IJCLS 4(1) (2019) 15-28

IJC LS

INDONESIAN JOURNAL OF CRIMINAL LAW STUDIES
http://journal.unnes.ac.id/sju/index/php/ijcls

Analysis of Corruption Settlement for Obligor Deviations of Bank Indonesia Liquidity Assistance (BLBI)

Hasbullah[1]
[1]*Faculty of Law, Universitas Pancasila, Jakarta, Indonesia*

Received February 17 2018, Accepted April 22 2019, Published May 21 2019

DOI: 10.15294/ijcls.v4i1.18713

How to cite:
Hasbullah (2019). 'Analysis of Corruption Settlement for Obligor Deviations of Bank Indonesia Liquidity Assistance (BLBI)', *Indonesian Journal of Criminal Law Studies* 4(1): 15-28. DOI: 10.15294/ijcls.v4i1.18713

Abstract

The settlement of the BLBI Corruption Case was only focused on the mistakes of former IBRA Chairperson Syafruddin Arsyad Temenggung who issued paid settlement letter to Sjamsul Nursalim as a BLBI obligor which caused 4.58 trillion in financial losses, even though the SKL issuance contained legal slices of the state administration process and civil affairs. The corruption case of the former Chairperson of the IBRA has diverted us all to the main point of corruption errors in the BLBI distribution. Distribution of the Bank Indonesia Liquidity Assistance Facility (BLBI) with a total of 144.53 trillion, from the distribution recorded based on BPK-RI Audit No. 34 I / XII / 11/2006, there was a distribution deviation amounting to 138.44 trillion, but the BPK audit by law enforcement has never been carried out until now. Therefore the problem is focused on two main things, namely whether the settlement of the BLBI Corruption crime in the case of the IBRA chairman issuing SKL to Sjamsul Nursalim has resolved the BLBI corruption case and how the law enforcement policy in BLBI corruption settlement has cost the state 138,44 trillion . Using a normative juridical method that is qualitative in nature, the research results show that the settlement of BLBI corruption in the case of the IBRA chairman issuing SKL to Sjamsul Nursalim is not the case for BLBI irregularities and even in the legal doctrine of the case is not a corruption case due to a legal clash state administration and civil law. and there has been a transfer of corruption eradication in the case of BLBI distribution which has cost the country a total of 138.44 trillion, because law enforcers must enforce the law against alleged BLBI corruption with criminal mechanisms and if possible civilian efforts.
Keyword: Corruption, State Losses, BLBI Distribution, Chairperson of BPPN

INTRODUCTION

After the monetary crisis that hit Indonesia, along with the beginning of the reform era in 1998, one of the problems that was considered the most crucial and endangering state finances was the problem of corruption. The existing government

**Email: hasbullah@univpancasila.ac.id*
Address: l. Buku Dikrama No.30, RT.5/RW.5, Srengseng Sawah, Kec. Jagakarsa, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12630

system has not yet been able to create a clean society because corrupt characters are still stored in the system itself (Susetyo, 2003). It can be said that corruption is the most important crime to be eradicated, this is understandable considering the corrupted state money will certainly be very necessary for the welfare of the people and build a better life of the nation and state. From the spirit of eradicating corruption, unfortunately it turned out to have an impact on the way of law enforcement against perpetrators who were suspected of committing criminal acts of corruption that were far from disclosure of their main cases. One example is the eradication of corruption that occurred when Indonesia was hit by monetary crisis.

The monetary crisis that triggered the banking crisis in 1998 caused a national economic crisis marked by a decline in a number of indicators of the Indonesian economy to a very low point. Indonesia's economic growth has decreased sharply to reach - 18% compared to the previous year. Most companies in the real sector experience difficulties and need to be restructured immediately. Inflation also increased from 20% to 60% in 1998 (BPK, 2006). This national economic crisis prompted the Government to immediately take steps to recover.

At the height of the crisis of confidence in the Indonesian banking system, following the outbreak of the Asian monetary crisis, the Indonesian government made a recovery effort through Bank Indonesia as "*lender of the last resort*" (Art. 11, Law No.23 of 1999), in accordance with the prevailing system at that time disbursing bailouts called Bank Indonesia Liquidity Assistance (BLBI) for banks experiencing liquidity difficulties which reached Rp.144.54 trillion spread over 15 BDL (Rp.11.89 trillion), 5 BTOs (Rp.57.64 trillion), and 5 BBOs (57.69 trillion) and 18 BBKU (Rp.17.32 trillion) (BPK, 2006). From the distribution, based on the results of the investigative audit on BLBI distribution found deviations from applicable provisions, system weaknesses and negligence in BLBI distribution, which caused potential state losses of Rp 138,442,026 Trillion or 97.78% of the total BLBI disbursed (BPK, 2006).

Potential state losses of Rp 138,442,026 Trillion from the amount of BLBI disbursement up to now has not been followed up and processed either by civil or criminal law. In 1998, one of the government's efforts to restore potential state losses was carried out by means of an out of court settlement mechanism, namely by making an agreement to settle obligations by charging the controlling shareholders of BLBI obligors in various forms, one of them through the Master Settlement And Acqisition Agreement (MSAA).

Based on the results of the BPK audit, it was stated that there were a number of BLBI recipient banks who wished to sign the MSAA, which were taken over by the controlling shareholders who received PKPS-MSAA divided into 3 groups (BPK, 2006). The first group is the Controlling Shareholders (PSP) of Banks that have completed their obligations in PKPS-MSAA, including BCA, BDNI, BUN, SURYA, RSI, Budi I, Danahutama, Yama, Mashill, Baja, Bumi U, Sejahtera Board, Hastin, Sewu In, BNN, Indotrade and Sanho; the second group is the PSP Bank group that has made PKPS-MSAA but has not repaid its obligations in accordance with their respective PKPS, including Lautan Berlian, BIRA, Namura, Putera Multi Karsa and Tamara. Furthermore, the third group is PSP Bank that does not pay or does not complete its obligations at all as stated in PKPS-MSAA, including BUN (Ongko), Modern, PSP, Metropolitan, Maritime, Aken, Intan, Tata, Servitia. Apart from that, 14 Bank BLBI recipients did not want to sign a pattern of settlement of shareholder obligations (PKPS) and did not return BLBI loans.

