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## **Civil Responsibilities *Badan Usaha Nilik Negara (BUMN)* Surveillance Bodies Faced With Damages in The Context of Civil Corruption**

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### **ABSTRACT**

The legal body is a terminology that is closely related to the right person, and the legal body itself is a closely connected terminology with the field of civil law. The research used to answer the question in this study is a combination of normative law research and empirical law research. Approaches that can be applied in research are case approaches, legal approach, conceptual approaches and historical approaches. As for the discussion that will be analyzed in this study on how the fulfilment of the elements of criminal responsibility to the supervisory body and how the corporate criminal responsibilities and the responsibility of the supervisor body are separated. The results of this study show that there is criminalization of the Supervisory Body in the event of the loss of the BUMN and this is a Tool of Social Engineering in order to raise the awareness of the oversight body so that the supervision function to the direction in conducting the management of the BUMN can be implemented as it should.

**Keywords:** BUMN, losses, criminal responsibility, and corruption

### **INTRODUCTION**

Criminal law is the law which regulates the acts prohibited by law and consequently imposes punishment on anyone who does so and fulfils the elements of the offence specified in the provisions of the Penal Code (Antonyan & Polyakov, 2022; Chaney & Sahoo, 2020). The law determines that it is man that it acknowledges as having rights and duties, but all things are considered only in terms of the relevant or meaning of the law (Adam & Fazekas, 2021; Bîzoi & Bîzoi, 2023). In this connection it may happen that the law decides its own choice of which human beings to be given the position of bearer of rights and duties (Rodrigues, 2020; Wachter et al., 2021). This suggests that the law may exclude a certain human being or group of human beings from being subject to the law (Rodrigues, 2020)(Kawwass et al., 2021). Even though they are human beings, yet the law cannot accept and acknowledge them as men in the sense of the law (Atkinson et al., 2020; Nori et al., 2023). If the law so determines, then there is no possibility for them to be bearers of rights and obligations(Sakib, 2022; Shostko, 2020).

The phrase "legal body" is directly associated with the appropriate individual, while the term "legal body" is intimately associated with the area of civil law (Bublitz & Gilbert, 2023; Sheehy et al., 2021). A legal entity is known as a corporation in Dutch, as well as by the

terms corporation in English and corporation in German (López Jiménez et al., 2021; Wachter et al., 2021). The Latin word *corporatio* is the source of these nouns (Formosinho et al., 2022; Rhoden & Kaaristo, 2020). One derivative of the term *corporare* is *corporatio*. The term *corpus*, which meaning "giving the body" or "giving it," is the root of the verb *corporare*. Therefore, *corporatio* refers to the product of its creation, or put another way, the human-made body that is acquired via human deeds as opposed to the natural human body (Celik et al., 2021; Sitti, 2021).

## **MATERIALS AND METHODS**

Both normative and empirical law studies were incorporated into the research specifications in order to address the study's research topic (Von Grafenstein et al., 2022). The case, legal, conceptual, and historical approaches are among the methodologies that can be applied in the research. PT. Insurance Jiwasraya (persero) and PT. Asabri (perser) are two examples of corruption cases that the Supreme Prosecutor's Office of RI is handling. These cases serve as the basis for several of the research methods employed in this study. The current issues will be given and addressed based on the findings of the case analysis.

## **RESULTS AND DISCUSSION**

### **Completion of the Elements of Criminal Responsibility**

Criminal liability can only occur if someone has previously committed a criminal offence. Moeljatno said, "A man cannot be held accountable if he has not committed a crime". Criminal liability first of all depends on the perpetrators of the crime. On the contrary, the existence of a crime does not depend on whether someone actually committed the crime. There are a number of acts that remain a crime even though no one is held accountable for doing so. Thus, it is not possible for a person to be held accountable in criminal law if the person concerned has not committed a crime. Only by committing a crime can one be held accountable. The model of criminal liability in the laws is basically impossible to shift responsibility to others. It can be seen in the basic foundations of criminal law in particular in the Continental European system or Civil Law, then such liability is direct liability under the law or what is often referred to as strict liability. Criminal responsibility should at least think of three important things: first, the responsibility of the perpetrator or the psychic state of perpetrators. Second, the existence of a relationship between the inner attitude and the conduct of persons, which is the presence of a factor of deliberate or negligent, and Third, the absence of reasons that exclude criminal responsibility.

The supervisory body bears the responsibility of informing the Directorate and supervising the Board of Commissioners of PT AJS with regard to the management policy and general management practices, as well as the Association's business (Mukhibad & Setiawan, 2022). In civil words, if the party in question is found guilty or neglects to carry out their duties as required, the Board of Commissioners will also be held personally accountable for the Agency's loss. Criminalization of BUMN supervisory bodies that do not carry out their supervision functions as set out in Article 6 paragraphs (1), (2) and (3) of the BUMn Act stipulates: 1. Supervision of BOMN is carried out by the Commissioner and the Board of Supervisors. 2. The Commissioners and the Supervisory Board are fully responsible for the supervision of BUMN for the interests and purposes of BUMN.

