

Corporate Responsibility in Corruption Crimes at PT. Asuransi Jiwasraya (Government Company) (Analysis of Sentence Number 30/Pid.Sus/Tpk/ 2020/PN.Jkt.Pst)



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ABSTRACT: A corporation is an entity or legal subject whose existence makes a major contribution in increasing economic growth and national development, but in reality, corporations sometimes also commit various criminal acts (corporate crimes) that have a detrimental impact on the state and society. A corporation can be considered to have committed a crime based on the actions of a person who controls the management of the corporation. PT. Asuransi Jiwasraya (Company) as a state-owned company in recent years has been in the spotlight. PT. Asuransi Jiwasraya (Government company) is unable to fulfill its customer's maturity policy obligations of around Rp 12.4 trillion. The default of PT. Asuransi Jiwasraya (Government company) actually occurred in one of its flagship products, the JS Saving plan. JS Saving plan is a life insurance product as well as an investment offered through banking or bancassurance. In contrast to unit-linked insurance products where the investment risk is borne by the policyholder, the JS Saving plan is a non-unit-linked investment whose risks are fully borne by the insurance company. The purpose of this study was to determine the implementation of corporate responsibility in the case of PT. Asuransi Jiwasraya (Government company) and to determine the optimization of corporate responsibility for the perpetrators of corruption at PT. Asuransi Jiwasraya (Government company) in returning losses to the state and customers (the public). The type of research used in writing this thesis is a normative legal research type. The results obtained are that in the corruption case that occurred at PT. Asuransi Jiwasraya (Government company) there were several perpetrators who were charged, one of which was Heru Hidayat who is the main commissioner of PT Trada Alam Minera who also manages and controls corporations involved in criminal acts. Corruption Deviations in Financial Management and Investment Funds by PT. Asuransi Jiwasraya (Government company). Heru Hidayat as one of the main actors in the corruption case has now been sentenced to life imprisonment plus a replacement money of Rp 10.73 trillion. Meanwhile, the corporations that have been accused are 13 Investment Manager Companies which have been transferred to the Corruption Court at the Central Jakarta District Court and are currently in the trial process.

KEYWORDS: Corporate Responsibility, Corruption Crimes, PT Asuransi Jiwasraya, Heru Hidayat , Investment Manager

I. INTRODUCTION

A corporation is an entity or legal subject whose existence makes a major contribution in increasing economic growth and national development, but in reality corporations sometimes also commit various criminal acts (corporate crimes) that have a detrimental impact on the state and society.¹ The problem of corporate responsibility for criminal acts is not a simple matter, considering that corporations are legal entities. This problem stems from the principle of no crime without guilt. Mistakes are mens rea or heart attitudes that naturally only exist in natural people. Mens rea is an element that is difficult to prove from a corporation that is considered to have committed a crime, considering that corporations can only take action through the organs of the board of directors. A corporation can be considered to have committed a crime based on the actions of a person who controls the management of the corporation. The juridical construction used to say that a corporation has committed a crime is if the crime was committed by the management or employee of the corporation who is still within the scope of their authority and for the benefit of the corporation.² PT. Asuransi Jiwasraya (Government company) hereinafter abbreviated as PT AJS a

¹ Consideration of the Supreme Court Decision No. 13/2016 on the Procedures for Handling Criminal Acts by Corporations.

² Mahrus Ali, *Kejahatan Korporasi*, (Yogyakarta: Arti Bumi Intaran, 2008), p.38.

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PT AJS is unable to fulfill its customer's maturity policy obligations of around Rp 12.4 trillion. The default of PT AJS actually occurred in one of its superior products called the JS Saving plan. JS Saving plan is a life insurance product as well as an investment offered through banking or bancassurance. In contrast to unit-linked insurance products where the investment risk is borne by the policyholder, the JS Saving plan is a non-unit-linked investment whose risks are fully borne by the insurance company. The JS Saving Plan offers a guaranteed very high return with a disbursement period every year. This return value was much higher or almost twice the interest offered by bank deposits, which at that time was in the range of 5-7 percent. There are 17,000 JS Saving Plan policy holders. The total Jiwasraya policy holders as a whole including policy holders of other products reached 7 million policy holders.³

