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CRIMINAL RESPONSIBILITIES OF STATE-OWNED ENTERPRISES (BUMN) IN INDONESIA AS THE PERPETRATORS OF MONEY LAUNDERING THAT ORIGINATED FROM CORRUPTION

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ABSTRACT

Background: The existence of State-Owned Enterprises (BUMN) in Indonesia has the objective to manage the fields related to the lives of many people. However, in its development there have been efforts to enrich themselves or groups (in BUMN), such as the case of money laundering and corruption that inflict a financial lost to the country.

Aim: For this reason, this research is structured with the aim of analyzing the criminal liability of State-Owned Enterprises (BUMN) in Indonesia as the perpetrators of money laundering that originate from corruption.

Method: This type of research is legal research or normative research, which is accompanied by the use of three approaches namely the legislative approach (*statute approach),* concept approach (*conceptual approach),* and case approach (*case approach).*

Result: The results of the study through the analysis of two decisions namely Decision of the Supreme Court of the Republic of Indonesia Number 787K/Pid.Sus/2014) and Decision The Supreme Court of the Republic of Indonesia Number 1616K/Pid.Sus/2013) which stated that the judge has decided the case of money laundering that comes from corruption. The two decisions stated that the suspect concerned was proven guilty of committing a criminal act of corruption which was carried out jointly.

Conclusion: Therefore, it can be concluded that the form of criminal liability in each corruption case of a State-Owned Enterprise (BUMN) continues to be processed in accordance with applicable laws and regulations, where the decision is then weighed and determined by the Supreme Court.

INTRODUCTION

State-Owned Enterprises (BUMN) in Indonesia were presented with the aim to organizing public benefits in the form of providing goods and/or services of high quality and sufficient for the fulfillment of the lives of many people, pioneering business activities that cannot yet be carried out by the private sector and cooperatives, and actively providing guidance and assistance to entrepreneurs of economically weak groups, cooperatives, and communities (Khairandy, 2009). The form of BUMN is also divided into 3 (three), namely: private companies, public companies, and limited liability companies. A private company is a state-owned company (BUMN) in the form of a limited liability company whose capital is divided into shares that are all or at least 51% of the shares owned by the nation whose main purpose is to pursue profits. A public company is a state-owned company (BUMN) whose entire capital is owned by the state and is not divided into shares, aiming at the public benefit in the form of providing high quality goods/services and at the same time pursuing profits based on the principles of company management. While a limited liability company is a Corporation whose capital and number of shareholders meet certain criteria, or a Corporation that conducts a public offering in accordance with the laws and regulations in the capital market (Cahyaningrum, 2009).

Searching further, until now it is known that there are 115 types of BUMN companies in Indonesia whose scope of business activities are engaged in all fields. However, the existence of BUMN has become a 'target' for many parties to do something beyond supervision such as money laundering to corruption. Therefore, vigilance against corruption and money laundering activities within the scope of BUMN is needed. Of the many cases of money laundering that cause losses to the government, many cannot do anything because it is not easy to intervene and get involved in the legal world. In fact, the authorities recommend and oblige for anyone to remain aware of the law, especially in criminal acts of corruption and money laundering (Ali, 2013). Thus this study was prepared with the aim of analyzing the criminal liability of State-Owned Enterprises (BUMN) in Indonesia as the perpetrators of money laundering that originate from corruption.

RESEARCH METHOD

This type of research was legal research or normative research that were chosen to studied and analyzed applicable laws and regulations or binding legal norms of relevance, legal theory and explain difficult areas and predict future developments. (Marzuki, 2005). That way this research would produced a systematic explanation of the legal rules governing certain laws that have legal issues within them.

