Sang Hyang Seri, the judge seemed to prioritize formal legal certainty over substantive justice and legal utility.

The aspect of legal certainty can be seen from the consistency of the judges in applying Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. The judge stated that the defendant was proven to have abused his authority as the President Director of PT Sang Hyang Seri because he knew about the practice of distributing non-real seeds but still allowed the practice to take place and continued to use fictitious documents for the disbursement of subsidy funds. Legal certainty can also be seen from the use of BPKP audit results as an objective basis in determining state losses. Thus, formally the elements of corruption have been fulfilled.

However, the application of formal legal certainty actually raises problems in the aspect of substantive justice. In Gustav Radbruch's perspective, law should not only be understood as written rules that are applied mechanically, but should also reflect a sense of justice in society. In the case of PT Sang Hyang Seri, the judge did impose a prison sentence on the defendant, but did not charge compensation to both the defendant and the corporation. As a result, the state still suffered losses of IDR 112,425,232,905.42 without any real asset recovery. This condition causes injustice because the state as the aggrieved party does not get maximum return of losses.

The clash between legal certainty and justice was seen when the judge assessed the *tantiem* of Rp247,311,449.25 as a valid right of office based on corporate rules. These considerations do provide legal certainty administratively, but substantively cause injustice because these profits come from fictitious seed distribution activities that are detrimental to the state. In Gustav Radbruch's perspective, this condition is a form of "unfair legal certainty" because the law is applied legalistically without regard to the origin of the profits obtained by the defendant.

In addition to the clash between legal certainty and justice, the case of PT Sang Hyang Seri also shows a clash with the aspect of legal utility. According to Gustav Radbruch, the law must provide real benefits to the community, including through the protection of state finances and the recovery of state losses due to corruption. However, the judge's decision in this case has not provided optimal legal benefits because it focuses more on corporal punishment than restitution of state losses. The absence of additional penalties in the form of substitute money shows that the goal of asset recovery in the eradication of corruption has not been achieved.

This condition shows that the verdict in the PT Sang Hyang Seri case is still formal legalistic and does not reflect a progressive legal approach. The progressive legal theory developed by Satjipto Rahardjo emphasizes that law must be placed for human beings and justice, not just as rigid formal rules. In the perspective of progressive law, judges should not only be "mouthpieces of the law", but should be able to see the legal objectives in a substantive way to protect the interests of society and the state.

In the case of PT Sang Hyang Seri, the judge can actually use a progressive approach by expanding the interpretation of Article 18 of the Corruption Law regarding the penalty of additional compensation. The judge may consider that even though the main profits go into the corporate account, the defendant still derives economic benefits from the crime of corruption through *tantiem* and increased corporate profits. Thus, the defendant and the corporation should be held accountable proportionately to return the state's losses.

This progressive approach is important because corruption in SOEs not only causes financial losses, but also damages public trust in the management of state companies. If law enforcement is only oriented towards punishing the body without restoring state assets, then the goal of eradicating corruption will not be optimally achieved. Therefore, progressive law emphasizes the importance of the courage of judges to make legal breakthroughs in order to realize substantive justice and protection of the public interest.

In contrast to the PT Sang Hyang Seri case, the case of PT Waskita Karya (Persero) Tbk shows a more progressive approach in law enforcement of corruption crimes. This case stemmed from the misuse of Supply Chain Financing (SCF) facilities in a number of toll road projects managed by PT Waskita Karya. In this case, the defendant as Director of Operations II of PT Waskita Karya together with other parties carried out fictitious procurement and mark-up of toll road projects such as the Cinere-Serpong, Kunciran-Parigi, Cibitung-Cilincing, Jakarta-Cikampek II Selatan, and Cimanggis-Cibitung toll roads. This practice is carried out through manipulation of project administration and the use of documents that are not in accordance with the actual conditions to obtain the disbursement of funds through the SCF mechanism.¹

¹ Decision of the Corruption Court at the Central Jakarta District Court Number 68/Pid.Sus-TPK/2023/PN.Jkt.Pst jo Decision of the Jakarta High Court Number 5/Pid.Sus-TPK/2024/PT. DKI jo Decision of the Supreme Court of the Republic of Indonesia Number 4028 K/Pid.Sus/2024, accessed through the

Based on the audit results, PT Waskita Karya's total losses reached IDR 1,435,832,531,558.00 (one trillion four hundred and thirty-five billion eight hundred and thirty-two million five hundred and thirty-one thousand five hundred and fifty-eight rupiah). However, Rp1,364,932,627,191.00 (one trillion three hundred and sixty-four billion nine hundred and thirty-two million six hundred and twenty-seven thousand one hundred and ninety-one rupiah) has been recovered through the payment and settlement of the company's obligations. Thus, the remaining state losses amounted to Rp70,816,392,800.00 (seventy billion eight hundred and sixteen million three hundred ninety-two thousand eight hundred rupiah). In addition, the defendant was also proven to have obtained personal profits of USD195,000 or the equivalent of IDR 2,855,375,000.00 (two billion eight hundred and fifty-five million three hundred and seventy-five thousand rupiah).

In his decision, the judge sentenced him to 4 years in prison, a fine of Rp500,000,000.00 (five hundred million rupiah), and an additional penalty in the form of compensation of Rp2,855,375,000.00 according to the profits received by the defendant. The judge also emphasized that the defendant's actions could not be protected by the principles of Business Judgment Rule (BJR) because the use of SCF facilities was carried out not for legitimate business interests, but through fictitious procurement and project mark-ups that were contrary to the principles of prudence and good corporate governance.