For the corporate crime case against PT AJS, the Panel of Judges of the Corruption Court at the Central Jakarta District Court sentenced the six defendants to life imprisonment. The six defendants were found guilty of corruption that caused state losses of Rp. 16.807 trillion in the case. An appeal was also made to the High Court level. The High Court of the Special Capital Region (PT DKI) later changed the sentences for several defendants, namely:

- 1) Hary Prasetyo, who was the former Finance Director of PT AJS, was sentenced to 20 years in prison plus a replacement money of Rp. 1 billion, subsidiary for 4 months.⁴
- 2) Hendrisman Rahim, who was the former President Director of PT AJS, was sentenced to 20 years in prison plus a replacement money of Rp. 1 billion, subsidiary for 4 months.⁵
- 3) Syahmirwan, the former Head of the Investment and Finance Division of PT AJS, was sentenced to 18 years in prison plus a replacement money of Rp. 1 billion, subsidiary of 4 months in prison.⁶
- 4) Joko Hartono Tirto, the Director of PT Maxima Integra, to 18 years in prison plus a replacement money of Rp. 1 billion, subsidiary of 4 months in prison.⁷

Meanwhile, the High Court of the Special Capital Region upheld the verdict of the first instance court against two other perpetrators, namely:

- 1) Benny Tjokrosaputro, the President Director of PT Hanson International, Tbk, was still sentenced to life imprisonment plus a replacement money of Rp 6.078 trillion.⁸
- 2) Heru Hidayat, the President Commissioner of PT Trada Alam Minera, was sentenced to life imprisonment plus a replacement money of Rp. 10.73 trillion.⁹

Three other defendants who were external parties to PT AJS namely Joko Hartono Tirto, Benny Tjokrosaputro and Heru Hidayat were charged with violating Article 3 of Law (UU) Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

The corruption case that occurred at PT AJS involved many corporations that were named suspects who were suspected of being involved in the process of buying and selling shares and mutual funds of PT AJS. Until now, only Investment Manager (MI) companies have been named as suspects, in total there are 13 MI companies, namely: PT Dhanawibawa Investment Management or PT Pan Arcadia Capital (DMI/PAC), PT OSO Investment Management (OMI), PT Pinnacle Persada Investama (PPI), PT Millennium Capital Management (MCM), PT Prospera Asset Management (PAM), PT MNC Asset Management (MNCAM), PT Maybank Asset Management (MAM), PT GAP Capital (GAPC), PT Jasa Capital Asset Management (JCAM), PT Pool Advista Asset Management (PAAAA), PT Corfina Capital (CC), PT Treasure Fund Investama Indonesia (TFII), and PT Sinarmas Asset Management (SAM).

³ Subrata, Agus. "Tata Kelola Perusahaan Asuransi, Studi Kasus: Gagal Bayar PT Asuransi Jiwasraya". <https://icopi.or.id/tata-kelola-perusahaan-asuransi-studi-kasus-gagal-bayar-pt-asuransi-jivasraya/> diakses pada tanggal 17 Maret 2021.

⁴ Direktori Putusan Mahkamah Agung Republik Indonesia. Putusan Nomor: 03/Pid.TPK/2021/PT.DKI, p.239.

⁵ Pengadilan Negeri Jakarta Pusat. "Informasi Detil Perkara: Banding". Putusan Nomor: 2/Pid.TPK/2020/PT.DKI".

⁶ Direktori Putusan Mahkamah Agung Republik Indonesia. Putusan Nomor: 5/Pid.TPK/2021/PT.DKI, p.293.

⁷ Pengadilan Negeri Jakarta Pusat. Putusan Nomor: 6/Pid.TPK/2021/PT.DKI. "Informasi Detail Perkara: Putusan Banding".

⁸ Pengadilan Negeri Jakarta Pusat. "Informasi Detil Perkara: Putusan Nomor: 29/Pid.Sus-TPK/2020/PN.Jkt.Pst dan Putusan Nomor: 7/Pid.TPK/2021/PT.DKI".