The approach used in this research was the statutory approach (*statute approach),* concept approach (*conceptual approach)* and case approach (*case approach).* The legislative approach was chosen because it could examined

all the laws and regulations relating to the legal issues being studied. The concept approach itself became an approach by discussing the opinions of scholars as a basis for supporting thesis discussion. Thus, it was hoped that ideas would be found that bring forth legal notions, legal concepts and legal principles that were relevant to the legal problems at hand. Meanwhile, the case approach was chosen because this research also focused on cases or legal issues that were happening, namely related to the corruption case of Indar Atmanto and the decision of Angelina Sondakh in executing the conviction for corruption that has been *inkracht*. In this study, the decision to be reviewed were the Supreme Court's Decision Republic of Indonesia Number 787K/Pid.Sus/2014 and Decision of the Supreme Court of the Republic of Indonesia Number 1616K/Pid.Sus/2013.

To analyzed this, the source of legal material used were primary legal material and secondary legal material. Primary legal materials used include the Constitution of the Republic of Indonesia of 1945, Law No. 1 of 1946 concerning Criminal Law Regulations, Law Number 31 of 1999 concerning Eradication of Corruption, Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption, and Law Number 8 of 2010 concerning Money Laundering. While the secondary legal materials used were literature related to corruption and money laundering such as law books, articles, papers, comments on judicial decisions, and legal magazines

RESULTS AND DISCUSSION

Corruption as *Predicate Crime* Money Laundering Crime

Criminal Acts of Corruption and Money Laundering have a connection, that corruption ranks first as a crime from money laundering (Baswir, 2002). Original crime is a source of money laundering. This is as regulated in Article 2 paragraph (1) of Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes (Law on PP TPPU). The proceeds of crime are assets obtained from criminal acts a. corruption; b. bribery; c. narcotics; d. psychotropic substances; e. labor smuggling; f. smuggling of migrants; g. in the banking sector; h. in the capital market sector; i. in the insurance field; j. customs; k. excise duty; l. human trafficking; m. illegal arms trade; n. terrorism; o. kidnapping; p. theft; q. embezzlement; r. fraud and; s. counterfeiting, as well as criminal offenses threatened with imprisonment of 4 (four) years or more, committed in the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and the said offense is also a crime according to Indonesian law (Baswir, 2002).

The linkage between corruption and money laundering is due to the fact that most of the proceeds of corruption are hidden or disguised to avoid prosecution from law enforcement officers. (Amrullah, 2004). Can be seen from the benefits in the criminal act of corruption that is used for the benefit of

individuals (personal). Like, an offender who has money proceeds from crime, where the money is used to buy assets and then disguised. The disguised profits are usually assisted by someone who collaborates with the perpetrators and can be charged under the article of money laundering.

Corruption and money laundering are not possible to be carried out simultaneously, because the crime of money laundering is a further criminal act, which can only occur if there is a criminal act that starts it. Thus for the existence of a money laundering crime, the existence of an original crime (*predicate crime*) must exist, because without the original crime being conducted there is no crime for money laundering. Therefore, to facilitate the handling of money laundering and criminal offenses, the PP TPPU Law requires finding sufficient evidence.

State-Owned Enterprises as Corporations in the event that occurred Money Laundering Originating from Corruption

In connection with the occurrence of a crime of money laundering (originating from corruption) in an State-Owned Enterprise, the responsibility is the State-Owned Enterprise organ, which means its directors and management. The position of the Board of Directors based on the Corruption Act, which is stated, among others, is stated in Article 20 paragraph (1) that a criminal act of corruption in the name of a corporation can result in criminal prosecution and impeachment against the corporation and/or its management. Furthermore Article 1 number 1 of the Anti-Corruption Law, a corporation is a collection of people and/or assets that are organized either as a legal entity or not a legal entity. In the event that a criminal complaint is committed towards a corporation (ZHANG and HAN, 2003).

