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Restorative Justice in Corporate Dispute Resolution as Business Actor in Indonesia

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Abstract

Indonesian limited liability company (Perseroan Terbatas or "PT") is a preferable entity selected by business actors in conducting activities. In this context, the characteristics of PT grant *persona standi in judicio*, as a legal subject capable of initiating and defending lawsuits in civil and criminal courts under Law No. 40 of 2007. Therefore, this article aimed to discuss the implementation of corporate accountability in the context of PT, and the potential for restorative justice in resolving disputes, relying on secondary sources such as theories, norms, and legal principles. The results show that 1) the application of restorative justice is consistent with the corporate entity's existence to maintain business continuity while upholding accountability as a legal subject, 2) Restorative Justice, centered on fundamental elements of encounter, repair, and transform, represents an effort towards the well-being and integrity of victims, perpetrators, and society. The method enhances legal certainty and protection for parties in PT-related business activities.

KEYWORDS *Corporation, Dispute Resolution, Restorative Justice*

Introduction

The objective of the Medium-Term Development Plan 2020—2024 is to achieve an independent, progressive, equal, and welfare Indonesian society through the development of various sectors under the guidance provided by the National Long-Term Development Plan (RPJPN) 2005—2025. This emphasizes the establishment of a resilient economic structure based on competitive advantages in various regions, supported by a skilled and competitive human resource base. Furthermore, the RPJMN 2020—2024 serves as a stepping stone towards realizing vision 2045, known as "Indonesia Maju" (Progressive Indonesia). The strategy used is the economic transformation from dependency on natural resources to a competitive modern manufacturing and services sector that adds significant value to the welfare of the nation. [1] Another strategy includes regulatory simplification through the application of an omnibus, which emphasizes the regulations by revising and repealing many laws simultaneously.[2] Meanwhile, the omnibus law, as a primary regulatory reform, aims to increase investments in Indonesia.[3] This concept was implemented through the issuance of Job Creation Law, most recently enacted as Law No. 6 of 2023 on Job Creation ("Indonesian Job Creation Law"), and Government Regulation of the Republic of Indonesia No. 7 of 2021 concerning the Convenience, Protection, and Empowerment of Koperasi and Micro, Small, and Medium Enterprise.

Economic transformation and regulatory reform are interrelated since the law plays a crucial role in providing guidance and regulations to ensure that national economic development is consistent with the envisioned objectives. The existence of economic laws regulates and constrains activities, enhancing the consistency between pursuits and advancements. In a developing society, the function of law is not limited to preserving, safeguarding, and securing the outcomes of development but must facilitate societal change and renewal.[4]

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1 "Lampiran 1 Peraturan Presiden Nomor 18 Tahun 2020 Tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2020-2024." (2020).

2 Antoni Putra, "Penerapan Omnibus Law dalam Upaya Reformasi Regulasi," *Jurnal Legislasi Indonesia* 17, no. 1 (2020): 1, https://doi.org/10.54629/jli.v17i1.602.

3 Firman Freaddy Busroh, "Konseptualisasi Omnibus Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan," *Arena Hukum* 10, no. 2 (2017): 227–50, https://doi.org/10.21776/ub.arenahukum.2017.01002.4.

4 Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan* (Bandung: Alumni, 2022).

According to Sunaryati, the regulation of activities leads to developmental economic law and social economic law.[5] Developmental economic law contains the legal framework and consideration regarding the methods for enhancing and developing the national economy in Indonesia comprehensively. This includes aspects such as land regulations, various forms of business enterprises, capital investment, foreign aid and credits, banking, and international trade. Social economic law pertains to the regulation and legal consideration concerning methods to improve the welfare of Indonesian citizens under human dignity. This includes areas such as healthcare and family, housing, transmigration, and agriculture, as well as assistance and education for small-scale entrepreneurs. Based on the sectors within economic law in the developmental and social fields, various types of enterprises, including small-scale entrepreneurs, become subjects of legal regulation and consideration within economic law.

Large corporations as well as Micro, Small, and Medium Enterprise ("MSME") play an active role in national economic development to achieve Progressive Indonesia in 2045, such as PT and non-legal entities. MSMEs support the downstream of strategic industries, enhancing the participation of national companies in the global value chain.[6]

In several countries, MSMEs significantly contribute to the increase of innovation within companies, the introduction of flexible new products, and job creation.[7] In Indonesia, the role of economic actors is optimized by issuing two policies as support. Government Regulation of the Republic of Indonesia No. 24 of 2022 has been enacted regarding the Implementation of Law No. 24 of 2019 concerning the Creative Economy to provide access for creative economy practitioners to banks and non-bank financial institutions. The institutions are expected to extend credit or financing with intellectual property as collateral, benefiting the majority of creative economy practitioners[8]. In addition, the Indonesian Job Creation Law has introduced a new type of

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[5] Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia* (Bandung: Bina Cipta, 1982).

[6] Bank Indonesia, *Pemetaan Dan Strategi Peningkata Daya Saing UMKM Dalam Menghadapi Masyarakat Ekonomi ASEAN (MEA) 2015 Dan Pasca MEA 2025* (Departemen Pengembangan UMKM Bank Indonesia, 2016).

[7] Silvia Lorincová, Andrej Miklošík, and Miloš Hitka, "The Role of Corporate Culture in Economic Development of Small and Medium-Sized Enterprises," *Technological and Economic Development of Economy* 28, no. 1 (2021): 220–38, https://doi.org/10.3846/tede.2021.15983.

[8] Susanti Yuliandari, "Jaminan Pembiayaan Berbasis Kekayaan Intelektual: Analisis Peraturan Pemerintah Tentang Ekonomi Kreatif," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 2 (2022): 125, https://doi.org/10.14421/sh.v11i2.2800.

business entity, the PT Perorangan (Indonesian Individual LLC), which meets the criteria of MSME. In the establishment of an Indonesian Individual LLC, several material and formal requirements differ from the mandatory requirements as stipulated in Law No. 40 of 2007 Concerning Limited Liability Companies ("Indonesian Company Law"), including the absence of a notarial deed, capital requirements, and the age of the founders. The Indonesian Job Creation Law provides facilitation to improve the investment climate and ease of doing business (EoDB) becoming a reference for investors. The higher a country's EoDB index, the greater the opportunities to attract investors. [9]

According to the provisions of the Indonesian Job Creation Law, PT becomes the primary choice for supporting economic transformation for PT Perorangan (MSMEs) and general PT. Business actors prefer PT as an entity due to limited liability, separate from the founders, and possession of distinct assets. These two characteristics are regulated under the Indonesian Company Law to ensure a conducive business climate.

