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Law Enforcement of Corruption Crimes in the State-Owned Enterprises Sector in Indonesia

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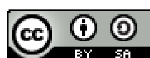
Abstract

Corruption has become a serious problem for Indonesia, especially in public services sectors, such as state-owened enterprises (BUMN) sector. This research was conducted to examine corruption in the BUMN sector with Aristotle's ethical theory. Aristotle's Ethical Theory serves to lead humans to achieve the highest goals of their lives through ratios and make humans the main human beings. This research uses normative juridical research methods where the use of this method uses a concept and legislation approach. Regarding the conclusion obtained from this study, the meaning of the definition of corruption is a matter of moral deviation from a moral problem in humans. Therefore, law and economics are not the main factors that encourage corruption in the BUMN sector. In the abuse of power in the BUMN sector, which is the starting point for corruption, there is a moral charge, in this case, an element of intentionality. Thus, corruption is closely



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related to moral issues in humans, in this case BUMN officials. This is where the portrait of Aristotle's ethical philosophy is very visible in the phenomenon of corruption in the BUMN sector in Indonesia.

KEYWORDS
Corruption, BUMN, State-Owned Enterprises, Law Enforcement

Introduction

Since the beginning of the struggle to establish the Republic of Indonesia, the founding fathers of this nation had seen that this country had not been able to rise economically on its own, so at that time the thought arose to fully protect everything that was considered to control the lives of many people, one of which was to formulate the policy into the constitution. The founding fathers of the nation, through the 1945 Constitution (*hereinafter* as UUD 1945) have clearly formulated the economic philosophy and principles that are the basis of the Indonesian nation's economy which in the constitution is further regulated in Article 33 of the 1945 Constitution. The meaning contained in the provisions of the paragraph in Article 33 of the 1945 Constitution, describes the role of the state in economic activities.[1]

The control of natural resources by the state is absolute and this is not a form of arbitrariness, but rather the initial strategy of the founding of the nation towards post-independence economic development. The control of natural resources owned by Indonesia should be fully utilized for the prosperity and welfare of the people. Article 33 paragraph 2 of the 1945

[1] Zainal Arifin Hosein, "Peran negara dalam pengembangan sistem ekonomi kerakyatan menurut UUD 1945", *Jurnal Hukum Ius Quia Iustum* 23, no. 3 (2016): 503-528; Rian Saputra and Silaas Oghenemaro Emovwodo, "Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law", *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 1-13.

Constitution emphasizes the role of the state more specifically in business activities, where production branches that have strategic value are controlled by the state and used to improve public welfare. The provisions in this constitution have expressly implied that the state takes a role in economic activities, but what distinguishes it from the private sector is that companies under the auspices of the state not only pursue profits, but also meet the needs of the community.[2]

Economic activities carried out by the state or state-established business entities have been seen since 1946, where the government established the National Bank of Indonesia (BNI). State involvement in the economy was increasingly visible during the Old Order period. A massive nationalization effort against all foreign companies was carried out by prohibiting the establishment of new foreign companies. In 1957, the movement to nationalize Dutch-owned companies began, where on 6 December, after the offices of the *Koninklijke Paketvaart Maatschappij* (Dutch shipping company) were taken over by the workers, the Indonesian Ministry of Foreign Affairs then instructed all Dutch companies in Indonesia to cease their activities. In its development, it turned out that all companies resulting from the nationalization policy did not perform well. Most of the nationalized state enterprises suffered losses due to poor management capabilities, corruption, and mismanagement, so most went bankrupt. The government then began to establish several state companies, including the National Oil Company/Permina (the forerunner of PT Pertamina) in 1957, the State Post and Telecommunications Company (the forerunner of PT Pos and PT Telkom) in 1961, the State Electricity Company (PT PLN) and the State Gas Company (PT PGN) in 1965.[3]

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[2] Simon Butt and Fritz Edward Siregar, "State control over natural resources in Indonesia: implications of the oil and natural gas law case of 2012", *Journal of Energy & Natural Resources Law* 31, no. 2 (2013): 107-121; Herdiansyah Hamzah, "Legal Policy of Legislation in the Field of Natural Resources in Indonesia", *Hasanuddin Law Review* 1, no. 1 (2016): 108-121; Suraya Afiff and Celia Lowe, "Claiming indigenous community: Political discourse and natural resource rights in Indonesia", *Alternatives* 32, no. 1 (2007): 73-97.

[3] The case of corruption in Indonesia is not a crime that has just occurred at this time or in the era of Indonesia's independence until now. Corruption has existed in Indonesia since

Until now, the problems of state-owned companies remain the same, especially corruption. Several directors, commissioners, and employees of State-Owned Enterprises (BUMN) are involved in corruption cases. There are indications that the culture of corruption in BUMNs is currently getting thicker, which is reflected in the increasing corruption cases handled by the Corruption Eradication Commission (KPK). Based on KPK data as published by Kompas media, the number of corruption cases involving BUMNs reached 11 (eleven) cases in 2016. This number increased significantly compared to 2015 which was only 5 (five) cases. In previous years, the number of cases involving BUMNs was at most 7 (seven) cases, namely in 2010, the rise of corruption within BUMNs made its performance less optimal and inefficient. In 2013 alone, the total assets owned by 138 BUMNs reached Rp. 4,024 trillion with a capital deposit of Rp. 934 trillion from the government, but ironically, dividends or profits received by the State were only Rp. 34 trillion, which means the Return on Investment (ROI) of BUMNs was only 3.6 percent.[4]

