Law Enforcement of Corruption in The Business Framework of State-Owned Enterprises in Indonesia

Sri Endah Wahyuningsih[1], Yunitha Arifin[2] and Umar Ma'ruf[3]

1,3 Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia
2 Doctoral Program, Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

DOI: https://doi.org/10.56293/IJMSSSR.2022.4573

IJMSSSR 2023
VOLUME 5
ISSUE 2 MARCH – APRIL **ISSN: 2582 - 0265**

Abstract: Law enforcement of corruption by corruptors still has gaps to be exploited by irresponsible parties in weakening the position of political or business opponents. The formulation in the legal system of criminal acts of corruption is unclear, making law enforcers less professional in applying the law in the field of criminal acts of corruption. The purpose of this study is to analyze and find corruption law enforcement regulations within the BUMN business framework that are not yet based on the value of justice and the weaknesses of corruption law enforcement regulations within the current BUMN business framework in Indonesia, as well as the reconstruction of corruption law enforcement regulations in Indonesia. SOE business framework based on the value of justice. The research method used is constructivism paradigm, sociological juridical approach, and qualitative analysis. The results of the study show that the law enforcement regulations for corruption within the BUMN business framework are not based on the value of justice, that the state financial loss will be closely related to the provisions of Law no. 1 of 2004 concerning the State Treasury and provisions related to the position, duties and functions of the Supreme Audit Agency (BPK). 2) The weakness of the legal substance is that in substance the existence of 4 (four) laws and regulations that are multi -aspects in BUMN and have different regulatory objects from each other have resulted in confusion over the financial accountability of BUMN. The weakness of the aspect of legal structure is that there is no synergy between law enforcers so that it is no longer fragmentary and the existence of the paradigm of the judiciary shows that the legal structure came first but has not yet been followed by adequate legal substance. Weaknesses in the aspect of legal culture are often subjective in nature which highlights, among other things, the loyalty and loyalty of law enforcement officials in carrying out and carrying out state duties, patterns of behavior and professionalism of officers, being one of the main issues that must be studied for reform and a solution in enforcing criminal law. corruption within the framework of an integral SOE business.

Keywords: Reconstruction, Regulation, Law Enforcement, Corruption, BUMN.

1. Introduction

Protection of the entire Indonesian nation through applicable legal instruments is an absolute thing to realize, the words "protect the entire nation and bloodshed" have no meaning if it turns out that there is still suffering felt by the people in the form of inequality of economic rights reflecting welfare for all Indonesian people. Where this inequality is encouraged and created by a system of government that is not socially just for all Indonesian people, because it still allows government practices where power is exercised arbitrarily and does not side with the people. According to Jimly Asshiddiqie as quoted by Armiwulan, one of the functions of the state is to fulfill the interests of citizens while protecting the interests of other citizens. The state is given the power to promote the interests of citizens and regulate the fulfillment of these interests or even limit them if they can harm the interests of other citizens [1].

Fulfillment and limitation of interests carried out through these legal instruments can be carried out on the initiative and legal needs of a country or because of the influence of legal instruments on the international legal system. According to David Wilkinson, geographically, the legal system itself is at several levels, namely: Local or sub-regional (eg state, province or Lander), National (eg UK), Regional (eg EU) and International. Since 6 February 2020, 187 countries, including Indonesia, have become Parties to the UNCAC. State Parties have the

meaning that the country is committed to ratifying the UNCAC into domestic regulations. Indonesia has shown its commitment to the UN Anti-Corruption Convention by ratifying it through the Law of the Republic of Indonesia Number 7 of 2006 concerning Ratification of the United Convention Against Corruption, 2003 [2].

Not all UNCAC recommendations are imperative for Indonesia as a participating country. The convention divides its recommendations into 2 (two) forms, one of which is mandatory and non- mandatory. Apart from these two forms of recommendations, there is something interesting about UNCAC. As an anti-corruption convention, UNCAC does not formulate offenses against state financial losses. Of course, this is very different from the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning Corruption Crimes ("Tikor Law"), where offenses related to state finances are placed as the first offense to be formulated in the Corruption Law. On the other hand, Article 3 paragraph 2 UNCAC, explains: "For the purposes of implementing this Convention, it shall not be necessary, excepts otherwise stated herein, for the offenses set forth in it to result in damage or harm to state property" [Unless stated otherwise, this Convention shall be implemented regardless of whether the crime referred to in this Convention results in loss or damage to state assets] [3].