More than a dozen years after the alleged events of potential state losses of Rp 138 442 026 Trillion occurred, there have been several cases were uncovered and

prosecuted under the criminal law, but the state's money back no more than 2 trillion. The latest BLBI case in 2017 revealed by the KPK related to the completion of the BLBI was in the case of the former Chairperson of the BPPN for the year 2002 to 2004, namely Syafruddin Arsyad Temenggung (SAT). SAT was charged with committing a criminal act of corruption in the provision of a Letter of Obligation to Obtain Shareholders No. SKL-22 / PKPS-BPPN / 0404 dated April 26, 2004 or known as a Lunar Certificate to Sjamsul Nursalim as the controlling shareholder of PT BDNI as referred to in Article 2 Paragraph (1); or Article 3 of the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crime ("UU TIPIKOR") jo. Article 55 Paragraph (1) 1st of the Criminal Code ("Criminal Code") with a state loss of 4.58 T, at the Central Jakarta PN level SAT was punished with imprisonment for 13 (thirteen) years and a criminal fine of Rp. 700,000,000 (seven hundred million Rupiah), and at the Appeal level is sentenced to 15 (fifteen) years imprisonment and a fine of Rp. 1,000,000,000 (One billion rupiah) (PN Jakarta Pusat, 2018), then the SAT is filing a Cassation.

The SAT case caused a great public attention because the value of the state losses was huge, namely 4.58 T and was given the title as a BLBI corruption settlement case. The SAT case is interesting to study considering whether it is true that the case was an attempt to resolve the BLBI which had the potential to harm state finances in the amount of Rp 138,442,026 Trillion or only as a case to cover up other cases that had the potential to harm state finances.

The defendant SAT was charged with giving a Letter of Obligation to Obligatory Shareholders No. SKL-22 / PKPS-BPPN / 0404 dated April 26, 2004, known as Certificate of Payment (SKL) to Sjamsul Nursalim as Controlling Shareholder of PT BDNI even though Sjamsul Nursalim is considered to have misrepresented in fulfilling his obligations based on MSAA and therefore SN has not repaid his obligations but given SKL by SAT, so that SAT is stated in the level of PN and PT commits corruption as referred to in Article 2 paragraph (1) of the law against corruption against Law No. 1 of 2004 concerning state treasury. If this case is legally examined further, there is a space between the criminal law, the state administrative law and civil law, one of which is the basis for the judge to say that SAT is guilty of knowing that there was a misrepresentation by Sjamsul Nursalim. Legally, the alleged misrepresentation is the nomenclature of civil law that must be proven civilly first, can it be legally misrepresented through criminal evidence? According to Prof. Nindyo Pramono (JPPN, 2018) in his statement as a civil expert stated in a civil agreement, including in this case the Master of Settlement and Acquisition Agreement (MSAA), the BLBI settlement by PT. BDNI, misrepresentation existed or not having to go through a civil court decision. The next matter is related to the existence of state administrative law that occurred in the case, according to Professor I Gede Pantja Astawa, SAT issued SKL as the implementation of the mandate of KKSK and was carried out administratively so it must be legally tested administration, then state administrative law expert Irman Putra Sidin stated that the error in issuing the Certificate of Settlement (SKL) toward debtors of the Bank Indonesia Liquidity Assistance (BLBI) must be tested through the State Administrative Court (PTUN) (Merdeka, 2018). On the other hand Prof. Andi Hamzah stated in the SAT case about the differences in the results of the Audit of the Supreme Audit Agency (BPK) in 2006 which stated, "... The SKL is deserved to be given to PS (Shareholders) of BDNI (Indonesian State Trade Bank) because PS has settled all agreed upon in the MSAA (Master Settlement and Acquisition Agreement) agreement and its amendments and in accordance with Government policy and Presidential Instruction

Number 8 of 2002. "While on the other hand, 11 years later, namely 2017, the BPK Audit emerged stating the contrary, then related to the absence of money transfer from Sjamsul Nursalim to SAT showed that there was no corruption (Beritasatu, 2018).

The views of several legal experts related to BLBI settlement cases that were snared to SAT are interesting to be studied further to elaborate legal understanding in order to realize legal certainty and provide views in order to complete a comprehensive BLBI case, regarding to this problem, namely first, how is the relation between criminal, civil and state administrative law in the case of Syafrudin Arsyad Temenggung? Second, whether the appointment of the BLBI case on behalf of the SAT defendant has covered up the alleged corruption which actually has the potential of state losses of 138,442,026 Trillion, moreover PT. BDNI according to the results of the 2006 BPK audit, is a BLBI obligor included in the first category, namely a Bank that has completed its obligations based on PKSP-MSAA? Third, what legal remedies are appropriate in returning state losses to BLBI corruption that have the potential to harm the state up to 138,442,026 Trillion? In this paper, the study of criminal law, civil law and State Administrative Law in the case of Syafrudin Arsyad Temenggung, law enforcement will be explained, refunding state losses for BLBI corruption which has the potential to damage the state up to 138,442,026 Trillion.