Criminal law enforcement against BUMN administrators involved in corruption then caused debate among legal experts. The parties who firmly state that the losses of BUMNs are also state losses so that they fall into the

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the days of the VOC (*Vereenigde Oostindische Compagnie*/East India Company Association). Corruption in the era of the Dutch East Indies Colonial government was political in nature to bring down its opponents. For example, the ruler wants to overthrow his opponent, for example, overthrow the power of the regent and want to be replaced by a regent of the ruler's choice, by presenting the issue of corruption. But there is also pure corruption to enrich themselves. The custom of regional leaders or prospective leaders to give gratuities also existed in that era. Including the involvement of landlords, people in government and prospective rulers or rulers, has been patterned in a cycle of corruption in the past. This pattern can be described in the current era between government officials, the private sector and political parties. *See* Miftakhuddin Miftakhuddin, "Historiografi Korupsi di Indonesia: Resensi Buku Korupsi dalam Silang Sejarah Indonesia", *Rihlah: Jurnal Sejarah dan Kebudayaan* 7, no. 2 (2019): 168-172; Ervanda Rifqi Priambodo, Miftahul Falah, and Yoga Pratama Silaban, "Mengapa korupsi sulit diberantas?" *Jurnal Ilmu Hukum, Humaniora dan Politik* 1, no. 1 (2020): 30-41; Brian Goodman, "The Dutch East India Company and the Tea Trade", *Emory Endeavors in World History* 3 (2010): 60-68.

[4] *See* Indonesian Corruption Watch, "Kasus Korupsi di Lingkungan BUMN: Marak dan Rawan Pada Sektor Finansial", *Online,* March 21 (2022). Retrieved from https://antikorupsi.org/id/kasus-korupsi-di-lingkungan-bumn-marak-dan-rawan-pada-sektor-finansial.

realm of criminal law (criminal acts of corruption) are law enforcers (Prosecutor's Office, Police, and KPK). On the other hand, some parties argue that the losses of BUMNs have nothing to do with state losses, so they do not include corruption. BUMNs are established by the state as companies with the aim of seeking profits for state income as PNBP (Non-Tax State Revenue), because the state cannot seek profits from government activities. Law enforcement officials are considered not to understand the basic concepts of legal entities, such as Limited Liability Companies (PT) or State-Owned Enterprises Persero. Law enforcement is also considered to have not properly understood the juridical consequences of capital participation by the state in BUMNs as a form of state wealth that has been separated in the form of shares. It is further said that BUMNs are corporations, a legal entity that aims to seek profit. By understanding the meaning and consequences of legal entities, a complete understanding of BUMNs will be obtained.

Related to this, it is highlighted that the wealth of BUMNs as legal entities is not part of state wealth. The reason is the state wealth separated in BUMNs is only in the form of shares. This means that BUMN assets do not become state wealth. The assets separated from BUMNs are the birth of state-owned shares, not BUMN assets. It was further explained that although the wealth of BUMNs is not part of state wealth, the government as a shareholder has the right to sue the directors of the BUMN company if proven to have committed embezzlement, falsification of data and financial statements, violations. Banking Law, violations of the Capital Market Law, violations of the Antimonopoly Law, violations of the Anti-Money Laundering Law, and other laws that have criminal sanctions.[5]

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[5] *See* Erman Rajagukguk, "Pengertian Keuangan Negara dan Kerugian Negara", *Paper*, presented for Public Discussion and Seminar "Pengertian Keuangan Negara dalam Tindak Pidana Korupsi", Komisi Hukum Nasional (KHN) RI, Jakarta 26 July 2006. *See also* Ahmad Mufti, Sophian Yahya Selajar, and Muhammad Tabrani Mutalib. "Pertanggungjawaban Pimpinan BUMN/BUMD Berbentuk Perseroan Terbatas dalam Penyelesaian Tindak Pidana Korupsi." *de Jure Jurnal Ilmiah Ilmu Hukum* 1, no. 1 (2019): 65-83; Muhammad Akram Syarif Hayyi, Muhammad Said Karim, and Aminuddin Ilmar. "Urgensi Penerapan Doktrin Business Judgment Rule terhadap Direksi BUMN dalam Perkara Tindak Pidana Korupsi." *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 6, no. 1 (2021): 72-81;

Furthermore, it is also emphasized that BUMN assets are no longer the wealth of state legal entities because there has been a legal transformation of the legal status of money from state finances as public finance to other legal. incorporated legal entity. personal. Furthermore, separated state finances no longer apply the provisions of the State Budget, but private law provisions, namely Law No. 40 of 2007 and the Civil Code (Civil Code). It was further explained that the separated state wealth is no longer a state financial status but has the status of a legal entity of another legal entity with the status of BUMN law, so that its management and accountability are carried out like ordinary private companies.

