Corporations Criminal Accountability That Permits Criminal Acts Of Corruption In Indonesia

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Abstract- Corporations play a central role in the economic system of a country. The corporation carries out the functions of the production and distribution of goods and services. Corporations also have an important role because they are directly involved in the process of allocating economic resources for society. This study aims to analyze and find the Criminal Liability Regulations for the Commissioners of Companies Who Commit Corruption Crimes that are not based on the Value of Justice, to analyze and find weaknesses in the Criminal Liability Regulations for the Commissioners of Companies Who Commit Corruption Crimes at this time, and to find reconstruction of the Criminal Liability Regulations for Commissioners Companies Committing Corruption Crimes Based on Justice Values. The results of the study found that the Criminal Responsibility of the Company's Commissioners Who Commit Corruption Crimes applying the concept of "collegiality" to the Company's Board of Commissioners is not absolutely applied in terms of authority and responsibility, but the law also opens exceptions to this concept of collegial responsibility, in the case stated in Article 114 paragraph (5) of the Limited Liability Company Law PERMA No. 13 of 2016, Corporations do not adhere to the doctrine of vicarious liability or identification theory. The Corporation PERMA means that the corporation is responsible because the Corporation itself commits a criminal act and enjoys the proceeds of the crime. This is certainly contrary to the concept or doctrines of Corporate Crime concerning Corporate Responsibility and in essence, the element of "benefiting the corporation" should be an element in Corporate Crime, not as a determinant of corporate wrongdoing.

Index Terms- Criminal liability, corporation; Indonesia; Justice.

I. INTRODUCTION

Corporations play a central role in the economic system of a country. The corporation carries out the functions of the production and distribution of goods and services. Corporations also have an important role because they are directly involved in the process of allocating economic resources for society. The influence of corporations on aspects of people's lives which are getting stronger in the era of globalization, has had many positive impacts on the country. Corporations have contributed to economic progress, increased human resources and so on. The existence of a company cannot be separated from society as its external environment. Companies and communities are a unit that gives and needs each other. Contribution and harmonization of both will determine the success of nation building. In connection with the regulation regarding Persero companies, currently Law Number 40 of 2007, in Article 1 Number 1 has defined that what is meant by a Limited Liability Company is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital all of which are divided into shares and meet the requirements stipulated by the law and its implementing regulations [1].

The Company (Corporation) has several organs, namely the General Meeting of Shareholders (GMS), directors, and board of commissioners. The company as an independent legal subject is an artificial person, which requires directors as its representatives. It can be said that a limited liability company cannot function to carry out its rights and obligations without the help of the board of directors. The existence of directors in a limited liability company is like the soul of the company. There is no way a company without directors. Conversely, there can be no directors without a company. The existence of the board of directors is to manage the company in accordance with the aims and objectives of the company in good faith and full responsibility. Thus, the presence of directors is needed by the company. Managing a company is not an easy thing. Therefore, for the company to be managed according to the purpose of the company's establishment, to become a director requires requirements and expertise. The delegation of authority from the company to the directors to manage the company is commonly referred to as fiduciary duty [2].

The Board of Directors is obliged to manage the running of the company as well as possible. The Board of Commissioners is tasked with supervising the management of the company by the Directors, as well as on certain occasions assisting the Directors in carrying out their duties. While the General Meeting of Shareholders (GMS) of the company functions to carry out overall control over every fulfillment of obligations from the Board of Directors and the Board of Commissioners of the company for the rules of the game that have been set. Based on Law Number 40 of 2007, as stipulated in Article 1 Number 6, it states that: "The Board of Commissioners is an Organ of the Company whose job is to carry out general and/or special supervision in accordance with the articles of association and provide advice to the Board of Directors. The word "Board of Commissioners" in the article above implies both an "organ" and an individual person. As an "organ", the Board of Commissioners is called the "Board of Commissioners", while an "individual" is called a "member of the Board of Commissioners". organs", in Law Number 40 of 2007 concerning PT the meaning of "Board of Commissioners" includes other bodies that carry out special supervisory duties in certain fields.

