

# Affirmation of BUMN Losses as State Losses in an Effort to Transform Them into Objects of Responsibility for Corruption Crimes

*by mas ari*

---

**Submission date:** 15-Feb-2024 08:04AM (UTC+0300)

**Submission ID:** 2295285694

**File name:** 125996717.pdf (464.59K)

**Word count:** 6617

**Character count:** 36411



1

# Affirmation of *BUMN* Losses as State Losses in an Effort to Transform Them into Objects of Responsibility for Corruption Crimes

Hanuring Ayu<sup>1\*</sup>, A. P.<sup>2</sup>, Ariy Khaeruddin<sup>3</sup>, Ismiyanto Ismiyanto<sup>4</sup>

<sup>1, 2, 3, 4</sup> Faculty of Law, Universitas Islam Batik, Surakarta, Indonesia  
hanuringayu@gmail.com\*

1

**Abstract.** Study answer question why necessary affirmation *BUMN* losses as internal state losses effort transformation become object responsibility answer follow criminal corruption. Then answer form affirmation *BUMN* losses as internal state losses in effort transformation become object responsibility answer follow criminal corruption. *BUMN* as means service public, the practice indicated become a medium for corruption with form losses that get immunity so that not yet capable classified as state losses. Need affirmation with expand losses of transformed *BUMN* as object responsibility answer follow criminal corruption. This thing strengthened various theory responsibility answers and comparisons management of *BUMN*. Study This normative with material law related with *BUMN*. Research results show necessity affirmation *BUMN* losses as internal state losses effort transformation become object responsibility answer follow criminal corruption because not yet there is evaluation loss *BUMN* policy, *BUMN* capital is state wealth and liability answer state losses and there are state interventions against activity state-owned enterprises. Shape affirmation *BUMN* losses as internal state losses effort transformation become object responsibility answer follow criminal corruption applied to regulation legislation includes Law No. 19 of 2003 concerning *BUMN*, Law No. 1 of 2004 concerning State Treasury, Law No. 40 of 2007 concerning PT, Law No. 17 of 2003 concerning State Finance and Law No. 20 of 2001 concerning Corruption.

**Keywords:** *BUMN*, Losses, Affirmation, Transformation.

14

## 1 Introduction

### 1.1 Background of the Study

I implementation the function of the state realizes well-being people realized with establishing a State-Owned Enterprise (*BUMN*) as follows arranged in Article 33 of the 1945 Constitution 1. Service public is fulfillment need community by the originating state administrators from how government connected with citizen with more good. However, function public service through state-owned companies frequently experience loss significant. In its development, *BUMN* is justified as tool do corruption even with intervention various form interests, then expansion *BUMN* losses as

1

© The Author(s) 2023

M. Umiyati et al. (eds.), *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry"* (ICCLB 2023), Advances in Social Science, Education and Humanities Research 804,

[https://doi.org/10.2991/978-2-38476-180-7\\_55](https://doi.org/10.2991/978-2-38476-180-7_55)

object responsibility answer criminal must realized [6]. This thing is antithesis of Law No. 19 of 2003 concerning State-Owned Enterprises (*BUMN Law*) and Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) which causes this *BUMN* losses reached moment This Not yet can classified become state losses so not yet can become object responsibility answer corruption.

The implication is that *BUMN* only suffers losses is loss reasonable as consequence logical company although can found capital from the state through the APBN, good fully (*BUMN Perum*), or some (*BUMN Persero*). *BUMN* causality with corruption strengthened statement former *BUMN* Minister Erick Thohir, via investigation and action firm against *BUMN* because has found 53 cases corruption in *BUMN* which is detrimental to the state [13]. The position of *BUMN* is relevant in a way grammatical in action criminal the economy has meaning deed related fields economic and can requested responsibility answer criminal [14]. *BUMN* is understood as state corporations do it deed economics, then to the loss can also be form responsibility answer follow criminal economy.

Act criminal economy in meaning wide covers smuggling; banking crimes; commercial crimes; computer crimes; environmental crimes; property and intellectual crimes; corruption; and labor crimes [1]. *BUMN* losses must be proven as state losses for can fulfil criteria Article 2 and Article 3 of the Corruption Law. Three classification in term corruption that is bribery; blackmail; and nepotism is anatomy crime corruption [5]. Corruption as one form follow criminal economy proven with the background to the codification of the Dutch Criminal Code No there is rule about problem economy, then in the Netherlands in 1932 began arrange field economy [15]. Therefore that's a must there is affirmation *BUMN* losses as internal state losses effort the transformation become object responsibility answer corruption [2]. Practice this still far away (especially *BUMN Persero* which is subject to UUPT, so the loss Not yet classified as state losses). Writer aim confirm and expand *BUMN* losses so can become the state losses due to related *BUMN* capital with State capital and *BUMN* activities are regulated and directed by the state. That thing is affirmation that *BUMN* losses included state losses are seen from consequence its causality.