The concept of Perseroan Terbatas or PT under the Indonesian Company Law is equivalent to the Limited Liability Company (LLC). PT is often considered more attractive, providing a suitable operational framework for a wide range of business activities.[10] As a separate entity, the owners of the company have limited liability, which means assets cannot be used to fulfil debts and obligations. The risk of loss for members is limited to the amount invested in the business. PT maintains perpetual existence, where changes in ownership do not trigger the dissolution of the corporation. Death, retirement, or resignation of a member does not necessitate the cessation of operations. [11]

The presence of corporations, primarily driven by profit-seeking motives, directly impacts the economy. The size is directly proportional to the level of job creation, which is highly beneficial for economic growth.[12] Therefore, regulatory reforms that promote corporate growth increase the desired economic transformation.

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[9] Teguh Tresna Puja Asmara, Isis Ikhwansyah, and Anita Afriana, "Ease of Doing Business: Gagasan Pembaruan Hukum Penyelesaian Sengketa Investasi di Indonesia," *University Of Bengkulu Law Journal* 4, no. 2 (2019): 118–36, https://doi.org/10.33369/ubelaj.4.2.125-143.

[10] Donald J., et al. Sotto, "Limited Liability Company: The Growing Entity of Choice," Fairleigh Dickinson University, n.d.

[11] CT Corporation Staff, "Benefits of Forming Limited Liability Company (LLC)," Wolters Kluwer, July 30, 2020. *See also* David Tan. "Scrutinizing Perseroan Perorangan: The Brainchild of Societas Unius Personae in the Realm of Indonesian Company Laws." *Lex Scientia Law Review* 6, no. 2 (2022): 391-442.

[12] Meirza Anggakara, "Peran Korporasi dalam Membantu Perekonomian Negara," LinopvHR, February 17, 2022.

PT is expected to satisfy substantive and formal prerequisites founded with the primary objective of generating profits. The corporation represents an aggregation characterized by the separation of capital, also known as corporate assets and limited liability. In English law, PT is known as a "Limited Company," signifying a business organization owned by several individuals. "Limited" shows the limited liability, which is restricted to the assets held within the entity. Furthermore, shareholders cannot be held liable for an amount greater than the nominal value of the shares. In German law, PT is known as "*Aktien Gesellschaft*," where "*Aktien*" refers to shares and "*Gesellschaft*" means association. This indicates the emphasis on shares, which are a characteristic feature and form of a limited liability company.[13]

PT, which stands for Perseroan Terbatas (Limited Liability Company), is a combination of concepts from English and German legal systems.[14] The term emphasizes the aspect of shares or equity and shows the concept of limited liability. Therefore, losses are typically seen as being accountable through the assets accumulated within the respective corporate entity to identify the responsible party among the individuals. In theory, there are 3 (three) forms of corporate liability, namely personal, joint, and limited. For example, the principle of piercing the corporate is applied, causing the limited liability to transform into an unlimited liability when the incurred loss is proven to result from unlawful acts.

Circumstances have led to the formation of large corporations in developed and developing nations. Even though there are positive impacts in terms of taxes and foreign exchange, significant negative effects such as environmental degradation, poverty, and economic inequality can also be inflicted on society. For instance, corporations often resort to unethical business practices, causing negative consequences for consumers and the wider society to maintain customer base. Other forms of corporate wrongdoing extend into areas, including the environment, social issues, and culture.

Corporate crime in the social domain may include copyright infringements.[15] In the environmental sphere, corporate activities in production or industry, lacking proper waste disposal measures, can lead to river pollution. Rivers are often essential for the daily needs of the local population, destroying

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[13] Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia: Cetakan Kedua* (Yogyakarta: FH UII Press, 2014).

[14] Khairandy.

[15] Soejono, *Anatomi Kejahatan Korporasi di Indonesia* (Jakarta: Bina Aksara, 2008). *See also* Sufiarina Sufiarina, et al. "Legal Dynamics of Limited Liability Companies: Unveiling the Power of Commissioners and Shareholders to Take Legal Action Against Directors' Negligence." *Unnes Law Journal* 9, no. 2 (2023): 265-288.

habitats or intentional forest fires for land clearance. Considering the detrimental impacts of violations of corporate law and business ethics, enforcement becomes crucial. These negative consequences, when connected to corporate activities, can be classified as crimes. [16]

In terms of civil law, third-party losses resulting from a corporation's breach cause damage with the qualification of an unlawful act as regulated in Article 1365 of the Indonesian Civil Code. According to Article 155 of the Indonesian Company Law, corporate civil liability is based on unlawful acts, and civil prosecutions do not negate criminal liability when the elements of a crime are met. From a formal legal perspective, corporations are not recognized as subjects of criminal law.[17] In the current Indonesian Penal Code (KUHP), provisions regarding corporate accountability and punishment are introduced. The Indonesian Criminal Code governs legal entities or corporations as entities capable of assuming responsibility and subject to criminal penalties. Primary and supplementary penalties can be applied to corporations and individuals, including functional officeholders, controllers, and beneficial owners.

Various legislative provisions introduce criminal sanctions for corporations. In Chapter IX of Law No. 23 of 1997 concerning Environmental Management ("Indonesian Environmental Management Law"), criminal sanctions, including imprisonment and fines are stipulated for legal entities. Furthermore, Article 46 of the Indonesian Environmental Management Law governs that when a legal entity is proven to have committed a criminal act, sanctions are imposed on the legal entity and leaders in the commission of the act. Corporate crimes in the legal system are not limited to the Indonesian Environmental Management Law. The Indonesian Prevention of the Crime of Money Laundering Law also addresses corporate criminal liability. In this context, illegal actions differ from low socioeconomic criminal behavior in terms of administrative procedure. Consequently, corporate crimes are exclusively classified as breaches of criminal law but also as violations of civil and administrative law.

In response to the increasing number of corporate crimes, The Supreme Court Regulation No. 13 of 2016 regarding Manner and Procedure for the Handling of Crimes Committed by Corporations ("Regulation No. 13 of 2016"). Article 3 of Regulation No. 13 of 2016 defines criminal acts based on employment relationships within and outside the corporation's environment.

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[16] Setiyono, *Kejahatan Korporasi* (Malang: Bayumedia Publishing, 2009).

[17] M. Mahrus Setia Wijaksana, "Pengaturan Korporasi Sebaga Subjek Tindak Pidana," *Jurnal Recht Vinding*, 2020.

As a business actor, the primary focus of a corporation is to seek profits and ensure the sustainability of operations, which include numerous stakeholders. In the case of public companies, investors' interest should be continuously attracted to investment. Therefore, this article uses a normative juridical method to emphasize secondary legal sources, including primary, secondary, and tertiary legal materials. The prospective application of restorative justice principles is explored in consistency with corporate characteristics through qualitative juridical analysis.

The principle of restorative justice can be used as a recovery instrument for resolving criminal cases, where the focus in the mechanism is transformed into a process of dialogue and mediation. The legal resolution is to reach an agreement on the resolution of criminal cases. Additionally, another intention is to achieve a fair and balanced legal decision for victims and offenders. The main principle is legal enforcement which prioritizes returning to the original state and restoring positive relationships.