The function of the company's Board of Commissioners is stated in Article 108 paragraph (1) UUPT which reads; "The Board of Commissioners supervises management policies, the course of management in general, both regarding the Company and the Company's business and provides advice to the Directors". As for the recent practice, which can be said to have increased in intensity, is the use of nominees. In general, what is meant by a nominee is a person or individual who is appointed to specifically act on behalf of the person who appointed him to carry out a certain act or legal action. Nominees can be appointed to take legal actions, including as property or landowners, as directors, as proxies, as shareholders and others. The use of nominees is still possible and is even widespread even though the provisions in the Company Law stipulate several criteria that must be met for a person to be appointed as a director of a PT or to become a shareholder of a limited liability company [3].

However, because there are no clear rules regarding this nominee, in practice this is then used by parties who have certain interests, especially in cases where it is considered necessary to exercise full control (control) of PT management and PT shareholders. The aim is none other than that the management and/or shareholders of the PT can be directed so that they have perceptions that are in line with the policies desired by the party appointing the nominee. the contents of the agreement stated that although legally the nominee organ has the authority to act on behalf of the company's interests, the nominee organ does not have any authority because it is fully controlled by the party appointing the nominee or the actual owner of the company (beneficial owner) whose name may even be not appear in the company's articles of association. The research in this dissertation is more directed to the discussion of the appointment of Nominee Commissioners and their responsibilities for criminal acts committed by this company. The existence of an error is an absolute element that can result in the request for criminal responsibility from the perpetrator of the offense.

Responsibility for a crime committed by a person is to determine the guilt of the crime he committed. Criminal responsibility or criminal responsibility means that a person who has committed a crime does not mean that he must be punished. He must be held accountable for the actions he has committed if an element of guilt is found in him because a crime consists of a criminal act (actus reus) and a criminal intent (mens rea). Actus reus or guilty act and mens rea or guilty mind absolutely exist for criminal responsibility. Criminal liability can only occur after he has previously committed a criminal act. So, criminal acts are separated from criminal liability or separated from elements of guilt. Based on the descriptions above, this dissertation research was conducted to further examine the responsibilities of the Nominee Commissioner for criminal acts committed by the company with a focus on the problem of why the appointment of a PT Commissioner Nominee occurred, which according to the articles of association of PT is legal and has the authority to oversee the running of the company but in the reality is that it is not free, in the sense that it only carries out the will of certain parties in their capacity as nominees. Can then his position as Commissioner Nominee be used as an excuse to evade responsibility for criminal acts committed by the company. And even more in-depth, can the related company be subject to criminal sanctions together with the imposition of criminal sanctions against the Nominee Commissioner [4].

II. RESEARCH METHOD

This type of research is descriptive analysis in nature because the researcher wishes to describe or describe the subject and object of the research, which then analyzes and finally draws conclusions from the results of the research. It is said to be descriptive because from this research it is expected to obtain a clear, detailed, and systematic picture, while it is said to be analysis because the data obtained from library research and case data will be analyzed to solve problems in accordance with applicable legal provisions. This legal research uses a sociological juridical approach, namely legal research using legal principles and principles in reviewing, viewing, and analyzing problems, in research, in addition to reviewing the implementation of law in practice. Source of data consists of primary data and secondary data. Primary data was obtained by conducting interviews with advocates, judges, and the public. Meanwhile, secondary data was obtained by conducting literature studies on primary legal materials from various regulations, secondary legal materials, and tertiary legal materials. The data obtained were then analyzed using a qualitative descriptive method.

III. RESEARCH RESULTS AND DISCUSSION

A. Corporate Criminalization as Perpetrators of Corruption Crimes Based on Pancasila Justice

The rapid growth of the economy in Indonesia has not only caused economic problems but has increased the phenomenon of crime as a new dimension of crime involving an unlawful abuse of economic power, as well as public power. This form of structural crime includes well-organized systems, organizations, and structures. The Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution, which upholds human rights and guarantees the rights of its citizens at the same time before law and

government and is obliged to uphold this law and government without exception. According to Sri Soemantri, a legal state must fulfill several elements. In the context of eradicating corruption in Indonesia, the key to success lies in law enforcement officials implementing and applying formal and material legal principles in imposing criminal sanctions on perpetrators of corruption. Corruption is an integral part of the history of human development and is one of the oldest types of crime and is a disease of society, the same as other types of crime such as theft, which have existed since humans existed on this earth. The main problem faced is that corruption has increased along with prosperity and technological progress. Experience shows that the more advanced the development of a nation is, the more the necessities of life will also increase and one of the impacts can encourage people to commit crimes, including corruption [5].

