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Juridical Review of the Phrase "Unlawful" in Decisions on Corruption Crimes in State-Owned Legal Entities

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Abstrak
In several court decisions in cases of criminal acts of corruption in State-Owned Enterprises (SOE), the phrase "against the law" is in Article 2 paragraph 1 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended based on Law Number 20 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Anti Corruption Act) is interpreted broadly by referring to the explanation of these regulations. Because it relates to an offense, the phrase "against the law" should be interpreted by taking into account the principle of legality, the principle of nullum delictum nulla poena sine previa lege poenali. The use of a broad interpretation of the phrase "against the law" results in unclear differences between unlawful acts in the context of civil law and (onrechtmatige daad) and unlawful acts in the context of criminal law (wederrechtelijkheid). This results in the risk of criminalization of SOE officials, giving rise to fear in making business decisions. The formulation of the problem in this research is how to interpret the phrase "against the law" in article 2 paragraph (1) of the Corruption Law when it is related to cases of criminal acts of corruption in SOE and what is the judge's interpretation of the phrase "against the law" in decisions court for criminal acts of corruption in SOE. The research method used is a research method with a normative juridical approach. The results of the research show that the phrase "against the law" is interpreted broadly in the explanation of article 2 paragraph (1) of the Corruption Law, and judges in several corruption crime decisions interpreted the phrase "against the law" broadly, resulting in violations of the Standard Operating Procedure, Work Plan and The Company's Articles and other internal company regulations are interpreted as unlawful acts that can be considered a criminal act of corruption.

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1. INTRODUCTION

The phenomenon of criminal acts of corruption within BUMN has caused damage to the image of BUMN. There is a growing opinion in society that BUMN are often used as cash cows by unscrupulous officials and politicians. BUMN is considered not free from pressure or influence from within or outside the BUMN itself because it is often intervened by various parties, including the government, both politically and economically.

In many cases, criminal acts of corruption are closely related to criminal acts of money laundering. This is because the perpetrators usually disguise the proceeds of criminal acts of corruption by purchasing assets such as property, investments and so on. So, it is not uncommon for perpetrators of criminal acts of corruption to also be charged with money laundering crimes. Indications of criminal acts of corruption by state officials in BUMN are monitored through the State Officials' Wealth Report (LHKPN).

There are a series of cases of major criminal acts of corruption in BUMN which have become a national issue, such as: (i) Cases of criminal acts of corruption in Bank Mandiri credit distribution transactions with the convicted main director who was found guilty in 2005, (ii) Cases of criminal acts of corruption in transactions aircraft rental by PT Merpati

Nusantara Airlines (Persero) with its main director as a convict who was found guilty in 2016, (iii) Corruption crime caseBank Indonesia Liquidity Assistance (BLBI) with a fantastic loss value of IDR 164.536 Trillion in 1998, (iv) Case of criminal acts of corruption at PT Asuransi Jiwasraya (Persero) with a loss value of IDR 16.8 Trillion in the 2013-2018 period, (v) PT ASABRI (Persero) corruption criminal case with a loss of IDR 23 trillion in 2012-2019 and other major cases. This series of casesshows how vulnerable a BUMN official is to being caught in a corruption case with a very large value.

The cases of criminal acts of corruption that ensnared BUMN administrators presented in this article raise concerns about the business continuity of BUMNs. The disclosure of these cases of criminal acts of corruption indicates that efforts are underway to eradicate criminal acts of corruption within BUMN. However, this also raises concerns for BUMN administrators in making business decisions because they are worried that there will be efforts to criminalize and politicize. Criminalization of BUMN management and politicization of BUMN corruption cases can be minimized if regulations for eradicating corruption in BUMN are carried out properly and appropriately. With appropriate regulations and effective implementation of corruption eradication programs carried out by the government, the criminalization of BUMN officials and the politicization of BUMN corruption cases can be minimized. If Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended based onLaw Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Crime (UU Tipikor) has weaknesses, sore vision of the articlesThe Corruption Law is the right solution to avoid efforts to criminalize BUMN officials and politicize cases of BUMN corruption.