⁹ Mahkamah Agung Republik Indonesia. Putusan Nomor: 30/Pid.Sus/TPK/2020/PN Jkt.Pst, p.1487-1488 dan Putusan Nomor: 4/Pid.TPK/2021/PT.DKI, p.245-246.

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In addition to the thirteen Investment Manager companies (MI), there are many more companies that will be named as suspects involved in the PT AJS corruption case, namely a securities company that acts as a broker in managing investments and PT AJS mutual funds which are controlled by the defendants Heru Hidayat and Benny Tjokrosaputro, including the companies owned by the defendant or where the defendants worked as well as PT AJS itself.

II. PROBLEM FORMULATION

This research has objectives to be achieved, namely:

- 1) To find out the implementation of corporate responsibility in the PT AJS case.
- 2) To find out the optimization of corporate responsibility for perpetrators of corruption at PT AJS (Government company) in returning losses to the state and customers (society).

III. THEORETICAL FRAMEWORK

Theoretical frameworks are “concepts which are actually abstractions of the results of thinking or frameworks that are basically the basis for identifying social dimensions that are considered relevant for research”.¹⁰

1. Criminal Theory

The theory of punishment used in this research is absolute theory or absolute theory (Vergeldings Theorien). The foundation of this theory is retaliation. According to this absolute theory, every crime must be followed by a criminal – it can't be no – without bargaining.¹¹

2. Legal Certainty Theory

Legal certainty as one of the objectives of the law can be said as part of efforts to realize justice. The real form of legal certainty is the implementation or enforcement of the law against an action regardless of who does it. With legal certainty, everyone can predict what will happen if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.¹²

3. Aristotle's Theory of Justice

Aristotle in his work entitled "The Ethics of Nichomachea" explains his thoughts on justice. For Aristotle, virtue, namely obedience to the law (policy law at that time, written and unwritten) was justice. In other words justice is a virtue and this is general. Theo Huijbers explains about justice according to Aristotle in addition to general virtues, also justice as a special moral virtue, which is related to human attitudes in certain fields, namely determining good relations between people, and balance between two parties.¹³

IV. RESEARCH METHODS

1. Type of Research

The type of research used in writing this thesis is normative legal research, namely the enforcement or implementation of normative legal provisions (in abstracto) on certain legal events (in concreto) and the results. In normative legal research, research will be carried out on legal documents concerned with related parties.¹⁴

2. Research Approach Method

The research approach method used in writing this thesis is:¹⁵

- a. Legislative approach (statute approach)

¹⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: U.I Press, 1981), p.125.

¹¹ Wirjono Prodjodikoro, *Asas Asas Hukum Pidana di Indonesia*, (Jakarta: Refika Aditama, 2003), p. 23.

¹² Moh. Mahfud MD. Penegakan Hukum dan Tata Kelola Pemerintahan yang Baik, Bahan pada Acara Seminar Nasional “Saatnya Hati Nurani Bicara” yang diselenggarakan oleh DPP Partai HANURA. *Mahkamah Konstitusi Jakarta*, 8 Januari 2009.

¹³ Hyronimus Rhiti, *Filsafat Hukum Edisi Lengkap (Dari Klasik ke Postmodernisme)*, Ctk.Kelima, (Yogyakarta: Universitas Atma Jaya, 2015), p. 241.

¹⁴ Soerjono Soekanto, *Op Cit*, p. 201.

¹⁵ *Ibid*, p. 202.

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Make up a research that prioritizes legal material in the form of legislation as a basic reference material in conducting research.

b. Case Approach

This approach is carried out by examining the corruption case that occurred at PT AJS, Heru Hidayat is one of the defendants who is the President Commissioner of PT Trada Alam Minera. The defendant was sentenced to life imprisonment with Sentence Number 30/Pid.Sus/Tpk/2020/PN.Jkt.Pst. This is done to see the extent of the role of corporations in the quo case.

c. Conceptual approach (conceptual approach)

Conceptual approach (conceptual approach) is a type of approach in legal research that provides an analytical point of view of problem solving in legal research seen from the aspects of the legal concepts that lie behind it, or even can be seen from the values contained in the norming of a regulation in relation to the concepts of law used.