In order to create order in the life of the nation and state, it is the purpose of making the basis of the state in the form of a constitution. The purpose of the Indonesian state has been stated in the highest state legal basis, namely the Preamble to the Constitution of the Republic of Indonesia. *The founding parents* have compiled the view into a philosophische grondslag of state life which of course its implementation is in the preamble to the 4th Constitution of the Republic of Indonesia alenia regarding the purpose of the state. Many obstacles are certainly faced by a country to achieve these noble goals. In order to make law into law itself and fulfill the principles of justice, legal certainty and of course usefulness is the most difficult obstacle faced by a country. State-Owned Enterprises (BUMNs) are one of the legal entities providing public services in Indonesia. Direct participation of separated state-owned assets is a method of raising capital for the operation of state-owned enterprises (BUMNs). However, in practice, this sector is a sector that is very vulnerable to corrupt practices. Corruption itself is an act carried out to gain personal benefit by abusing the power possessed. Of course, this action is very detrimental to the country because it can inhibit the growth of the Indonesian state into a developed

Prianto Budi Saptono and Dwi Purwanto. "Factors causing the ineffectiveness of Good Corporate Governance in preventing Corruption in State-Owned Enterprises." *Integritas: Jurnal Antikorupsi* 8, no. 1 (2022): 77-94.

country and grow into a country whose people have state prosperity.[6]

In the further context, the abuse of authority or power possessed to obtain something for the benefit of individuals in this case or what is called corruption in this case can be seen from various aspects or points of view, one of which is from the point of view of Aristotle's ethical theory. Aristotle's Ethical Theory serves to lead humans to achieve the highest goals of their lives through ratios and make humans the main human beings. Law and economics are not the main factors that encourage corruption in the BUMN sector. In the abuse of power in the BUMN sector, which is the starting point for corruption, there is a moral charge, in this case, an element of intentionality. Therefore, from the discussion above, research is needed related to the discussion of corruption in the BUMN sector from the point of view of Aristotle's ethical theory to see this not only from an economic aspect, but also from aspects related to morals and ethics that encourage it to occur.

Various studies on corporate criminal liability has been carried out before, but those that are closely related to this paper include as conducted by Kristian[7], who in his research explained that there are 4 (four) concepts of corporate criminal responsibility, namely: corporate administrators as makers and managers are responsible (development of corporate responsibility in the first stage); the corporation as the maker but the management is responsible (the development of corporate accountability at the second stage); the corporation as a maker and the corporation must also be responsible (the development of corporate accountability in the third stage); and both the corporation and its management as perpetrators of criminal acts so that they can be held criminally responsible. Then Orpa

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[6] Susanto Susanto, "Kedudukan Akuntan Publik Untuk Melakukan Audit Investigatif Terhadap Kekayaan Badan Usaha Milik Negara (BUMN) Persero Dalam Rangka Menghitung," *Jurnal Hukum Staatrechts* 1, no. 1 (2018): 57–86.

[7] Kristian Kristian. "Urgensi Pertanggungjawaban Pidana Korporasi." *Jurnal Hukum & Pembangunan* 44, no. 4 (2014): 575-621.

Ganefo Manuain[8] highlighted the problem of formulating corporate criminal liability rules in corruption crimes in the future, steps can be taken: 1. The definition of "*employment relationship*" must be further regulated in the explanation of the article concerned, the definition of "*other relationship*" must be limited in meaning or can be eliminated; 2. Corporate punishment as stipulated in Article 2 paragraph (2) of Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, therefore criminal sanctions in the form of closing all corporations must be formulated; and 3. Sanctions in the form of closing the company for a certain period of time, or revocation of the company's license, or restriction of company activities in lieu of criminal fines not paid by the corporation or may also refer to the provisions of Article 81 of the 2004 Draft Criminal Code. Meanwhile, research discussing the criminal responsibility of BUMNs as corporations has also been conducted by Fakhri Arindra Zaki (2018), whose research explains that if there is a criminal act of money laundering originating from corruption in a BUMN, it can be held accountable before the criminal law. This is because BUMNs are not legal entities or private business entities, but legal entities where there is state capital participation in carrying out their activities, so that in the event of a criminal act on behalf of BUMNs, criminal liability cannot be borne by the corporation, but by the Company's organs, in this case company managers.

Methods

The writing of this article uses normative juridical research methods or commonly referred to as doctrinal legal research which in conducting this research method uses doctrinal legal research. This research was conducted by examining secondary materials in this case in the form of library

[8] Orpa Ganefo Manuain, "Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi." *Thesis.* (Semarang: Program Magister Ilmu Hukum Universitas Diponegoro, 2005).

materials that can be used as the main material in this study. Regarding the nature of research in this law is research that has the aim of how to overcome problems which can be called the nature of prescriptive research. Regarding the approach in this study, namely reviewing related laws and regulations called the *statute-approach approach*. As stated above, this study uses secondary data which is data obtained from other organizations or parties. Regarding data processing in this study, it is used by compiling written legal materials which are then discussed in this legal material in order to obtain an in-depth analysis of the topic under study in this case is law enforcement of criminal acts of corruption in the BUMN sector in Indonesia.

Result and Discussion

1. Corruption in the BUMN Sector

Basically, criminal liability is a way to react to the reproach of deeds, namely violations of a certain (criminal) act that has been agreed and then stated in a legal product. If someone commits an unlawful act and the act meets the formulation of the offense in the law, it is still not enough to be held accountable or sentenced to him, because there is still another absolute condition, namely fulfilling the element of guilt (mens rea). Thus, in addition to having to fulfill the formulation of offense in the law, to be held criminally responsible must also meet the elements of mens rea or guilt of the perpetrator.

In corruption cases, Article 20 paragraph (1) of Law No. 31 of 1999 means that there are at least 3 (three) forms of corporate criminal liability, namely: corporations that act and must be held accountable; the corporation that does, but the board is responsible; and corporations as doing, but both must be held accountable. The provisions in Article 20 paragraph (2) of Law No. 31 of 1999 adhere to the doctrine of identification and the doctrine of aggregation. Doctrine identification is reflected in the phrase "when the crime is committed by persons either on the basis of

employment or on the basis of other relationships." While the doctrine of aggregation is reflected in the phrase "if the crime is committed... either alone or together."

