

# Law Enforcement of Corruption Crimes of State-Owned Enterprises to Actualize Legal Certainty

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**Abstract.** The crime that has always been in the spotlight in Indonesia is the problem of corruption. Corruption is not a new thing in this country. Corruption in Indonesia is even classified as an extra-ordinary crime or extraordinary crime. The goal to be achieved in this paper is Law Enforcement of Corruption Crimes Against SOEs to create legal certainty and forms of criminal responsibility in corruption crimes against SOEs to create legal certainty. The method used is normative juridical by collecting primary, secondary and tertiary legal materials. the law cannot fulfill the promises and desires regulated in the law. Therefore, in law enforcement work, it is necessary to implement a formal mechanism of the rule of law and strive to realize the values contained in the law, especially related to the law enforcement of BUMN. In addition, accountability for the management of state finances, criminal provisions, administrative sanctions are regulated in the State Finance Law, the Treasury Law and the State Finance Management and Accountability Audit Law.

**Keywords:** Law Enforcement; Corruption, BUMN

## 1 Introduction

The issue of corruption is a serious issue that needs serious handling. The crime of corruption in Indonesia is very concerning, and even various groups have entered the category of extra-ordinary crime or extra-ordinary crimes because corruption has damaged the joints of the life of the nation and state. Many things have been done so that corruption does not develop from prevention to the eradication stage, but until now, corruption has run rampant in the regions [1].

Law Number 19 Of 2019 regarding the Second Amendment to Law Number 30 of 2002 regarding the Corruption Eradication Commission has been substantial in taking action against corruption, and it is even regulating the matters of corrupt behavior through abuse of authority. This law was issued based on the anxiety of all parties as a result of corrupt behavior, so this law is expected to be able to answer these concerns.

The phenomenon of corruption crimes has entered the level of State-Owned Enterprises; even many leaders of state-owned enterprises (BUMN) have abused their power for personal gain; however, eradicating the problem of permanent corruption is experiencing difficulties. The steps for taking action are still facing many obstacles until now. Corruption is a chronic and

incurable disease that has been spreading to all government sectors, even to state-owned companies [2].

Cases of corruption have spread in all sectors of government institutions and have undermined the entire coffers of people's social life. However, the issue of enforcement so far has not provided a significant deterrent effect. This can be seen from the trend of corruption cases increasing in all lines of government, both central and regional, especially cases of corruption in state-owned enterprises (BUMN) circles.

Corruption cases must be a severe concern to all elements of the nation [2]. The rise of corruption cases in state-owned enterprises (BUMN) has caused considerable losses to the state, so it must be addressed immediately so as not to undermine state finances. If you look at the opinion of Bagir Manan when he observed Indonesian law, there is a legal system that does not yet reflect a unified system into a single system of national rules[2]. where every applicable legal rule should support each other, not overlap[3].

Law enforcement of state-owned enterprises (BUMN) corruption cases is a serious matter because the accountability of state-owned enterprises (BUMN) corruption must pay attention to existing legal principles. Seeing this problem, the researcher felt interested in doing research, so the formulation used in this study was as follows: (1) How to enforce the law on corruption crimes against state-owned enterprises (BUMN) to create legal certainty?, (2) What is the form of criminal responsibility in corruption crimes against state-owned enterprises to create legal certainty?

## **2 Theoretical Framework**

### **Criminal Liability Theory**

Criminal liability is a condition when someone commits a crime. Criminal liability is defined as the relationship between the producer's situation and the actions and sanctions that must be taken. Criminal liability is stated by the existence of a relationship between the facts that condition the implied, legal cause and effect[4].

### **Legal Certainty Theory**

Utrecht emphasized that certainty contains legal certainty is one manifestation of law enforcement in the community. Utrecht emphasized that certainty contains legal certainty, which is one manifestation of law enforcement in the community. Law enforcement must strictly refer to the provisions of the laws and regulations so that each party feels that every decision and its enforcement is properly carried out in accordance with the applicable provisions[5].