Application of corruption offenses related to state finances as stipulated in Article 2 paragraph (1) and Article 3 of the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law Republic of Indonesia Number 31 of 1999 concerning Corruption Crimes, also experienced various discourses. One of them is related to the expansion of the scope of state finance. Discourse revolves around the use of corruption criminal regime instruments for financial irregularities of State-Owned Enterprises/Regional-Owned Enterprises (BUMN/BUMD), which, according to the theory of transformation of state finances, for example, requires BUMN/BUMD finances to be qualified as corporate finance, so that against the company's financial irregularities do not use the Corruption Law. The definition of state finances in the Corruption Law is an expansion of the scope of state finances. Instruments of the Corruption Law can not only be used to enforce the law on corruption against state finances which are still controlled by the state, but also against state finances that are separated, for example through equity participation in BUMN [4].

One of the uses of the Anti- Corruption Law instrument against state finances at SOEs is in the case of the former Director of Pertamina, Karen Agustiawan, who was alleged to have ignored the investment procedures in force at PT Pertamina, resulting in an estimated state loss of Rp. 568 billion. With an error in the indictment stating that the Director of Pertamina decided to invest in participating interest in the Australian BMG block without conducting prior discussions or studies and agreeing to the PI of the BMG block without dueling diligent. Apart from ignoring the existing investment procedures at PT Pertamina, Karen Agustiawan also did not conduct a risk analysis which was then followed up with a sale purchased signature process. agreement without the approval of the commissioners and the legal part of the state-owned oil company.

Based on PT Pertamina's 2009 work plan budget, Rp 1.77 billion was allocated for the acquisition of the Oil and Gas Block. For the implementation of the acquisition, PT Pertamina then formed a team with Karen as chairman. However, without any analysis and research on the block to be invested, Karen Agustiawan and PT Pertamina Finance Director Frederick Siahaan ordered the forwarding of the offer Pertamina received from ROC Ltd to Bayu Kristanto as PT Pertamina's merger and acquisition manager. For her actions, Karen was charged with violating Articles 2 or 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption in conjunction with Article 18 paragraph 1 letter b Jo Article 55 paragraph 1 1 of the Criminal Code. After undergoing a long trial period, the Panel of Judges at the Jakarta Corruption Court finally sentenced Karen Agustiawan to 8 years in prison. The verdict was handed down on Monday 10 June 2019. Karen was also required to pay a fine of IDR 1 billion or 4 months in prison for corruption in the Basker Manta Gummy (BMG) investment block in Australia. Karen Agustiawan was found guilty of Pertamina's investment which caused losses to state finances worth IDR 568.066 billion [5].

After submitting a legal effort, the Panel of Judges of the Supreme Court issued a release decision or onslag vans recht vervolging towards Karen Agustiawan. Karen escaped her previous sentence of eight years in prison. The arguments of the Panel of Judges of the Supreme Court included that Karen Agustiawan was proven to have committed an act but not a crime with the consideration of the cassation panel, among others, that what the defendant Karen Agustiawan did was " business". judgment rule" and the act is not a crime. On the other hand, there is also an acquittal that has received the most criticism in cases of criminal acts of corruption, namely Bank

Mandiri involving the Main Director of Bank Mandiri ECW Neloe, former Director of Risk Management I Wayah Pugeng and former EVP Coordinator Corporate & Government M. Sholeh Tasripan which harmed the state Rp. 160 billion, but the panel of judges at the South Jakarta District Court passed an acquittal on the three defendants on the basis that the public prosecutor could not prove the element of state loss even though the public prosecutor had charged him with 20 years in prison and a fine of Rp. 1 billion subsidiary 12 months in prison [6]. Based on the decision of the panel of judges, Bank Mandiri's debtors, namely Edyson, Saiful Anwar and Diman, were automatically released Ponijan and three management of PT. Cipta Graha Nusantara. Even though the court has handed down acquittals in 76 cases, there were 254 cases of corruption that were sentenced to imprisonment for under 2 years. Law enforcement of criminal acts of corruption by corruption still has gaps to be exploited by irresponsible parties in weakening the position of political or business opponents. The formulation in the legal system of criminal acts of corruption is unclear, making law enforcers less professional in applying the law in the field of criminal acts of corruption. It appears that corruption as a subject of criminal law is still outside the Criminal Code, as stated in Law no. 31 of 1999 as amended by Law no. 20 of 2001 [7].

For this reason, a systematic and procedural effort with an integral approach is needed in formulating national policies that are oriented towards preventing or punishing corruption if involved in criminal acts of corruption. A clear direction is needed in enforcing the criminal law on corruption by corruption and is not only oriented towards reforming the legal substance, but renewal to strengthen the synergy between institutions or agencies, so that national policies can really touch the economic, social, political system and state Administration. Reconstruction of law enforcement against corruption must have a strong justification both philosophically, sociologically, from a juridical framework to a business perspective, so that the legal gap does not have a deconstructive impact on the world economy and law enforcement, which ideally is inter-determinant within a constructive and just framework [8].