RESEARCH METHODS

The research method used in this paper uses normative juridical research type, with a problem approach used through a statute approach and a conceptual approach (Marzuki, 2008). The data used are secondary data with sources of legal material used are sources of primary legal material in the form of relevant laws and regulations, secondary legal materials in the form of books on law, and non-legal materials in the form of books outside the law (Marzuki, 2008). Related to the method of analysis of legal materials used in this paper using the deductive method, which is based on the basic principles and then presents the object to be examined, in other words, from general principles to specific principles (Marzuki, 2008), related to the presentation of research presented qualitatively.

FINDING AND DISCUSSION

Relation between the Law of Corruption Crime and Civil and State Administrative Law in the BLBI Corruption Case

Criminal according to Moeljatno is an act that is prohibited in law and there is a threat of sanctions for those who violate the prohibition (Moeljatno, 2002; Moeljatno 1995). In terms of the criminal acts mentioned above, Moeljatno does not discuss errors or criminal liability. Errors are a determining factor for criminal liability and therefore should not be part of the definition of criminal acts (Hiariej, 2014). This view is known as a dualistic view (Sudarto, 1990). Other experts who are "in line" with Moeljatno, in the sense that giving an understanding of criminal acts does not cover criminal liability are Vos and Suringa Hazewinkel (Hiariej, 2014). Vos defines criminal acts as a human behavior which is punished by criminal law (Vos, 1950). As for Suringa, the definition is any act that is punishable by crime or can be in the form of doing or not doing

something or consisting of crimes and violations (Suringa, 1953).

Opponents from a dualistic view are monistic views that provide a definition of criminal acts as a translation of the Dutch language called strafbaar feit, which in the definition given a monistic view includes both criminal acts themselves and criminal liability (Hiariej, 2014). Dutch criminal law expert who views this as such is Simons, which interprets criminal acts as an act/handeling that is threatened with crime, which is against the law, which is related to mistakes and committed by people who are able to be responsible, so that the person is considered responsible for his actions (Simons, 1937; Moeljatno, 2002).

As for Pompe defines criminal acts theoretically as a behavior that is contrary to law (*onrechmatig of wederrechtelijk*), which is held because of guilty offenders (*aan schuld van de overtreder te wijten*) and who can be punished (*strafbaar*) (Utrecht, 1960). Enschede defines criminal acts as human behavior that fulfills the formulation of offenses, is unlawful and can be denounced (Enschede, 2002). Van Hamel defines it as the behavior of the person formulated in the law, is against the law, deserves to be punished and carried out by mistake (Sianturi, 1986).

The Indonesian criminal law experts, among them, are Komariah Emong Sapardjaja, defining that a criminal act is a human act that fulfills the formulation of offenses, is against the law, and the author is guilty of committing the act (Sapardjaja, 2002). Opinions that are not much different are stated by Indriyanto Seno Adji who states that a criminal act is an act of someone who is threatened with a criminal act, an act that is against the law, there is an error in the perpetrator, and the perpetrator can be accounted for his actions (Adji, 2002).

One element of criminal acts is the phrase "against the law". In criminal law, the term "against the law" is a phrase that can be seen from various theories. Whether "*against the law*" in the sense of "*elements against the law*" or against the law in the sense of "*understanding against the law*" or against the law in the sense of "*nature against the law*". The study of various theories of against the law seems to be similar but not the same. In terms of the "*Elements against the Law*", there are three views, each of which is a formal view, a material view and a middle view. The formal view argues that the element against the law is not an absolute element of any criminal act unless it is stated in an expresive verbis in the formulation of offenses. The material view argues that the element against the law is a constitutive element of every crime. The middle view states that the element against the law is a characteristic of every criminal act and is an absolute element if it is stated in an expresive verbis in the formulation of offenses.

Elements against the Law in the context of article 2 paragraph (1) of the Law on the Eradication of Corruption Crime, Explanation of Article 2 paragraph (1) states: "What is meant by" against the law "in this article includes acts against the law in the formal sense and in the sense of material, that is, even though the act is not regulated in the laws, but if the deed is deemed despicable because it is not in accordance with the sense of justice or norms of social life in the community, then the act can be convicted." However, in its development, based on the Constitutional Court Decision 003 / PUU-IV / 2006 concerning the Testing of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crime (PTPK Law), specifically an explanation of "Against the law" in the offense formulation of Article 2 paragraph (1) of the PTPK Law, it is stated that the Explanation of Article 2 paragraph (1) of the Law on the Eradication of Corruption Act (PTPK Law) is not legally binding (Constitutional Court, 2006), because it is contrary to the 1945 Constitution, namely Article 28D paragraph (1). That is, the nature of unlawfulness that must be recognized is only the nature of against formal law (Hiariej, 2014).

The nature of against formal law (*formeel wederrechtelijkheid*), is simply that it implies that all parts (elements) of the formulation of offenses have been fulfilled or contrary to the law (Ali, 2011). LC Hofman explained that the main concept of unlawful acts is an act that is contrary to the law, so that actions that are contrary to morality or contrary to something that in the community's view are inappropriate, are not illegal if the act does not conflict with the law (Sapardjaja, 2015).

This opinion is in line with Simons: "*Om Strafbaar te zijn moet het gepleegde feit on die die atomization vallen, in overeenstemming zijn met delictsinhoud naar de wettelijke strafbepaling. Is ditt het geval, dat comt in den regent een verder onderzoek na de werrechtelijkheid niet te pas* (To be convicted an act must match the formulation of an offense in a written provision in criminal law. If it is already so, it is not necessary to investigate whether the action is against the law or not) (Hiariej, 2014). Strictly speaking, the one who forbids or denounces these acts is written law, or in other words the giving of the nature of the law is based on written rules or regulations (Chazawi, 2016).