Corruption is a symptom of society that can be found everywhere. History proves that almost every country is faced with the problem of corruption. It is no exaggeration if the notion of corruption is always evolving and changing according to the changing times and the ways to deal with it are also developing too. The intensity and modus operandi of corruption from one country to another depends on the quality of society, customs, and law enforcement system in that country. Now the most important thing is that corruption in a country is no longer a problem for the country itself but has become a problem/concern for all countries and nations in the world. Corruption is a legal case, so the legal mechanism must work. The spirit of law enforcement today is in the right direction. No more high-ranking officials are above the law. Former Ministers, Chief Justices of the Supreme Court, Directors of State-Owned Enterprises, Heads of the Supreme Audit Board and many others can be equally examined by legal mechanisms. For the record, this spirit must work consistently. There should be no impression of "pick and choose". Consistent and fair law enforcement will have the effect of providing shock therapy [6].

The legal process is the establishment of a corruption eradication system; therefore, the law must be enforced fairly. The fugitive corruptors who fled abroad were brought back to their country and given appropriate punishment. South Korea and Singapore are examples of countries that apply consistent law enforcement mechanisms. 240 Eradicating corruption is the most urgent problem that must be done in this country because it has significantly hampered the progress of the nation. The habit of corruption looks so big and beyond the control of the government. However, these steps to eradicate corruption are often hindered by various complex problems. However, eradicating corruption must be carried out, it is a tough task but that does not mean it is impossible to do. Therefore, law enforcement and extraordinary handling are needed in eradicating criminal acts of corruption. There is no end to acts of corruption in Indonesia, which is an important question that arises, among other things, the laws and regulations to eradicate corruption are inadequate. Law enforcers in our country do not have a high commitment in eradicating corruption. That the crime of corruption is a crime that is difficult to prove as it is known that proof is a problem that plays a role in the examination process at trial. It is through proof in court that a person can ultimately be declared guilty or not guilty of the criminal acts he has committed [7].

B. Proof System

The purpose of forming an evidentiary law is to draw conclusions about whether the defendant's guilt has been proven in committing the crime being charged, for the judge to pass a verdict. Of the many legal instruments and institutions that have been implemented in statutory policies to eradicate corruption in the Unitary State the Republic of Indonesia, one of which is the system of reversing the burden of proof. The implementation of this system is expected to be able to eliminate the level of difficulty in proving that has been encountered so far in eradicating criminal acts. The criminal act of corruption is a part of the special criminal law besides having certain specifications that are different from the general criminal law. when viewed from the regulated material, direct or indirect corruption is meant to minimize leakage and irregularities in the country's finances and economy. Whereas in other words, apart from the offense of gratification, the guilt of the perpetrators of the burden of proof is not permitted to be applied in the handling of criminal acts of corruption proof System [8].

In Justice Value-Based Corruption Crimes. In assessing the strength of proof of existing evidence, several systems or theories of proof are known. The evidentiary system aims to find out how to place the results of evidence on the case being examined. The evidentiary system is the regulation of the types of evidence that may be used, the breakdown of evidence and the ways in which the evidence is used and the way in which judges must form their convictions before a trial court. In essence, in the context of applying evidence or law of evidence the judge then starts with the evidentiary system with the aim of knowing how to place a result of evidence on the case being tried. For this reason, theoretically for the application of a proof system, several theories are known, namely:

a. A mere belief system (Conviction in-time).