3. Research type

The types of research are normative and empirical. The normative approach refers to legal norms. Empirical approach or sociology of law is an approach used to look at legal aspects in social interactions in society.

IV. IMPLEMENTATION OF CORPORATE RESPONSIBILITY IN THE CASE OF PT. ASURANSI JIWASRAYA (GOVERNMENT COMPANY)

Corporations as the subject of corruption are regulated in the Anti-Corruption Law, namely Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption ("Corruption Law") as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption ("Law 20/2001"). The Anti-Corruption Law does not regulate corporations as the subject of criminal acts, only determines "natural humans" as the subject of criminal acts. The Corruption Act regulates corporate criminal liability in Article 20. A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on work relationships or based on other relationships, acting within the corporate environment, either alone or jointly. In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and/or its management. In the event that a criminal charge is made against a corporation, the corporation is represented by the management. Managers who represent the corporation can be represented by other people. However, the judge can order the corporate management to appear in court himself and can also order the management to be brought to court. In the event that a criminal charge is made against a corporation, the summons to appear and the submission of the summons shall be submitted to the management at the management's residence or at the management's office.

The main punishment that can be imposed on corporations is only a fine, with the maximum sentence being added by 1/3 (one third). So, in the Corruption Law, corporate responsibility is included in the 3rd model, where the corporation is the maker and can be held criminally accountable, not only the management. The management can be held criminally responsible together with the corporation. There are various opinions regarding whether or not the regulation of corporate criminal liability in the Anti-Corruption Law is clear. According to Purwoleksono¹⁶, the regulation of corporate criminal liability in the Corruption Act includes laws that clearly regulate corporate criminal liability, in addition to Perppu Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism (in Article 17 and Article 18). Purwoleksono classifies the regulation of corporate criminal liability in the Act in two forms, namely:¹⁷

- 1) the arrangement is clear;
- 2) the setting is not clear.

¹⁶ Didik Endro Purwoleksono, 2016, *Tindak Pidana Korporasi: Catatan Kritis Pengaturannya dalam Undang-Undang, disampaikan pada saat FGD Penelitian tentang "Pembaruan Hukum Pidana: Pertanggungjawaban Korporasi sebagai Subjek Tindak Pidana dalam RUU KUHP"*, Fakultas Hukum Universitas Airlangga, 14 Agustus 2016.

¹⁷ *Ibid*

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Corporate accountability in corruption can also be seen in the formulation of article 20 of the PTPK Law, there are at least 7 (seven) descriptions of the form of accountability, namely:¹⁸

- 1) In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and or its management.
- 2) A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on a work relationship or based on other relationships, acting within the corporate environment, either alone or together.
- 3) In the event that criminal charges are made against the corporation, the corporation continues to be represented by the management.
- 4) The management representing the corporation as referred to in paragraph (3) may be represented by another person.
- 5) The judge may order the management of the corporation to appear in court himself and may also order that the management be brought to court.
- 6) In the event that a criminal charge is made against a corporation, the summons to appear and the submission of the summons shall be submitted to the management at the management's residence or at the management's office.
- 7) The main punishment that can be imposed on corporations is only a fine, with the maximum sentence being added by 1/3 (one third).

From the formulation of Article 20 of the Law on the Eradication of Corruption Crimes above, it at least provides an illustration that a criminal act of corruption is committed by a corporation, if the crime is committed by people who, based on work or other relationships, act within the corporate environment, either alone or jointly same. The burden of corporate responsibility according to the provisions of this Article is placed on the corporation itself and or on its management. The nature of this responsibility is known as cumulative-alternative. This can be seen from the sentence "corporation and/or management" in the formulation of article 20 paragraph (1), so to prosecute and impose a crime in the event that a criminal act of corruption is committed by or on behalf of a corporation according to this provision can be carried out against "corporations and their management." or against "corporations" only or administrators only.