In the context of Indonesian criminal law, the nature of being against the law is often only interpreted as contrary to the law, which basically corresponds to the basic principles written in Indonesian criminal law, namely the principle of legality as referred to in Article 1 paragraph (1) of the Criminal Code (KUHP) as explained by Kristian & Gunawan (2015) that there is no act can be convicted except for the strength of the criminal rules in the legislation that existed before the act was committed (Moeljatno, 2009). With such provisions, it seems as if it is possible to impose a criminal offense without the written legislation that regulates it, which is indeed related to the nature of criminal law sanctions which are the strongest among other legal sanctions (Kristian & Gunawan, 2015). With the enactment of this law against nature (nature against formal law), then the norms of criminal law that applies is the norm of criminal law based on laws and not the laws that are not laws (Djaja, 2010).

One of the most important things to ensnare a legal subject that has committed a crime is the bestand delict. The offense formula shows what must be proven according to the law. So, everything listed in the offense formula (but not more than that) must be proven according to the applicable criminal procedure law. The offense formulation is elements of written offense, or it can be said as a written requirement that can be punished by an action, so all elements must be accused and proven. The Bestandeel delict Article 2 paragraph (1) Corruption Law: First, the element of 'everyone' is an individual (ie a legal subject that can be criminally responsible, which in this case the legal subject is not a legal subject referred to in Article 44 paragraph (1) of the Criminal Code, meaning that the legal subject must be healthy spiritual or soul or mind) or a corporation as a legal subject that carries rights and obligations. Second, the element is against the law, as explained above. Third, the element of doing deeds. This means that this element must be read in a positive sense, that is to do an act is to do an action in a tangible manner, which in the context of criminal law is known as crime by commission /*commissie delicten*. Fourth is an element of enriching oneself or another person or a corporation. This element must cause the result of increasing wealth in yourself, other people or a corporation. Fifth, the element can be detrimental to the finances or the economy of the country. In the practice of state losses, it must be proven based on the audit results as referred to in Law Number 17 of 2003 concerning State Finance, in its development, in the context of criminal acts of corruption relating to losses of state finances, of course the state financial losses are included in the offense, and therefore if an act is qualified as a criminal act of corruption as referred to in Article 2 and / or Article 3 of the Law on the Eradication of Corruption Crime, it is MUST be legal for state financial losses incurred (actually) by acts suspected of being corruption (changes

from formal offenses to material offenses). This matter has also been further emphasized by the Constitutional Court, that the word "can" be revoked and deemed invalid (contrary to the 1945 Constitution and has no binding legal force) through the Constitutional Court Decision Number 25 / PUU-XIV / 2016 dated 25 January 2017, which basically is then interpreted that state financial losses must occur in real terms to be said to fulfill the element of state financial losses;

In the context of the relation of criminal acts of corruption with civil law and state administrative law, it was seen in the case of the defendant SAT who was charged with giving a Letter of Obligation to Obligatory Shareholders No. SKL-22 / PKPS-BPPN / 0404 dated April 26, 2004, known as a Certificate of Payment (SKL) to Sjamsul Nursalim as Controlling Shareholder of PT BDNI even though Sjamsul Nursalim is considered to have misrepresented in fulfilling his obligations based on MSAA and therefore SN has not repaid his obligations but by SAT given SKL so that SAT is stated in the level of district court and high court (PN and PT) commits corruption as referred to in article 2 paragraph (1) of the corruption law against the law Law No. 1 of 2004 concerning state treasury. In the description of the proof, SAT was indicted and decided at the PN level and PT for his actions including:First, SAT is the IBRA chairman who served in the year 2002 to 2004, the SAT was deemed by the KPK to be aware of the misrepresentation carried out by Sjamsul Nursalim on the obligations of the SN in fulfilling farmers' debt in the Pasena Lampung as referred to in PKPS-MSAA, according to the KPK Prosecutor, Sjamsul Nursalim had to pay off 4.8 T of his obligations given to IBRA in 1999, because it turned out that the farmers' receivables were bad loans that could not be billed, so the KPK Prosecutor and the Judge considered the SN misrepresentations; Regarding the indictment SAT stated a different fact because according to the fact SN had revealed the condition of farmers' receivables submitted and received by IBRA in 1998 as outlined in the PKPS-MSAA agreement, SN had even received a release and discharge letter from the IBRA chairman and the Finance Minister on May 25, 1999, then the alleged misrepresentation has been known since 2000 based on the 2000 KKSK decision, but the government has never made any civil legal efforts to bring it to court until the final closing agreement. Until finally because the PKPS-MSAA agreement has never been revised or canceled, the SAT still sees MSAA as a reference for SN obligations. Indeed, in the MSAA, the SN obligation is 28 T and does not include farmers' debt obligations. So that this is a difference in the interpretation of the agreement. The difference in interpretation of the misrepresentation is then used as the basis of the element against criminal law, therefore there is a connection between fighting the law in criminal and civil law.

Secondly, SAT is considered guilty for hiding the situation of misrepresentation and SN obligations on farmer's receivables of 4.8 T which were not reported to the Chairperson of KKSK as his superior and to the President in the cabinet meeting report; On the charges, SAT denied on the basis that the KKSK as the Defendant's superior had issued several KKSK decisions, including a decision dated October 7, 2002 which stated that the obligation of SN was 28 T and not included in farmers' debt, a decision dated March 17, 2004 stating an order to IBRA (BPPN) to give SKL to SN, and in making KKSK decisions, KKSK has received input from the Legal Aid Team and the Legal Aid Steering Team formed by KKSK, so according to SAT what SAT does is in order to carry out orders of superiors in accordance with the law, by hence there is a connection between going against the law in criminal and the state administration.