The Concept of Peace in Civil and Criminal Dispute Resolution

The resolution of civil disputes can be settled through the court system. The settling of disputes outside the court is commonly referred to as alternative dispute resolution (ADR). This can be achieved through methods such as negotiation, conciliation, mediation, and arbitration.

In practical terms, when conflicts are settled within the legal system, the result is a court decision. However, the decision is seen as insufficient in fully resolving the issues and leads to new problems, including dissatisfaction from the losing party. This may prompt further legal actions, consuming additional resources such as time, money, and energy. The process has led to the development of alternative dispute resolution methods, such as mediation.[18]

Mediation has gained public preference for settling conflicts due to simplicity, speed, and characteristic of providing win-win solutions. The outcomes are reached through mutual agreement and consensus, ensuring no party feels unfairly treated. Furthermore, the variable includes a negotiation process facilitated by a neutral third party, known as a mediator. Unlike judges

[18] Dedy Mulyana, "Kekuatan Hukum Hasil Mediasi di Luar Pengadilan Menurut Hukum Positif," *Jurnal Wawasan Yuridika* 2, no. 2 (2019).

and arbitrators, mediators do not have the authority to impose decisions on the disputing parties. [19]

According to Indonesian civil procedure law, mediation is mandatory during the litigation process, as stipulated by Article 130 of the Herziene Inlands Reglement ("HIR") and Article 154 of the Reglement voor Buiten Gewesten ("RBg"). The requirement aims to motivate the parties to obtain a peaceful resolution, intensifying the integration of the process. Therefore, dispute resolution can be more intensive, with judges actively working towards achieving peace among the conflicting parties.

Peaceful resolution is the best method for settling disputes since the method enhances the restoration of harmonious relationships among the parties. Therefore, conflicting parties must have opposing interests beyond the substance of the dispute and extend to psychological satisfaction. [20]

In Indonesian positive law, specifically in criminal cases, Indonesia has effectively implemented the concept of peace in the form of diversion when dealing with cases of minors as offenders. The obligation of law enforcement authorities is expected to resolve cases by terminating the legal process through diversion, with the outcome being a judicial decision or judgment. In the future, the pattern of resolving criminal cases can be completed without the necessity of a court decision. An issue is considered resolved when an agreement is reached between the victim and the perpetrator or the accused. In this context, the state cannot further prosecute the perpetrator or accused or make additional claims.

The resolution of cases outside the courtroom is well-recognized in criminal procedure law. This is commonly referred to as ADR or alternative dispute settlement. Historically, ADR efforts in criminal cases dating back to the colonial era of the Netherlands before Indonesia gained independence. In the Indonesian Penal Code (KUHP), the resolution outside the court is regulated under Article 82, referred to as "*Afkoop*," where the authority to prosecute offenses becomes void when the maximum fine and expenses have been voluntarily paid. Jan Remmelink also refers to the concept as "*compositie*,"[21] and the fundamental idea behind alternative dispute resolution

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[19] Karmawan Karmawan, "Diskursus Mediasi dan Upaya Penyelesaiannya," *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 16, no. 1 (2017): 107–26, https://doi.org/10.15408/kordinat.v16i1.6457.

[20] I Made Sukadana, *Mediasi Peradilan: Mediasi Dalam Sistem Peradilan Perdata Indonesia Dalam Rangka Mewujudkan Proses Peradilan Yang Sederhana, Cepat, Dan Ringan* (Jakarta: Prestasi Pustaka, 2012).

[21] Rodliyah, et.al. "Afdoening Buiten Process dalam Hukum Acara Pidana Indonesia," *Jurnal Kompilasi Hukum* 5, no. 1 (2020): 192–206.

is related to the nature of criminal law. According to Ultimum Remedium, as Van Bemmelen suggests, criminal law is considered the last resort and should be applied. The threat of punishment is an Ultimum Remedium, and the potential benefits and limitations of sanctions should be considered. [22]

Restorative Justice Theory as the Foundation for Out-of-Court Dispute Resolution for Corporations

PT is a legal entity complying with formal and material requirements, which include capital, a specific purpose of profit, interests, and organizational structures to conduct activities. Corporations and the representative are considered actors in the context of criminal offenses. Criminal liability applies to leaders (factual leaders) who can be punished based on the functions performed within the corporation.

Corporate criminal conduct includes actions committed by individuals within the context of employment or other relationships. The Indonesian Criminal Code regulates legal entities or corporations as entities held accountable and subject to criminal penalties. Primary and additional penalties, as well as measures, are applied to the corporation and individuals, including executives with functional positions, order givers, controllers, and beneficial owners. According to Regulation No. 13 of 2016, corporate criminal conduct includes actions committed within the context of employment or other relationships. Article 4 of the Regulation No. 13 of 2016 further states that:

(1) Corporations can be held criminally liable under the provisions of corporate criminal law.
(2) In imposing penalties, judges can assess wrongdoing based on
   a. the benefits derived from the criminal act,
   b. neglect to the commission of the criminal act, or
   c. failure to take necessary steps to prevent, mitigate larger impacts, and ensure compliance with applicable laws.

The resignation or death of one or more corporate officers does not result in the loss of liability. In this context, corporate criminal actions are taken against the corporate stakeholders, including

1. Lenders for investment or working capital purposes, such as banks, financial institutions, or individuals.
2. Government entities at the national and local levels.
3. Customers or users of products and services produced by the corporation.

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[22] Andi Hamzah, *Asas-Asas Hukum Pidana: Edisi Revisi* (Jakarta: PT. Rineke Cipta, 2008).

4. Owners of the corporation.
5. Workers or individuals with employment contracts.
6. The general public.

The theory of restorative justice addresses the deficiencies in conventional criminal case resolution, which includes a repressive method. The deficiencies of the repressive method include the focus on retribution through punishment and imprisonment of offenders. However, after serving sentences, offenders may not experience rehabilitation, or struggle to reintegrate into a social environment. This leads to prolonged resentment and potential criminal behavior. Repressive methods in case resolution often fail to address the issues, specifically those between the offender and the victim. In reality, the resolution of a case should contribute to justice for all parties.[23]

Considering the development of penal theories, which focused on the position of the offender and emphasized the part of the victim, a new philosophy of punishment has been reported. This philosophy centres on achieving a criminal case resolution that benefits all parties, including the victim, the offender, and the community. Achieving justice in criminal case resolution should not only cater to a party's interests. Therefore, there is a need for a comprehensive theory of penal objectives representing all aspects of case resolution.[24] In this situation, restorative justice facilitates the recovery of crime victims, holds offenders accountable, and serves the interests of stakeholders through a case resolution process. [25]

In principle, restorative justice may be offered as a standard method in decision-making at all stages of the litigation process. However, the traditional method should not be precluded when public or private interests take precedence in the decision-making process. Restorative justice allows stakeholder participation and repairs the harmful impact of crimes and conflicts unless the overall circumstances in a specific case dictate the need for a different response. [26] The concept broadens the circle of stakeholders, reaching out to affected parties who have a stake in the criminal case resolution. This is because conventional criminal justice resolution often undermines certain aspects and does not fully consider the interests of the parties. Conceptually, Bagir Manan suggests that restorative justice comprises ideas and principles, including:

1. The establishment of collective participation among offenders, victims,

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[23] Mansyur Kartayasa, "Restorative Justice dan Prospeknya dalam Kebijakan Legislasi."