Elements deed offense corruption in Law No. 20 of 2001 concerning Corruption linked policy taken *BUMN* directors as fulfilling blindness offense corruption, if can harm state finances. Article 2 paragraph (1) Law No. 20 of 2001 states "harmful state finances/economy." State finances according to the Corruption Law is deep state wealth form whatever, fine separated or no, incl all part state assets, rights and obligations. This thing is causality state losses resulting from losses to *BUMN* are object responsibility answer corruption [21]. Provision the arrange during there is real losses to the *BUMN*, considered has harm state finances. Directors can requested responsibility answer and be charged corruption considering *BUMN* apart from means state administration, is also perpetrator the economy has functions and duties ensure well-being public with service public. An ensnaring case *BUMN* directors who were indicted do follow criminal corruption with proposition the company he leads has cause loss to state finances because provisions for capital obtained by the company such as *BUMN (Persero)* 51% comes from the country. Although there are also resistance

stating that *BUMN* capital is state assets are separated so that the loss submit against *UUPT*.

Resistance the strengthened argumentation that in the business world Certain there is risk make a loss including *BUMN*. So, if happen state losses incurred because it is a state-owned company, it has to be seen and proven is loss the pure from risk business, and whether decision taken already through principle prudence and faith good *BUMN* directors. This thing become cause for straighten out A confusion effort affirmation real losses to *BUMN* can classified as state losses and can become object responsibility answer corruption. Writing This as road middle conflict norm between governing provisions about internal state losses explanation of the Corruption Law with provision regulated state losses in *UUPT* which resulted uncertainty law.

## 1.2 Formulation of the Problem

1. Why required affirmation *BUMN* losses as internal state losses effort transformation become object responsibility answer follow criminal corruption?
2. How form affirmation *BUMN* losses as internal state losses effort transformation become object responsibility answer follow criminal corruption?

## 2 Methodology

Study this normative with approach regulation constitution for classify norm interpreted SOE arrangements wrongly that *BUMN* is subject to *UUPT* so practiced *BUMN* loss, isn't it? is state losses. Approach case used sort it out argumentation logical necessity affirmation *BUMN* losses as state losses so can transform become object responsibility answer follow criminal corruption. Approach conceptual used formulate form affirmation *BUMN* losses as internal state losses effort the transformation become object responsibility answer follow criminal corruption.

## 3 Discussion

### 3.1 Urgency Affirmation *BUMN* losses as State losses in Effort Transformation Become Object Accountability Answer Act Criminal Corruption

- a. Not yet available evaluation loss *BUMN* policy

Policy in activity *BUMN*'s efforts to <sup>15</sup> is it Not yet there is evaluation loss. The objectives of *BUMN* are stated inside Article 2 paragraph <sup>8</sup>) Law No. 19 of 2003, namely give donation for development economy national in general and <sup>5</sup> state revenue in particular; chase profit; organize expediency general form provision goods and/or quality services high and adequate for fulfillment desire the lives of many people; become pioneer activities efforts that have not yet be <sup>16</sup> made can implemented by sector private and cooperative; and join in active give guidance and assistance to businessman group economy weak, cooperatives, and communities, not yet supported

classification type fulfillment goal. That thing implications *BUMN* activities are not consistent, vulnerable intervention policy in a way structural so that cause loss. Statistics show *BUMN* losses are significant in a way quantitative.

Data for 2018 shows that *BUMN* experienced this loss is 24 *BUMN* or around 20% of the total 118 active *BUMN*. Although in a way quantitative the number of state-owned companies making losses more a little from 2013 data, namely 30 *BUMN*. However, a total loss reached IDR 32.6 trillion [12]. That figure happen Because Lots directors play role double running a *BUMN*, mainly mix affairs business with service public [17]. It doesn't exist yet evaluation give birth to policy controversial in activity state-owned enterprises. Chairman general contact farmer fisherman Winarno Tohir, refused addition permission import rice amounting to 1 million tons for corporation logistics. Addition import rice assessed break Spirit farmer in do production rice that at the moment That enjoy price grain dry good harvest with value Rp. 4,500 to with Rp. 5,000/kg. Instead, divide government, additional import rice is step anticipation and mitigation price rice continues to rise due to supply limited. If policies that don't evaluated the concerning desire many people's lives like import rice, of course become potential miserable society. Must the presence of accurate and free data interest No Can negotiable, too Lots power, energy, and resources wasted power in Because debate policies that are based on data that is not accurate [19].

b. *BUMN* capital is state assets and liability answer state losses

Article 2 letter g Law No. 17 of 2003 states: "state wealth / wealth managed area alone or by other parties in the form of money, letters valuable, receivables goods, as well other possible rights assessed with money, incl assets that are separated from state/ company companies area." Article 1 Law No. 17 of 2003 confirms state company is entire business entity or part the capital owned by the central government. This thing classify *BUMN* capital incl national wealth. So, the loss is loss to the wealth of the country remembers *BUMN* wealth can be obtained classified as the wealth of the country is seen from inclusion the capital. *BUMN Persero*, which is dim directed submit to provisions of Law no. 40 of 2007 concerning Limited Liability Companies, in fact can withdrawn responsibility answer criminal. In company known responsibility answer company, everything action company, good and bad will borne by the company 13. Accountability answer the state that: "Manager company only as an organ that does not responsible answer on his actions, however become not quite enough the answer it represents, namely company limited in question. Even in principle and or the system He No holder shares, but rather an administrator professional."