When analyzed using Gustav Radbruch's theory, the decision in the PT Waskita Karya case reflects more of a balance between legal certainty, justice, and legal utility. In terms of legal certainty, the judge consistently applies Article 3 and Article 18 of the Corruption Law and uses the BPKP audit as the basis for proving state losses. The judge also gave a clear limit on liability by charging only the compensation amount to the personal benefit received by the defendant.

From the aspect of distributive justice, the imposition of compensation of Rp2,855,375,000.00 shows the application of the principle of proportionality because the defendant is only burdened according to the benefits he receives from the crime of corruption. In Gustav Radbruch's perspective, justice does not only mean punishing the perpetrators, but also placing responsibility according to the degree of guilt and profit that each party earns. Therefore, the decision reflects more substantive justice than the decision in the PT Sang Hyang Seri case.

In addition, the aspect of commutative justice is also seen through efforts to recover state losses through additional compensation penalties. The judge not only imposed a physical penalty, but also obliged the defendant to return the profits he had obtained illegally. This shows that there is a balance between the losses incurred and the obligation to recover that must be carried out by the defendant.

In terms of legal benefits, the verdict in the PT Waskita Karya case also provides more real benefits to the state because it supports asset recovery efforts and the return of state losses. This approach is in line with progressive legal theory that places law as a means of protection for the public interest and public welfare. From a progressive legal perspective, the success of law enforcement of corruption crimes is not only measured by the severity of the corporal punishment imposed on the perpetrators, but also by the extent to which the law is able to recover state losses and return misappropriated public assets.

Nevertheless, a clash of legal values still arises in the case of PT Waskita Karya. The judge applied the principle of proportionality by only charging compensation equal to the defendant's personal profit, while the remaining state losses of Rp70,816,392,800.00 have not been fully recovered. From the perspective of justice for the state, this condition still poses problems because the state continues to bear large amounts of losses. However, from the perspective of legal certainty and distributive justice, the judge considered that a person could not be burdened beyond the benefits he was shown to enjoy directly.

From a progressive legal perspective, the verdict can actually still be further developed through the optimization of corporate accountability and other parties who also enjoy the results of corruption crimes. Progressive law requires judges not only to focus on individual accountability, but also to encourage maximum recovery of state losses through corporate accountability. Thus, asset recovery can be carried out more optimally to protect the interests of the state and society.

The connection between Gustav Radbruch's theory and progressive legal theory can be seen in the orientation of both towards substantive justice. Gustav Radbruch emphasized that the law should not only pursue formal legal certainty if it actually causes injustice. Meanwhile, progressive law emphasizes that the law must be on the side of people, justice, and the public interest. In the context of SOE corruption, both theories reject a formal legalistic approach that only focuses on punishment without paying attention to the recovery of state losses.

Based on these two cases, it can be seen that law enforcement of corruption crimes against SOE directors is still facing the problem of clash between legal certainty, justice, and legal utility. In the case of PT Sang Hyang Seri, formal legal certainty is more dominant so that substantive justice and legal benefits have not been optimally achieved. On the other hand, in the case of PT Waskita Karya, the judge began to apply a more

progressive approach by balancing the punishment and recovery of state losses through additional penalties in lieu of money.

Therefore, the enforcement of corruption crimes against SOE directors should not only be oriented towards criminalizing the body, but must also be directed at optimizing asset recovery as a form of protection for state finances. Judges are required to dare to make legal breakthroughs through a progressive approach so that the law not only provides formal certainty, but is also able to realize substantive justice and legal benefits for society and the state. Thus, the goal of eradicating corruption is not only achieved in the form of punishing the perpetrators, but also through the maximum recovery of state losses for the public interest and public welfare.

Based on the corruption case by the Board of Directors of SOEs, it is very clear that there is a contradiction between Radbruch's legal values which can be seen concretely when comparing the Decision of the PT. Sang Hyang Seri (SHS) and PT. Waskita Karya. In the case of PT. SHS involving a fictitious subsidized seed project, the criminal verdict against the Board of Directors succeeded in upholding the value of legal certainty (rechtssicherheit), but in the judge's decision it had failed to pursue the return of state losses, even though the corruption asset flow was proven to have entered the corporate account, the purpose of the benefit (zweckassigkeit) laws that are essential for the country's economic recovery are not realized, this triggers substantive injustice for the public as the true owners of the state's wealth that is separated.

On the contrary, a legal anomaly occurred in the case of PT. Waskita Karya, there is an effort to recover real state losses. When a judge formulates a sentence without giving proportionate consideration to the recovery of the asset, the law is stuck in the fulfillment of rigid formal certainty. The contrast between the failure of asset execution in the case of PT. SHS and asset return in the case of PT. Waskita points out that judicial institutions in Indonesia are still disoriented in balancing the Gustav Radbruch trinity, formal legal certainty that sacrifices the value of economic benefits and substantive justice.

4. Closing

This research shows that law enforcement against corruption crimes in SOEs should no longer be trapped in rigid legal positivism. Law enforcement officials and judges must adopt a progressive legal approach to realize substantive justice. The true essence of eradicating corporate corruption is not just imposing corporate sanctions (retributive), but oriented towards asset recovery that has been depleted by deviant actions from the Board of Directors of SOEs. When formal legal certainty ignores economic benefits and fails to restore state wealth as seen in the anomaly of the cases of PT SHS and PT Waskita, then the fundamental purpose of law for public welfare has failed to be achieved. Therefore, progressive law demands a repositioning of the judicial paradigm: placing the restoration of assets intact as the main indicator of the success of substantive justice, in order to ensure that the state's wealth is truly returned for the development and benefit of the people.

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