The conviction in time system of proof determines whether a defendant is guilty, solely determined by the judge's assessment of the conviction. It is the judge's conviction that determines whether the defendant's guilt is proven or not. It does not matter where the judge draws from and infers his belief in this system. Conviction may be taken from and concluded by the judge from the evidence he examined in court proceedings, it is also possible that the results of the examination of the evidence will be ignored by the judge, and immediately withdraw the conviction of the defendant's guilt.

Vice versa, if the evidence is complete to determine the defendant's guilt but the judge is not sure, the judge may acquit the defendant. In this system the judge's belief is absolute, because only with the judge's conviction can a defendant be declared guilty or not, so that the evidence presented at trial does not have the power of proof to state the defendant's guilt, and vice versa, if the evidence is insufficient the judge If the judge has confidence in the guilt of the defendant, the judge can acquit the defendant. In addition, this system opens great opportunities for arbitrary law enforcement practices to occur, relying on the reason the judge is convinced.

b. A belief system with logical reasons (Conviction Raisonne)

In this system, the judge's conviction still plays an important role in determining whether the defendant is guilty, but the judge's belief must be supported by logical/clear reasons. Furthermore, the judge's conviction is carried out selectively in the sense that the judge's belief is limited by having to be supported by clear and rational reasons in deciding. This system is based on the judge's conviction, but the judge's conviction must be based on a logical conclusion (conclusive), which is not based on law, but on provisions according to the judge's own knowledge, according to his own choice regarding the implementation of evidence to be used. In other words, judges are not bound by law but have freedom in deciding cases.

Business crime is often identified with corporate crime, but according to Romli Atmasasmita, the definition of business crime is broader than the understanding of corporate crime for several reasons, as follows:

1. The modus operandi does not always use corporations to commit crimes, but corporations are used as a place to accommodate the results of crime studies. In fact, the corporation is not an actor (dader) and even in terms of corporate responsibility, the corporation is represented by its management. Whereas the owners or founders of corporations often become controllers of corporations that have been proven to have committed acts against the law and corporations actually become victims, including shareholders, especially in limited liability companies that have "go public" or open limited liability companies (PT. Tbk).
2. The complexity of problems in corporate business activities is not only related to national problems but is now often related to international problems. These activities often become legal issues that have a broad impact on the interests of the people and even the interests of legal protection for the corporation itself. These circumstances and business activity problems do not only involve the organs of the limited liability company but also the organs of state power.
3. Both domestic and international business activities have been controlled by the Multi-National Corporation (MNC) which has a network between countries so that it has created legal complexities related to corporations, especially in cases where there has been a violation of criminal law by corporate agents who have acted without the knowledge principals with offices in other countries. In addition to the complexity of the regulations related to these business activities, the existence of an MNC has created jurisdictional issues in the event of a criminal act by the MNC.
4. International business networks with significant and dispersed capital, in several countries have a major impact both in terms of financial, labor and people's welfare in the country concerned. These conditions require a clear and broad legal umbrella that can predict the future of international business activities both in the lives of the people where the MultiNational Corporation operates. The legal umbrella for regulating the activities of the Multi-National Corporation requires an adequate understanding of the term, namely business crime.

According to D. Andhi Nirwanto, business and financial crimes are often identified as deviant behavior by economic actors, with the goal of getting as much profit as possible, ff course, the profit is obtained by the culprit in an unreasonable way, without regard to the method or process of obtaining this advantage. This side is the point of contact between legal issues and economic principles, both of which may be contradictory but also complement each other. Like a production process, plans and evil intentions are upstream while the profits from evil deeds are downstream. Such is the brief description of a business and financial crime scenario, the point of which lies in malicious intent as the origin of the profits that will be obtained by the perpetrators of crime. Indonesia's new reformed government has set policy directions in the field of combating corruption. Starting with the enactment of the TAP MPR RI Number IX/MPR/1998 concerning State Organizers who are Clean and Free of Corruption, Collusion and Nepotism, which was later made into Law no. 28 of 1999 concerning the Organization of a State that is clean and free from corruption, collusion, and nepotism. This policy was subsequently followed by the establishment of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes which replaced the old corruption law, namely Law No. 3 of 1971 concerning the Eradication of Corruption Crimes, which was considered no longer appropriate to the development of legal needs in society [9].