Based on the author's observations, there have been several attempts to request a review of the Corruption Law which were carried out through the Constitutional Court of the Republic of Indonesia (MK-RI). One of them is a review of article 2 paragraph (1) of the Corruption Law regarding state losses as decided in the MK-RI Decision Number 25/PU-XIV/2016. Based on this decision, a criminal act of corruption is deemed to have occurred if an actual loss has occurred, not just a potential loss.

Efforts to petition the MK-RI for review of the articles of the Corruption Law did not stop there. There are several requests for review of articles of the Corruption Law and the State Finance Law that have been submitted to the MK-RI. According to the author, this should not always be seen as resistance by the corrupt camp to efforts to eradicate criminal acts of corruption, but can be seen as a positive thing. It needs to be acknowledged that several provisions in the Corruption Law and other related laws are still imperfect and need revision. The MK-RI Decision Number 25/PU-XIV/2016 shows that the Corruption Law still has weaknesses and in the future it will still require revision because it still contains many weaknesses in its implementation.

In this article, the author raises problems that are often found in court decisions regarding criminal acts of corruption in BUMN. This problem is related to the interpretation of the phrase "against the law" in the explanation of article 2 paragraph (1) of the Corruption Law. According to the author, the explanation of the phrase "against the law" in article 2 paragraph (1) of the Corruption Law is very likely to be used to criminalize BUMN officials. There are several cases of criminal acts of corruption in BUMN which should be civil cases, but due to the use of the explanation of article 2 paragraph (1) of the Corruption Law, the judge at the corruption court considers them to be cases of criminal acts of corruption.

The explanation of article 2 paragraph (1) of the Corruption Law results in the blurring of the difference between "acts against the law" in criminal law, and "acts against the law" in civil law. "Unlawful act" is a term translated from Dutch, namely "onrechtmatige daad" in civil law, and "wederrechtelijkheid" in criminal law. Both the term "onrechtmatige daad"

and the term "wederrechtelijkheid" are defined as "acts against the law" in Indonesian. This is the root of the problem raised by the author in this article.

2. RESEARCH METHOD

The legal research method used in this research is the normative legal research method. This research examines positive law related to legal conceptions, legal principles and legal rules contained in laws and regulations related to the eradication of criminal acts of corruption that apply in Indonesia. The author uses a legislative approach in this research to look for legal ratios and ontological bases to find out whether there is a philosophical conflict between the law on eradicating criminal acts of corruption and other laws and regulations related to criminal law and civil law.

Data collection was obtained by searching statutory regulations, scientific literature and documents resulting from expert research that are relevant to this research. Secondary data collected consists of: (i) Primary legal material in the form of statutory regulations relating to the selected object consisting of laws and other relevant regulations,(ii)Secondary legal materials in the form of written works from experts related to this research, magazines, journals, articles from various print media, internet websites and related research results, and(iii)Tertiary legal materials are supporting primary and secondary legal materials in the form of language dictionaries, and so on.

3. RESEARCH RESULTS AND DISCUSSION

3.1.Research result

The interpretation of the phrase "against the law" in article 2 paragraph 1 of the Corruption Law is contrary to the principle of legality or the principle of *nullum delictum nulla poena sine previa lege poenali*, which means that an act can only be punished if the act violates the law that regulates the crime.

The verdict on the criminal act of corruption in aircraft rental transactions at PT Merpati Nusantara Airlines (Persero) (MNA) shows that the Panel of Judges of the Supreme Court of the Republic of Indonesia interpreted the phrase "against the law" broadly by stating that the action of the President Director of MNA who paid a security deposit worth USD 1 million as an act that can be punished because it is carried out without changing the RKAP or submitting approval again to the GMS for changes to the RKAP. However, the attitude of the Panel of Judges at the Supreme Court of the Republic of Indonesia was different in its decision regarding the alleged criminal act of corruption in the acquisition transaction of the BMG Block, Australia by PT Pertamina (Persero). KA as the President Director of Pertamina who also serves as the President Commissioner of PHE is deemed not to have committed any unlawful act in this transaction, because PHE is not a BUMN.