As for the laws that have unclear regulations regarding corporate criminal liability, among others, Law Number 32 of 2009 concerning Environmental Protection and Management. The criminal liability of corporations in the law is regulated in CHAPTER XV, concerning Criminal Provisions, in Articles 97 to 120, concerning the types of criminal acts and the subject of environmental crimes. Meanwhile, the Anti-Corruption Law does not fully regulate criminal responsibility, as stated by the Head of Sub-Directorate for Serious Human Rights Violations at the Directorate of Prosecution of the Junior Attorney General for Special Crimes, Undang Mugopal [4]. He mentioned several issues in the Anti-Corruption Law, including who has the right to represent corporations in the legal process of corruption cases? To be legally accountable and to facilitate the execution of the execution, it is the person who is the administrator of the appointed legal entity and not another person who acts as legal adviser in the criminal justice process. There must be a limit to the extent to which the provisions of Article 20 paragraph (4) of the Anti-Corruption Law, in the event that a corporation can be represented by "other people".¹⁹ Normative arrangements for parties who have legal standing to represent and act on behalf of corporations in the judicial process of criminal acts of corruption are regulated in provisions of Article 20 of the Corruption Law. As for anyone who can represent a corporation as a legal subject for perpetrators of corruption in the trial based on the provisions of Article 20 paragraph (3), paragraph (4), paragraph (5), and paragraph (6), namely:

- 1) administrator;
- 2) Other people as Deputy Managers;
- 3) Certain Corporate Managers who are appointed by order of the Judge.²⁰

¹⁸ Rony Saputra, 'Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi Yang Merugikan Keuangan Negara Terutama Terkait Dengan Pasal 2 Ayat (1) UU PTPK)', *Jurnal Cita Hukum*, Vol. II No. 2 Desember 2015, ISSN: 2356-1440.

¹⁹ Undang Mugopal, Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi (Persoalan dalam Praktik), makalah disampaikan dalam Seminar tentang "Kedudukan dan Tanggung jawab Korporasi dalam Tindak Pidana Korupsi", *Badan Diklat Hukum dan Peradilan Mahkamah Agung*, Selasa, 15 November 2016, Hotel Grand Mercure, Jakarta Pusat.

²⁰ *Ibid*

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When reviewed, the Anti-Corruption Law has not clearly regulated the criminal liability of corporations. Article 1 number 1 states that "Corporation is an organized collection of people and/or assets, both legal entities and non-legal entities." By emphasizing the phrase "and/or" in the formulation, as a result, corporations will consist of several types, namely:

- 1) an organized collection of people and assets in the form of a legal entity;
- 2) an organized collection of people and wealth that is not a body law;
- 3) an organized group of people in the form of a legal entity;
- 4) an organized group of people who are not legal entities;
- 5) an organized collection of assets in the form of a legal entity;
- 6) an organized collection of assets that is not a legal entity.²¹

From this formulation, it can be said that the Anti-Corruption Law has a broad understanding of corporations, namely those that are legal entities and are not legal entities. Formulation of understanding is important to avoid multiple interpretations in its application. Another provision, is Article 20 paragraph (2), which states that "A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on a work relationship or based on other relationships, acting within the corporate environment, either alone or same together." So a corporate crime is considered to be committed by a corporation if the crime is committed by people based on work or other relationships. In the theory of vicarious liability, the working relationship in question is limited to certain circumstances where the corporation is only responsible for the wrongdoing of workers who are still within the scope of their work.

Article 20 paragraph (1), which reads "In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and/or its management." So those who can be accounted for are: corporations, management, corporations and management. Based on this, the corporate criminal responsibility system is that the corporation can commit a crime (as the maker) and can be held accountable. The formulation of Article 20 paragraph (1) and paragraph (2) of the Anti-Corruption Law is related to Identification Theory, so if people based on work relationships and/or other relationships act outside or are no longer within the boundaries or duties of the corporation, the corporation cannot be held criminally responsible. On the other hand, if these people have committed actions that are still within the scope of the duties and/or business of the corporation, then those who are asked to be criminally responsible are the corporations.