Even the settlement of state financial losses in the Corruption Eradication Law is considered to only recognize criminal instruments as the only countermeasure by law enforcement officials. Article 4 of the Corruption Eradication Law states "...returns to state financial losses, does not eliminate crime." The article clearly shows that non-penal measures are not possible, unless the suspect/defendant dies as referred to in Article 32, then civil lawsuits can only be pursued. Regardless of the historical and sociological background, the closing of non-penal efforts in the Corruption Eradication Law, academically, this should be criticized. Even when compared between corruption crimes and other serious/extraordinary crimes (serious crimes or extraordinary crimes) such as narcotics and terrorism, these two laws on crimes can be said to be comprehensive (in which they contain "countermeasures" which consist of prevention activities, prosecution/punishment, and recovery). In contrast to the Anti-Corruption Eradication Law, which has no regulations regarding prevention [10].

Efforts to provide legal certainty have been made, the Attorney General through Circular No. B-113/F/Fd.1/05/2010 dated 18 May 2010 (SEJA) which is seen as a breakthrough in preventing Corruption crime is still being opposed even by colleagues (law enforcement officials and other government agencies) by putting forward the reason that SEJA has contrary to Article 4 of the Corruption Eradication Law. This phenomenon shows that there is no uniformity of thought in resolving state financial losses using non-penal efforts, although on the other hand, the President as the highest leader in eradicating corruption has urged to prioritize aspects of prevention over criminal law enforcement, however, the institutions led by the President are also still their pros and cons. The fact that differences of opinion occur between law enforcers and fellow government officials and stakeholders of State-Owned Enterprises (BUMN) certainly has a major impact on the achievement of prosperity which is continuously strived for by the BUMN sector. In fact, it has become the Government's national long-term plan to continuously transform SOEs to become agile, lean, and flexible [11].

Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to RI Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, has broadened the understanding of civil servants as one of the legal subjects (actors). Article 1 point 2 states that civil servants include:

1. Civil servants as referred to in the Law on Personnel;
2. Civil servants as referred to in the Criminal Code;
3. People who receive salaries or wages from a corporation that receives assistance from state or regional finance;
4. People who receive salaries or wages from other corporations that use capital or facilities from the State or the community.

This also includes placing BUMN managers as State Administrators who are subject to the perpetrators of the criminal provisions stipulated in Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 in accordance with the Explanation of Article 5 paragraph (2) are state administrators as referred to in Article 2 of RI Law Number 28 of 1999 concerning State Administrators who are clean and free from corruption, collusion, and nepotism. Article 1 point 1 of the Republic of Indonesia Law Number 28 of 1999 concerning State Organizers who are Clean and Free of Corruption, Collusion and Nepotism, states that: "State Organizers are State officials who carry out executive or judicial functions and other officials whose main functions and duties are related to with the administration of the State in accordance with the prevailing laws and regulations".

Article 2 of the Republic of Indonesia Law Number 28 of 1999, it is explained that what is meant by "State Organizers" includes:

1. State officials at the highest state institutions;
2. State officials at high state institutions;
3. Minister;
4. Governor;
5. Judge;
6. Other State Officials in accordance with the provisions of the applicable laws and regulations
7. Other officials who have strategic functions in relation to the administration of the State in accordance with the provisions of the applicable laws and regulations.

Furthermore, in the Elucidation of Article 2 number 7 of Law Number 28 of 1999 it is stated that what is meant by "other officials who have strategic functions" are officials whose duties and authorities in running the State are prone to practices of corruption, collusion and nepotism which include :

1. Directors, commissioners and other structural officials in BUMN and BUMD;
2. The leadership of Bank Indonesia and the leadership of IBRA;
3. Leaders of State Universities;
4. Echelon I officials and other officials who are equal in the civil, military and police of the Republic of Indonesia;
5. Prosecutor;
6. Investigators;
7. Court Clerk;
8. Project leader and treasurer.