3.2.Discussion

3.2.1 Interpretation of the phrase "against the law" in Article 2 paragraph (1) of the Corruption Law

"Phrase" or "phrase" or in English known as "phrase" isis a combination of two or more words that form a meaning. Phrases are non-predicative or are often explained as a combination of words that fill one of the syntactic functions (subject, object, description and complement) in a sentence. The term "against the law" is a phrase that is part of an "act against the law" which can function as a subject, an object or a predicate. "Unlawful act" is a term translated from Dutch, namely "onrechtmatige daad" in civil law, and "wederrechtelijkheid" in criminal

law. Both the term "onrechtmatige daad" and the term "wederrechtelijkheid" are defined as "acts against the law" in Indonesian.

According to PAF Lamintang,the use of the term "wederrechtelijkheid" by legislators to indicate the illegal nature that can be found in various offense formulations. The use of the word "illegally" indicates the illegitimate nature of an intention or action. The definition of "illegally" also means that an action is contrary to objective law. Or in other words, illegal acts can also be defined as (i) acts that conflict with objective law, (ii) acts that conflict with the rights of other people, and (iii) acts carried out without rights or authority.

Van Hattumas quoted by Mahrus Ali, he believes that the word "wederrechtelijkheid" must be limited only to written law or those that conflict with written law. This is in line with Simons' opinion which states that an unlawful act is considered an offense if it is expressly stated in the statutory regulations. According to Sudarto, the nature of being against the law according to criminal law doctrine is divided into 2 (two) types, namely the nature of being against the formal law and the nature of being against the material law. Formally against the law is an act that is said to be against the law if the act is threatened and formulated as an offense in law. Meanwhile, the nature of being against material law is that an act is said to be against the law if the act is contrary to unwritten law in the form of disgraceful acts, namely violations of propriety, prudence and accuracy that live in society.

According to Wirjono Prodjodikoro as quoted by Jonker Sihombing, the term "act against the law" which is found in the field of criminal law and the field of civil law actually has different meanings. Unlawful acts in the field of criminal law are intended to protect public interests, while in the field of civil law they are intended to protect the interests of each individual. In statutory regulations, the terms "onrechtmatige daad" and "wederrechtelijkheid" are only translated as "acts against the law" because Indonesian does not have a complete vocabulary for these two terms. This then often causes problems. The doctrine of unlawful acts in the civil sphere is increasingly developing, including acts that are contrary to unwritten rules, the caution that a person should have in socializing in society, as well as violations that can affect the property of members of the community.

In line with Wirjono Prodjodikoro's opinion, Rosa Agustina provides a clear distinction between unlawful acts in the field of criminal law and unlawful acts in the field of civil law. Acts against the law in the field of criminal law are intended to protect the public interest, while acts against the civil law are intended to protect the interests of each individual.

One of the elements of an offense contained in article 2 paragraph (1) of the Corruption Law is an unlawful act. The interpretation and opinions of legal experts regarding unlawful acts need to be considered in interpreting the phrase "against the law" contained in the offense of Article 2 paragraph (1) of the Corruption Law and in conducting a juridical study of the use of the phrase "against the law" in criminal court decisions. corruption. Apart from article 2 paragraph (1) of the Corruption Law, there are other laws and regulations that use the term "act against the law". The concept of "act against the law" must be seen from 2 (two) sides, namely civil law and criminal law. Discussions regarding unlawful acts contained in article 2 paragraph (1) of the Corruption Law must focus on the criminal law side, because one of the objects examined in this paper is court decisions regarding criminal acts of corruption in BUMN.