## **3 Research Methods**

The research used in this journal is normative juridical, with a statutory, conceptual, case, and comparative approach. The legal materials used are primary-secondary and tertiary legal materials. The analysis of legal materials used in this research is qualitative, which is expected to get answers related to the issues raised, primarily the criminal responsibility of state-owned enterprises[6].

## **4 Results and Discussion**

### **4.1 Law Enforcement Of Corruption Crimes Of State-Owned Enterprises To Actualize Legal Certainty**

Law enforcement is essentially the only way to conviction, as stated by Roscou Pound, who said that the function of law enforcement is to provide a deterrent effect for any party who commits a crime. Crime in state-owned enterprises is a severe problem because it is closely related to many people's lives. So that a firm legal instrument is needed so that any losses incurred can be accounted for.

For state-owned enterprises/SOEs, the management is regulated in the provisions of the state-owned enterprises Law and the Company Law and the state-owned enterprises/SOEs Capital Market Opening Law. This causes different governance and accountability from APBN/APBD accountability, even though there are state finances there. The nature of the Limited Liability Company (PT) is closely related to the state-owned enterprises/SOEs, so the provisions that apply to the Limited Liability Company (PT) also apply to the state-owned enterprises/SOEs. As an independent and separate legal entity, the actions taken by the state-owned enterprises/SOEs and the responsibility for such actions are the actions and responsibilities of the state-owned enterprises/SOEs itself and not the actions of the state or the government. The same applies to ownership of wealth and assets.

In the interpretation of the law related to state-owned enterprises, Article 4 of the first paragraph explains the meaning and purpose of the separation of state-owned assets, where there is a separation between state-owned wealth and state-owned income, as well as the inclusion of SOEs as state-owned capital. Further development and management are no longer system-based. The new law makes sense once it is implemented. Therefore, law enforcement requires power because power without the law is wishful thinking, and without law, there will be an injustice. Given that enforcement is more important than legal norms, the success or failure of state-owned enterprises (BUMN) corruption enforcement depends on law enforcement officers[7].

Satjipto Rahardjo[8] in another language, the law cannot be enforced to realize the will contained in the law itself because the law is only a rule so the role of the legal apparatus is very fundamental. It means that the law cannot fulfill the promises and desires regulated in the law. Therefore, in law enforcement work, it is necessary to implement a formal mechanism of the rule of law and strive to realize the values contained in the law.

### **4.2 Implementation of Criminal Accountability in Corruption Crimes Against State-Owned Enterprises (BUMN)**

Accountability for state financial management, criminal provisions, and administrative sanctions are regulated in the State Finance Law, the Treasury Law, and the State Financial Accountability and Management Audit Law Number 15 of 2004. Criminal responsibility is basically directed at all parties who commit corruption against state-owned enterprises (BUMN). The application of criminal responsibility is directed at keeping state finances stable.

In the previous description, it has been emphasized that the losses associated with using the pure assets of the Persero cannot be resolved using administrative law mechanisms. However, stricter rules are needed so that criminal sanctions are still applied; this is directed so that all parties get a deterrent effect and do not repeat their actions. Criminal sanctions are an alternative that should be a priority so that law enforcement related to corruption can run well.

Referring to the provisions of Article 22 paragraph (5) state-owned enterprises (BUMN), basically, state losses can be seen based on studies or preliminary findings from the Supreme Audit Agency, and the findings are directed to be followed up by law enforcement so that they can be found related to losses incurred by the parties so that state finances can be confiscated. Back to be accountable for the parties who commit corruption.

Accountability itself is directed so that parties who commit corruption in state-owned enterprises (BUMN) can get laws that are in accordance with their actions and can provide a deterrent effect to the parties in order to keep national development going well.

## **5 Conclusion**

Law enforcement of the crime of corruption in state-owned enterprises (BUMN) must be further strengthened by the legal system itself because the articles that were ensnared were considered by various parties to be still very weak, so there was no deterrent effect. The technology for preventing corruption itself must be better so that abuse of authority can be monitored. Meanwhile, related to criminal responsibility in corruption crimes against state-owned enterprises (BUMN), it must be able to provide certainty for the parties in order to achieve justice as expected for all parties because the state-owned enterprises (BUMN) corruption case is a big case that undermines the nation's economy and can hinder national development.

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