[24] Muladi, *Kapita Selekta Hukum Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995).

[25] Artidjo Alkostar, *Restorative Justice* (Varia Peradilan, 2007).

[26] Ian D Marder, "Restorative Justice as the New Default in Ireland Criminal Justice," *Irish Priobation Journal* 16 (2019): 60–82.

and community groups in resolving an event or criminal act. This positions offenders, victims, and the community as stakeholders who collaborate and actively obtain a fair solution for all parties.

2. The motivation of offenders to take responsibility for the damage caused to victims due to an event or criminal act. Furthermore, this instills a sense of responsibility in offenders to refrain from repeating criminal actions.
3. Shifting the perspective regarding an event or criminal act to understanding the concept as a transgression. Therefore, the focus should be on the offender's accountability to the victim instead of prioritizing legal accountability.
4. The promotion of resolution through informal and personal methods.

The Implementation of Corporate Accountability of Indonesian Limited Liability Company

In principle, the accountability of PT as a legal entity is limited in nature. The obligations arise from regulations and agreements entered by PT with third parties. Violations of the obligations lead to responsibilities that must be fulfilled to prevent disputes between the corporation and third parties. Therefore, corporate disputes can result from a violation of regulations or a breach of agreements. The resolution of civil disputes is pursued through litigation or alternative dispute resolution.

In practice, since PT is founded based on contractual freedom, most of the standard protections can be waived or modified.[27] The corporation is obliged to take responsibility for compensating for losses resulting from unlawful acts or non-performance when violations result in harm to others. The doctrine of unlawful acts broadens the meaning of unlawfulness to include actions or inactions violating written or unwritten laws, infringing on the subjective rights of others, and contravening the obligations of those acting against decency (morality) or a manner contrary to the recognized norms of societal behavior (Arrest Lindenbaum-Cohen 1919 HR January 31, Hoetink No.110).[28]

Breach of contract refers to a situation where a debtor violates an agreement, fails to fulfil promises as stipulated in the contract, completely

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[27] Peter Molk, "How Do LLC Owners Contract Around Default Statutory Protections?," *The Journal of Corporation Law* 42, no. 3 (2017): 504–56. *See also* Doni Budiono, and Maria Clarisa Talia. "Limited Liability Company's Status After Insolvency: Dissolution or Rehabilitation?." *Pandecta Research Law Journal* 18, no. 2 (2023): 280-299.

[28] Mariam Darus Badrulzaman, *Hukum Perikatan Dalam KUHPerdata (Buku Ketiga: Yurisprudensi, Doktrin Serta Penjelasannya* (Bandung: Citra Aditya Bakti, 2015).

disregards commitments, or delays in performing contractual obligations.[29] As the presence and influence of corporations expand across economic, social, and political spheres, the spectrum of corporate misconduct diversifies, leading to a distinct category of criminal activity referred to as white-collar. These offenses are characterized by organization and transnational reach, hence corporate misdeeds are categorized under white-collar crime.[30] Even though the crimes committed are more financially significant, most cases are not covered by criminal law but treated as civil or administrative violations.

In the United States, certain business activities were classified as illegal in the 19th century. Deceptive advertising, trade restrictions, bank fraud, unsafe product manufacturing, fraudulent securities sales, patent infringements, and environmental pollution are examples of corporate violations. The first regulation enacted by the U.S. Federal Government was the Sherman Antitrust Act of 1890 to prevent price-fixing and monopolistic practices. Oversight of corporate misconduct is primarily accompanied by federal and state regulatory agencies, including the Federal Trade Commission (FTC), Environmental Protection Agency (EPA), Interstate Commerce Commission, Nuclear Regulatory Commission (NRC), Securities and Exchange Commission (SEC), and The Occupational Safety and Health Administration (OSHA). These regulatory bodies have a range of sanctions for enforcing the law, including warnings, recalls, orders, monetary penalties, and criminal prosecution. [31]

Corporate violations leading to disputes between corporations and third parties are regulated by law as a *lex generale*. Article 155 of the provision regarding the responsibility of the Board of Directors and Commissioners over the mistakes and negligence regulated in the Law shall not reduce the provision in the Law regarding Criminal Law.

Article 155 of the Indonesian Company Law serves as a guiding principle, indicating the presence of other provisions governing corporate violations classified as criminal acts. In addition, various specialized laws related to corporate criminal offenses exist in Indonesia, which can impose sanctions as legal entities. In addition, as a legal entity, every legal act carried out on behalf

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[29] N. Yunita Sugiastuti, "Ganti Rugi Akibat Wanprestasi (Perbandingan Kitab Undang-Undang Hukum Perdata Indonesia dan Civil Code of the Netherlands)," *Jurnal Hukum PRIORIS* 8, no. 2 (2022): 201–35, https://doi.org/10.25105/prio.v8i2.14981.

[30] Rodliyah Rodliyah, Any Suryani, and Lalu Husni, "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) dalam Sistem Hukum Pidana Indonesia," *Jurnal Kompilasi Hukum* 5, no. 1 (2021): 191–206, https://doi.org/10.29303/jkh.v5i1.43.

[31] Frank E. Hagan, "Corporate Crime," Britannica, 2023.

of the corporation becomes its responsibility.[32] Under Indonesian Company Law, the tasks and authorities of the Board of Directors is to represent the corporation inside and outside the court. There is no accountability provided obligations are carried out in accordance with the mandate as stated in the articles of association.[33] The dispute resolution policy depends on the authority of the entity when a violation is classified as corporate criminal misconduct.

Corporate activities that play a significant role in economic transformation include the financial services sector. In broad terms, three service sectors can strengthen corporations as economic players, namely banking, capital markets, and non-bank financial industry (IKNB). Criminal violations in the financial services sector share similar characteristics, primarily causing material losses, specifically for consumers and the public.

The relationship between corporations and the public experiences challenges among stakeholders and consumers of products or services. In this context, stakeholders refer to individuals or groups capable of being influenced by a corporation's activities. For instance, corporate fraud is triggered by irregularities in financial reporting. These irregularities include misrepresentations or unintentional errors, leading to situations where decision-makers may change decisions. The error criteria comprise issues in the collection or processing of accounting data, which form the basis for financial reports, inaccurate accounting estimates due to misinterpretations, misapplications of accounting principles, or irregularities.[34]

In the banking sector, fraud typically arises due to weak internal oversight and the lack of adherence to good corporate governance.[35] Banking fraud often results from practices that deviate from policies, procedures, or applicable rules, combined with deliberate actions, leading to material and moral losses for the bank.[36] In the capital markets sector, criminal violations governed by Law No.