According to Vidya as quoted by M. Dana Pratama Huzaini, there must be a real causal relationship between actions carried out by a civil servant or public official which are carried out against the law or abuse the authority, opportunities or means available to him because of his position or position, and wealth. obtained unfairly.

The second element contained in article 2 paragraph (1) of the Corruption Law is not only unlawful acts that enrich oneself which can be considered a criminal act of corruption. The act of enriching another person or a corporation can also be considered a criminal act of corruption. Because actions that enrich other people, carried out against the law and harm state finances, are sufficient grounds for the panel of judges to determine him as a corruption convict.

The second element in article 2 paragraph (1) of the Corruption Law must be interpreted by taking into account the explanation of article 2 paragraph (1) of the Anti-Corruption Law. The use of the word "can" in Article 2 paragraph (1) and Article 3 of the Corruption Law makes the offense of Article 2 paragraph (1) of the Anti-Corruption Law a formal offense. With the word "can" in article 2 paragraph (1) of the Corruption Law, an act that has the potential to result in state losses is enough to ensnare state civil servants or BUMN officials, even though state losses have not yet occurred. The definition of an act that has the potential to result in state losses is an act that has been carried out but has not yet resulted in state losses. Or in other words, a potential loss that has not yet occurred is sufficient as long as it is clear that there is an effort put into action to do so.

Based on the MK-RI Decision Number 25/PUU-XIV/2016, the MK-RI stated that the word "can" in the element "can harm state finances" in article 2 paragraph (1) of the Corruption Law is declared unconstitutional and no longer has legal force. because it is contrary to the 1945 Constitution. PostMK-RI Decision Number 25/PU-XIV/2016, the offense of article 2 paragraph (1) and article 3 of the Corruption Law is no longer a formal offense, but a material offense.So, in order for the offense of Article 2 paragraph (1) of the Corruption Law to be considered fulfilled, a state loss must first have occurred (actual loss).

The interpretation of the phrase "against the law" in article 2 paragraph 1 of the Corruption Law is contrary to the principle of legality or the principle of *nullum delictum nulla poena sine previa lege poenali*, which means that an act can only be punished if the act violates the law that regulates the crime.The explanation of article 2 paragraph (1) of the Corruption Law is explained as follows:

> *What is meant by "unlawfully" in this Article includes acts against the law in the formal sense as well as in the material sense, that is, even though the act is not regulated in statutory regulations, if the act is considered reprehensible because it is not in accordance with the sense of justice or norms. norms of social life in society, then this act can be punished. In this provision, the word "can" before the phrase "harm the state's finances or economy" indicates that the criminal act of corruption is a formal offense, namely that the existence of a criminal act of corruption is sufficient for the fulfillment of the elements of the action that have been formulated, not for the consequences to arise.*

The explanation of article 2 paragraph (1) of the Corruption Law is the law's interpretation of unlawful acts. Explanation of article 2 paragraph (1) of the Corruption Law, the concept of unlawful acts in a broad sense. This explanation emphasizes that what is considered an unlawful act that can be punished is not only an unlawful act in the formal sense, but also an unlawful act in the material

sense. Acts against the law in a material sense can be acts that are considered disgraceful because they are not in accordance with a sense of justice or the norms of social life in society. The explanation of article 2 paragraph (1) of the Corruption Law is in line with this idea Satochid Kartanegarawhich divides "acts against the law" or wederrechtelijk into 2 (two) groups, namely; (i) formal wederrechtelijk, and (ii) material wederrechtelijk.

Interpretation of the phrase "against the law" using concepts of *wederrechtelijk* material can cause problems. One of them is because the definition of "disgraceful act" is not regulated in statutory regulations. The phrase "despicable act" is more often used as criminal law terminology than as a religious or social norm. It is necessary to create a clear definition of the phrase "disgraceful acts" when applied in the context of eradicating criminal acts of corruption in BUMN. "Disgraceful acts" as stated in the explanation of article 2 paragraph (1) of the Corruption Law are acts that are not in accordance with social norms in society. Lawmakers need to further explain what norms are meant in the context of criminal acts of corruption in government agencies, especially BUMN. Because there are many norms that are applied in BUMN as a company, such as accounting norms, good corporate management norms (principles of Good Corporate Governance), personnel code of ethics, articles of association, bylaws, Work Plan and Company Budget (RKAP), Standard Operating Procedures (SOP) in carrying out work, company policies and others.