2. Research Objective

To analyze and find corruption law enforcement regulations within the BUMN business framework and the weaknesses of corruption law enforcement regulations within the current BUMN business framework in Indonesia.

3. Research Method

This study uses the constructivism paradigm. This type of research is descriptive analysis and the approach that the author uses is a Juridical Sociological approach. The data used in this study are primary data and secondary data. This primary data is obtained by conducting interviews with law enforcement prosecutors, judges, and perpetrators of criminal acts from agencies/institutions related to the purpose of this research. Secondary data was obtained from library materials through literature studies in the form of laws and regulations, research results, journals, and data sourced from the internet. To complement the research data, comparative legal studies were also carried out with several foreign countries such as Malaysia, Singapore, and Thailand. The data obtained were analyzed using a qualitative descriptive method.

4. Research Results

4.1. Regulation For Law Enforcement of Corruption in The Business Framework of State-Owned Enterprises

About state finances according to Law no. 31 of 1999 Jo. UU no. 20 of 2001, clearly stated in Article 2 and Article 3. Losses to state finances are one of the elements that must be factually proven. 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.
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 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 [9].

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 Articles 2 and 3 Law on Corruption Eradication. 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 [10].

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 SOEs which have transformed into holding companies, the form of the company remains a Persero. A state-owned company in the form of Persero, the 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 the actual ownership of this BUMN subsidiary, it is still in the corridor of BUMN supervision, so that no principles of state control have been violated. Thus, in essence there has been a paradigm shift, especially by the judiciary in viewing BUMN and state financial losses in BUMN. When compared to the past, the Corruption Court at the Bandung District Court through No. 77/ Pid.Sus /TPK/2011/ PN.Bdg dated 13 February 2012 still assesses the deposits of PT Elnusa, Tbk (a subsidiary of PT Pertamina (Persero)) as state assets [11].

The synchronization of laws necessary to improve the eradication of corruption is as follows:

First, the BPK cannot examine BUMN Persero because the assets of BUMN Persero are not state assets. If the BPK wants to examine state-owned enterprises, then Article 23E of the 45 Constitution needs to be amended by stating that the BPK does not only examine state finances, but also the finances of private companies. This is against the background of the BPK as a state institution.

Second, amendments need to be made to Law No. 31 of the Law on the Eradication of Criminal Acts of Corruption, namely regarding the definition of criminal acts of corruption, namely: "Criminal acts of Corruption... which can be detrimental to state finances or the state's economy are "replaced" into "criminal acts of corruption... which can be detrimental to the finances of private companies, state companies, and services [12].

Article 2 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption needs to be changed to not only those that can harm the state but also those that do not harm the state, namely harming private companies, because corruption is a crime.

Third, finally it is necessary to change the definition of state finances in Law No. 15 of 2004 concerning Examination of State Financial Management and Responsibility, following the proposed change in the definition of finance.

4.2. Weaknesses in the Current Business Framework of State-Owned Enterprises in Indonesia

1. Weakness of Legal Substance

a. Administrative Instruments Related to Law No. 17 of 2003 and Law no. 1 of 2004

In the management of state finances, after the issuance of law package No. 17 of 2003 concerning state finances, Law No. 1 of 2004 concerning the State Treasury and Law No. 15 of 2004 concerning Audit and Management and Accountability of State Finances, the Law Invite Indonesian Treasury or better known as Indische Comptabilities Wet (ICW) Staatsblad (Stbl) 1925 Number 448 as amended several times , most recently by Law Number 9 of 1968 which among other things regulates legislation and demands for compensation for donors and other employees who break the law or neglect their obligations so that it is detrimental to the state, it is declared no longer valid14 Read: General Explanation of Law No. 1 of 2004 concerning the State Treasury.

Instead, in Chapter XI Article 59 paragraph (2) of Law Number 1 of 2004 concerning the State Treasury, it is stipulated that the treasurer, non-treasurer civil servant, or other official who because of his actions violates the law or neglects the obligations imposed on him directly harms the state, obliged to compensate for the loss. Implementation of the provisions of Law Number 15 of 2004 concerning Audit and Management and Accountability of State Finances, the Supreme Audit Agency (BPK) has established BPK Regulation Number 3 of 2007 concerning Procedures for Settlement of State Compensation Against Treasurers which regulates procedures for settlement of state compensation to treasurers within government agencies/state institutions and other treasurers who manage state finances [13].