Normatively, corporations as legal subjects can be held criminally liable if involved in a corruption case. In fact, until now, although many BUMN administrators, both directors, commissioners, and employees have been charged with Law No. 20 of 2001, none of BUMNs as corporations have been held criminally responsible. Law enforcement officials, especially the KPK which has the largest budget for handling corruption cases, always stop at legal subjects in handling corruption cases within BUMNs. The KPK so far seems to have not had the courage to process BUMNs as corporations, even though several corruption cases involving directors, commissioners, and employees of BUMNs, allegedly also benefit these BUMNs. For example, without mentioning a case, bribery cases to facilitate project permits carried out by a BUMN to government officials, are certainly intended to expedite the course of the project so that later the BUMN can complete the project and get profits. These potential benefits should also be considered by the KPK to process BUMNs as corporations.

The abuse of power for personal gain defines corruption itself. In addition, corruption can also be interpreted anti-entimologically which means the misuse of state money for personal or other people's gain. This definition of corruption is also found in the legal dictionary which means an immoral and evil act. Regarding the opinions of figures related to corruption, the provision of grants indicated as bribe gifts, this was conveyed by Baharuddin Lopa [9] From some definitions of corruption above, it cannot be said to be a static definition because society always develops from time to time. If we look at corruption from a historical point of view, this concept refers to political behavior. In this way, the word corrupt identifies and gives direction to evil concepts and in these words, there are

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[9] Marten Bunga et al., "Urgensi Peran Serta Masyarakat Dalam Upaya Pencegahan Dan Pemberantasan Tindak Pidana Korupsi," *Law Reform* 15, no. 1 (2019): 85-97, https://doi.org/10.14710/lr.v15i1.23356.

moral indications that will later have an impact on the destruction of wholeness. Therefore, if we draw a conclusion in the word corruption there are two words that indicate the meaning of corruption itself, namely the acceptance of bribes and giving. In its implementation, corruption itself is not only carried out by private parties or politicians, but more ironically, this corruption is often carried out by officials of State-Owned Enterprises or so-called BUMNs. It is ironic that it is not BUMN officials who should act to provide public services to the community but instead do things in the form of corruption which will certainly be very detrimental to the state and will have an impact on the welfare of the community. Many BUMN officials use their power arbitrarily and manipulate data for the purpose of enriching themselves. The phenomenon of corruption in the BUMN sector in Indonesia certainly occurs because there is something behind it so that it can happen. Several figures expressed their opinions related to the factors behind this corruption phenomenon. The figure is Sarlito Wirawan Sarwono said that there are two factors that encourage corruption, the first factor is an internal factor which can be interpreted as a factor from within humans because it is based on personal desires, for the second factor is an external factor which is a factor from outside other than from within humans but comes from external stimuli due to opportunity or lack of control [10]. From these two factors, it can be seen that the actual elements behind the occurrence of corruption in the BUMN sector in Indonesia are very diverse. Therefore, it is very important to examine this matter from various perspectives or points of view, one of which is Aristotle's ethical theory because this act of corruption or abuse of authority has a moral element.

Regarding the discussion related to the phenomenon of corruption in the BUMN sector in Indonesia, it will be studied in three ways, the first is the purpose of human life, the second is corruption an imaginary success, and the third is to become the main man. The first discussion is about

[10] Nibraska Aslam, "Pencegahan Korupsi Di Sektor BUMN Dalam Perspektif Pelayanan Publik Di Indonesia," *Integritas : Jurnal Antikorupsi* 7, no. 2 (2022): 359–72, https://doi.org/10.32697/integritas.v7i2.818.

corruption and the Ethics of Ariatotle in terms of the purpose of human life. Aristotle's ethics explains that the attainment of freedom must be the ultimate goal of life. In this concept, in order to be happy, man must arrange his life. The rules of morality are reasonable and understandable, which is how Aristotle's ethical theory defines them. Delivering man to his ultimate goal of happiness is the goal of morality. So, it can be concluded that humans can be said to have taken the right path ifthey follow the rules of moral rules.[11]

The second discussion is related to the relationship between innovation and imaginary success. In the implementation of life, there are certain goals that are considered wrong and inadequate. Wealth and popularity are considered the wrong end goal when viewed from Aristotle's view. This concept also explains that wealth does not guarantee happiness because wealth is only a means. Therefore, it can be said that people will be further away from happiness if they devote their whole life to possessions alone. Popularity itself is not something that comes from one person but comes from the views of others. Many people are not qualified but are seen as popular. Therefore, one should not strive for popularity but rather achievement and self-quality so that it is seen that the meaning of the concept of happiness and popularity itself is a consequence of the development of human abilities. It can be concluded that being a corrupt BUMN official cannot be said to be better than being a good person because that a person who is enslaved by lust and does everything to enrich himself and pursue reputation is not necessarily lucky and partial when compared to a person who lives with trueknowledge and joy.