Understanding the explanation of article 2 paragraph (1) of the Corruption Law must be done within a frame of mind the principle of Nullum Delictum Nulla Poena Sine Previa Lege Poenalior the principle of legality. The principle of legality is also regulated in article 1 of the Criminal Code which states that an act cannot be punished unless it is based on the strength of existing statutory provisions. An act that can be punished must first be regulated by a law that regulates it.

Explanation of article 2 paragraph (1) of the Corruption Law which provides an understanding ofunlawful acts in the broadest sense. This is basically contrary to the principle of legality or article 1 of the Criminal Code. If the explanation of article 2 paragraph (1) of the Corruption Law is used, then the actions of members of the Board of Directors, members of the Board of Commissioners and structural officials of BUMN which only conflict with the norms applicable in BUMN can be punished. For example, actions by members of the Board of Directors or members of the Board of Commissioners of a BUMN that are contrary to the articles of association of the BUMN can be punished. Likewise, if the actions of a member of the Board of Directors or Board of Commissioners of a BUMN that violates the company's RKAP can be considered a criminal act of corruption. In fact, if these actions are carried out in a privately owned legal entity, they are purely unlawful acts in the context of civil law as regulated in article 92 paragraph (1) and article 64 paragraph (1) and (2) of Law Number 40 of 2007 concerning Companies Limited (Limited Liability Company Law).

Does the explanation of article 2 paragraph (1) of the Corruption Law have the same binding legal force as article 2 paragraph (1) of the Corruption Law? An explanation of a law has a function that is related to the body of the law. The explanation of the law is a description of the drafter of the law. By explaining the law, the parties to whom the law is intended know the background to the creation, aims and objectives of the formation of the law as well as everything that is deemed necessary to explain.

Attachment 1 number 176 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, explains that the explanation of the law is a means of clarifying the norms in the body of the law and must not result in ambiguity in the application of a law. Therefore, the explanation of a law should not require further explanation. An explanation of the law cannot also be used as a legal basis for making further regulations and including formulations containing norms. The explanation of a law is not a legal basis or norm that is different from the body of the law itself. So that judges' decisions in court cannot use legal explanations in making decisions.

The explanation of article 2 paragraph (1) of the Corruption Law should not emphasize the interpretation of the phrase unlawful act with concepts of *wederrechtelijk* (act against the law) material. Because this causes deviations from important principles in criminal law, namely *Nullum Delictum Nulla Poena Sine Previa Lege Poenali*or the principle of legality as also regulated in article 1 of the Criminal Code.

3.2.2 Interpretation of the Phrase "Unlawful" in Several Corruption Court Decisions

a. Verdict on the Crime of Corruption in Aircraft Rental Transactions at PT Merpati Nusantara Airlines (Persero)

In the case of the criminal act of corruption in the rental of 2 (two) MNA aircraft, the panel of judges at the Jakarta Corruption Court handed down acquittals to two defendants in the criminal act of corruption in the rental of MNA aircraft, namely the former Main Director of MNA, HN and the former General Manager of Aircraft Procurement of MNA, Tony Sudjiarto (TS) in a separate file. According to the Panel of Judges at the Jakarta Corruption Court, the actions of the two defendants did not meet the elements of the primary or subsidiary charges. The element of unlawfulness in the primary indictment of Article 2 paragraph (1) of the Corruption Law was declared not proven because the security deposit of USD 1 million from MNA to TALG was refundable or the money could be returned at any time if TALG defaulted. This is a business risk faced by MNA even though the precautionary principle is still applied. The element of benefiting oneself, other people or the corporation is not proven. Neither of the two defendants benefited from this case and there was no malicious intent from the start in the LASOT agreement which benefited TALG. This is proven by the existence of a refundable clause.