It is generally known that there are 3 statutory regulations in the field of state finance which are derivations of Article 33 of the 1945 Constitution, consisting of Law no. 17 of 2003 concerning State Finances (State Finance Law), Law Number 1 of 2004 concerning the State Treasury (State Treasury Law), and Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK Law). The arrangements which are derivations of Article 33 of the 1945 Constitution above show a mixed conception of state finances in a broad sense. Until finally the three laws had become the object of examination in a judicial review with the issue of the intersection between public law and private law where BUMN as a legal entity is in the form of a limited liability company whose operations and legal basis are considered to enter into the private sphere. Until finally, the judicial review requested was not granted by the Constitutional Court as stated in Decision Number: 48/PUU-XI/2013 and Number: 62/PUU-XI/2013 dated 18 September 2014. In other words, the court has confirmed Article 2 letter g and letter i of the Constitutional State Finance Law which means that state finances separated into BUMN and BUMD remain state finances. The contents of the article in full, namely:

a. The state's right to collect taxes, issue and circulate money, and make loans;
b. The state's obligation to carry out state government public service duties and pay third party bills;
c. state revenue;
d. State spending;
e. Regional Revenue
f. Regional Expenditures;
g. State/regional assets that are managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets that are separated into state/regional companies;
h. Wealth of other parties controlled by the government in the context of carrying out governmental tasks and/or public interest;
i. Wealth of other parties obtained by using facilities provided by the government.

The PTPK Law also constructs state finances that are separated from BUMN as the scope of state finances as stated in the Explanation, namely: "all state assets in whatever form, separated or not separated, including all parts of state assets and all rights and obligations that arise Because:

1. is under the control, management and accountability of officials of state institutions, both at the central and regional levels;

2. are under the control, management, and accountability of state-owned enterprises/regional-owned enterprises, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the state.

After the issuance of Decision Number: 48/PUU-XI/2013 and Number: 62/PUU-XI/2013 dated 18 September 2014, it reaffirmed that BUMN assets are state assets and are still the object of examination by the Supreme Audit Agency which is also the object of elements of evidence Article 2 and 3 Corruption Eradication Laws. Furthermore, an interesting thing that needs to be considered in the scope of SOEs is the consideration of the panel of judges of the Constitutional Court (MK) in 2019, in decision No. 01/PHPU-PRES/XVII/2019 dated June 27, 2019, in the case of the presidential election dispute, it was discovered that "a subsidiary of a BUMN is not a BUMN". The Constitutional Court's decision is considered as strengthening the thinking on 5 (five) principles of the role of state control which does not only have to own and operate directly in managing state assets [12].

Judging from the capital, in general the capital of BUMN subsidiaries comes from BUMN. In plain view, the form of the company is no longer a Persero or Perum. In contrast to BUMN which have transformed into a holding company, the form of the company remains a Persero. BUMN companies in the form of Persero, whose capital has been converted into shares, most, or all of which are placement capital sourced from the State Budget. Meanwhile, the capital of BUMN subsidiaries comes from the assets of their parent company - BUMN. However, judging from its true ownership, this BUMN subsidiary is still in the corridor of BUMN supervision. SOE Persero is a legal entity that is separate from its founder, which in this case is the State or the Government. As an independent and separate legal entity, the actions taken by the Persero BUMN, as well as the responsibility for these actions are the actions and responsibilities of the Persero BUMN itself, not the actions of the State or the Government. Likewise with the ownership of wealth and assets. So, since the status of BUMN Persero as a legal entity, since then the law has treated shareholders and Directors separately from the BUMN Persero itself [13].