The third division is to be the main man. Man must be able to develop himself and must know the direction of his life. Directing people to walk in the right direction is a teaching of Aristotle's ethical concept. In order to give the right direction in life, humans must be able to build ethical and

[11] Mas Putra and Zenno Januarsyah, "Penerapan Asas Ultimum Remedium Terhadap Tindak Applying Principles of Ultimum Remedium Corruptions," *Wawasan Yuridika* 1, no. 1 (2017): 24–34.

intellectual strength so that their quality increases. The virtues built on each individual are the benchmark of a person's individual qualities. The discussion related to being the main human being in Aristotle's ethical theory is closely related to character. The process of carving a soul so that it is uniquely shaped is the definition of building character. Because it cannot be done instantly, this character-building process requires high discipline. Therefore, from the explanation above, it can be concluded that the rampant phenomenon of corruption in the BUMN sector is due to an unformed character as an official who should have a soul as a public servant, but in its implementation, it is competing to pursue popularity and wealth.[12]

Therefore, it is very natural that this corruption can occur. The understanding related to the concept of Aristotle theory is very appropriate if understood carefully by every BUMN official in Indonesia. This is because this concept can provide an understanding that being a good person will be happier and beneficial for the life of everyone. Moreover, in the jobdesk of BUMN officials as people who should serve the community, if this corruption is committed, it will certainly have a very bad impact because this will have a direct impact on public welfare. If corruption is rife, we cannot only look at external factors, because after understanding this concept that corruption in the BUMN sector can also occur due to the encouragement of everyone, morals, and ethics.

2. Death Penalty Regulation for Indonesian Corruption Perpetrators

The debate on law enforcement against BUMNs among practitioners and legal experts is still ongoing. The debate is still revolving around whether BUMN entities fall into the realm of private or public law.

[12] Ahmad Mufti, Sophian Yahya Selajar, and Muhammad Tabrani Mutalib, "Pertanggungjawaban Pimpinan BUMN/BUMD Berbentuk Perseroan Terbatas Dalam Penyelesaian Tindak Pidana Korupsi," *De Jure Jurnal Ilmiah Ilmu Hukum* 1, no. 1 (2019): 65-83, https://doi.org/10.33387/dejure.v1i1.1418.

Normatively, BUMNs are business entities whose entire or most capital is owned by the state through direct participation derived from separated state wealth. Because the capital of BUMNs comes from direct participation of separated state wealth, the direct participation of state wealth is the wealth of business entities. Regarding what is meant by being separated, is the separation of state wealth from the State Budget to be used as state capital participation in BUMNs for further development and management is no longer based on the State Budget system, but the development and management are based on sound corporate principles.

The legal consequence is that there has been a separation of wealth between the state and business entities. The source of state capital participation in the context of establishing or participating in BUMNs is regulated according to Article 4 jo. Explanation of Article 4 paragraph (2) Letter b of Law Number 19 of 2003. Capital participation by the state uses state finance, which normatively in Law No. 17 of 2003 states as all state rights and obligations that can be assessed with money, as well as everything both in the form of money and in the form of goods that can be made state property in connection with the implementation of these rights and obligations. Regarding this provision, Erman Rajagukguk argues that state wealth separated in BUMNs is physically in the form of shares owned by the state, not the assets of these BUMNs.

In addition, in the General Explanation of Law No. 20 of 2001, state finance contains the definition of all state assets in any form, separated or inseparable, including all parts of state wealth and all rights and obligations arising from being in the control, management, and accountability of officials of State institutions and in the control, management, and accountability of BUMNs / D, foundations, legal entities, and companies that include state capital, or companies that include third-party capital under agreements with the State. Meanwhile, what is meant by the state economy is economic life that is structured as a joint effort based on the principle of kinship or community business independently based on

Government policy, in accordance with the provisions of applicable laws and regulations that aim to provide benefits, prosperity, and welfare for all people's lives.

From the definition of state finance formulated, Nindyo Pramono stated that both included state wealth as part of state finance but did not provide a standard understanding of the elements of state finance. Law No. 20 of 2001 actually provides a very broad understanding that covers all state wealth in any form, while Law No. 17 of 2003 provides a narrower state financial limit, namely all state rights and obligations that can be assessed with a sum of money. Based on this, it is clear that Law No. 20 of 2001 defines state finance from the point of view of its object, while Law No. 17 of 2003 defines state finance from the point of view of its subject. From this point of view, anyone involved in the implementation of the law does not use the same approach or criteria, it is certain that its implementation will cause problems.

In the development regarding state finance, the author is of the view that the government has made a mistake when issuing a Government Regulation regulating Procedures for the Elimination of State/Regional Receivables, namely PP No. 14 of 2005, because it does not emphasize a clear boundary of difference between which is the wealth of the Company's BUMNs and which is the wealth of the state as a shareholder. Then based on the decision of the Supreme Court Number WKMA / Yud / 20 / VII / 2006, the Government issued PP Number 33 of 2006 which amended PP No. 14 of 2005 by determining that the management of receivables of state/regional companies is carried out based on the provisions of the applicable laws and regulations regarding Limited Liability Companies and BUMNs, as well as their implementing regulations. The implications of the Government Regulation emphasize that BUMN receivables are not categorized as state receivables, but BUMN receivables themselves. Then the Constitutional Court decision strengthened the Supreme Court and PP decisions by stating that BUMNs are business entities that have separate

wealth from state assets, so that the authority to manage wealth, business, including the settlement of BUMN debts is subject to Law No. 40 of 2007. Thus, the debts and receivables of BUMNs are not state debts and receivables.

Customary criminal law was enacted before the criminal law was enacted in Indonesia. This law applies to all regions in Indonesia. In customary law rules in Indonesia, there are various forms of sanctions as follows.