At the cassation level at the Supreme Court of the Republic of Indonesia, HN was found guilty and sentenced to 4 years in prison and a fine of IDR 200 million. The Panel of Judges at the Supreme Court of the Republic of Indonesia assessed that HN was legally and convincingly proven to have violated Article 2 paragraph (1) of the Corruption Law by enriching individuals/corporations, namely TALG and Hume & Associates Law Firm, thereby causing state financial losses worth USD 1 million.HN as the President Director was also considered guilty for not changing the RKAP or resubmitting approval to the GMS for changes to the RKAP, related to the plan to lease 2 (two) Boeing aircraft. The Panel of Judges of the Supreme Court of the Republic of Indonesia also considered that this act was an unlawful act because it violated

article 22 paragraphs (1) and (2) of Law Number 19 of 2003 concerning State-Owned Enterprises (UU BUMN) and article 35 paragraph (1), (2), and (3) Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises.

Even though it has not yet received approval from the GMS, HN is still carrying out plans to lease the 2 (two) Boeing aircraft. MNA accepted the proposal from TALG and made an agreement with TALG, one of which was depositing USD 1 million into the Hume & Associates Law Office account. Even though the 2 (two) aircraft to be rented are still in the control and ownership of East Dover, Ltd. HN was deemed to have committed an unlawful act because he paid a security deposit worth USD 1 million without going through the L/C mechanism. HN ordered the funds to be deposited into the Hume & Associates Law Firm account even though there had not been a Purchase Agreement signed between TALG and East Dover Ltd as the aircraft owner. Apart from that, HN is also considered to have ignored the legal opinion submitted by the risk management team regarding cooperation with TALG.

Panel of judges of the Supreme Court of the Republic of Indonesia punished HN because he was proven to have committed a criminal act of corruption with a sentence of four years in prison and a fine of IDR 200 million with the provision that if the fine was not paid it would be replaced by imprisonment for 6 months.

HN's action of using a security deposit in aircraft rental transactions by MNA is considered a negligent act and ignores the principles of prudence and thoroughness as known in the fiduciary duty doctrine. HN's actions are not in line with the provisions of article 97 paragraph (2) of the Limited Liability Company Law which regulates that the management of limited liability companies must be carried out by every member of the Board of Directors in good faith and full responsibility. Based on the explanation of article 97 paragraph (2) of the Limited Liability Company Law, "full responsibility" means that the management of a limited liability company must be carried out carefully and diligently.[1]HN's actions are considered unlawful acts that can be punished based onexplanation of article 2 paragraph (1) of the Corruption Law. So the Panel of Judges at the Supreme Court considered that HN's actions as President Director of MNA had violated Article 97 paragraph (2) of the Limited Liability Company Law.

b. Verdict on Alleged Crime of Corruption Transaction Acquisition of the Basker Manta Gummy Block by PT Pertamina (Persero)

Karen Agustiawan (KA), President Director of PT Pertamina (Persero) (Pertamina) was charged with ignoring the investment procedures applicable to Pertamina and other investment provisions or guidelines at the time of acquisition.10 percent Participating Interest in the development of the BMG Block, Australia. The signing was even carried out without approval from the legal unit and the Pertamina Board of Commissioners. Agreement for Sale and Purchase was signed on May 27 2009 with a transaction value of USD 31.5

[1]Based on the Big Indonesian Dictionary, the term "thoroughly" is defined as "careful", "careful" or "precise", while "diligent" is defined as "serious" and "diligent".

million. Pertamina also bears other costs from the BMG Block amounting to USD 26 million. With costs equivalent to IDR 568 billion, Pertamina projects that the BMG Block, Australia will produce up to 812 barrels of oil per day. However, in fact, the BMG Block, Australia can only produce 252 barrels of crude oil per day.