This thing Lots used save directors of *BUMN Persero* from responsibility answer corruption, though practice its implementation far from *PT* conception. The practice, activity state-owned enterprises do not simple company generally, however thick state intervention and tug-of-war interests that are detrimental to *BUMN*. According to Marshall B. Clinard and Peter C. Yaegar, a corporate crime is any conduct carried out by a corporation that results in legal action from the state, regardless of whether administrative, civil, or criminal laws are used to penalize it [18]. This thing define crime corporation is every actions taken by corporations that can given dropping punishment by the state, incl under law state administration, law civil, as well as law criminal [20]. There is some positioning *BUMN* losses as state losses.

First, theory identification, action from administrator or employee as personnel something corporation is identified as action corporation based on doctrine strict liability or not quite enough answer determine directly responsibility answer punishment for the perpetrator without prove exists error perpetrator [22]. However, other experts argue theory identification different with doctrine strict liability. Actions administrator is directing mind corporation identified as deed corporation so that deed crime committed administrator can charged to corporation. Principle not quite enough answer based on elements element error, is reaction to principle or theory not quite enough answer absolute **no fault liability or absolute/strict** which **prevailed in** primitive times, **with** enactment something **formula** "a man acts at this peril" **2** means deed whatever someone does, if harm others will cause he blamed has violate **law**.

**Second**, theory **imputation**, which is based on principles **vicarious liability** or **imputed liability** or not quite enough **transferred** answer to other **party by** the perpetrator physique Because connection between insured party answer with perpetrator physical [9]. Writer aligned with theory that, that the relationship in question more to connection causality for prove exists linkages perpetrator physique with insured party answer. This thing often happen in position *BUMN* directors do it corruption and its causality proven party related with activity corruption that. Connection administrator or employee as perpetrator physique with corporation is matter main, then employee must Act in room scope or part from work for interest corporation. With so, corporation responsible answer to intent and action his employees [10]. Use principle vicarious liability linked with theory respondent superior and theory alter ego. Theory respondent superior also positions corporation can insured answer according to law criminal, if agent corporation proven do crime in scope his work and crime intended give profits to corporations.

There are three necessary elements fulfilled so something corporation can insured answer on deed agent, namely; agent corporation do crime; crime the done in scope authority; and with objective for profit corporation 19. Writers do too comparison with theory responsibility answer **1** criminal corporation from the Anglo-Saxon countries for strengthen expansion **BUMN losses as state losses** so **become object responsibility answer corruption**. Theory the covers use theory identification (direct corporate criminal liability or doctrine responsibility answer criminal straight away. The application is actions and/ or 'senior officer' errors identified as actions and/ or error corporation [4]. Theory identification also called theory alter ego or organ theory. Next, it is used doctrine responsibility answer criminal replacement (vicarious liability). This thing refuse from doctrine superior responder. Based on the employment principle, that employer (employer) is underwriter answer main from actions of workers/employees. Based the delegation principle so, "a guilty mind" from workers/employees can connected to employer if There is delegation relevant powers and obligation **1** So, app towards positioned *BUMN's* in perspective corporation can open room to **affirmation BUMN losses as internal state losses transformation object responsibility answer follow criminal corruption**.

c. State Intervention Against *BUMN* Business Activities

David Lazer criticize state relations with company public (companies state property) with elaborate how the country should be relate with company belongs to

that country. First, the state tried get superiority competitive with method accommodate competitors best as image for standard country production. Second, through results points First that, the state creates possible conditions competitors small No own power [7]. So, the state must positioning self through policies that benefit *BUMN*. So, no justified intervention through policy government can disturbing *BUMN* performance. Government sued capable develop pattern good and balanced cooperation with state company. The pattern If applied in Indonesia, it is hoped create profit for the state, *BUMN* and society through performance satisfying operate service public. In practice, the state still diligent in do various form intervention towards *BUMN*. Intervention towards many state-owned companies carried out by the government through his policies, even up to the level deed faceted two government (material daad) the truth government in do action civil must obey the rules law civil. However, theory this kept by the government with form intervention to *BUMN*. That thing no healthy specifically for development and growth of *BUMN* [11].