Third, SAT is considered detrimental to state finances because by giving SKL to SN, it eliminates SN obligations of 4.8 T over farmer debt, and because of SAT proposals to KKSK to abolish farmers' debt to PT. DCD therefore SAT has violated

the law of Law No. 1 of 2004 concerning state treasury; the SAT accusation explained the fact that there was a confusion between "SKL issues arising as a result of the MSAA Agreement" and "bad credit of Farmer Debt to BDNI" arising from the suspension of BDNI by the Government. Farmer debt is an asset of PT BDNI (not an asset of Sjamsul Nursalim) that has been taken over by IBRA in connection with the freezing of PT BDNI. Whereas the so-called Sjamsul Nursalim assets handed over to IBRA (BPPN) were the ownership of company shares by Sjamsul Nursalim worth Rp 27.4 Trillion, including PT Gajah Tunggal Tbk and PT Dipasena Citra Darmadja, which were also accepted by IBRA on 25 May 1999. In addition The loss was Rp 4.5 trillion as a result of the difference between the sales value of Rp 220 billion and the book value of Rp 4.8 trillion of farmer's debt sold by PT Pengola Aset Company (Persero) ("PT PPA") and the Minister of Finance (Sri Mulyani) based on Decree No. 30 / KMK.01 / 2005 dated May 24, 2007 to the NEPTUNE consortium from Group Charoen Pokphand is a burden and responsibility that must be borne by SAT, even though SAT had no longer served as Chairperson of the IBRA (BPPN) in 2007, even IBRA had been declared dissolved on 30 April 2004, based on the Handover Minutes (BAST), on 27 February 2004, IBRA had handed over assets in the form of Farmer Debt of Rp 4.8 Trillion to the Minister of Finance, and then the Minister of Finance hands over Farmer Debt with this value on June 10, 2004 to PT PPA.

Regarding the correlation in the context of the relation between criminal law and the laws of data and state administrative law, it becomes important to analyze it as follows:

First, the problem of the agreement relates to the principle of civil law, which is based on Article 1338 Paragraph (2) of the Civil Code that according to Subekti (1987), that the agreement cannot be withdrawn without the consent of the parties. In theory known agreements must not be canceled unilaterally. Because the agreement that has been made legally by the parties, applies binding as a law to those who make it. The principle is known as the principle *pacta sunt servanda* (the agreement is binding on the parties) (Subketi, 1987). Therefore, if the MSAA agreement has things that must be changed, it must be agreed by the parties and if one of the parties does not agree on legal remedies through the court. Furthermore, regarding misrepresentation in the theory of civil law, it is a term in the common law legal system. The definition is misleading information or misleading information. Inaccurate information, information is not true misrepresentation. if it is aligned with the Indonesian legal system, it is known in the capital market law including in the realm of infringement, known as misleading information. So a misleading information, vague information, information that is in essence not true (Miru & Yodo, 2004).

According to the theory of civil law, if one of the debtors or creditors states that there is an act or there is misleading information, then it must be proven that the information is misleading (Miru & Yodo, 2004). So if the accused party or states provide misleading information, then they do not want to accept, there must be a dispute. If a dispute occurs, if it is related to the main agreement, then it is seen whether there is a default or not. If there is no default, then it is not the default lawsuit. However, if there is an element of lawlessness, a lawsuit against the law is carried out. Even in civil law, a lot happens now, there are two big camps. There are those who hold or make a lawsuit in default with a lawsuit against the law. Some are juxtaposing like that. The point remains that legal action must be taken to protect the interests declared as being harmed by the other party earlier. Therefore, in the case of the BLBI SAT, if it is alleged that the SAT does not report a misrepresentation, then the basis of the misrepresentation must be proven in court.

Second, related to the SAT action as the head of the IBRA that issued SKL by the order of KKSK, it was legally closely related to state administrative law. IBRA is an institution tasked specifically with bank restructuring where this task is a delegation from Bank Indonesia (PP 17 of 1999) as part of the Government's duty to safeguard the banking sector within the framework of the national economy. This was emphasized in the Presidential Decree concerning KKSK where the task of IBRA carried out the direction of KKSK policy (Keppres 177 of 1999, Art. 3). It can be concluded that IBRA is an inseparable part of KKSK consisting of the Coordinating Minister for Economic and Financial Affairs as Chairperson, Minister of Finance, Minister of Industry and Trade, State Minister for Investment and BUMN Development (later replaced by Deputy Minister of National Economic Restructuring Affairs based on Presidential Decree No. 143 of 2000), Head of the National Development Planning Agency. So the duties and authority of IBRA, there are attributes that are attributable to the Banking Law, delegates from Bank Indonesia's duties and also the mandate of KKSK. Based on the provisions governing the duties and authority of IBRA, the authority to issue SKL is basically the implementation of policies taken by KKSK. Legally the administration of this action is the authority that comes from the mandate.

Based on Article 5 PP No. 17 of 1999, the Chairperson of the IBRA is appointed and dismissed by the President at the proposal of the Minister. In the provisions governing IBRA's duties and authority, IBRA does not regulate the authority of the Chairperson of the IBRA which is separate from the duties and authority of IBRA as the Agency. This is also in accordance with the provisions of the State Administrative Court Law, which reads: "State Administration Agency or Agency is an Agency or Officer carrying out government affairs based on applicable laws and regulations." Also according to AP Law Article 1 number 3 reads: "The Agency and / or Official of the Government are the elements that carry out the Function of Government, both within the government and other state administrators."

Referring to the construction of the lawsuit in the PTUN Law, official actions are categorized as inseparable actions of the Agency. So the act of issuing SKL signed by the Chairperson of the IBRA is not a personal act as a Chair but an action as a State Administrative Body. This action can be categorized as a mandate from KKSK so that accountability remains with KKSK.

Norms or rules of Administrative Law have different characteristics from the rules of Civil Law or the Code of Criminal Law. The definition of collective action as regulated and interpreted in the Criminal Law rules as a form of joint participation and accountability as determined in the Civil Law is not known in the construction of the rules of State Administration Law.