1) Cut off the hand (thief)
2) Killing people using wood
3) Hang on a tree
4) Body parts are separated or cut into several pieces
5) Using mortar to hit perpetrators

The Gayo use imprisonment and the death penalty[13]. The death penalty in the Batak area is immediately carried out if the convict neglects to pay the wrong money and the convict's family surrenders themselves to be punished.

The current penal code is considered a result of Dutch colonization, although the death penalty was abolished in the Netherlands in 1870. It is based on the matching principle used in Indonesia at that time. Moreover, the history of the death penalty cannot be separated from the process of enforcing the Criminal Code. The history of executions in Indonesia cannot be separated from the history of the death penalty in the Netherlands. The Dutch death penalty derives from French penal code because France colonized the Netherlands during Napoleon's reign. Therefore, in the Netherlands, historical criminal law [14]. There has been no revision of the Criminal Code regulations of the BeLanda government so that there is still

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[13] Deni Setiyawan, "Analisis Yuridis Terhadap Hukuman Mati Bagi Koruptor Pada Masa Pandemi," *Jurnal As-Said* 1, no. 1 (2021): 5–9.

[14] Maswandi Maswandi, "Penerapan Hukuman Mati Bagi Koruptor dalam Perspektif Islam di Indonesia," *Jurnal Mercatoria* 9, no. 1 (2016): 75–85.

the death penalty[15].

After the independence of the Dutch government, attempts to replace French penal code resulted in the creation of a legal code in the Netherlands. That is, it is inseparable from French criminal law. The reason for maintaining the death penalty is because it is considered necessary and very effective to prevent criminal acts. The Dutch advance influenced expansion into other countries, including the Indonesian archipelago. Thus, the laws in force in the Netherlands were also enforced in the colonies, including the death penalty. The reasons why the death penalty is retained or included in the WvS, as JE Sahetapy deduces from the opinions of Dutch scholars, are based on three reasons: Racial Justification, Justification of Public Order, and Justification of Criminal Law and Criminology [16].

1) Racial Justification

According to JE Sahetapy, the reasons why the death penalty is based on racial justification factors can be seen from:

a) Malays (later Indonesians) and law enforcement officials who do not speak the local language. Relying on translators can lead to more false statements.
b) Dutch jurists did not understand and assimilate the values and social structure of the indigenous people of the time.
c) The incompetence of the Code of Criminal Procedure and the absence of legal counsel or legal counsel do not rule out the possibility of misunderstanding and assumption that Customary witnesses are likely to make false statements. [17]

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[15] Moch Iqbal, "Kriminalisasi Korporasi Dalam Tindak Pidana Korupsi Terkait Bumn Persero," *Jurnal Hukum Dan Peradilan* 2, no. 2 (2013): 309, https://doi.org/10.25216/jhp.2.2.2013.309-324.

[16] M Makhfud, "Urgensi Hukuman Mati Bagi Koruptor Dengan Pengabaian Penderitaan Yang Akan Diderita," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 6, no. 3 (2019): 317–30, https://doi.org/10.15408/sjsbs.v6i3.13200.

[17] Kristina Dwi Putri, and Agustianto Agustianto. "Efektifitas Penerapan Hukuman Mati Bagi Para Pelaku Tindak Pidana Korupsi Di Indonesia." *Jurnal Komunitas Yustisia* 4, no. 3 (2021): 736-747.

2) Justification of public order

Public policy issues in colonial countries were crucial before the penal code was codified, and more clearly illustrated the difficulties Congress faced during the colonial period. According to Van Hamel as follows:

a) People find it difficult to understand the position of laws and regulations.
b) Because in the middle of the nineteenth century new ideas emerged in the Western world, which began to develop towards the problem of slavery and colonialism.
c) The circumstances and conditions incomprehensible to the Dutch rulers of that time made it seem as if without the strict and harsh laws on which the defense of the colony depended, there would be no government institutions. [18].

Modeman's thoughts on the basis of public order:

1) Determination of death penalty criteria established by the State
2) Despite the many undeniable shortcomings of the death penalty, no one should refrain from including it in the penal system. Therefore, contrary to public order and decency, the death penalty can and should be imposed.

Some of the factors for the inclusion of the death penalty in the Criminal Code are as follows [19].

1) The situation of Indonesia which has ethnic groups is different from the condition of the Netherlands. In this case, the rule of law owned by Indonesia tends to be more difficult to understand, while the rule of law owned by the Netherlands is more critical and dangerous.
3) Under such circumstances, according to Lemaire, it is irresponsible to give up a powerful weapon as a terrible death sentence that does not fall

[18] Amrullah Bustamam, "Pidana Mati Bagi Koruptor Dana Bencana Non Alam: Studi Terhadap Konsekuensi Keputusan Presiden Nomor 12 Tahun 2020," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 9, no. 2 (2020): 260–80.

[19] Diya Ul Akmar and Syafrijal Mughni Madda. "Memaknai Hukuman Mati Bagi Koruptor Berdasarkan Filsafat Hukum." *Supremasi Hukum* 17, no. 2 (2021): 40–47.

under confinement and imprisonment.

4) Justification of criminal law and criminology

JE Sahetapy has a very strong impression that Dutch scholars see the death penalty as a natural element of criminal law and therefore unquestionable. The death penalty is seen as inherent in the Werd Niet Twiffelacting Geoordeeld Criminal Code, so no doubt such a thing can be understood as long as the Criminal Code is seen as a mere instrument of political control[20]. This is still true today, but there are still many jurists who are not aware of this. Legal scholars who argue that criminal law is concerned with how crime is eradicated, how crime is prosecuted within the framework of criminal theories underlying crime, and how criminal law provisions reflect increased value. and the norms of life there. The way society enforces criminal law is also a powerful tool for enforcing government policies and regimes.