Companies with limited liability, not only the ownership of assets by the company that is separate from the money owned by the people who run the company but also the company's shareholders are not responsible for the company's debts. Article 4 paragraph (1) of Law Number 19 of 2003 concerning BUMN states that BUMN capital comes from separated state assets. Elucidation of Article 4 paragraph (1) clearly states the meaning and purpose of the separation of State assets by stating that what is meant by being separated is separating State assets from the State Revenue and Expenditure Budget to be used as State capital participation in BUMN for further development and management which is no longer based on the system STATE BUDGET. Meanwhile, the budget related to the PSO will remain subject to the provisions of the State Finance Law, because this budget is purely from the APBN and is still seen as part of the APBN whose management and accountability follow the accountability system for state finances. It should be explained beforehand, what is meant by PSO is the public service obligation carried out by BUMN Persero as a legal entity, because in accordance with the purpose of establishing BUMN Persero, in addition to pursuing profits, it also "organizes public benefits in the form of providing goods and/or services of high quality and adequate for the fulfillment of the lives of many people", or in other words in PSO, SOEs play the role of representatives of the Government/State because in essence it is the State that performs the public service function [3].

Based on this arrangement, there are two kinds of use of "State capital participation". First, which is used by the government to set up companies, and secondly "State Capital Participation" which is referred to simply as "participation". Because it is related to the State Budget, all of these investments must be used in Government Regulations (PP), while for investments originating from reserve capitalism and other sources, it is carried out by a GMS and by the Minister of State Enterprises. Other sources are asset revaluation profits and share premiums. The elucidation of Article 4 paragraph (5) of the BUMN Law, emphasizes that if these funding sources are to be used as participation, then there is no need to do so with a Government Regulation, because based on the explanation of Article 4 paragraph (2) that these funding sources have been separated from the APBN. The limitation on the use of the APBN mechanism is on the use of these funds. If then the funds mentioned above are not used as equity participation, but purely to finance government projects implemented by SOEs, then the responsibility is accountability in accordance with the principles of state financial management. So that if evaluating BUMN wealth is related to state finances, the legal regimes that can be applied are: a) the legal regime for state finances (State Finance Law) which regulates the management of state assets which are not separated from APBN/APBD); b) the corporate legal regime (BUMN Law) which regulates the management of separated State assets (BUMN); c) the legal regime of State Finance only applies to SOEs insofar as they relate to the capital and existence of SOEs. For example, the BUMN Law stipulates that establishment, merger, consolidation, acquisition, change of capital, the approval and dissolution of SOEs are stipulated by Government Regulations, and the process even involves the Technical Minister, the Minister of Finance, the President and the DPR. Meanwhile, operational actions (outside the capital and existence of SOEs) are fully subject to the corporate law regime [14].

Thus, the position of BUMN Persero's wealth is related to two legal aspects that regulate it, namely state finance law (public) and corporate law (private). when the state or government wants to establish a Persero state-owned company or when the state includes a PSO budget in the APBN and then gives a mandate to state-owned companies to carry it out, the government's actions are still under the power of public law which is carried out in the form of a statement of intent (wilsverklaring) in the form of a government regulation. However, when the wealth separated from the APBN has entered the capital of the Persero BUMN which consists of shares, the management will automatically comply with the provisions of the law on limited liability companies, and this does not apply to the budget for implementing the PSO which remains part of the implementation of the APBN.

The reality that is happening now in law enforcement actions, there is no clear separation of state status in the management of SOE assets. Losses arising from transactions carried out by an agency or corporation that are clearly corporations with separated state assets have the potential to be interpreted as state losses which lead to threats of corruption.

C. Criminal Instruments: Related to Law No. 31 of 1999 Jo. Law No. 20 of 2001 Article 2 Paragraph (1) and Article 3 Jo. Explanation of Article 32.

Law Number 17 of 2003 concerning State Finance which uses an approach from the side of objects, subjects, processes and objectives in formulating state finances. In terms of objects, what is meant by State Finances includes all state rights and obligations that can be valued in money, including policies and activities in the fiscal, monetary and management of state assets that are separated, as well as everything whether in the form of money or in the form of goods that can be used as property. the state in relation to state finances includes all the objects as mentioned above which are owned by the state, and/or controlled by the Central Government, Regional Governments, State/Regional Companies, and other bodies which are related to state finances. From a process standpoint, state finances cover a whole series of activities related to the management of the objects mentioned above starting from policy formulation and decision making to accountability. In terms of objectives, state finances cover all policies, activities and legal relations related to the ownership and/or control of the objects referred to above in the context of administering the State Government.
In Article 34 of Law no. 17 of 2003 concerning State Finance there are several elements so that the actions committed are criminal acts, including:

(1) Ministers/Heads of institutions/Governors/Regents/Mayors who are proven to have deviated from the policies stipulated in the law on APBN/Regional Regulations on APBD shall be threatened with imprisonment and fines in accordance with the provisions of the law.
(2) Heads of Organizational Units of State Ministries/Institutions/Regional Work Units proven to have committed deviations from budgetary activities as stipulated in the law on APBN/Regional Regulations on APBD shall be subject to imprisonment and fines in accordance with the provisions of the law.