### 3.2 Form Affirmation *BUMN* losses as State losses in Effort Transformation Become Object Accountability Answer Act Criminal Corruption

#### a. Affirmation losses of *BUMN* as state losses in Law No. 19 of 2003 concerning *BUMN*

*BUMN* is guided by substance establishment, management nor responsibility answer in operate activity company. For instance, *BUMN Persero* is a state-owned limited liability company with capital divided into shares, with the state owning all or at least 51% of the business's shares. The capital originate from segregated state assets are included straight away. Equity participation sourced from the *APBN*, capitalization backup, and others. State assets such as new funds, state goods, state receivables from *BUMN* (*Persero*), state shares in *BUMN*, and other state assets are included in the source capital participation from the *APBN* [3]. Article 11 Law No. 19 of 2003 regulates in matter operate management of *BUMN Persero*, applies provisions and principles in Law No. 40 of 2007 (*UUPT*). It is implied that *BUMN Persero* will adhere to the same rules and regulations that apply to *PT*, such as the division of wealth between the founding fathers and the administrator of *Persero*. However, capital participation from the *APBN* is legitimacy people to the state through *BUMN* for furthermore there is supporting output people.

The intended output is service public. Therefore, if happen loss in running *BUMN Persero*, even though the *BUMN* is subservient to *UUPT* provisions, no can released from state losses. This thing because *BUMN* capital from separated state assets although put the country as holder shares, in practice the state still determine direction policies and activities state-owned enterprises. One the proof is that the ministry of *BUMN* exists and against it President can do assignment through Presidential Decree and products law others. So, deep position This is not a state-owned company only operate separated capital of the country, but also as deep state tools its policy. Therefore that, form loss towards *BUMN*, right? Again only is loss company, however concern state losses. Writer strengthen matter This in two matter main that is *BUMN* capital comes from state assets are separated, but the state is not only role as

holder share like provision in *UUPT*, however in practice in many countries determine direction and policy and/ or activity state-owned enterprises; and state involvement in determine direction policy and/ or activity state-owned enterprises make *BUMN* directors do not can equalized with directors or director companies in general as provision from *UUPT*.

Not quite enough answer directors of real *BUMN*'s are different in comparison with not quite enough answer directors compar<sup>3</sup>s in general. State participation in management of *BUMN* becomes bridge exp<sup>2</sup> and *BUMN* losses as state losses, because *BUMN* is in point this no in a way absolute subject to the provisions of the company law, however still there is role as well as internal countries management his business. In fact, deep a number of case, government can do deed government faceted two towards *BUMN*. As a result, action government faceted two that, no fully obey the rules law civil, even followed substances that do not balanced. So, the phr<sup>2</sup>e must confirmed regarding *BUMN* losses in Law No. 19 of 2003 is must add provision that *BUMN* losses are interpreted as loss to the state at any time there is intervention and the decisive role of the state direction p<sup>4</sup>cy and/ or activity state-owned enterprises.

b. Affirmation losses of *BUMN* as state losses in Law No. 1 of 2004 Concerning National Treasury

Article 1 number 22 Law No. 1 of 2004 concerning National Treasury classifies state losses as: "Disadvantages money, letters valuable, real and definite goods \_ the amount as consequence deed law<sup>2</sup>ood on purpose nor negligent." Understanding the have coherence with provision state losses in Law No. 15 of 2006 concerning *BPK*. In the state treasury law, no explain losses to *BUMN* and more arrange effort solution to state losses as well recovery state financial consequences state losses. Understanding state losses can occur shaped loss mon<sup>11</sup> letters valuables, and goods. This thing answer definition state losses regulated in Law No. 17 of 2003 concerning Finance State, Law No. 15 of 2006 con<sup>10</sup>ing *BPK*, and Law No. 20 of 2001 concerning Corruption. However, definition State losses in the state treasury law are narrowed with the phrase "which is real and certain amount, effect deed oppose law good on purpose nor negligent." With thus, the state treasury law in determine loss to the country is seen as provision offense material, that is loss state finances must real and certain the amount comparable with und<sup>10</sup>standing state finances.

Inte<sup>2</sup>al state losses explanation Article 1 number 22 Law No. 1 of 2004 are: reduction state finances in the form of money valuable, item state property of the amount and/ or the value should be; lack the country 's finances must real and certain the amount, no only indication or potency loss; and losses that consequence deed oppose law, fine intentionally / negligently, element oppose law must can proven. So, the losses that occur to *BUMN* are difficult for stated as state lo<sup>2</sup>es, related provision Article 1 No. 22, regarding there is necessary elements proven. The implication is that *BUMN* losses must be caused by actions deliberate law nor negligence *BUMN* directors. Directors in carry out his task must based on faith Good as well as in accordance with *AD/ART* or objective company. This thing can absorbed to directors of *BUMN*, as state subject to *UUPT*.