In Article 35 there is an affirmation of a principle that applies universally, that is, anyone who is authorized to receive, store, and pay or hand over money, securities, or state property, is personally responsible for all deficiencies that occur in their administration. The obligation to compensate state financial losses by the managers of state finances is part of internal control. State losses can occur due to violations of law or negligence by state officials or non-treasurer civil servants in the context of implementing administrative authority or by the treasurer in the context of implementing treasury authority. The compensation referred to is based on the provisions of article 35 of Law Number 17 of 2003 concerning State Finances. Settlement of state losses needs to be carried out immediately to restore lost or reduced state assets and improve the discipline and responsibility of civil servants / state officials in general, and financial managers [14].

To avoid causing state financial losses due to unlawful acts or someone's negligence, the said State Treasury Law stipulates provisions regarding the settlement of state losses. Therefore, the State Treasury Act emphasizes that any loss to the state caused by an unlawful act or someone's negligence must be reimbursed by the guilty party. With the settlement of these losses, state finances can be recovered from losses that have occurred.

The application of administrative instruments as described above, of course, will experience problems if applied to BUMN whose administrative management is in company management which is subject to private or corporate law and is subject to Law no. 19 Yr. 2003 concerning State Owned Enterprises, Law no. 40 Years 2007 concerning Limited Liability Companies, Law no. 8th 1995 concerning the Capital Market.

b. Civil Instruments Related to Law NO. 40 of 2007 and Law NO. 19 of 2003 and the MA RI Fatwa number 6
In its development, after the promulgation of Law No.19/2003, concerning State-Owned Enterprises, in Article 9 of the BUMN Law, only state-owned companies and Perums are recognized as BUMN.

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 Instrument: 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 rights and obligations of the state that can be valued in money, including policies and activities in the fiscal, monetary and management of separated state assets, as well as everything whether in the form of money or in the form of goods that can be owned. 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 [15].

The determination of a state financial loss before a trial is certainly inseparable from the legal evidence used to determine the state's loss.

In the concept of financial accountability or a financial accountability system, it should always be linked to the source of the funds for each legal subject, because the treatment of each legal subject regarding the origin of the source of funds is of course different. Likewise, with the Persero. The Persero's financial sources consist of sources originating from the Persero's own assets and other sources related to the PSO assignment. The Persero's wealth originates from and consists of shares, including shares owned by the state. As a state shareholder, of course it has an interest in the state of the company's profit and loss, however, in the legal concept of the company, the loss of the company does not necessarily harm the shareholder.

One of the losses for shareholders is not receiving dividends. This of course can be said to be detrimental to the state. Whereas in the concept of company law, the reason for choosing the form of PT is that it is easy to know the risks that will be borne by shareholders, namely only the shares invested. So not receiving dividends should also be a risk that shareholders have considered when buying shares.

Thus, the risk of loss of not receiving dividends, including loss of capital gains (margin), and loss of Persero's assets, either in part or in whole at the time of the dissolution of the PT, should have been known or at least considered by shareholders, in this case the state. For this reason, the study of the importance of establishing a Persero by the Minister of Finance, the Minister of Technical and the Minister of BUMN, at the stage of establishment is very decisive.

State losses arise when there is a "lack" of money. State money at this point should already exist and then decrease. Not receiving dividends does not reduce state funds but reduces state revenues. Unlike the case with capital gains. Because the shares invested are the capital that becomes the wealth of the Persero. State losses can occur when stock prices decline. If the share price decreases to the point where the total wealth of the company decreases, it can be said that the state as a shareholder suffers a loss. Lack of wealth means there has been a shortage of money. The amount of wealth can be calculated with certainty. Thus, the state only needs to prove that there has been an unlawful act or negligence on the part of the directors and or commissioners. If it is proven that an unlawful act or negligence has occurred, the directors and/or commissioners may be subject to sanctions based on the State Treasury Law, the State Finance Law and the Law on State Financial Management and Responsibility Audit [16].

2. Weaknesses from the Legal Structure Aspect

Problems in enforcing the law on corruption must be properly resolved, so there is a need for harmonization between institutions handling corruption, meaning that corruption handling agencies know their respective duties and authorities in eradicating and enforcing corruption laws. The most important thing in upholding the law on corruption is cooperation between agencies handling corruption by providing handling of investigations and investigations and even sharing in dealing with corruption cases. Most importantly, the rules for enforcing the law on corruption are different between institutions. Police refers to Law no. 8 of 1981 concerning Criminal Procedure Code (KUHAP), police officials are to act as investigators and case investigators. So, the police have the authority to become investigators and investigators for every crime (including corruption). The prosecutor's authority to carry out investigations is stated in Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Law). Based on article 30 of the Attorney General's Law, the prosecutor's office has the authority to conduct investigations into certain criminal acts based on the law. This includes the authority of the prosecutor's office to eradicate corruption as amended by Law no. 20 of 2001. As for the Corruption Eradication Commission (KPK), its authority is granted by the KPK Law. Based on Article 6 of the Corruption Eradication Commission Law, the task is to carry out investigations, investigations, and prosecutions of criminal acts of corruption.