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[32] Fiany Alifia Lasnita and Muhamad Adji Rahardian Utama, "Authorized Failure: How is Company Status?," *Indonesian Journal of Advocacy and Legal Services* 2, no. 2 (2020), https://doi.org/10.15294/ijals.v2i2.37721.

[33] Ardison Asri, "Doktrin Piercing The Corporate Veil dalam Pertanggung Jawaban Direksi Perseroan Terbatas," *Jurnal Ilmiah Hukum Dirgantara* 8, no. 1 (2014), https://doi.org/10.35968/jh.v8i1.138.

[34] Anisa Putri, "Kajian: Fraud (Kecurangan) Laporan Keuangan," *Jurnal Riset Akuntansi & Komputerisasi Akuntansi* 3, no. 1 (2012): 1–10.

[35] Metha Christinawati and Hari Setiyawati, "Factors Affecting Banking Fraud Prevention and Their Impact On The Quality of Financial Statements," *International Journal of Social Science and Business* 6, no. 2 (2022): 215–24, https://doi.org/10.23887/ijssb.v6i2.46538.

[36] Novi Angga Safitri et al., "The Fraud of Banking Review in Legal Perspective," *International Journal of Law Reconstruction* 6, no. 1 (2022): 41, https://doi.org/10.26532/ijlr.v6i1.20424.

8 of 1995 on Capital Markets ("Indonesian Capital Markets Law") were amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ("Indonesian Financial Omnibus Law"). These violations include fraud, market manipulation, fictitious trading, and insider trading. In both banking and capital markets, dispute resolution resulting from civil violations is settled outside the court through arbitration or other alternative method. Parties can select a dispute resolution forum when violations fall within the realm of civil law. Disputes can be categorized as business disputes and should be resolved quickly to maintain confidentiality and a win-win solution.

Several methods are negotiation, mediation, administrative settlement, arbitration, court channels, and legislative methods. A method to resolve disputes is by mediation conducted through litigation or non-litigation channels. The process of resolving disputes with mediation in court is faster with lower costs, and the possibility of settlement by an agreement acceptable to all parties. In addition, the parties do not seek appeal and cassation, reducing case buildup and accumulation in court. Mediation empowers disputing parties in the resolution process, facilitates access to justice for the community, maintains confidentiality, and enhances the possibility of implementing agreements, thereby enhancing relationships between the parties. Furthermore, courts benefit from using alternative dispute resolution techniques.[37] Mediation has been proven to be a particularly effective method of resolving legal disputes in part because the parties are allowed to participate in the resolution process.[38] For instance, Alternative Financial Services Sector Dispute Resolution Institution (LAPS SJK) resolves disputes in the financial services sector. The institution provides optimal protection to consumers[39], even though the violation falls under criminal offenses.

OJK gives written orders to violators of the capital market regulations based on the Capital Market Act and pursues profits obtained illegally.[40] A dispute resolution model is used to ensure business continuity, consumer, and

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[37] Indriati Amarini, "Court Connected Mediation: Civil Dispute with A Local Society Cultural Approach," *Jurnal Dinamika Hukum* 20, no. 1 (2021): 256, https://doi.org/10.20884/1.jdh.2020.20.1.2599.

[38] Leonard Edwards, "Dependency Court Mediation," *Family Court Review* 35, no. 2 (1997): 160–63, https://doi.org/10.1111/j.174-1617.1997.tb00456.x.

[39] Lastuti Abubakar and Tri Handayani, "Integrated Alternative Dispute Resolution Institutions in the Financial Services Sector: Dispute Resolution Efforts in Consumer Protection Framework," *Yustisia Jurnal Hukum* 10, no. 1 (2021): 32, https://doi.org/10.20961/yustisia.v10i1.48684.

[40] Anugrah Muhtarom Pratama et al., "The Regulation of Disorgement in the Indonesia Capital Market: Remaining Concerns and Lessons from US," *Journal of Indonesian Legal Studies* 7, no. 2 (2022): 585–632, https://doi.org/10.15294/jils.v7i2.58666.

public, including the disgorgement of illicit gains, based on Regulation of OJK No. 65/POJK.04/2020 on the Return of Illegitimate Profits and Investor Compensation Funds in the Capital Markets ("POJK Rules on Disgorgement"). This regulation is enacted to enhance investor protection and the effectiveness of law enforcement in the capital markets sector. Therefore, strengthening legal enforcement instruments is necessary to create a deterrent effect on violators of regulations and laws.[41] Disgorgement is a novel method to enhance legal protection for investors against losses resulting from violations of regulations in the capital market.[42]

The legal enforcement instruments can be achieved through disgorgement, which includes ordering parties who have violated regulations and laws in the capital markets sector to return profits obtained or losses avoided unlawfully. This prevents the parties from committing violations. In the capital markets, violations have traditionally been subjected to administrative sanctions, fines, and imprisonment. The purpose is to deter criminal activity, without providing recovery for investors who have suffered financial losses. In the financial crimes landscape, these sanctions are ineffective given the financial hardships faced by victims without adequate restitution. [43]

Considering the existing cases, criminal qualifications are used to establish criminal elements, such as fraud, embezzlement, or misuse of positions to introduce false data. In certain cases, civil accountability does not preclude the need for criminal punishment and sanctions.

The concept of disgorgement appears to have been influenced by the evolution of securities law in Anglo-Saxon countries. The Securities Exchange Commission (SEC) obtained legal enforcement outside of damages remedies in the late 1960s. In the 1970s, the SEC successfully persuaded federal district courts to allow disgorgement efforts. In the case of SEC v. Texas Gulf Sulphur Co, the court ordered Texas Gulf Sulphur to make restitution, eliminating the profits gained from illegal activities. SEC can pursue remedial actions instead of providing damages provided the relief is corrective in nature.[44] Disgorgement

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[41] Mochammad Aditia Gustawinata, Lastuti Abubakar, and Ema Rahmawati, "Perlindungan Hukum Atas Kerugian Investor Melalui Pengembalian Keuntungan Tidak Sah Dalam Praktik Manipulasi Pasar," *Jurnal Tana Mana* 4, no. 1 (2023): 147–57.

[42] Uni Tsulasi Putri, "Disgorgement as Remedial Action in Indonesian Capital Market Regime," *Jurnal Hukum Novelty* 11, no. 1 (2020): 1–13.