### **Dicotomy of Corporate Criminal Responsibility and Supervisory Body Responsibility**

According to Act No. 19 of 2003 on State-owned organization Agencies, the Board of Directors and the Council of Commissioners are the two entities with the power to run the organization. The Board of Commissioners is in charge of providing oversight, while the Board of Directors is entirely in charge of running the organization. Within the framework of the BUMN, the Supervisory Board and the Board of Commissioners are chosen, as supervisory bodies, frequently without explicit procedures and more out of political considerations than an effort to optimize the BUMN's capabilities. But at least the Commissioner post needs to be filled by a professional, with powers almost as great as those of the board of directors and an income almost as high, so that the Indonesian BUMNs may compete with other individuals whose majority shares are owned by private companies. Losses to BUMN must be thoroughly and carefully examined, which constitutes pure business risks and which are losses relating to the state's finances so that they can be classified as a crime of corruption as regulated by the Law No. 31 of 1999 Jo. of the Act No. 20 of 2001 on the Criminal Procedure of Corruption. Given the fact that a corporation is a legal subject in the form of an artificial person, Article 5 Perma 13/2016 has regulated that in the case of one or more corporate directors resigning, or death does not result in the loss of any corporate responsibility. Therefore, Article 23 Perma13/2016 also provides that the judge can impose criminal proceedings against the corporation or director, or corporation and manager, either alternatively or cumulatively.

There are two types of corporate councils, one tier system and two tier system. One tier system is the merger of supervisory and management functions in one board of directors. Here the company has two separate bodies namely the Board of Supervisors (Council of Commissioners) and the Management Board. (Dewan Direksi). The Board of Directors manages and represents the company under the direction and supervision of the Board of Commissioners. In this system, the members of the board of directors are appointed and can be replaced at any time by the supervisory body. (Dewan Komisaris). The Board of Directors also provides information to the Commissioner and answers to matters raised by the Board of Commissioners. So the Board of Commissioners is primarily responsible for overseeing management tasks. In this case, the Board should not be involved in management duties and should not represent the company in third-party bribery transactions. Members of the Board of Commissioners appointed and replaced at the General Meeting of Shareholders (RUPS). The Supervisory Body may be held personally accountable for any damages resulting from mistakes or carelessness, as stated in the description above. In compliance with the law and the association's basic budget, errors or omissions by the directors are evident in the formalities of the activity. As specified in Articles 114 and 115 of the Limited Partnership Act, the council of commissioners is subject to the application, *mutatis mutandis*, of the Business Judgment Rule in Act No. 40 of 2007 on Limited Partnerships. The chief officer of the firm is in charge of management and supervision, even though in theory the Supervisory Body is unaware of the Business Judgment Rule because of the common law system of single board officers. In order to be held accountable from a variety of legal angles, the management of BUMN also needs a general foundation, which is a ground concept and has to be a frame of reference as a boundary in any financial management of the BUMN. (situational gebundenness)

The provisions of Article 48 of Government Regulations No. 23 of 2022 on Amendments to Government Regulation No. 45 of 2005 on the Establishment, Management, Oversight, and Dissolution of State-owned Enterprise Bodies stipulate: 1) Supervision of BUMN shall be carried out by the Commissioner and the Supervisory Board. 2) Supervision by Persero shall be conducted on the basis of the provisions and principles applicable to limited staff. This means that, the acts of the supervisory body of BUMN that do not carry out its supervision duties against the Directorate in the management of BOMN there are acts against the law committed by the directorate that damage the financial body can be sought criminal liability personally if the individuals in the Supervisory Body of BAMN fulfil the elements of criminal responsibility as described above.

PT. Asuransi Jiwasraya (Persero) is a company belonging to the State of the Republic of Indonesia whose shares are owned by the State. The purpose and purpose of the Association is to carry out activities in the field of life insurance, including life insurance with the principle of Shariah as well as optimizing the use of the resources of the Society to produce high-quality and competitive services, to gain / pursue profits in order to increase the value of the Company by applying the principles of the Limited Company. The company has been in existence since 1859, making it one of the oldest financial services companies in Indonesia. Jiwasraya Insurance was born with a noble idea: to educate people to plan for the future. A great idea that has been recognized for hundreds of years by the pioneers, founders and policymakers of the Republic. To accomplish this noble task, Jiwasraya devoted all of his dedication and expertise to meeting the demands of society for life insurance and increasingly complex and competitive financial planning.

Hendrisman Rahim served as Chief Executive Officer of PT. AJS, Hary Prasetyo as Chairman of the Investment Division for the period from 2008 to 2014 and as General Manager of Investment and Finance for the Period from 2015 to 2018 P.AJS, the third of whom acted as Investment Committee with the position of Hendrism Rahim as President, Hary Prasetyo as Vice-Chairman and Syahmirwan as a member. Since 2008 to 2018 Hendrismahim, Hary Prassetyo And Syhamirwan Have used the funds derived from PT. Ajs products of non-saving plan, product saving plan, as well as corporate premiums worth less than Rs. 91.105.314.846.726,70 (one hundred and one trillion one hundred five hundred fourteen million sixteen hundred sixty-six thousand two hundred seven hundred rubles for the Fund's investments) (MTN).

Criminal proceedings of corruption against PT AJS that have damaged the state finances worth Rs.16,807,283,375,000.00 (sixteen trillion eight hundred seven billion two hundred eighty-three million three hundred seventy-five thousand rupees) with the mode of Management of investments in stocks and the Recsa Fund as described above as a reflection to discuss the urgency of criminal liability to the supervisory bodies for the loss of BUMN as a result of the corruption punishment. It is very unfortunate that the corruption offences that occurred in the AJS PT with the management of investments in shares and the Recsa Fund at AJS in the period from 2008 to 2018 did not highlight the role of the Board of AJS Commissioners which has the supervisory function of the AJs PT Directorate in carrying out the management duties of the company. Surveillance of BUMN through supervisory bodies is one of the policies to curb the spread of corruption crimes in the neighborhood.

## **CONCLUSION**

Criminalizing the Supervisory Body is a social engineering tactic used to increase the body's awareness and enable proper implementation of the oversight role of the direction in

managing BUMN's operations. From a philosophical standpoint, criminal culpability placed on supervisory organizations that do not oversee the management of BUMN can establish a just legal system in which the goal of the law is justice, as is the fundamental goal of law enforcement.

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