Provision this interpreted differently if *BUMN* directors do not operate actions and/ or its policy with faith well and when proven, then responsibility answer criminal



can addressed to *BUMN* directors. However, related *BUMN* losses, necessary explored is correct caused personal directors who act, act No with faith good and not according to *AD/ART*, or role state interventionists dictate direction policies and activities activity state-owned enterprises. *BUMN* has role the doer of business, profit or losses incurred in company is something normal thing. However, if the country goes through his intervention in a way real give rise to loss towards *BUMN*, then must classified as state losses due to: (1) *BUMN* is not in a way full submit to *UUPT*, proven with state intervention dictates activity *BUMN* businesses through policy nor materielle <sup>2</sup>ad; (II) the country does not responsible answer if *BUMN* is proven loss Because state intervention. So, if the state and *BUMN* don't heed principle as applies to *BUMN Persero*, the implications *BUMN* can suffer losses classified become state losses so fulfil element as object responsibility answer corruption. Affirmation *BUMN* losses in Law No. 1 of 2004 is add provision if *BUMN* losses are proven caused deep state intervention dictate activity *BUMN* business, the <sup>7</sup>become state losses.

c. Affirmation losses of *BUMN* as state losses in Law No. 40 of 2007 concerning Limited Liability Companies

<sup>10</sup>  
*UUPT* provisions do not give point bright to *BUMN* losses. Article 11 of the *BUMN Law* confirms in matter *BUMN* management applies existing provisions and principles in provisions of the company law. That is, things about substance in *BUMN Persero* applies the same case in a limited liability company, such as there is separation riches between company with owner and administrator company. Chapter the sumir and not yet give clarity positioning *BUMN Persero's* <sup>2</sup>sses. Writer moreover formerly browse source divided capital of *BUMN Persero* in state capital participation in the form of shares and state participation in the form of sourced funding from budget implementation obligation service public which <sup>2</sup> is not enter in riches Persero. Segregated wealth from the *APBN* later made as capital for the establishment of *BUMN Persero* or those consisting of from shares become *BUMN* wealth, no again So national wealth. This thing because difference state position in *BUMN Persero*. When the country comes in as part of *BUMN Persero*, its position equivalent holder share other or as shareholders.

Government no again as a legal entity the public holds power state administration but as a legal entity submissive private to provision company. In practice, the government through its policy in form <sup>2</sup> assignment nor deed government faceted two that don't balanced (because substance agreement or contract more Lots dictated by the government) still hold power applied state administration towards *BUMN*. Government facts standing on two legs, one try role subject to *UUPT* places *BUMN* as institution law private subject to provisions company, however the other hand holds domination to activity state-owned enterprises. Government hinder explanation Article 4 paragraph (1) <sup>2</sup> of the *BUMN law*, namely objective separation the wealth of the country is separate state assets from the *APBN* as state capital participation, which is next its management no again based on rules government. However, the govt in a number of time do assignments that are not can released from function government in regulate *BUMN*. This thing <sup>2</sup> aggravated with no he explained budget related *PSO* although stated still submit to provisions of the State Finance Law because budget the

pure from the *APBN* and remains seen as the part of the *APBN* that is managed and accountable the answer follow system responsibility answer state finances [16].

The implication is, no there is affirmation through the role of the state towards *BUMN* as well separated capital because bound and subject to the state finance law (because *BUMN* capital is one of them originate from the *APBN*). With thus, implementation *PSO* by *BUMN Persero* is colored role implementing government function service general. Affirmation *BUMN* losses in *UUPT* are define understanding *BUMN* can suffer losses classified as loss to the state if losses experienced by *BUMN Persero* the are participation funds used by the directors in a way oppose law or his negligence originate from the dedicated *APBN* For obligation public service.

d. Affirmation losses of *BUMN* as state losses in Law No. 17 of 2003 Concerning State Finance

Article 1 number 1 Law No. 17 of 2003 explains that: "all valuable state rights and obligations money, as well all something that can made proper of the relevant state with implementation rights and obligations that." Meanwhile, Article 2 letter g of Law No. 17 of 2003 states managed state/regional assets themselves/other parties in the form of money, letters valuables, receivables, goods, as well as other rights of value money, incl assets that are separated from state/regional companies, namely part from state finances. Definition chapter the means that state capital is used as establishment of the originating *BUMN* from separated state assets is national wealth. If the *BUMN* loses, then loss the can classified as state losses. This thing become antithesis understanding summarizing the existing *BUMN* Law give diction in matter operate the management of *BUMN Persero* applies provisions and principles of *UUPT*, which is because matter the towards *BUMN Persero* more appropriate applies provision law private.