[43] Nikmah Mentari, "Pengembalian Keuntungan Tidak Sah Terhadap Investor Ritel : Keadilan Korektif Melalui Konsep Disgorgement," *Jatiswara* 38, no. 1 (March 31, 2023), https://doi.org/10.29303/jtsw.v38i1.462.

[44] Jacqueline K. Chang, "Kokesh vs SEC, The Demise of Disgorgement," *UNC School of Law* 22, no. 1 (2018): 309–31.

should be seen as a corrective measure instead of punishment. Under the Securities Act of 1934, the return of funds should eliminate the ill-gotten gains as a deterrent to any entity attempting to steal profit unethically.

Disgorgement is considered a fair legal remedy, rather than a punitive measure.[45] The Department of Justice (DOJ) used the remedy as a tool in enforcing the Foreign Corrupt Practices Act (FCPA) to enhance accountability. However, the use of disgorgement in FCPA-related disclosure failures has raised critical concerns due to perceived limitations compared to alternative resolutions.[46] Corporate responsibility in disputes is related to remedial or corrective resolutions viewed as inefficient methods to regulate corporations concerning regulatory developments and methods. [47]

The Restorative Justice Approach as a Futuristic Approach in Corporate Dispute Resolution for Business Actors in Indonesia

Sunaryati Hartono, an Indonesian Legal Economic Expert, emphasizes the importance of not relying on narrow legal reasoning but approaching issues in an interdisciplinary and anticipatory manner. The field of law related to wrongful acts is also reported in business or economics, commonly known as unfair practices, allowed to persist without sanctions and prevention.[48] Therefore, the corporate dispute resolution policy, which focuses on recovery and correction as part of the concept of restorative justice, is a commendable option.[49]

Restorative Justice is a model developed in the 1970s as an effort to resolve criminal cases. The method places a strong emphasis on the direct participation of offenders, victims, and the community in the process of resolving criminal cases. Despite the theoretical debate, the method evolved and significantly influenced laws and practices in various countries.

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[45] CFI Team, "What Is Disgorgement?," Corporate Finance Institute, 2023.

[46] Karen Woody, "'Declinations with Disgorgement' in FCPA Enforcement," *University of Michigan Journal of Law Reform*, no. 51.2 (2018): 269, https://doi.org/10.36646/mjlr.51.2.declinations.

[47] Peter Henning, "The Impact of Criminal Sanctons on Corporate Misconduct," *Journal of Business & Technology Law* 2, no. 1 (2007): 107–10.

[48] Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional* (Bandung: Alumni, 1991).

[49] Josefin Mareta, "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak PIdana Anak," *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 308–19.

In the context of Indonesian law, restorative and rehabilitative methods are expected to be incorporated into the criminal justice system with repressive and preventive measures. Romli Atmasasmita believes that the restorative-rehabilitative resolution model captures the essence of traditional customary law, restoring balance in the cosmos or representing a modernized version of customary law resolution.[50]

Restorative justice model emphasizes the direct participation of offenders, victims, and the community by interpreting criminal acts as attacks. The concept is perceived as a process of obtaining solutions to relatively minor criminal cases including the participation of victims, the community, and offenders. This is crucial in the efforts towards improvement, reconciliation, and ensuring the sustainability of the improvement efforts. Restorative justice, as a thought concept responding to the developments in the justice system, addresses criminal acts by law enforcement and legal practitioners.[51] In considering the incorporation of the principles, concerns arise regarding the objectives to be achieved through the application of criminal law and the justice system. The entire process centers around the interests of offenders when compared to the evolving theories of criminal justice, including retribution, deterrence, incapacitation, rehabilitation, and resocialization, as well as the contemporary concepts of the penitentiary system. Meanwhile, the fundamental principles are interpreted as a method embodied in the attitude or perspective within the administration.[52]

The concept of Restorative Justice has been mandated in Indonesia's National Medium-Term Development Plan (RPJMN) for 2020—2024 as a policy measure for improving the national judicial system. The policy directions and regulatory structuring strategies are through the implementation of restorative justice, which optimizes the utilization of existing regulations within the legal framework. This supports restorative justice, enhancing the roles of customary institutions and related bodies in alternative dispute resolution. [53]

In the positive law of Indonesia, restorative justice can be found in several legislative regulations, including the implementation and regulation in Law No. 11 of 2021 concerning the Juvenile Criminal Justice System (Indonesian JCJS

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[50] Romli Atmasasmita, *Globalisasi Kejahatan Bisnis* (Jakarta: Kencana, 2010).

[51] Muhaimin, "Restorative Justice dalam Penyelasaian Tindak Pidana Ringan (Restorative Justice in Settlement of Minor Offences," *De Jure* 19, no. 2 (2019): 185–206.

[52] Eva Achjani Zulfa, "Implementation of Restorative Justice Principles in Indonesia: A Review," *International Journal of Science and Society* 2, no. 2 (May 20, 2020): 317–27, https://doi.org/10.54783/ijsoc.v2i2.161.

[53] Kementerian PPN/Bappenas, *Rancangan Teknokratik-Rencana Pembangunan Jangka Menengah IV 2020-2024*, 2019.

Law). According to Article 1, Number 6 of the Indonesian JCJS Law, the concept is the resolution of criminal cases comprising the perpetrator, victim, the families of the perpetrator, and other relevant parties. This can be achieved through diversion, which includes redirecting certain cases comprising children suspected of committing specific criminal acts. Diversion is considered a special right of children when dealing with legal matters, but the concept is not easily implemented since the child facing legal issues and the other party, must reach an agreement. This right is limited by the requirements of Article 7, Paragraphs (2a) and (2b) since diversion can only be carried out in cases where the criminal act is punishable by imprisonment of less than 7 years. Therefore, diversion cannot be implemented when the conditions set out in Article 7, Paragraphs (2a) and (2b) are not met.[54] Based on the regulations, restorative justice in the JCJS Law cannot be fully applied. The concept is used cautiously while emphasizing a justice-oriented method for the benefit of the child while considering justice for the victim. In the JCJS Law, restorative justice shifts the prevailing paradigm in the juvenile justice system. Historically, punishment has been retributive, and fully focused on the child offender. Punishment (incarceration) is not a form of revenge but an educational measure to prevent crimes in the future.[55]

Law No. 32 of 2009 on Environmental Protection and Management ("Indonesian PME Law") implies and opens the space for the application of restorative justice as an alternative form of law enforcement for environmental crimes.[56] As regulated in Article 48B of the Indonesian Financial Omnibus Law, the concept is used in resolving criminal violations and the mechanism includes:

1. OJK is authorized to determine the commencement, non-commencement, or termination of investigations into criminal offenses.
2. An inquiry into allegations is carried out in the financial services sector before initiating an investigation.
3. Parties suspected of committing criminal offenses may submit a request for the resolution of violations in the financial services sector.
4. OJK assesses requests for resolving violations and determines losses by

[54] Johari Johari and Muhamad Arif Agus, "Analysis of Diversion Terms in Child Criminal Justice System," *Journal of Correctional Issues* 4, no. 2 (2021): 95–103, https://doi.org/10.52472/jci.v4i2.59.