Exploring further, in Article 6 paragraph (1) it has been stated that corporations also include organized groups, which are structured groups consisting of three (3) people or more, whose existence for a certain time, and acting with the aim of committing one or more criminal acts regulated in the Act with the aim of obtaining financial or non-financial benefits both directly and indirectly. The provisions of Article 6 clearly state that a criminal offense can be imposed on a Corporation if the crime of Money Laundering in the case of: 1) is carried out or ordered by the Corporate Control Personnel; 2) carried out in the context of fulfilling the aims and objectives of the Corporation; 3) carried out in accordance with the duties and functions of the offender or the giver of the order; and 4) done with the intention of providing benefits to the Corporation. This is certainly different from the formulation in Law Number 25 of 2003 which only states that a criminal offense can be imposed on a corporation if the criminal act is committed by the management and/or the authority of the executive on behalf of the corporation, then the sentence is imposed, both on the management and/or the power of management and the corporation. Criminal liability for corporation managers is restricted as long as the management has a functional position within the corporate organization structure (Sjawie, 2015).

Based on this description, it can be seen that although in the Corruption Law and in the PP TPPU Law it is clearly stated that corporations are legal subjects and can be held accountable, but if they are related to BUMN Act, the responsibility for corporations is borne by its management. Thus the corporation itself cannot be accounted for in criminal law (Iqbal, 2013). This can be understood, because State Owned-Enterprises (BUMN) as a corporation have a state financial capital participation, so it is impossible if the corporation in which there is state-owned capital that must be charged with criminal liability (DAN and PEMIDANAAN, 2005).

Criminal Sanctions for State Owned-Enterprises (BUMN) as Perpetrators of Money Laundering Originated from Corruption

The State Owned-Enterprises (BUMN) Law only determines who is responsible for corporate governance, so that none of it regulates criminal sanctions. This is because criminal sanctions cannot be imposed on State Owned-Enterprises (BUMN) as a corporation. Criminal sanctions can only be imposed on the Board of Directors or management of a State Owned-Enterprises (BUMN). For example, the sanctions imposed on directors who commit criminal acts of corruption as stipulated and mentioned in Article 2 paragraph (1) of the criminal act of corruption.

As explained in the article, what is meant by actions or efforts "unlawfully" includes actions against the law in a formal or material sense, even though the act is not regulated in statutory regulations, but if the act is deemed to be disgraceful then the act the sentence can be convicted. In this provision, the word "can" before the phrase "detrimental to the financial or economic condition of the country" indicates that a criminal offense is a formal offense, that is the existence of a criminal act of corruption is sufficient by fulfilling the elements of the act that have been formulated not by the arising of consequences.

Meanwhile, in Article 3 of Law No. 19 of 2003 concerning State Owned-Enterprises does not regulate criminal sanctions for State Owned-Enterprises in the form of a Limited Company (PT), if it against or violates the law. This is because the State Owned-Enterprises (BUMN) Law is an administrative law whose criminal sentence refers to the criminal act of corruption in imposing a criminal sentence.

As explained in the provisions of Article 4 of Law No.19 of 2003 concerning State Owned-Enterprises (BUMN), its capital comes from separated state assets. The participation of state capital in the context of establishment or participation in State Owned-Enterprises (BUMN) comes from the State Budget (APBN), capitalization of reserves, and other sources. Handling in corruption cases with perpetrators is that State Owned-Enterprises (BUMN) are considered more "*tricky "* rather than a corporation in the form of a private sector. For example, when there are State Owned-Enterprises (BUMN) that

are considered responsible for state financial losses caused by corruption cases. Whereas, on the other hand State Owned-Enterprises (BUMN) is also part of the state. If a State Owned-Enterprise is punished by a panel of judges where the person concerned must pay fines and compensation to cover the state financial losses which will result the same, because at the end, the state will pay the state (Robertson-Snape, 1999).

The types of criminal sanctions stipulated in the Anti-Corruption Act, are not different from the types of criminal sanctions in Article 10 of the Criminal Code, which consist of the main criminal sanctions in the form of capital punishment, imprisonment, confinement and fines. Additional crimes include revocation of rights, confiscation of goods and announcement of the judge's decision. Against corporate offenders the appropriate type of criminal is a criminal fine. In addition to criminal fines, actions can also be taken to restore the situation as before the damage. In accordance with the development of compensation can also be imposed on the corporation as a new type of criminal. This compensation can be in the form of compensation to the victim. In addition, sanctions can also be imposed in the form of additional crimes, namely the closure of all or part of the company for a maximum of 1 (one) year as stipulated in Article 18 paragraph (1) letter c of Law No. 31 of 1999 concerning Eradication of Corruption Crimes.