Article 11 of the Corruption Eradication Commission Law further limits that the KPK's authority to carry out investigations, investigations and prosecutions is limited to acts of corruption which: 1. Involve law enforcement officials, state administrators, and other people who have anything to do with criminal acts of corruption committed by law enforcement officials or state officials; 2. Receiving attention that is troubling the community; 3. Concerning state losses of at least IDR 1,000,000,000.00 (one billion rupiah). In the elucidation of the KPK Law , it is explained by the provisions of this Law , the Corruption Eradication Commission: 1. Be able to develop a strong network and treat existing institutions as conducive "counterpartners" so that the eradication of corruption can be carried out efficiently and effectively ; 2. Does not monopolize the duties and authorities of investigations, investigations and prosecutions; 3. Serves as a trigger and empowerment of existing institutions in eradicating corruption (trigger mechanisms); 4. Serves to supervise and monitor existing institutions, and in certain circumstances can take over the duties and authorities of investigations, investigations and prosecutions (superbody) that are being carried out by the police and/or prosecutors [17].

3. Weaknesses from the Legal Culture Aspect

The attitude of the people who do not care is a challenge in uncovering corruption cases. Reluctance is also a characteristic of people who are cultured in the East. In the context of Indonesian society, two things that need to be considered in building legal awareness are first, the process of learning law in view of small people (kawulo alit, wong cilik) who do not have as knowledge, secondly the process of learning legal normative awareness through facts how legal norms can be confirmed through the effective role of law enforcement.

Protection for people who report corruption cases in Indonesia is indeed very weak. Those who should be heroes in law enforcement can turn out to be victims in law enforcement. Public reports about attempted extortion by bureaucrats were used as evidence in defamation reports for the reported person. This makes people reluctant to report extortion by bureaucrats. Threats and terror against the reporter and the reporter's family are still common. Weak witness protection will weaken community participation. Weaknesses in the aspect of legal culture are often subjective in nature which highlights, among other things, the loyalty and loyalty of law enforcement officials in carrying out and carrying out state duties, patterns of behavior and professionalism of officers, being one of the main issues that must be studied for reform and a solution in enforcing criminal law. corruption within the framework of an integral SOE business [18].

4.3. Law Enforcement Regulations for Crime of Corruption in the Business Framework of State-Owned Enterprises from Comparison Legal Perspective

1. Malaysian

The criminal system for criminal acts of corruption in Malaysia in Article 16 of the Malaysian Law Deed 694 is: Any person who stands alone or through or together with any other person:

a) Rationally asking or receiving he (Person) agrees to receive for himself or any other person.
b) Rationally giving, promising, or offering to anyone either for the benefit of that person or for the benefit of another person.

In Malaysia on the Act Order for the Prevention of Rasuah Malaysia 2009, the threats given have been clearly stated, namely imprisonment and fines, but in Indonesia each article contained is explained in detail how many threats of fines have been determined with the minimum and maximum limits. Unlike Malaysia, the anti-corruption law owned by Malaysia states that the fine that must be paid is not less than five times the proceeds of corruption, so the payment of the fine is determined by the panel of judges. Malaysia's anti-corruption law is clear who the perpetrators of corruption are, various types of corruption, the elements up to the imposition of sanctions regulated in it, the application of sanctions for corruption in Malaysia is no different from that in Indonesia to prove the perpetrators of criminal acts of corruption are guilty and can be punished, it must be determined in advance whether the elements of the act have fulfilled or not. Article 16 of the Deed of Orders to Prevent Rasuah Malaysia states that a criminal act of corruption occurs when a person or several people unlawfully request, accept, or approve a policy to obtain certain benefits for themselves or their group. Unlawfully giving, promising, or offering something with the aim of obtaining convenience or personal benefit from it. The types of punishment that can be given by a judge if proven to have committed a criminal act of corruption

according to Deed-694 Order to Prevent Rasuah Malaysia are:

1. Prison sentence Imprisonment is a form of punishment that restricts the freedom of movement for a convict. The holding time can be short term or long term. The determination of the prison sentence given depends on the actions committed against the crime.

2. Criminal fines Fines are a form of punishment in the form of an obligation to pay an amount of money that has been determined by the judge when deciding the case. The amount paid can be double the proceeds of the crime and a maximum of five times the proceeds of the crime. The similarity between the two countries is that in determining the punishment, one must look at the elements of the act committed by the perpetrators of corruption, and the elements of corruption in each country have similarities between the criteria for the perpetrator and the consequences that occurred when committing the crime. Alone. The next equation is that there is a maximum threat of imprisonment as a sanction for corruption, which is a maximum of 20 (twenty) years.