Since the focus is on protecting society, it is natural that the concept of severe sanctions such as the death penalty or life imprisonment should remain, but this concept of the death penalty is not covered in the main story. as a specific type of criminal or a special person arising from the purpose of establishing, disciplining, or regulating society to strengthen it.[21]

Cases of BUMN directors charged with corruption cases for harming state finances are generally subject to Article 2 paragraph (1) of Law No. 20 of 2001. As an example of the case of the former President Director of PT. Merpati Nusantara Airlines (Persero), Hotasi Nababan, who was convicted of corruption, to the detriment of the state due to his policy of leasing two Boeing aircraft from the Thirdstone Aircraft Leasing Group (TALG). The cassation verdict then stated that Hotasi Nababan was proven to violate

[20] Ebenhaizer Nuban Timo, "Hukuman Mati Bagi Koruptor atau Hukum Koruptor Sampai Mati Sebuah Kajian Hukum, Etis Kristiani Dan Kultural." *Jurnal Humaniora Yayasan Bina Darma* IV, no. 1 (2017): 45–62.

[21] Daud Munasto, "Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dikaji Dalam Perspektif Sosiologi Hukum," *Widya Pranata Hukum* 4, no. 1 (2022): 24–38.

Article 2 paragraph (1) of Law No. 20 of 2001. Based on what has been described above, the problem that has not been resolved in positive law in Indonesia is regarding state finances, in this case the wealth of BUMNs is state wealth. Therefore, it is necessary to revise laws related to this issue, including the definition of state finance contained in Law No. 17 of 2003 and Law No. 20 of 2001. The aim is to reinforce the definition of state finance and wealth which is separated in this case between state wealth and BUMN wealth.

BUMNs in seeking profits cannot be separated from business risks that will arise both profits and losses. But the problem is, the losses suffered by BUMNs are considered state losses that lead to criminal acts of corruption even though business decisions are taken in good faith. In addition to Hotasi Nababan, there is also a case involving Karen Agustiawan, former President Director of PT. Pertamina (Persero). The prosecution as the investigator of this case previously charged Karen Agustiawan with deliberately ignoring the investment procedures applicable at PT Pertamina and other investment provisions or guidelines in the Participating Interest (PI) of the Basker Manta Gummy Block (BMG) Australia in 2009. Unlike Hotasi Nababan who was sentenced to a crime, in a court decision at the cassation level, Karen Agustiawan was acquitted of all charges. The panel of cassation judges considered Karen's actions not to be a criminal act, but a business judgment rule. If we look closely, the two cases are essentially the same issue, namely about the business judgment rule but have different decisions. The business judgment rule itself is regulated in Article 97 paragraph (5) of Law No. 40 of 2007. The case is a fact that occurs because of the ambiguity of state finances which has an impact on the status and position of BUMNs themselves in the realm of criminal law (corruption). On the other hand, the principle in Law No. 20 of 2001 requires that losses suffered by BUMNs also include state losses.

The assumption that the wealth of BUMNs including state wealth arises because the state provides many privileges to BUMNs (and their

subsidiaries), including physical facilities and policies that benefit BUMNs, one of which is in the implementation of government project tenders. This will unwittingly have a bad impact on economic development because it creates unhealthy business competition. If you want to eliminate the assumption that the wealth of BUMNs includes state wealth, then the privileges that benefit these BUMNs should also be eliminated. BUMNs should be considered the same as private companies in general. The legal implication is that if the organs or administrators of BUMNs commit losses, offenses related to the criminal act violated and not merely corruption. Another solution is to revise Article 2 letter g and letter i of Law No. 17 of 2003 and Law No. 20 of 2001. This article is the entrance for law enforcers in entangling cases such as Hotasi D.P. Nababan and Karen Agustiawan. As long as this article is not revised, law enforcers can ensnare anyone who harms state finances.

Thus, regarding the ambiguity of BUMNs, according to the author, the opinion that BUMNs cannot be subject to criminal law (corruption) is a misguided phenomenon. It must be understood, BUMN as a company whose majority shares are owned by the state, has a specificity or privilege when compared to private companies. Among them are the exclusion of monopolistic practices carried out by BUMNs as referred to in Article 51 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Law No. 5 of 1999), and direct appointment by the government in the implementation of consumer goods import policies. Ironically, with the support of capital from the state, and all its privileges, most BUMNs actually suffered losses.

Viewed from the perspective of corporate law, directors are authorized to take action in the management of the company, one of which is business decision making. This authority is protected by law so that it cannot be sued / tried by anyone even though the decision is detrimental to the company as long as the decision is taken in good faith, in accordance with applicable regulations, rational, does not know there is no conflict of interest. The

doctrine of protecting the business decisions of directors is called the business judgment rule, and in general, directors of state-owned enterprises implicated in corruption cases, take refuge behind this doctrine. According to Sartika Nanda Lestari, directors in implementing the business judgment rule must meet the following requirements: making decisions in accordance with applicable law; done in good faith; carried out with the right purpose; decisions have a rational basis; done carefully as done by someone wise enough in a similar position; carried out with reasonable confidence as the best for the Company.