Identification theory requires the existence of a "directing mind" from the corporation, where the directing mind is on the management of the corporation who has a working relationship or other relationship based on the AD/ART or the purpose of the corporation being established. Thus, in the criminal justice process for criminal acts of corruption, corporate criminal responsibility should be borne by the party who represents and acts on behalf of the corporation, which is made a legal subject. The actions taken (*actus reus*) and the *mens rea* of the corporate management are the *mens rea* of the corporation. Regarding the formulation of Article 20 paragraph (4) of the Anti-Corruption Law, problems will arise if the corporation is represented by another person. In this case, of course, there must be provisions that regulate, which are affirmative in nature, so that there are no multiple interpretations in its implementation.

The corporation benefits from the actions or actions taken by its management. To overcome the problem of holding corporations accountable as the subject of criminal acts, the Supreme Court issued Supreme Court Regulation no. 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations, on December 29, 2016. This regulation was issued as a guide for law enforcement officers and fills legal voids related to procedures for handling certain crimes carried out by corporations and/or their management. This regulation is not only to ensnare corporations in criminal acts of corruption, but also to corporations that are criminally accountable by other special laws. Perma No. 13 of 2016 contains the formulation of the criteria for corporate error which can be called committing a criminal act; anyone who can be held liable for corporate crime; procedures for examination (investigation-prosecution) of corporations and or corporate management; corporate trial procedures; types of corporate punishment; sentence; and implementation of sentences. In terms of the error criteria there are several things that need to be considered. First, the corporation obtains profits or benefits from certain criminal acts or the crime is carried out for the benefit of the corporation. Second, corporations allow criminal acts to occur. Third, the corporation does not take preventive steps or prevent a bigger impact and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts.

²¹ Wirjono Prodjodikoro, *Asas Asas Hukum Pidana di Indonesia*, (Jakarta: Refika Aditama, 2003), p. 23.

V. OPTIMIZATION OF CORPORATE RESPONSIBILITY FOR CRIMINAL ACTS OF CORRUPTION AT PT. ASURANSI JIWASRAYA (GOVERNMENT COMPANY) IN RETURNING LOSS TO THE STATE AND CUSTOMERS (COMMUNITY).

1. Corporate responsibility for criminal acts committed by the Corporate Management.

The corruption case that occurred at PT. Asuransi Jiwasraya (Government company) or (PT AJS) involved many people as well as corporations. One of the defendants in this case is Heru Hiadyat, the President Commissioner of PT Trada Alam Minera. Heru Hidayat's Involvement in the Corruption Crime Case of Deviations in Financial Management and Investment Funds by PT. AJS in several companies for the period 2008 to 2018, was initiated by a malicious agreement between Heru Hidayat and Both of Director (Director of PT. AJS) before the implementation of PT. AJS investment began in 2008. The malicious agreement was marked by an agreement to appoint Heru Hidayat and Benny Tjokroaputro to control and regulate PT. AJS' investment in both shares and PT. AJS' mutual funds. The initial regulation and control of PT.AJS's investment was to improve the finances of PT.AJS which in 2008 experienced an RBC (risk based capital) of -580% (minus 580 per hundred) which is far from the health level of an insurance company should be 120%. With an RBC value of -580% and a liability level (the obligation of PT. AJS to policyholders) of Rp. 6.7 trillion, so that PT. AJS's financial improvement is needed by investing in PT. AJS on a large scale which is expected to improve PT. AJS's finances.

The source of funds in PT.AJS's stock and mutual fund investments is from public insurance funds as a result of the sale of insurance products in the form of non-saving plan products, saving plan products, and corporate premiums totaling approximately Rp.91,105,314,846,726.70 (ninety one trillion one hundred five billion three hundred fourteen million eight hundred forty six thousand seven hundred twenty six point seventy rupiah). Because it has been agreed that Heru Hidayat as one of the parties appointed to control and regulate the investment in shares and mutual funds of PT. AJS, so that the investment funds are partly regulated and managed by Heru Hidayat. It turns out that in the regulation and control of PT. AJS investment, Heru Hidayat together with Joko Hartono Tirto and Piter Rasiman who are Directors of Heru Hidayat's companies use the nominees (people or companies whose names/identities are used) to increase the price/value of underperforming shares with low liquidity before being sold to PT. AJS. The use of people's identities as nominees is not known by the owner of the identity. The shares are shares that come from the issuer company owned by Heru Hidayat directly or the issuer company in which Heru Hidayat is the Beneficial Ownership in it.