State Administrative Law regulates or defines actions in the construction of actions or actions of Officials / State Administrative Agencies (State Administration), so that mutual understanding is not known in the rules or norms of State Administrative Law. Considering the actions or actions of the State Administration / Administration Agency (State Administration) must be based on applicable laws and regulations, which are concrete, individual and final, which give rise to legal consequences for a person or civil legal entity.

Therefore, if the issuance of the Certificate of Payment cannot be seen in the context of actions or actions of the Official/State Administration (State Administration) jointly, it must be seen as a unity of actions or actions aimed at carrying out public services in this matter restructuring banks to overcome the economic crisis nationally. So according to the State Administrative Law if SKL is determined as an act or an act that violates the law, the form of violation must be determined through a decision of the

State Administrative Court.

Furthermore, after the legal standing of the IBRA chairman as the executor of the KKSK delegation, criminal matters are regulated in Article 51 Paragraph (1) of the Criminal Code: "No one may not be punished who commits an act for carrying out a legitimate position order given by a superior (ruler) who is entitled to it ". Same as carrying out the law's order, Satochid Kartanegara also affirms that the execution of the order must be balanced, appropriate, and must not exceed the command limits. Id damnum dat qui iubet dare; eius vero nulla culpa est, cui parrere necesse sit. Thus a basic postulate means that accountability will not be asked of those who obey the order but will be asked to the party giving the order (Remmelink, 2003). Therefore, according to the theory of pointless punishment as described at the beginning of this chapter, there is no point in imposing a sentence on someone who carries out the commandment obediently (Hamdan, 2012). It's just that in the opinion of Eksaminer, theory of pointless punishment in a position order is something that comes from outside the actor. The postulate came from Roman law which was as old as when talking about state power. Position orders issued by those authorized to give rights to those who receive orders to do something or do nothing. Thus this right abolishes the law-breaking element of action so that it is included as justification. If this is the case, then what are the requirements so that a person is freed from criminal liability on the basis of committing an order? At least, there are three requirements. First, between those who govern and those who are governed are in the dimension of public law. Second, between those who govern and those who are governed there is a relationship of subordination or relations in the dimensions of staffing (Remmelink, 2003). Third, implementing the position order must be in an appropriate, balanced manner so that it does not exceed the fairness limit. Therefore, he was charged SAT as the former head of the IBRA too forcibly imposed on him.

Third, related to the state losses incurred, SAT was declared to have harmed the country's finances based on the results of an audit conducted by the BPK in August 2017 that had conveyed the potential calculation of State losses of Rp 4.58 Trillion. The calculation by the BPK was carried out in 2017, while at SAT in IBRA a complete audit was carried out by the BPK in 2006 and 2002 and there was no potential loss of the State. The findings of the BPK in 2017 occurred because the Rp 4.8 trillion bill had been sold by the Minister of Finance / PPA in 2007 amounting to Rp 220 billion. Even if there is a potential loss of the State, which carries out sales not SAT, but the Minister of Finance and PT PPA and the time of their sale after IBRA closed in 2004. Thus there are some errors from the procedure: First, because the legal subject and tempus delicti are not related to SAT. Second, the audit results submitted are only "potential", whereas as explained by the Expert above, based on Decision of the Constitutional Court Number 25 / PUU -XIV / 2016 dated January 25, 2017, that state financial losses must occur in real terms to be said to fulfill the element of state financial losses. Third, with the results of the difference between the results of the BPK audit, namely between those carried out in 2002 and 2006 (which stated no state financial losses) with the results of audits in 2017 (which stated the potential for state financial losses), then the Panel of Judges only using the results of the audit in 2017, according to Eksaminer has strongly indicated that the Panel of Judges did not implement or even did not understand the subject matter of one of the principles in criminal law, namely the principle of "a more favorable clause", which principle is in accordance with the adage in the science of law known as the principle *in dubio pro reo*. The purpose of this principle is if there are doubts, then the provisions or explanations that benefit the defendant should be chosen (Triffterer, 1999; Hiariej 2014). Based on these principles or principles, then when there

are differences in the provisions and/or interpretations of certain conditions, including the results of the audit as explained above, then in terms of criminal law, the most favorable provisions or explanations must be chosen for those affected by the provisions or interpretations, which in criminal law are directed more towards people suspected of being perpetrators of acts, or in other words beneficial for people affected by the criminal provisions (Noor, 2018). Strictly speaking, in this case it should not be the result of the BPK audit in 2017 that should be used, but the results of the audits in 2002 and 2006. Regarding this, it will be related to the explanation of documentary evidence, Dennis explained that: "Generally be proved document must by witness who can verify the nature and authenticity of the document. In this sense the judicial evidence is a form of testimony, but documents need to explain how the witness may prove, first, the contents of the document, and the second execution, the due execution of the document" (Dennis, 2007). It can be concluded that there are three things related to the document as evidence. First, related to the authenticity of the document. Second, the contents of a document. Third, is the document carried out in accordance with its contents. Therefore the description shows a misinterpretation of state losses committed by the SAT.

After the overall description is carried out, for the sake of legal certainty as outlined by Satjipto Rahardjo, in implementing the law it must be in accordance with legal certainty. There are four things related to the meaning of legal certainty. First, that the law is positive, meaning that it is a law (gesetzliches Recht). Second, that the law is based on facts (*Tatsachen*), not a formulation of judgments which will be carried out by judges, such as "goodwill", "courtesy". Third, that fact must be formulated in a clear way so as to avoid mistakes in meaning, besides being easy to implement. Fourth, the positive law must not often be changed meaning, in addition it is also easy to implement. Fourth, the positive law cannot be changed frequently (Rahardjo, 2006). The explanation of the legal certainty was clearly not fulfilled in the disclosure of the BLBI case with the defendant Syafruddin Arsyad. Therefore the case is not related to the disclosure of the BLBI case that has harmed the state.