On November 5 2010, the BMG Block, Australia was closed and production stopped because it was deemed uneconomical to continue. As a result, the investment that Pertamina has made does not provide benefits or benefits in increasing national oil reserves and production.

The Jakarta Corruption Court decided that KA's actions had enriched ROC Ltd, Australia, thereby causing state financial losses amounting to IDR 568 billion. The panel of judges at the Jakarta Corruption Crime Court (Tipikor) sentenced KA to 8 years in prison because he was found guilty of committing a criminal act of corruption in investment.10 percent Participating Interest in the development of the BMG Block, Australia. KA is also required to pay a fine of Rp. 1 billion rupiah subsidiary to 4 months in prison.KA escaped the primary indictment of article 2 paragraph (1) in conjunction with article 18 paragraph (1) letter b of the Corruption Lawin conjunction with article 55 paragraph (1) of the Criminal Code. Even though he escaped the primary charges, according to the Panel of Judges at the Jakarta Corruption Crime Court, KA was deemed guilty of violating Article 3 of the Corruption Law in conjunction with Article 55 paragraph (1) of the Criminal Code, which is a subsidiary charge. The reason why the Panel of Judges at the Jakarta Corruption Crime Court considered KA to have violated the subsidiary charges, not the primary charges, was because based on the evidence and witnesses in the judicial process, KA was deemed to have abused his authority.

The Panel of Judges at the Jakarta Corruption Crime Court is of the opinion that the primary indictment provisions of Article 2 paragraph (1) of the Corruption Law cannot be prosecuted. According to the Panel of Judges at the Jakarta Corruption Crime Court, KA was not proven to have violated Article 18 paragraph (1) letter b of the Corruption Law which required him to pay state financial losses amounting to IDR 568 billion. So, the Panel of Judges at the Jakarta Corruption Crime Court released the defendant from this obligation because KA did not enjoy the money in question.

At the cassation level, The Panel of Judges at the Supreme Court of the Republic of Indonesia rejected the cassation petition from Cassation Petitioner I/Public Prosecutor and granted the cassation petition from Cassation Petitioner II/Defendant and canceled the Corruption Crime Court Decision at the DKI Jakarta High Court Number 34/Pid.Sus-TPK/2019/PT. DKI, dated September 24 2019 which strengthened the Corruption Crime Court Decision at the Central Jakarta District Court Number 15/Pid.Sus/TPK/2019/PN Jkt.Pst., dated June 10 2019.

The decision of the Supreme Court of the Republic of Indonesia was issued with the following considerations; (i) The "loss" experienced by PHE is actually an impairment, namely a corporate action in the form of a decrease in the value of assets which is fluctuating in nature and is not a real corporate loss, (ii) The loss suffered by PHE as a subsidiary of Pertamina is not is a real state financial loss because it is only a fluctuating decrease in value and based on the Decision of the Constitutional Court of the Republic of Indonesia Number 01/PHPUPres/XVII/2019 dated 27 June 2019, it is stated that the

participation and placement of BUMN capital in a BUMN subsidiary does not make the subsidiary a BUMN, (iii) The finances of BUMN subsidiaries do not include state finances as per the Decision of the Constitutional Court of the Republic of Indonesia Number 01/PHPU Pres/XVII/2019 so that the losses experienced by PHE as a Pertamina subsidiary are not state financial losses because PHE as a Pertamina subsidiary is not subject to State Finance Law and BUMN Law, (iv) What PHE experienced was a fluctuating decline in asset value (impairment) in bookkeeping/recording in accordance with Financial Accounting Standards, (v) Regarding permission and approval from the Board of Commissioners, KA has received permission and approval for bidding through Board of Commissioners Memorandum dated 30 April 2019, but the day after signing the Sale Purchase Agreement on 27 May 2009 in Sidney, the Board of Commissioners showed an ambivalent attitude, and (vi) What KA and other Pertamina Board of Directors did was in the context of developing Pertamina by trying to increase oil and gas reserves so that the steps taken by the defendant as President Director of Pertamina and President Commissioner of PHE do not go outside the realm of Business Judgment Rules. This is characterized by the absence of elements of fraud, conflict of interest, unlawful acts and intentional mistakes.