The problem is, it must be recognized that in the management of organizations in most BUMNs (especially strategic ones) are held by people who are not professionals related to the "core business" of these BUMNs. This is where the important role of the Ministry of BUMNs as the state representative as the owner of most of the shares of BUMNs, which should appoint professionals and someone who does have the expertise to lead and manage BUMNs. According to the author, if this is still difficult to do, at least the Ministry of BUMNs can appoint a professional board of commissioners to supervise the directors in running their business. Therefore, according to the author, as long as most BUMNs continue to experience losses, law enforcement of corruption crimes must continue. Normatively, law enforcement against the administrators of BUMNs also has a strong legal basis and is still valid today, namely Article 2 letter g and letter i of Law No. 17 of 2003, unless it can be proven that the directors of these BUMNs have implemented all principles in the business judgment rule. If proven, then the losses incurred by BUMNs are purely losses caused by business risks alone as happened in the case of Karen Agustiawan, and not a "*mistake or mens rea*" to enrich themselves or others from state wealth.

Therefore, the government at the time believed that the death penalty should be included in the Criminal Code as a powerful weapon used by the rulers to enforce local laws in Indonesia. Executions were carried out by

hanging prisoners on the gallows in the same way as executioners. The death penalty according to the new concept of the Criminal Code is a crime that is punishable by the death penalty. Formulation of criminal acts, especially imprisonment and fines. The death penalty can only be imposed for certain crimes, and life imprisonment and sentences are always interspersed.

Indonesia's criminal policy that imposes the death penalty on perpetrators of corruption is considered more effective than imprisonment or confinement. The imposition of the death penalty against perpetrators of corruption crimes based on article 2(2) of the PTPK Law is possible against perpetrators if the provisions of article 2(2) are implemented in "*certain circumstances*".[22] The specific conditions in question are those that can be used as a basis for committing crimes against people who commit criminal acts of corruption, namely, to overcome dangerous situations, national natural disasters, or the consequences of widespread social unrest. Necessary means overcoming economic and currency crises, overcoming corruption.[23]

Conclusion

BUMNs as legal subjects are still considered unable to be held criminally responsible. Those who can be held criminally liable are the administrators of the corporation, both directors and employees. To be able to hold BUMNs directly or indirectly involved in corruption cases accountable, they can apply corporate criminal theories such as: vicarious liability theory, identification theory, strict liability, and doctrine of aggregation. To ensnare BUMN administrators in accounting for the

[22] Moses Janrry Wotulo, "Analisis Yuridis atas Hukuman Mati terhadap Koruptor Kasus Tindak Pidana Korupsi Ditinjau dari Perspektif Hak Asasi Manusia." *Lex Privatum* 9, no. 13 (2021): 213-222.

[23] Herman Katimin, "Kerugian Keuangan Negara Atau Perekonomian Negara Dalam Menentukan Hukuman Mati Pada Tindak Pidana Korupsi," *Sasi* 26, no. 1 (2020): 39, https://doi.org/10.47268/sasi.v26i1.210.

criminal acts they commit, law enforcers are free to choose theories and doctrines (based on case), but also by always continuing to apply universally applicable legal maxims, namely actus non facit reum nisi mens sit rea and always guided by the provisions of applicable laws and regulations. Law No. 20 of 2001 jo. Law No. 31 of 1999 has actually regulated corporate criminal liability, so that BUMNs that are proven to be involved in a corruption case, can be held criminally responsible. In its enforcement, it does not stop thoroughly investigating cases only to the directors and employees of BUMNs but must try to see the full construction of criminal acts accompanied by supporting evidence, whether the BUMNs also benefit (benefit) due to corruption committed.

The ambiguity of the justification of corporations committing criminal acts should refer to standard and non-contradictory provisions because consistency and synchronization of laws and regulations must legitimize corporate actions from various points of view including the form of its own entity included in the Company law and state involvement in state-owned companies in state finances. Material legal adjustments must be made to improve and reform the criminal justice system and place the position of directors of and on behalf of corporations in the development of legal domains such as civil and administrative as well as placing crime as the ultimate remedium. The correct product of law should not be confused with a multiinterpretive norm in determining state finances and corporate forms, which on the one hand must have independence and on the other hand are considered state ownership. As long as Law No. 17 of 2003 is still in effect, especially Article 2 letter g and letter i, law enforcement against BUMN directors involved in corruption can still be carried out, as long as it can be proven that it turns out that their actions actually have the intention to harm BUMN finances and do not fully implement the business judgment rule properly.

Etymology and terminology are the nature of understanding the concept of the meaning of corruption. Corruption is something that is

actually difficult to describe concretely because of its plural nature. However, what can be underlined is that corruption is a form of deviation. The phenomenon of corruption in the BUMN sector in Indonesia is a form of deviation not only in the realm of power to seek material benefits but also a form of deviation of trust. Understanding the ethics of Arintoteles serves to lead humans to achieve the highest goals of their lives through ratios and make humans become the main humans, imaginary success factors, and wealth and popularity are also studies related to the influence of the emergence of the phenomenon of corruption in the BUMN sector in Indonesia. In essence, this theory related to Aristotle ethics can be realized through educational institutions in Indonesia because educational institutions can be used as a means of distributing value and not just transferring knowledge. Educational institutions can be used as social diseases and character destroyers such as corruption that has damaged the nation, moreover it has undermined the BUMN sector. In order for education to crust in the future, a better future study is needed on how humans have been understood so far. Therefore, producing a new generation that has intellectual and moral balance can be through the study of Aristotle's ethics.

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