In connection with the foregoing description, corporations that commit crimes are available to be subject to additional fines and penalties as well as a number of actions (Brown, 2006). That way, although corporations can be personally accounted for, there are some exceptions, namely in cases which by nature cannot be done to corporations, for example bigamy, rape, perjury; in cases where the only criminal can be imposed on corporations, for example imprisonment or capital punishment; full or partial closure of the company of the convicted person for a specified time; revocation of all or part of certain facilities which have been or can be obtained from the government by the company for a certain time; company placement under the authority for a certain time (Prasetyo, 2014); specifically regarding sanctions for closing or stopping company activities, consideration of the consequences that can arise in relation to the roles of the company or corporation as an employer. Because if these sanctions are imposed on corporations, then the most affected are the employees or workers of the company itself compared to employers or company owners.

Therefore, it can then be seen that with the sanction, it is explicitly explained, that the system of criminal punishment against corporations has not been considered efficient so that judges cannot impose criminal sanctions on corporations can only be subject to sanctions in the form of fines, freezing and dropping permits. The judge is also still having difficulty in finding proof of a corporation, because in terms of distinguishing the evidence against a corporation that commits a criminal act of corruption, starting from who is committing the criminal act that moves within the corporation, and whether a

criminal act is purely carried out by a corporation or a person who commits corruption only utilizes an authority within that corporation (Director) (Iqbal, 2013).

ANALYSIS OF COURT DECISIONS

Analysis of Supreme Court Decision Number 787K/Pid.Sus/2014 an. The Defendant in the Case of Indar Atmanto

Beginning on January 18, 2012, where the Attorney General's Office of the Republic Indonesia ordered an investigation related to the abuse of 2.1 GHz radio frequency by IM2 with the suspected Director of IM2. This investigation was carried out based on reports received regarding the alleged abuse of Indosat's 3G network by IM2. Continuing on October 30, 2012, the rapporteur of alleged corruption, Denny AK was found guilty after being proven legally extorted Indosat but in a different case.

As such, Denny AK was sentenced to 1 year and 4 months in prison. Not long then, in November 2012 after Denny AK was sentenced, the Attorney General's Office gave a statement regarding the losses incurred by the state due to acts of corruption committed by IM2. The loss amounted to Rp 1,3 trillion, which then made the former Managing Director of IM2, Indar Atmanto examined by the Attorney General's Office as a suspect on December 12, 2012. Subsequently, Indar Atmanto was named a suspect by the AGO in the alleged abuse of 2,1 GHz radio frequency, where he then filed a lawsuit with the Jakarta State Court (PTUN) against the State Audit and Oversight Agency (BPKP).

Through a series of court proceedings and demands that are charged to those concerned, it can be seen that PT. IM2 as the service provider in carrying out its activities can only use the closed fixed network as stipulated in Article 33 paragraph (1) of the Minister of Transportation Decree No. 20 of 2001 concerning the implementation of a network that remains closed is required to build a network for rent. This is due to the collaboration between Indar Atmanto as the director of PT. IM2 with Johnny Swandy Sjam and Herri Sasongko, each of whom is the managing director of PT. Indosat.

In the use of refill vouchers and judging from the existing network frequencies, it is known that the managing director of IM2 has used the 2.1Ghz frequency which is a primair and exclusive frequency, but the use of the 2.1Ghz frequency is done without going through an auction process contrary to Article 2 paragraph (2) Minister of Communication and Information Regulation No. 7 of 2006 concerning the use of 2.1 GHz radio frequency band for the operation of mobile cellular networks. This is also considered to be in conflict with Article 25 paragraph (1) of Government Regulation no.53 of 2000 concerning the Use of Radio Frequency Spectrums and Satellite Orbits which states that the holder of a radio frequency allocation cannot transfer the radio frequency allocation he has obtained to another party. Based on the decision of the DKI High Court, a Cassation was filed by the

Public Prosecutor and it was alleged that Indar Atmanto, in which the Supreme Court's Cassation Decision ruled that Indar Atrmanto was sentenced, remained in prison for eight years and PT. IM2 is subject to fines (Jamin Ginting).