BLBI Corruption Case Deviation Settlement Efforts

Based on the explanation above, it is known that in resolving criminal acts of corruption related to the BLBI case, until now it has not been resolved thoroughly and in accordance with the subject matter, because the SAT case is far from disclosing BLBI cases and more impressed to cover the BLBI corruption case. However, if the criminal process is continued against the BLBI Corruption case, there are many obstacles faced by law enforcers. One of them is regarding the expiration of prosecution of corruption, BLBI irregularities occurred in 1997, d. 1998 so that if calculated to date it has occurred 21 years ago. Regarding the prosecution expiration is regulated in Article 78 paragraph (1) of the Criminal Code ("KUHP") which states that the authority requires criminal deletion due to expiration:

> regarding to all violations and crimes committed by printing after one year; concerning crimes threatened with criminal penalties, imprisonment, or imprisonment for a maximum of three years, after six years; concerning crimes which are threatened with imprisonment of more than three years, after twelve years; concerning crimes which are threatened with capital punishment or imprisonment for life, after eighteen years.

Law Number 31 Year 1999 concerning Eradication of Corruption Crime ("Law 31/1999") as amended by Law Number 20 Year 2001 concerning Amendment to Law Number 31 Year 1999 concerning Eradication of Corruption Crime is a rule of crime specifically which contains criminal procedural law for corruption (formal law) and criminal law of corruption (material). In addition, regarding the procedural law, it can also be seen in Law Number 46 of 2009 concerning the Corruption Court.

In some laws relating to the corruption cases mentioned above, it is not specifically regulated regarding the expiration of prosecution. It does not mean that the prosecution has no expiration for criminal acts of corruption, but still refers to more general rules. The basis of their applicability as stipulated in Article 103 of the Criminal Code ("KUHP") states: "That the provisions of Chapter I to Chapter VIII of the Criminal Code also applies to acts by other statutory provisions shall be sentenced, unless the law provided otherwise."

On the basis of these provisions, because in Law 31/1999, Law 20/2001, or Law 46/2009 is not regulated regarding expiration, the Criminal Code also applies. For example, if the BLBI case is alleged by article 2 paragraph (1) and Article 3 of the corruption law, where Article 2 paragraph (1) the threat of his speech is at least 4 (four) years and a maximum of 20 (twenty) years, while Article 3 the threat of speech is at least 1 (one) year and for a maximum of 20 (twenty) years, then the calculation of expiration in accordance with Article 78 paragraph (1) item 3 of the Criminal Code applies, therefore the expiration is eighteen years after the act is carried out. the expiration date, according to Article 84 paragraph (1) of the Criminal Code, for the sake of law the authority to carry out the criminal offense is due to expiration. So that for the sake of legal certainty the enforcement of convictions on BLBI cases is difficult to proceed.

Based on criminal provisions it is difficult to continue the criminal process for BLBI cases, but the amount of state losses due to BLBI corruption will be very detrimental to the State if no other legal measures are taken, one method of utilizing the civil aspects in eradicating corruption as stipulated in Article 32 paragraph (1) Law 31/1999 which states:

> "In terms of the investigation finds and argues that one or more elements of corruption do not have enough evidence, while there is a clear loss of state finances, the investigator immediately submits the court of attorney to the State Attorney for a civil suit or is submitted to the agency harmed to file a lawsuit ".

According to the author's opinion, Article 32 paragraph (1) is the most appropriate way out and efforts by the Government to return the money of hundreds of trillions that have been distorted by the obligatory of BLBI.

CONCLUSION

Settlement of cases of criminal acts of BLBI corruption that have cost the state finances amounting to Rp. 138,442,026 Trillion up to now has not been able to be resolved by law enforcement. The settlement of the BLBI case was revealed again in the case of the IBRA chairman who issued the SKL to Sjamsul Nursalim, but based on the research results, the case was not the case for BLBI irregularities, because the case was far after the BLBI deviation and even the case was not a corruption case because of contact in state administrative law and civil law. With the appointment of the SAT case there has been a transfer of corruption eradication in the BLBI distribution case which

has cost the country an amount of Rp 138,442,026, therefore law enforcers must continue to enforce the law against alleged BLBI corruption with civilian efforts, given the legal effort has been included in the expiration of prosecution, because it has happened more than eighteen years.

Law enforcers should consistently apply legal certainty, for BLBI cases that have been resolved it should not need to be continued, but law enforcement must focus on the subject of BLBI irregularities and immediately make a civil claim against BLBI obligors that have cost the state hundreds of trillions.

BIBLIOGRAPHY

Adji, I. S. (2002). *Korupsi dan Hukum Pidana, Kantor Pengacara & Konsultan Hukum*. Jakarta: Prof Oemar Seno Adji & Rekan.

Ali, M. (2011). *Dasar-Dasar Hukum Pidana*. Jakarta: Sinar Grafika.

Miru, A. & Yodo, S. (2004). *Hukum Perlindungan Konsumen*. Bandung: PT Raja Grafindo Persada.

Beritasatu (2018) "Sidang BLBI saksi ahli perkara Syafruddin Temenggung tak masuk akal", *Online,* retrieved from https://sp.beritasatu.com/home/sidang-blbi-saksi-ahli-perkara-syafruddin-temenggung-tak-masuk-akal/125568, accessed on 25-03-2019, 06.17. WIB

BPK RI. *Hasil Pemeriksaan Penyaluran, Penggunaan dan Penyelesaian Bantuan Likuiditas Bank Indonesia, Dalam rangka pemeriksaan atas laporan pelaksanaan tugas BPPN No 341/XII/II/2006 tanggal 30 November 2006*.