[55] Brian Septiadi Daud and Litya Surisdani Anggraeniko, "Kelemahan Penyelesaian Perkara Pidana Anak Melalui Restorative Justice dalam Sistem Peradilan Pidana Anak," *Jurnal Pacta Sunt Servanda* 4, no. 1 (2003): 1–21.

[56] Joshua Navirio Pardede and Wahyu Yus Santoso, "Refleksi Kritis Terhadap Konsep Keadilan Restoratif Dalam Penanganan Tindak Pidana Lingkungan Hidup di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 263–86.

considering several factors, namely the presence or absence of losses resulting from the criminal offense, the transaction value and the extent incurred due to the violation, as well as the impact on the financial services sector, institutions, or the interests of customers, shareholders, investors, and the general public.

5. The party making a request is obligated to implement the agreement when approved, including paying compensation.
6. The investigation is terminated when an agreement has been fully fulfilled.
7. Compensation is the right of the aggrieved party and is not considered revenue for OJK.
8. OJK is authorized to impose administrative sanctions on parties suspected of committing criminal violations in the financial services sector. These sanctions include written warnings, restrictions on products, services and business activities, suspension, removal of management, and administrative fines.
9. OJK is authorized to proceed with the investigation phase when the request for the resolution of violations is not approved.
10. The provisions are adjusted to the characteristics of each financial services sector.

The procedures for the resolution of violations and requests are regulated by OJK regulations.

Disgorgement: A Restorative Justice Model in Resolving Disputes in the Indonesian Capital Market

As part of the financial services sector, the Capital Market plays a crucial role in the national economic development. The market serves as a source of corporate financing, particularly for Limited Liability Companies and investment alternatives for individual and corporate stakeholders. Other participants in the capital market such as brokers and supporting institutions are required to take on the form of Limited Liability Companies. In this context, the potential for violations committed is quite significant.

Violations can be categorized as administrative, civil, or criminal and the legal enforcement market rarely results in court proceedings. OJK prefers imposing monetary fines on wrongdoers, citing the Indonesian Capital Market Law and authority to charge administrative sanctions. An important case includes a fraud committed by Larasati, an employee of a securities firm, in collaboration with PT Reliance Securities, Tbk, and PT Magnus Capital. Meanwhile, appropriate actions have been taken within the jurisdiction and

under applicable regulations to address the problem.

The obligations and responsibilities can be observed since funds received by Reliance victims were refunded. The sanctions constitute a form of deterrence aimed at individuals with responsibilities and authority in the matters.

In this context, similar incidents will not occur in the future within the securities.[57] The resolution of disputes, which also includes corporate entities in the capital market, is supported by a strong legal framework. The OJK has issued POJK Rules on Disgorgement as a form of legal protection for investors. Protection is a regulatory objective in the capital market based on the document containing the objectives and principles published by the International Organization of Securities Commissions (IOSCO). This document sets forth 38 principles of securities regulation based on three objectives, namely 1) protecting investors, 2) ensuring that the market is fair, efficient, and transparent, and 3) reducing systemic risk. Regarding law enforcement in the capital market, principles 10, 11, and 12 are regulated as follows:[58]

a. Regulators must have comprehensive inspection, investigation, and oversight authority (Principle 10),
b. Regulators must have law enforcement authority (Principle 11),
c. The regulatory system must ensure the effective and credible use of inspection, investigation, oversight, and law enforcement authority, as well as the implementation of effective compliance programs (Principle 12).

Based on IOSCO document, OJK, as the regulator, creates regulations in line with international standards. The considerations of the disgorgement method for dispute resolution include, 1) upholding the functions of development, trust, and services and 2) protecting investors, as a pillar of capital market development.

The Implementation of Disgorgement (PKTS) as an Investor Protection Measure and Support strengthens Financial Sector Credibility and enhances Public Trust.[59] Article 7 of the Indonesian Capital Market Law stipulates that the Stock Exchange is established to conduct orderly, fair, and efficient trading. Therefore, trading activities should be based on clear rules and consistently applied. In this context, prices should reflect market mechanisms driven by supply and demand forces. Efficient securities trading is reported in transaction

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[57] Vicky Prayitno, "Studi Kasus Tindak Pidana Pasar Modal Pada PT Reliance Securities, TBK Dan PT Magnus Capital," *Dharmaisya* 2, no. 2 (2022): 653–74.

[58] OICV-IOSCO, "Objectives and Principles of Securities Regulation," May 2017.

[59] Otoritas Jasa Keuangan, Roadmap Pasar Modal Indonesia 2023-2027.

settlements at relatively low costs. Dispute resolution through the disgorgement model is consistent with the characteristics of the capital market.

The authority to use the disgorgement model is based on consumer protection and other actions granted to Financial Services Institutions, market participants, and/or supporting entities, as regulated in Law No. 21 of 2011 on the Financial Services Authority (the OJK Law). Specifically: Article 9(c) of the OJK Law governs that OJK has the authority to conduct supervision, examination, investigation, consumer protection, and other actions against Financial Services Institutions, market participants, and supporting entities to carry out supervisory duties. According to Article 28(c), there is authority to prevent consumer and public losses for the protection of consumers and the public. Furthermore, Articles 1(1)(b)(1) and 1(1)(b)(2) state that OJK has the authority to take legal action for the protection of consumers and the public, which includes:

1. To recover the wealth of the injured party under the control of those causing the loss
2. To obtain compensation for losses due to violations of regulations in the financial services sector.

The Indonesian Capital Market Law regulates the authority to prevent losses to the public or investors. Article 5, letter n regulates that Bapepam is authorized to take necessary actions to prevent losses in implementing the provisions in Articles 3 and 4.

The authority to impose administrative sanctions in the form of a return of illicit gains as a dispute resolution mechanism is strengthened by the regulations in Chapter XII A of the Indonesian Financial Omnibus Law on *Una Via* Principles and Written Orders.[60] The authority regulation is stipulated in Article 100A of the Indonesian Financial Omnibus Law, which reads as follows: According to Article 100 A:

(1) OJK may decide I) not to proceed with the investigation, II) initiate an investigation into allegations of criminal acts.
(2) In determining the provisions as referred to in paragraph (1), OJK assesses:
    a. The transaction value of the violation or the impact
    b. Resolution of losses incurred due to criminal acts,
    c. The consequences of the criminal act on public offering and trading of Securities, and
    d. The impact of losses on the Capital Market system or the interests of

[60] Edward Omar Sharif Hiariej, "Asas Lex Specialis Systematis Dan Hukum Pidana Pajak," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 1, https://doi.org/10.30641/dejure.2021.V21.1-12.

investors or the public.