Meaning ends *BUMN Persero's* losses are not Again state losses as defined in the state finance law. This thing not enough right, understanding thereby tend unilateral create tradition that gave birth uncertainty law. Ideally, the provisions of the state finance law correct there is, because although state assets are separated and become *BUMN* capital in a way as well as immediately make *BUMN* subject to the provisions of the *PT UUPT*. Need seen role dual *BUMN*, as companies under the auspices provisions of *UUPT* and as a *BUMN* that has obligation public service and roles that no can released from mix hand of the state. So, in fact textual state finance law already give affirmation state losses included assets separated from state companies. Affirmation *BUMN losses* in the State Finance Law textual Already explained in Article 2 letter g Law No. 17 of 2003, however can added in rule the transition that provision This interpreted tie towards *BUMN* so avoid uncertainty law in the practice.

e. Affirmation losses of *BUMN* as state losses in Law No. 20 of 2001 Concerning Corruption

UU No. 20 of 2001, not yet state follow criminal corruption by state-owned companies and *BUMN* losses as state losses. However, Article 2 paragraph (1) and Article 3 regulate detrimental corporation's finance or the country's economy is under threat criminal prison lifetime life or a maximum of 20 years, fine maximum One billion rupiah. The sentence is detrimental finance or the country's economy, which is linked with understanding State Finances according to the Corruption Law make defi-

dition this prone to for *BUMN* directors in make decision or detrimental policies company. Error understanding the capital used for establishment of *BUMN* as follows originate from the wealth of the country that has separated implications mistake understanding Article 11 of the *BUMN* Law, that matter the contradictory with principles of *BUMN Persero*, because in operate *Persero* applicable principles is provision law private. Opinion Erman Rajagukguk linked Article 11 of the *BUMN* law, no means deed directors no can free from demands follow criminal.

This thing because no close possibility can its implementation provision criminal to directors if his actions caused it loss the like do embezzlement, falsification of data and reports finance or using liability funds service public for interest self Alone nor anyone else [8]. Affirmation *BUMN* losses caused by *BUMN* directors become step eradicate case corruption involving *BUMN*. Case SOE corruption is frequent make number of people suffering one in the *BUMN*. Since early 2000s, president director of *PT. PLN (PERSERO)* even already tripped three times case corruption. Since early 2000s, already there is three main director of *PLN* who was arrested consequence corruption: Eddie Widiono (already free), Nur Pamudji, and Sofyan Basir. Eddie is punished because corruption project plan parent system information, Nur Pamudji consequence corruption procurement material burn oil High Speed Diesel, last Sofyan Basir consequence case PLTU bribery. An ensnaring case Main Director of *PT. Pertamina (Persero)* is also interesting attention. The reason Main Director Karen Agustiawan had time succeed bring *Pertamina* to scene international, however then become sick in case corruption. Karen Agustiawan succeed bring *Pertamina* to the fortune global 500 list in 2014 at position 123. However, Karen instead so set as suspect in March 2018 because considered harm *Pertamina* amounting to IDR 568 billion. Karen considered harm *Pertamina* because exploration oil and gas in the Manta Gummy block in Australia which results disappointing [23]. Director Finance Angkasa Pura II Andra Y. Agussalam was also arrested by the *KPK* because do transaction bribe amounting to 96,700 Singapore dollars. Money the allegedly is Money accept love Because appointed *PT. CORE* for working project procurement baggage handling system worth IDR 86 billion.

Corruption also creates sick main director of *PT. Pelindo II (Persero)*, Richard Joost Lino. The cause is abuse authority in procurement quay container crane (QCC). The *KPK* also determined director production and research *PT Krakatau Steel (KS) Wisnu Technology*, Kuncoro as suspect case conjecture bribe procurement goods and services at *PT Krakatau Steel (Persero)*. The corruption eradication commission also caught him three other people, namely Alexander Muskita as party suspected private sector as recipient together Vishnu. Case bribe this very ironic considering moderate *KS* trapped in mounting debt. Vishnu called plan need goods and equipment each worth IDR 24 billion and IDR 2.4 billion, then Alexander offered a number of partner for carry out work the to Vishnu and approved. Conspiracy between both of them involving *PT Grand Kartech* and the *Tjokro Group*. Early August 2019, the corruption eradication commission determined ex-president director of *PT Garuda Indonesia Emirsyah Satar (ESA)* and beneficial owner of *Connaught International Pte Ltd Soetikno Soedarjo* as suspect bribe procurement engines and aircraft at *PT Garuda Indonesia*. Soetikno called accept commission big from companies that get project

from *Garuda*, such as rolls-royce and airbus. He then gave part the commission to Emirsyah. Soetikno gave IDR 79 billion to Emirsyah for payment house in Pondok Indah, USD 680 thousand and 1.02 million euros sent to account company owned by Emirsyah in Singapore, and 1.2 million Singapore dollars for repayment apartment owned by Emirsyah in Singapore.