Law No.1 of 2004 Concerning the State Treasury, article 62 paragraph (2) states that: If in the examination of state/regional losses as referred to in paragraph (1) a criminal element is found, the Supreme Audit Agency will follow up on it in accordance with the statutory regulations apply. Then in article 64 it is emphasized that treasurers, non-treasurer civil servants, and other officials who have been appointed to compensate state/regional losses may be subject to administrative sanctions and/or criminal sanctions and criminal decisions do not exempt from demands for compensation.
In connection with the criminal sanctions mentioned in Law no. 1 of 2004 and Law Number 17 of 2003 concerning State Finance, then in Law no. 15 of 2004 concerning Examination of State Financial Management and Responsibility, regulated criminal provisions contained in Chapter VI article 24 to article 26.
Article 24 stipulates that:
Everyone who deliberately does not carry out the obligation to submit documents and/or refuses to provide management and responsibility for state finances as referred to in Article 10 shall be subject to imprisonment for a maximum of 1 year and 6 months and/or a maximum of Rp. 500,000,000.- (five hundred million rupiahs).
Anyone who deliberately prevents, impedes and/or thwarts the examination as referred to in Article 10 shall be subject to imprisonment for a maximum of 1 year and 6 months and/or a fine of up to Rp. 500,000,000.- (five hundred million rupiah).
Anyone who refuses a summons made by the PemerK Agency as referred to in Article 11 without submitting reasons for refusal in writing shall be subject to imprisonment for a maximum of 1 year and 6 months and/or a fine of up to Rp. 500,000,000.- (five hundred million rupiah).
Any person who deliberately falsifies or falsifies the documents submitted as referred to in paragraph (1) shall be subject to imprisonment for a maximum of 3 years and/or a fine of up to Rp. 1,000,000,000.- (one billion rupiah).
In paragraphs (1) and (2) above it is a criminal provision if the management and accountability of state finances are not in accordance with Article 10, which contains that the examiner in carrying out his duties must carry out:

a. Ask for documents that must be submitted by officials or other parties related to the implementation of audits of state financial management and responsibility.
b. Access all data stored in various media, assets, locations, and all types of goods or documents in the possession or control of the entity that is the object of inspection or other entities that are deemed necessary in carrying out their audit duties.
c. Carrying out the sealing of places where money, goods, and state financial management documents are stored.
d. Ask someone for information.
e. Taking pictures, recording and/or taking samples as a tool for examination.

Whereas in paragraph (3) is the implementation of the article, which is a criminal provision, if in the context of requesting information as referred to in Article 10 letter d, it turns out that the summons is rejected by the person who will be examined by the BPK without any reason for rejection in writing.

IV. CONCLUSION

1. Criminal Responsibility of the Company's Commissioners Who Commit Corruption Crimes The application of the concept of "collegiality" to the Company's Board of Commissioners is not absolutely applied in terms of authority and responsibility, but the

law also opens exceptions to this concept of collegial responsibility, in terms of what is stated in Article 114 paragraph (5) Limited Liability Company Law.

2. PERMA No. 13 of 2016, Corporations do not adhere to the doctrine of vicarious liability or identification theory. The PERMA of Corporations means that the corporation is responsible because the Corporation itself commits criminal acts and enjoys the proceeds of these crimes. This is certainly contrary to the concept or doctrines of Corporate Crime concerning Corporate Responsibility and in essence, the element "benefiting the corporation" should be an element in Corporate Crime, not as a determinant of corporate guilt.

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