To fulfill the implementation of PT. AJS mutual fund investment, the way that Heru Hidayat did is to provide an Investment Manager Company to PT. AJS to manage PT. AJS mutual fund participation units. There are Investment Manager companies provided by Heru Hidayat which are directly owned by him which were obtained directly from the Right Issue (ownership capital placement), namely PT. Treasure Fund Investama and IPO Shares (Initial Public Offering), namely PT. Pool Advista Asset Management and there is also an Investment Manager company controlled by him, namely PT. Corfina Capital, PT. Gap Capital, PT. Prospera Asset Management, PT. Millennium Capital Management, PT. Pinnacle Persada Investama, PT. Sinarmas Asset Management, PT. Capital Asset Management Services, PT. Maybank Asset Management, PT. Dhanawibawa Investment Management, PT. OSO Investment Management and PT. MNC Asset Management.

The mutual fund product units issued by the 13 Investment Manager Companies are used as shells to accommodate Heru Hidayat's shares through sale and purchase transactions and also through asset settlement or transfer of shares, which causes PT. AJS losses to increase from shares and mutual funds. That so it can be seen from the fact that Heru Hidayat is the beneficial owner of PT. Trada Alam Minera with TRAM shares is only a means used by Heru Hidayat in controlling PT. AJS money for his own benefit and also enriching other people, namely the Directors of PT. AJS (Drs. Hendrisman Rahim, Hary Prasetyo and Syahmirwan) as a result of the agreement bad together. Heru Hidayat as beneficial owner is a person who can appoint or dismiss directors, commissioners, management, supervisors, or supervisors at PT. Trada Alam Minera as a corporation and Heru Hidayat have the ability to control PT. Trada Alam Minera and are entitled to and/or receive benefits from PT. Trada Alam Minera, directly or indirectly, is the real owner of the funds or shares of PT. Trada Alam Minera so that the responsibility remains with Heru Hidayat.

In the investigation of the Corruption Crime Case of Deviations in Financial Management and Investment Funds by PT. AJS (Government company) in several companies for the period 2008 to 2018, that the corporations that have been designated as suspects are 13 Investment Manager Companies involved in the implementation of PT. AJS mutual fund investments which have now been delegated to the Corruption Court at the Jakarta District Court Center and while in the trial process.

2. The Corporation for Corruption Crimes at PT. Asuransi Jiwasraya is Responsible for the State.

In the a quo case, it was found that the 13 investment manager companies knew that the opening of the mutual fund unit was actually a request by Heru Hidayat and Benny Tjokrosaputro for PT. AJS to become a single investor with 100% ownership and wanted that the mutual fund unit they manage was as a single investor warehousing (shell) to fill in the shares originating from Heru Hidayat and Benny Tjokrosaputro, which are shares resulting from price manipulation. With the aim of benefiting from the management of PT. AJS mutual funds in large quantities so that they are willing to carry out the instructions for requesting a subscription (purchase) of shares from Heru Hidayat and Benny Tjokrosaputro which exceeds 10% issued by 1 (one) issuer of the net asset value of the mutual fund. for mutual funds in the form of conventional and exceeding 20% for mutual funds in the form of sharia which is contrary to OJK regulations. That the 13 investment manager companies continued to carry out instructions from Heru Hidayat and Benny Tjokrosaputro despite knowing that the mutual fund unit belonged to PT. AJS and the share subscription funds/money came from PT. AJS. In reality, the 13 Investment Manager Companies are not independent in managing mutual funds which are contrary to OJK regulations, so the 13 Investment Manager Companies do not carry out PT. AJS investments seriously and bypass high standards of care and do not take precautions. , does not carry out supervision and/or does not guarantee to ensure that crime does not occur.

According to the explanation of Law Number 31 of 1999, State finances are all state assets in any form and are not separated, including all parts of state assets and all rights and obligations arising from:

- 1) Being in the control, management, and accountability of state officials, both at the central and regional levels;
- 2) Being in the management and responsibility of State-Owned Enterprises/Regional-Owned Enterprises, Foundations, Legal Entities, and companies that include state capital, or companies that include third party capital based on agreements with the State.