(3) According to paragraph (1) letter A, OJK has the authority to impose administrative sanctions and issue written orders when an investigation is not carried out.

Article 100 B stipulates that OJK may issue a written order to return unlawfully obtained profits and losses avoided from administrative or criminal violations when administrative action is imposed in the form of sanctions. The regulation of *una via* as a law principle in the enforcement of securities market regulations under the Indonesian Financial Omnibus Law constitutes a reinforcement of previous provisions, specifically POJK No. 36/POJK.04/2018 regarding the Procedures for Examinations in the Securities Market Sector. According to Article 14, Paragraphs (2) and (5), recommendations from the Examiner to the Chief Executive of the Capital Market Supervisory Agency (OJK) may include not escalating to the investigative stage, accompanied by a proposal for the imposition of administrative sanctions. The legal policy for resolving disputes can use the disgorgement model, which represents corrective action or restoration in line with the concept of restorative justice.

The implementation of disgorgement as an alternative dispute resolution mechanism for violations is expected to strengthen the legal protection of investors, who will not need to initiate civil lawsuits for losses. Civil lawsuits based on Article 111 of the Indonesian Capital Market Law are not straightforward since the underlying principle resembles Article 1365 of the Indonesian Civil Code based on fault. Weaknesses in the mechanism for claims related to damages under Article 111 of the Indonesian Capital Markets Law have resulted in infrequent use of civil claims.[61] Furthermore, the introduction of disgorgement represents a novel approach to enhance investor confidence. This has an impact on the capital market's function as an investment and financing alternative.

The disgorgement model raises several legal issues requiring regulatory reinforcement and enhanced cooperation. Meanwhile, OJK is still preparing regulations to facilitate the implementation of disgorgement. Some of the legal issues include institutional aspects to manage the disgorgement fund, the scope of assets as a form of compensation, seizure of institutions, and calculation of compensation. In the context of the payment mechanism, Letter No. 17/SEOJK/04/2021 was issued Regarding the Return of Illegitimate Gains and Investor Loss Compensation Funds. Some key provisions in the Circular Letter

[61] Ema Rahmawati and Lastuti Abubakar, "Peranan Penyelesaian Sengketa Pasar Modal: Suatu Tinjauan Atas Perkara Perdata Terkait Transaksi Repo," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 130–49.

are:

1. Opening of an Account of Funds,
2. Procedures for the Return of Illegitimate Gains in the Form of Funds,
3. Procedures for the Repayment of Illegitimate Gains in the Form of Fixed Assets,
4. Locking of Accounts with Financial Institutions,
5. Legal Remedies when the Party subject to the return of illegitimate gains fails to make payment.

SEOJK affirms the mechanisms and readiness of supporting institutions in the implementation of disgorgement. Point 5 is important concerning the legal actions taken when the Party subject to Restitution of Illegitimate Gains does not make the full payment. OJK may take the following actions

1. Investigate the non-compliance with the written order in the provisions of the laws regarding the Financial Services Authority.
2. File a civil lawsuit against the Party subject to the Restitution of Illegitimate Gains and request the attachment of the assets.
3. File a petition for a declaration of bankruptcy and a suspension of the obligation to pay debts.

Concerning efforts to process the investigation stage, the conditions considered include the party subject to the unlawful profit return being uncooperative, having a history of regulatory violations, failing to make the unlawful profit return payment, and complaints from investors or the public. Meanwhile, civil lawsuits may be initiated by OJK since the party subject possesses assets that can economically satisfy the unlawful profit return payment obligation. Bankruptcy petitions may be initiated based on the financial status of the party subject to the Unlawful Profit Return, particularly when payments are not fulfilled. Furthermore, the presence of multiple creditors is a prerequisite for filing a petition. Acknowledgement from investors or the public may also influence the decision to pursue proceedings.

Under the regulations, concerns about the weakness of disgorgement implementation have already been anticipated. A written order for the Return of Illegitimate Gains nullifies criminal charges when considered according to the principle of *una via* as stipulated in the Indonesian Financial Omnibus Law. Meanwhile, an argument justifies that the restitution can eliminate the material unlawfulness. The elimination is not a new concept as observed by the Republic of Indonesia dated January 8, 1966, No. 42K/Kr/1965 in the case of Machroes Effendi (ME), who was proven to have committed criminal acts as formulated in Article 372 and Article 64 Paragraph (1) of the Criminal Code (KUHP). Based on the considerations, the material unlawfulness of the perpetrator is

eliminated since no gains are received.[62] In the context of resolving corporate disputes through the application of the disgorgement model, this restitution or corrective action is in line with the function and purpose of the Capital Market as an economic entity. Furthermore, the application of the model is a concept of restorative justice, prioritizing recovery of losses over inflicting suffering on the wrongdoer. In this context, reparative justice conception places greater emphasis on restoring the right relationship than punishing the wrongdoer.[63] Even though the disgorgement model is associated with compensation or punishment, the principles of restorative justice are applied to guide the assessment in a more holistic and victim-centred manner.[64]

Conclusion

In conclusion, corporations were legal entities subject to criminal sanctions, as stipulated in the Indonesian Penal Code (KUHP). The provisions in the KUHP served as *lex generalis* since several laws governed criminal sanctions in addition to civil liability provisions. Typically, criminal violations were categorized into fraud, embezzlement, and false statements by officials. Corporate responsibility in disputes was related to restorative or corrective resolutions as opposed to criminal penalties, which were inefficient in regulating corporations. Furthermore, restorative justice was a dispute resolution model in line with the existence of corporations while upholding accountability as legal entities. The fundamental elements of encounter, repair, and transformation represented an effort toward the well-being and integrity of victims and offenders, as well as the broader society. Restorative justice simultaneously created legal certainty and protection in business activities consistent with the characteristics and role of corporations as economic drivers. A similar method was implemented in Indonesian positive law, particularly in the financial services sector. The application of sanctions by OJK for losses resulting from administrative and criminal violations in the capital market served as a concrete example of restorative justice. A strong legal foundation was also provided to

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[62] Yanto Yunus, Juwita Sarri, and Syahirudin Syahir, "Hilangnya Sifat Melawan Hukum Pidana Materil Dalam Tindak Pidana Korupsi Pasca Pengembalian Seluruh Kerugian Keuangan Negara," *Media Iuris* 4, no. 2 (2021): 243, https://doi.org/10.20473/mi.v4i2.25457.

[63] Joko Sriwidodo, *Perkembangan Sistem Peradilan Pidana di Indonesia* (Yogyakarta: Kepel Press, 2020).

[64] Renny Aryanni et al., "Disgorgement of Profits: An Alternative Solution to Stolen State Assets," *Hasanuddin Law Review* 9, no. 2 (2023): 139–54.

implement the concept under the Indonesian Capital Market Law, as amended by the Financial Omnibus Law which was followed by the POJK Rules on Disgorgement.

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