The Corruption eradication committee has done it confiscate house owned by Emirsyah in Pondok Indah and one apartment unit in Singapore. Account the alleged Emirsyah as means washing money is also blocked. Ex-president director of *PT Asuransi Jasa Indonesia (Jasindo)* Budi Tjahjono considered guilty harm state finances amounting to IDR 16 billion on manipulation activity agent and payment commission paid by *PT Jasindo*. Budi was hit too punishment prison in prison Sukamiskin during seven year. Budi is called enrich self alone amounting to IDR 6 billion and USD 462,795. Apart from Budi, the party who got it profit is Kiagus Emil Fahmy Cornain, as a trusted person head of *BP Migas* amounting to IDR 1.3 billion. Solihah as director *PT Jasindo Finance and Investment* amounting to USD 198,340. Actually, there is corruption committed by *PT Jiwasraya*. Case conjecture *PT Asuransi Jiwasraya* mentioned cause state losses of up to IDR 16.81 trillion. The country 's loss consists on loss consequence investment share amounting to IDR 4.65 trillion and losses consequence investment mutual funds IDR 12.16 trillion [24].

Remember the number of state-owned companies involved specifically through ranks its directors in case corruption, open thinking writer in formulate form expansion related *BUMN* losses deed *BUMN* directors as object responsibility answer criminal. So, the got it achieved with maximizing provision in Article 2 and Article 3 of Law No. 20 of 2001 concerning Corruption. Although has the Constitutional Court Decision No. 003/PUU-IV/2006 already state that meaning harm state finances or the country's economy does not is necessary consequences stated happens, in fact expansion form substance chapter must can ensnare good directors of *BUMN* and the party behind it. This thing remember the wrong policy was taken government against *BUMN* can cause *BUMN* losses, then *BUMN* losses must be confirmed as state losses and fulfill criteria as object responsibility answer corruption.

#### 4 Conclusion

Urgency necessity affirmation *BUMN* losses as internal state losses effort transformation become object responsibility answer follow criminal corruption because: (I) not yet there is evaluation loss *BUMN* policy; (II) *BUMN* capital is state wealth and liability answer state losses; and (III) exists state intervention against activity state-owned enterprises.

Form affirmation *BUMN* losses as internal state losses effort transformation become object responsibility answer follow criminal corruption applied to regulation legislation includes: (I) Law No. 19 of 2003 concerning *BUMN*; (II) Law no. 1 of 2004 concerning National Treasury; (III) Law no. 40 of 2007 concerning PT; (IV) Law No. 17 of 2003 concerning State Finance; and (V) Law No. 20 of 2001 concerning Corruption.

## 5 Suggestion

Suggestions summarized by the author within writing this includes suggestions to government as well as *BUMN* for interpret phrase *BUMN* losses included state losses as well to the corruption eradication commission, prosecutor's office and judges for interpret expansion *BUMN* losses as state losses so use it as object responsibility answer follow criminal corruption as one form follow criminal economy in enforcement law in Indonesia.

## References

1. Andi Hamzah, *Crime in the Economic Sector: Economic Crimes*, Jakarta: Sinar Grafa, 2017, p. 26.
2. Andi Hamzah, *Op. Cit.*, p. 28.
3. Article 2A Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.
4. Barda Nawawi Ari e f, *Kapita Selekta Criminal Law*, Bandung: Citra Aditya Bakti, 2003, p. 233-238.
5. Denny and Partners, (07/01/2017) "Economic Crime," <https://lawofficedeny.wordpress.com/2017/01/07/tindak-pidana-Ekonomi/>, accessed on Saturday 18 March 2023.
6. Dinda Audriene, CNN Indonesia, "Uncovering the Root of the Problem Causes of Corruption of BUMN Directors," <https://www.cnnindonesia.com/economic/20191004063546-92-436640/menyibak-akar-problem-besar-kokerja-direksi-bumn> , accessed at Friday March 17, 2023.
7. D. Lazer and V. Mayer-Schoenberger, "Governing Networks," *Brooklyn Journal of International Law*, Vol. 27 (3), 2002: 819- 8 51.
8. E. Rajaguguk, "Understanding State Finances and State Losses," presented in the Public Discussion, " Understanding State Finances in Corruption Crimes, " Indonesian National Law Commission (KHN), Jakarta 26 July 2006.
9. Gatot Supramono, *Punishment of Corporations as Perpetrators of Corruption Crimes*, Jakarta: Predana Media, 2020, p. 134-136.
10. IS Susanto, *Criminology*, Semarang: Faculty of Law, Diponegoro University, 1995, p. 88.
11. Inda Rahadian, "The Position of BUMN Persero as a Separate Legal Entity in Relation to the Separation of State Finances from BUMN Capital," *Ius Quia Iustum*, Vol. 4 (20), October 2013: 624- 6 40.
12. Kompasiana, "Is it true that our BUMN continues to lose money," [https://www.kompasiana.com/nadb5\\_679/5b570e6bc7db7fc7704052/besar-bumn-kita-terus-merugi?page=all](https://www.kompasiana.com/nadb5_679/5b570e6bc7db7fc7704052/besar-bumn-kita-terus-merugi?page=all) , accessed on Friday 17 March 2023.
13. Maizal Walfajri, Kontan.co.id, "This is the reason why there is still a lot of corruption in state-owned companies, Erick Thohir's version," <https://nasional.kontan.co.id/news/ini-pembebab-masih-besar-kokerja-di-kompasi -bumn-ersion-erick-thohir-1> , accessed on Saturday 18 March 2023.
14. Mardjono Reksodiputro, *Progress in Economic Development and Crime (First Collection of Essays)*, Jakarta: UI Center for Justice and Legal Services, 1995, p. 38 in IKAHI, Com-