4. CONCLUSION

The phrase "against the law" in article 2 paragraph (1) of the Corruption Law must be interpreted by taking into account the principle of legality regulated under article 1 of the Criminal Code, which states that an act cannot be punished unless it is based on the strength of existing legislation. In other words, an act can be punished if there is a law that regulates it first. The broad interpretation of the phrase "against the law" in the explanation of article 2 paragraph (1) of the Corruption Law can be considered contrary to the principle of legality which has been regulated under article 1 of the Criminal Code. If the interpretation contained in the explanation of article 2 paragraph (1) is applied, then the actions of members of the Board of Directors or members of the Board of Commissioners that are contrary to internal norms (articles of association, SOP, internal policies, etc.) that apply in BUMN can be considered a criminal act. corruption. And the explanation of article 2 paragraph (1) of the Corruption Law is not a legal basis or norm that is different from article 2 paragraph (1) of the Corruption Law. The explanation of article 2 paragraph (1) of the Corruption Law should not contain any hidden changes to the provisions of statutory regulations as explained in Attachment 1 number 178 of the P3 Law. The explanation of article 2 paragraph (1) of the Corruption Law can be considered to contain a hidden and very basic change, because the application of statutory regulations related to criminal law should not deviate from article 1 of the Criminal Code.

The verdict on the criminal act of corruption in aircraft rental transactions at MNA shows that the Panel of Judges at the Supreme Court of the Republic of Indonesia interpreted the phrase "against the law" broadly. HN's action as the Main Director of MNA in paying a security deposit worth USD 1 million is considered an act that can be punished because it was carried out without changing the RKAP or submitting approval again to the GMS for changes to the RKAP. In other words, HN's actions as President Director of MNA are considered to violate the RKAP which has been approved by the MNA GMS which is considered an unlawful act that can be punished under article 2 paragraph (1) of the Corruption Law. The attitude of the Panel of Judges at the Supreme Court of the Republic of Indonesia is different in its decision regarding the alleged criminal act of corruption in

the acquisition transaction of the BMG Block, Australia by the Main Director of PT Pertamina (Persero). KA as the President Director of Pertamina who also serves as the President Commissioner of PHE is deemed not to have committed any unlawful act in this transaction, because PHE is not a BUMN. In fact, KA's actions as President Director of Pertamina can be considered to have pierced the corporate veil against Pertamina as a PHE shareholder. KA's actions can be considered an unlawful act that has harmed state finances, in this case, there has been a decrease in the value of Pertamina's investment in PHE due to a decrease in the value of the BMG Block.

It would be better if the phrase "against the law" in article 2 paragraph (1) of the Corruption Law should be interpreted only in relation to written unlawful acts, namely the law, especially in responding to cases of criminal acts of corruption in BUMN. The interpretation of the phrase "against the law" or "wederrechtelijkheid" in a broad sense causes the difference between "wederrechtelijkheid" and "onrechtmatige daad" to be unclear. As a result, many civil cases that should be seen as the negligence of members of the Board of Directors or Board of Commissioners in carrying out their fiduciary duties have turned into cases of criminal acts of corruption. It is necessary to reformulate the meaning of the phrase "against the law" in article 2 paragraph (1) of the Corruption Law. In other words, the explanation of article 2 paragraph (1) of the Corruption Law needs to be revised.

Legal experts have long debated the meaning of "wederrechtelijkheid" in the context of implementing article 2 paragraph (1) of the Corruption Law. It is necessary to carry out further legal studies until an agreement or joint formulation is reached between academics and practitioners regarding the meaning of "wederrechtelijkheid" in the context of eradicating BUMN corruption. "Wederrechtelijkheid" must be interpreted as an act against written law, namely the law.

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