On the other hand, the legal counsel of PT. IM2 filed a lawsuit to the DKI Jakarta State Administrative Court (PTUN) in connection with the results of losses that were examined by the BPKP (Government Finance Audit Agency) which has no legal basis. The State Administrative Court (PTUN) panel of judges stated in their decision that the Government Finance Audit Agency (BPKP) audit did not follow the existing procedure, which was not preceded by a request from the Ministry of Communication and Information and the discovery of the joint frequency of Indosat-IM2 was not in accordance with the facts of the trial and the BPKP had never conducted an examination of its audit objects that is PT Indosat Tbk and IM2. Therefore, the State Administrative Court (PTUN) considers that the Government Finance Audit Agency (BPKP) audit is violating Law No. 20 of 1997 concerning Non-Tax State Revenue.

Seeing these conditions eventually resulted in the existence of 2 (two) different Court Decisions, namely the Supreme Court's Cassation Decision in the Corruption Crime case and the Supreme Court's Cassation Court's Administrative Court's Decision which have a connection that can overturn other decisions. This then become the basis for consideration for PT. IM2 to submit a Juridical Review (PK) as a basis *novum request* to the Supreme Court.

Decision of the Supreme Court of the Republic of Indonesia Number 1616K/Pid.Sus/ 2013 an. The accused Angelina Patricia Pingkan Sondakh

The defendant in the case named Angelina Patricia Pingkan Sondakh (Angelina Sondakh). The defendant's job is as a Member of Parliament which was appointed based on the Republic of Indonesia's Presidential Decree Number 70/P of 2009 concerning the Inauguration of Members of the DPR, serial number 487, Ms. Angelina Sondakh, SE. The defendant represented the Democratic Party with the constituency of Central Java VI for the term of office of the 2009-2014 DPR membership. The defendant is also a Member of the House of Representatives Commission X from the Democratic Party Faction based on DPR Decree Number: 32/DPR RI/I/2009-2010 concerning the Formation and Ratification of the Membership Structure of Commission I up to the Commission XI of the DPR The Membership Period concerned is in 2009-2014. In addition, the defendant also served as a Member of the DPR Budget Board as stipulated in DPR Decree Number: 48/DPR RI/I/ 2009-2010 concerning the Establishment and Ratification of the Membership Arrangement of the DPR Budget Board with the 2009-2014 Membership period. Commissions in the House of Representatives in carrying out their duties and functions have work partners, where the work partners of Commission X include the Ministry of Youth and Sports (Kemenpora), the

Ministry of National Education (Kemendiknas), the Ministry of Culture and Tourism, and the Library Board based on DPR Decree Number: 31/DPR RI/I/ 2009-2010 concerning the Formation of Commissions and Determination of the Scope of Commissions and Work Commissions of DPR Membership for the 2009-2014 Membership.

The defendant as a Member of Parliament is suspected of committing a criminal act of corruption by the Public Prosecutor. The criminal act of corruption was carried out by the defendant by accepting gifts or promises given by the SEA Games Athletes Wisma project which was sheltered by the Permai Group holding company which oversees 38 companies. This company is led by Muhammad Nazaruddin and 3 (three) others. While the deputy director of finance at Permai Group is Yulianis. The two men were witnesses during the case investigation in the case of the defendant Angelina Sondakh. The gifts or promises are given if the Defendant wants to help by passing the project that will be carried out by Permai Group. The intended project is the construction of buildings or supporting facilities at several State Universities in Indonesia by the Ministry of National Education (Kemendiknas) and the procurement of facilities and infrastructure programs in the Ministry of Youth and Sports (Kemenpora). Permai Group in this case acts as a company that implementing projects handled by the Ministry of National Education (Kemendiknas) and the Ministry of Youth and Sports (Kemenpora) after going through stages in winning project tenders in the Ministry of National Education (Kemendiknas) and Ministry of Youth and Sports (Kemenpora). In the development of the case the defendant did not have any connection with the crime that occurred in the Ministry of Youth and Sports (Kemenpora). The criminal act in question is a bribery committed by Muhammad Nazaruddin as a person suspected of being one of the leaders of the Permai Group in bribery cases in the Ministry of Youth and Sports (Kemenpora).