- pilation of IKAHI Seminar Papers: 2014-2019, Jakarta: Central Management of the Indonesian Judges Association, 2019.
15. Mardjono Reksodipuro, "Reviewing the Bill Concerning the Criminal Code in the Context of Human Rights Protection," *Journal of Justice*, Vol. 2(2), 2002.
  16. Mahpud Sujai, "Review of the Public Service Obligation (PSO) Subsidy Policy at PT. Pelni," *Transportation Research News*, Vol. 23 (4), 2011: 319- 3 33.
  17. Maizal Walfajri, *Op. Cit.*
  18. MB Clinard, PC Yeager, J. Brissette and D. Petrashek, E. Harries, *Illegal Corporate Behavior*, Rockville, Washington D. C: University of Wisconsin, 1979, p. 348.
  19. Medcom.id, 19 September 2018, Rice Import Controversy, <https://www.medcom.id/economic/analisa-economic/9K548ePk-kontroversi-import-beras> , accessed on Friday 17 March 2023.
  20. Sigid Soeseno, *Indonesian Criminal Law, Development and Reform (Implications Theories of Corporate Criminal Liability in Criminal Law and Practice Indonesian Criminal Justice)*, Bandung: Teen Rosdakarya, 2013, p. 207-216.
  21. Sudarto in Ardi Ferdian, "Harmonization of Regulations for Special Crimes whose Objects are False Writings and News," *Legal Panorama Journal*, Vol. 1 (1), June 2016: 27-42; Chairul Huda, "Patterns of Criminal Aggravation in Special Criminal Law," *Ius Quia Iustum*, Vol. 18 (4), 2011: 508- 5 24.
  22. Sutan Remy Sjahdeini, *Corporate Criminal Responsibility*, Jakarta: Grafitipers, 2006, p. 100.
  23. Tommy Kurnia, *Liputan 6.com*, "A Row of State-Owned Enterprises Involved in Corruption Cases," <https://www.liputan6.com/bisnis/read/4035862/deretan-bumn-yang-tersangkut-cases-corruption> , accessed on Friday 17 March 2023.
  24. Tsarina Maharani, *Kompas.com*, "Investigating Jiwasraya Corruption Case, Attorney General Confiscates Assets Worth Rp. 18.4 Trillion,"

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.



# Affirmation of BUMN Losses as State Losses in an Effort to Transform Them into Objects of Responsibility for Corruption Crimes

## ORIGINALITY REPORT

**21** %  
SIMILARITY INDEX

**20** %  
INTERNET SOURCES

**5** %  
PUBLICATIONS

**3** %  
STUDENT PAPERS

## PRIMARY SOURCES

**1** [www.atlantis-press.com](http://www.atlantis-press.com) 9 %  
Internet Source

**2** [download.atlantis-press.com](http://download.atlantis-press.com) 5 %  
Internet Source

**3** [journals.usm.ac.id](http://journals.usm.ac.id) 1 %  
Internet Source

**4** [www.lawjournals.org](http://www.lawjournals.org) 1 %  
Internet Source

**5** [journal.uniku.ac.id](http://journal.uniku.ac.id) 1 %  
Internet Source

**6** [voi.id](http://voi.id) 1 %  
Internet Source

**7** [media.neliti.com](http://media.neliti.com) 1 %  
Internet Source

**8** [ejournal.upnvj.ac.id](http://ejournal.upnvj.ac.id) 1 %  
Internet Source

**9** [investor.wika-beton.co.id](http://investor.wika-beton.co.id) <1 %  
Internet Source

**10** [jurnal.unissula.ac.id](http://jurnal.unissula.ac.id) <1 %  
Internet Source

**11** Submitted to Universitas Diponegoro <1 %  
Student Paper

**12** [ssbfnet.com](http://ssbfnet.com) <1 %  
Internet Source

13	repository.unpas.ac.id Internet Source	<1 %
14	Submitted to Universiti Kebangsaan Malaysia Student Paper	<1 %
15	ir.pgn.co.id Internet Source	<1 %
16	archives.palarch.nl Internet Source	<1 %
17	greenpub.org Internet Source	<1 %
18	infobanknews.com Internet Source	<1 %
19	iosrjournals.org Internet Source	<1 %
20	siasatjournal.com Internet Source	<1 %
21	Andi Mirzan Doda, Fence M. Wantu, Dian Ekawaty Ismail. "Return of State Losses In The Investigation Process That Can Eliminate Criminal Perpetrators of Corruption", Estudiante Law Journal, 2023 Publication	<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On