Chazawi, A. (2016). *Hukum Pidana Korupsi di Indonesia (Edisi Revisi)*. Jakarta: PT. Raja Grafindo Persada.

Dennis, Ian. (2007). *The Law Evidence, Edisi ke-3*. London: Sweet and Maxwell.

Djaja, E. (2010). *Memberantas Korupsi Bersama KPK (Komisi Pemberantasan Korupsi)*. Jakarta: Sinar Grafika.

Hamdan, H.M. (2012) Alasan Penghapus Pidana, Teori dan Studi Kasus, Refika Aditama: Bandung.

Hiariej, Eddy O.S. (2014). *Prinsip-Prinsip Hukum Pidana.* Yogyakarta: Cahaya Atma Pustaka.

JPPN (2018). "Misrepresentasi harus dibuktikan lewat putusan pengadilam", *Online,* retrieved from "https://www.jpnn.com/kementan/news/misrepresentasi-harus-dibuktikan-lewat-putusan-pengadilan, accessed on 25-03-2019, 06.17. WIB

Keppres 177 of 1999, Keputusan Presiden Republik Indonesia Nomor 177 Tahun 1999 Tentang Komite Kebijakan Sektor Keuangan.

Kristian & Gunawan, Y. (2015). *Tindak Pidana Korupsi: Kajian terhadap Harmonisasi antara Hukum Nasional dan United Nations Convention Against Corruption (UNCAC)*, *Cetakan Kesatu*. Bandung, PT Refika Aditama.

Marzuki, P.M. (2008). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.

Merdeka (2018) "Apa kabar koruptor dana BLBI", *Online,* retrieved from https://www.merdeka.com/uang/apa-kabar-koruptor-dana-blbi.html, accessed on 25-03-2019, 06.17. WIB

Merdeka (2018) "Pengamat imbau kesalahan penerbitan SKL terhadap BLBI harus diuji PTUN", *Online,* retrieved from https://www.merdeka.com/uang/pengamat-imbau-kesalahan-penerbitan-skl-terhadap-blbi-harus-diuji-ptun.html, accessed

on 25-03-2019, 06.17. WIB

Moeljatno. (2002). *Asas-Asas Hukum Pidana, Cetakan Ketujuh*. Jakarta. PT. Rineka Cipta.

_____. (1995). "Perbuatan Pidana Dan Pertanggungan Jawab Dalam Hukum Pidana". Pidato diucapkan pada *upacara peringatan Dies Natalis ke VI Universitas Gadjah Mada*, di Sitihinggil Yogyakarta pada tanggal 19 Desember 1955

_____. (2009). *Kitab Undang-Undang Hukum Pidana*. Jakarta: Bumi Aksara.

Noor, H.J. (2018). "Kerugian Keuangan Negara dalam Pengelolaan Badan Usaha Milik Negara Berbentuk Perseroan Terbatas dalam Perspektif Hukum Bisnis dan Tindak Pidana Korupsi". *Disertasi*. Yogyakarta: Fakultas Hukum Universitas Gadjah Mada.

Peraturan Pemerintah Nomor 17 Tahun 1999 Tentang Badan Penyehatan Perbankan Nasional.

PN Jakarta Pusat (2018). Putusan PN Jakarta Pusat No.39/PID.SUS/TPK/2018/PN.JKT.PST Jo. Putusan Pengadilan Tinggi DKI Jakarta No. 29/PID.SUS-TPK/2018/PT.DKI

Putusan Mahkamah Konstitusi 003/PUU-IV/2006

Rahardjo, Satjipto. (2006). *Hukum dalam Jagat Ketertiban*. Jakarta. UKI Press.

Remmelink, Jan. (2003). *Hukum Pidana*. Jakarta: PT. Gramedia Pustaka Utama.

Simons, D. (1937). *Weertboek Van Het Nederlandsche Strafrecht, Eerste Deel, Zesde Druk*. Groningen – Batavia: P. Noordhoof N.V.

Suringa, Hazewinkel. (1953). *Inleiding Tot De Studie Van Het Nederlandse Strafrecht*. Haarlem: H.D. Tjeenk Willink & Zoon N.V.

Sapardjaja, Komariah Emong. (2002). *Ajaran Melawan Hukum Materiil dalam Hukum Pidana Indonesia: Studi Kasus tentang Penerapan dan Perkembangannya dalam Yurisprudensi*, Bandung: Alumni.

Sianturi, S.R. (1986). *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya, Alumni Romli Atmsasmita dan Kodrat*.

Subekti. (1987). *Pokok-pokok Hukum Perikatan*. Jakarta: Intermasa.

Sudarto. (1990). *Hukum Pidana I*. Semarang: Yayasan Sudarto Fakultas Hukum Universitas Diponegoro.

Susetyo, Benny. (2003). "Ilusi Pemberantasan Korupsi". *KOMPAS*, 14 November 2003.

Triffterer, O. (1999). *Commentary on the Rome Statute of the International Criminal Court*. Baden-Baden: Nomos Verlagsgesellschaft.

Utrecht. (1960). *Hukum Pidana I*. Bandung: Penerbitan Universitas.

Undang-Undang No. 5 Tahun 1986 jo. Pasal 1 angka 8 Undang-undang No 51 Tahun 2009.

Undang-Undang Republik Indonesia Nomor 23 Tahun 1999 Tentang Bank Indonesia

Vos, H.B. (1950). *Weetboek Van Nederlands Strafrecht, Derde Herziene Druk*. Haarlem: H.D. Tjeenk Willink & Zoon N.V.

Wibowo. (2016). *Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia*. Jakarta: PT Kharisma Putra Utama.