Permai Group in this case was also represented by Mindo Rosalina Manulang as the Marketing Director who was the main liaison between the defendant and the Permai Group leaders. The way the defendant herded the project funds was by holding formal meetings which were part of his authority as a Member of Parliament, Member of Commission X, Member of the Budget Agency of Commission X and Coordinator of the Working Group (Pokja) of Commission X's budget. In addition to formal meetings there are also informal meetings to several parties that are deemed to have authority or parties deemed able to assist in passing the project. On the other hand, the defendant also gave a sum of money, both directly and indirectly to the parties who were considered to be able to assist the defendant in the decision making process of the project that being herded.

Thus, the judge decided not to ensnare the defendant with the first or second indictment on the grounds that the two indictments were not in accordance with the defendant's actions. Therefore, the judge without the need to prove the first and second indictments, can immediately prove the third indictment

submitted by the public prosecutor, because the public prosecutor used the indictment in an alternative form. This caused the defendant could not be charged with the maximum sentence as in the first indictment which was threatened with a maximum imprisonment of 20 (twenty) years in prison and a maximum fine of Rp 1.000.000.000.00 (one billion rupiah) according to the first indictment or imprisonment for 12 (twelve) years and a criminal fine of Rp. 500.000.000 (five hundred million rupiahs) subsidiary 6 (six) months of confinement in accordance with the demands of the Public Prosecutor. The judge's decision by not ensnaring the accused according to the first indictment was wrong. In addition, the judge only relating the defendant's actions to the defendant's authority, not to the defendant's obligations.

Based on the decision of cassation that has been determined on the process of examining the case of Angelina Sondakh, the criminal corruption has permanent legal force or *inkracht*. In the cassation decision issued by the Supreme Court, it was stated that former DPR members/DPR members who were still serving from the Democratic Faction were required to pay a replacement fee of Rp 12,58 billion and 2,35 million US dollars or around Rp 27,4 billion, if attached to a corruption case. The panel of judges believes that the process of examining the case of Angelina Sondakh is necessary. Angelina Sondakh is indeed still a member of House of Representatives (Member of Commission X of the House of Representatives from the Democratic Party). This is as regulated in Article 240 paragraph (1), paragraph (2), and paragraph (3) of the DPR RI Law, that the dismissal of a House of Representatives (DPR) member is proposed by a political party leader to the DPR leadership with a copy to the President. This is because the president has the authority to dismiss members of the House of Representatives (DPR). As such, DPR members indirectly no longer have duties, authorities, obligations, or rights in positions, occupations, or professions (Brown, 2006). Angelina Sondakh who is a member of the House of Representative (DPR), has duties and authorities based on the DPR Law. The existence of the Angelina Sondakh cassation verdict, therefore it can be used as a basis after the dismissal of Angelina Sondakh as a member of the House of Representatives, so that her duties and authorities as stipulated in the House of Representatives Law cannot be carried out again as long as she is a member of the House of Representatives (Ganie-Rochman and Achwan, 2016).

CONCLUSION

Based on an analysis of the two decisions it can be concluded that it is good for Decision of the Supreme Court of the Republic of Indonesia Number 787K/Pid.Sus/2014) on behalf of the defendant Indar Atmanto and Decision The Supreme Court of the Republic of Indonesia Number 1616K/Pid.Sus/2013) on behalf of Angelina Sondakh has included legal considerations for the crime of money laundering resulting from corruption. Both of them simultaneously contain efforts to the detriment of the state in large numbers. For this reason, the Supreme Court has considered and decided the case in accordance with the applicable sanctions.

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