2. Singapore

Comparison of eradicating corruption between Indonesia and Singapore has differences. In this study, secondary legal materials were used, namely books, journals, articles, and other written works originating from both print and internet media which have a correlation with normative research regarding the comparison of corruption eradication between the governments of Indonesia and Singapore. In general, there are three main points that support CPIB in efforts to eradicate corruption, namely a strong political will from the government, by providing a strong legal framework and adequate resources in efforts to eradicate corruption, having a good publication function, especially in publicizing the process of prosecuting corruption , there is a policy that emphasizes state administrators to disclose their assets and their sources of income well implemented, taking a comprehensive approach through three strategies: investigation, prevention, and public education [19].

The development of handling corruption in Singapore can be seen from a cultural perspective, Singapore from a political perspective will, community awareness and attitude and culture of professionalism are ingrained. In Indonesia, public awareness and political will from the government is still not maximized so that some Indonesian people consider corruption to be a normal thing and in handling it is still less professional or seems to be half measures. Meanwhile, in terms of regulations, the regulations in Singapore differentiate more on the sorting of perpetrators from criminal acts of corruption, while in Indonesia it differentiates more on the offenses that occur. In terms of institutions, Singapore has only one institution that has full authority in eradicating corruption, namely the CPIB, while Indonesia, with three institutions, namely the Police, the Attorney General's Office, and the Corruption Eradication Committee, seems to have equal and equal authority in dealing with corruption, resulting in overlapping authorities.

3. Thailand

This new pattern of corruption is called policy corruption, which is related to conflicts of interest. Conflicts of interest arise from influential politicians who have the power to make decisions and involve cooperation among politicians, high-level civil servants, and businessmen. One example of a policy corruption case is the land purchase corruption case in Ratchada involving Prime Minister Thaksin Shinawatra. This policy of corruption is treated differently because it is within the rule of law, so that the perpetrators cannot be immediately punished. The government classifies corruption in 2 (two) scales, namely corruption on a large scale (grand corruption) and corruption on a small scale (petty corruption). Grand corruption is usually carried out by high-level government officials by abusing their power for personal gain. This type of corruption is called grand corruption because the perpetrators get huge profits which can cause huge losses to society and the state. Meanwhile petty Corruption usually involves lower-level government employees who do routine work and the profits that the perpetrators get are not big. Prior to 1975 corruption cases in Thailand were handled entirely by the police based on criminal law laws and other laws governing public officials. The poor performance of the police has led to rampant corruption. Until finally in 1975, the government issued regulations regarding the Handling of Corruption and established the Office of Corruption Handling (Office of Corruption). The Commission of Counters Corruption. However, the limited authority of the OCCC makes it unable to eradicate corruption. In 1996 a law-making body was formed, whose members were members of the public who were directly elected from each province. It was this institution

that later legalized the Corruption Eradication Law in 1999.

This law later became the basis for the establishment of the NCCC (National Counter Corruption Commission). The government has formed several institutions whose job is to monitor, prevent and efficiently suppress corruption cases, including National Anti- Corruption Commission (NACC), Office of Public Anti- Corruption Sector Commission (PACC), Office of the Attorney General (OAG), Ombudsman, Office of the Auditor General, Royal Thai Police, Anti-Money Laundering Office (AMLO), Department of Specials Investigation (DSI), Supreme Court's criminal Division for Persons Holding Political Positions. These institutions have interrelated goals in ensuring transparency, fairness, accountability and guaranteeing the rights of citizens. In carrying out its functions, the NCCC is given enormous authority to investigate and prosecute politicians and officials. The NCCC was given broad powers to apply for the dismissal of politicians, examine the wealth of officials, obtain documents, arrest, and detain accused persons at the request of the courts. The NCCC implemented several strategies to eradicate corruption including repressive measures through prosecution, preventive measures, anti-corruption public awareness efforts by involving the media and NGOs through various approaches, transparency strategies in examining the wealth of officials and politicians, obtaining reports on corruption cases, and protection programs. witness. The Thai government's commitment or support has also provided support to the NCCC to eradicate corruption. In 2008 NCCC received budget support from the government of US$ 21.3 million. In the same year, NCCC had a total of 740 experts [20].

Thailand has various laws and regulations to prevent and combat corruption. These laws and regulations are divided into 2 categories namely: substantive law and procedural law. Substantive law consists of: Thai Penal Code and Organic act on Counters Corruption (OACC) BE 2542 (1999). Thai The Penal Code explains in detail the punishment for government employees who commit corruption, namely imprisonment between 5 and 5 years. In addition, corruptors are also subject to fines and must return the proceeds of corruption. The OACC discussed in detail the existence of the NCCC. Apart from Thai Penalty Act, the OACC discussed several matters related to conflict of interest and bribery cases. Meanwhile, procedural law consists of 5 main laws, namely: Thai criminal Procedure Code; organic act on Counters Corruption (OACC) BE 2542 (1999); Anti-Money Laundering BE Act 2542 (1999); act of Mutual Legal Assistance in Criminal Matters BE2535 (1992;) and Extradition BE Act 2551 (2008). Thai criminal The Procedure Code is applied to all criminal cases ; The OACC not only discusses the formation of the NCCC but also emphasizes the authority or power to investigate corruption cases; Anti-Money Laundering Act BE 2542 (1999) discusses in more detail regarding assets resulting from corruption that are transferred through money laundering; act of Mutual Legal Assistance in Criminal Matters BE2535 (1992;) provides a conceptual framework for international cooperation in the criminal litigation process from the beginning of the investigation to the end of the trial; and Extradition Act BE 2551 (2008) which contains the authority of Thailand to be able to extradite a person to the requesting country, and also to make requests to foreign countries to extradite fugitives to Thailand [21].

5. Conclusions

1. Law enforcement regulations for corruption within the BUMN business framework are not based on the value of justice, that the state financial loss will be closely related to the provisions of Law no. 1 of 2004 concerning the State Treasury and provisions related to the position, duties, and functions of the Supreme Audit Agency (BPK). According to Law no. 1 of 2004 concerning the State Treasury, it is determined that "Any state loss caused by an unlawful act, or someone's negligence must be resolved immediately in accordance with the provisions of the applicable laws and regulations " (Article 59 paragraph (1). Losses due to the unlawful act The above are losses due to acts against the law of private law, while losses due to acts against the laws of state authorities/state administrators, namely acts against the nature of public law, are more within the scope of Law No. 17 of 2003 concerning State Finance , Law No. 1 of 2004 concerning the State Treasury, Law No. 15 of 2006 concerning the Audit Board of the Republic of Indonesia, Law No. 15 of 2004 concerning Examination of State Financial Management and Responsibility , and Law No. 31 of 2004 1999 concerning Eradication of Criminal Acts of Corruption.
2. Weaknesses in law enforcement regulations on corruption in the BUMN business framework are currently found in 3 aspects, namely weaknesses in the aspects of legal substance, legal structure, and legal culture. The weakness of the legal substance is that it is necessary to understand the criminal act of corruption which is detrimental to state finances which of course cannot be separated from acts and criminal acts which also refer to Law No. 17 of 2003 concerning State Finance, Law no. 1 of 2004

concerning the State Treasury, Law no. 15 of 2006 concerning the Supreme Audit Board, Law no. 15 of 2004 concerning Examination of State Financial Management and Responsibility , as well as Law no. 31 of 1999 concerning the Eradication of Corruption Crimes. Substantively, the existence of 4 (four) statutory regulations that are multi -aspect in BUMN, and have different regulatory objects from each other, has resulted in confusion over the financial accountability of BUMN, for this reason, it is necessary to amend Law Number 20 of 2001 in accordance with UNCAC 2003 provisions that criminal acts Corruption does not only cover state finances but also private finance, state companies and services. The weakness of the aspect of the legal structure is that there is no synergy between law enforcers so that they are no longer fragmented and the existence of the paradigm of the judiciary shows that the legal structure came first but has not been followed by adequate legal substance, so that there is no overlapping authority. Weaknesses in the aspect of legal culture are often subjective in nature which highlights, among other things, the loyalty and loyalty of law enforcement officials in carrying out and carrying out state duties, patterns of behavior and professionalism of officers, being one of the main issues that must be studied for reform and a solution in enforcing criminal law. corruption within the framework of an integral SOE business.

6. Suggestions

1. For the government and DPR to immediately reconstruct the law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in particular Articles 2 and Article 3, as well as Law Number 15 of 2004 concerning Examination of the Management and Accountability of State Finances in Article 1 paragraph 8.
2. No the synchronization of laws and regulations governing state finances and state financial losses, is not the fault of the Act , the problems that are arising at this time actually originate from the perspective of law enforcers and elements of the legal community, for this reason it is necessary to review various existing regulations, especially relating to business decisions taken by SOE control holders, especially the meaning of State Finances and to then be carried out with improvements referring to efforts to produce legislation that is sensitive to the needs and sense of justice of society, as well as accommodates the need for a balance between laws and regulations invitations, especially regarding the meaning of state money and state financial losses.
3. For law enforcement officials, the Police, Prosecutors' Office, Courts and the KPK should work together in eradicating criminal acts of corruption, especially law enforcement for criminal acts of corruption within the BUMN business framework.

References

1. D. S. Narwastuty, "the Equation on the Justice for Fisherman: the Urgency To Protect Fishermen and Marine Resources in Indonesia," Dialogia Iurid. J. Huk. Bisnis dan Investasi, vol. 12, no. 1, pp. 081–096, 2020.
2. K. R. Lutfi and R. A. Putri, "Optimalisasi Peran Bantuan Hukum Timbal Balik dalam Pengembalian Aset Hasil Tindak Pidana Korupsi," Undang J. Huk., vol. 3, no. 1, pp. 33–57, 2020.
3. A. Mufasirin and A. Witasari, "A Legal Assistance In Criminal Action Trial Process," vol. 3, no. 2, pp. 346–352, 2021.
4. M. Anisa, "Analisis Kinerja Pemasaran Melalui Keberhasilan Implementasi Sistem Enterprise Resource Planning (Erp) Pada Umkm Di Semarang," Conf. Business, Account. Manag., vol. Vol. 2 No., pp. 150–160, 2015.
5. I. K. Seregig, T. Suryanto, B. Hartono, E. Rivai, and E. Prasetyawati, "Preventing the acts of corruption through legal community education," J. Soc. Stud. Educ. Res., vol. 9, no. 2, pp. 138–159, 2018.
6. R. A. Wibowo, "When anti-corruption norms lead to undesirable results: learning from the Indonesian experience," Crime, Law Soc. Chang., vol. 70, no. 3, pp. 383–396, 2018.
7. M. A. Agus and A. Susanto, "The Optimization of the Role of Correctional Centers in the Indonesian Criminal Justice System," J. Penelit. Huk. Jure, vol. 21, no. 3, p. 369, 2021.
8. S. E. Wahyuningsih, "Reconstruction of the retroactive principle in the Indonesian criminal Law code based on the value of religious wisdom," vol. I, no. 1, pp. 177–198.
9. B. D. Lewis and A. Hendrawan, "The impact of majority coalitions on local government spending, service delivery, and corruption in Indonesia," Eur. J. Polit. Econ., vol. 58, no. May 2018, pp. 178–191, 2019.

10. M. E. Ruhullah and Z. Qodir, "Analytical Study of Politics in Bangladesh : Ages Of Sheikh Hasina and Khaleda Zia's Dictates," Int. J. Islam. Khazanah, vol. 11, no. 1, pp. 1–11, 2021.
11. K. Pistor, "The value of law," Theory Soc., 2020.
12. B. Street, L. Village, B. District, B. City, and S. Sulawesi, "LEGAL PROTECTION POLICY FOR WITNESSES IN THE," vol. 1, no. 2, pp. 28–51, 2020.
13. S. Isra, Yuliandri, F. Amsari, and H. Tegnan, "Obstruction of justice in the effort to eradicate corruption in Indonesia," Int. J. Law, Crime Justice, vol. 51, pp. 72–83, 2017.
14. F. P. Varghese, T. Israel, G. Seymour, R. Becker Herbst, L. G. Suarez, and C. Hargons, "Injustice in the Justice System: Reforming Inequities for True 'Justice for All,'" Couns. Psychol., vol. 47, no. 5, pp. 682–740, 2019.
15. B. S. Daud and I. Cahyaningtyas, "Criminal Justice System Toward Children With Legal Conflict Seen In Justice Restorative Presfective," J. Huk. Prasada, vol. 7, no. 1, pp. 14–26, 2020.
16. C. R. A. Setyobudi and D. Setyaningrum, "Jurnal Akuntansi dan Auditing Indonesia E-government and corruption perception index : a cross-country study," vol. 23, no. 1, 2019.
17. J. Pyo, "The impact of jury experience on perception of the criminal prosecution system," Int. J. Law, Crime Justice, vol. 52, no. April 2017, pp. 176–184, 2018.
18. R. Lastra, P. Bell, and C. Bond, "International Journal of Law , Crime and Justice Sports betting and the integrity of Australian sport : Athletes ' and non-athletes ' perceptions of betting-motivated corruption in sport," Int. J. Law Crime Justice., vol. 52, no. June 2017, pp. 185–198, 2018.
19. I. A. Indrawan, "Ship Arrest in Indonesia and Cross-Border Maritime Dispute," Indones. J. Int. Law, vol. 14, no. 4, 2017.
20. C. Doonan, "A House Divided: Humanitarianism and Anti-immigration Within US Anti-trafficking Legislation," Fem. Leg. Stud., vol. 24, no. 3, pp. 273–293, 2016.
21. A. Sabani, M. H. Farah, and D. R. Sari Dewi, "Indonesia in the spotlight: Combating corruption through ICT enabled governance," Procedia Comput. Sci., vol. 161, pp. 324–332, 2019.