Whereas because the PT.AJS mutual fund investment funds/money received by the 13 Investment Manager Companies for stock subscription as the underlying (contents) in the PT.AJS mutual fund unit managed by the 13 Investment Manager Companies came from PT.AJS which they manage, the 13 companies The Investment Manager as a corporate legal subject is responsible to the state in this case PT. AJS because PT. AJS as a BUMN receives state investment funds from state finances.

VI. CONCLUSION

Corporations as subjects of criminal law have been stipulated in Law no. 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Although the Anti-Corruption Law stipulates that corporations are subject to criminal law, only a few law enforcement officers have designated corporations as suspects for corruption and punish them. This is because law enforcement officers have difficulty in ensnaring corporations. One of the reasons is the incomplete provisions regarding corporations as legal subjects in the Anti-Corruption Law. In addition, investigators have difficulty finding evidence and determining the identity of corporate actors. Another reason is that the Criminal Code still stipulates humans as legal subjects, which is reflected in the "whoever" element in the various formulations of the offense. The non-recognition of corporations as legal subjects in the Criminal Code, results in when a crime occurs involving a corporation, only individuals from the corporation are held criminally responsible.

In the corruption case that occurred at PT Asuransi Jiwa Sraya (Government company) there were several perpetrators who were indicted, one of which was Heru Hidayat who is the main commissioner of PT Trada Alam Minera who also manages and controls corporations involved in Corruption Crimes, Deviations in Financial Management and Investment Fund by PT Asuransi Jiwa Sraya (Government company). Heru Hidayat as one of the main actors in the corruption case has now been sentenced to life imprisonment plus a replacement money of Rp 10.73 trillion. While the corporations that are accused are 13 Investment Manager Companies, namely PT. Treasure Fund Investama, PT. Pool Advista Asset Management, PT. Corfina Capital, PT. Gap Capital, PT. Prospera Asset Management, PT. Millennium Capital Management, PT. Pinnacle Persada Investama, PT. Sinarmas Asset Management, PT. Capital Asset Management Services, PT. Maybank Asset Management, PT. Dhanawibawa Investment Management, PT. OSO Investment Management and PT. MNC Asset Management which has now been delegated to the Corruption Court at the Central Jakarta District Court and is currently in the trial process.

Corporate Responsibility in Corruption Crimes at PT. Asuransi Jiwasraya (Government Company) (Analysis of Sentence Number 30/Pid.Sus/Tpk/ 2020/PN.Jkt.Pst)

REFERENCES

Books:

- 1) Hasbullah F.S, 2013, *Direksi Perseroan Terbatas serta Pertanggungjawaban Pidana Korporasi*, Citra Aditya Bhakti, Bandung.
- 2) Mahrus Ali, 2008, *Kejahatan Korporasi*, Arti Bumi Intaran, Yogyakarta.
- 3) Prodjodikoro, W, 2003, *Asas Asas Hukum Pidana di Indonesia*, Refika Aditama, Jakarta.
- 4) Rhiti, H, 2015, *Filsafat Hukum Edisi Lengkap (Dari Klasik ke Postmodernisme)*, Ctk.Kelima, Universitas Atma Jaya, Yogyakarta.
- 5) Sembiring, S, 2006, *Hukum Asuransi*, Penerbitan Nuansa Aulia, Bandung.
- 6) Soekanto, S, 1981, *Pengantar Penelitian Hukum*, U.I Press, Jakarta.
- 7) Wirjono, R, 2006, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*, Sinar Grafika, Jakarta.

Papers

- 1) Moh. Mahfud MD. *Penegakan Hukum dan Tata Kelola Pemerintahan yang Baik, Bahan pada Acara Seminar Nasional "Saatnya Hati Nurani Bicara" yang diselenggarakan oleh DPP Partai HANURA*. Mahkamah Konstitusi Jakarta, 8 Januari 2009.
- 2) Mugopal, U, *Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi (Persoalan dalam Praktik)*, makalah disampaikan dalam Seminar tentang "Kedudukan dan Tanggung jawab Korporasi dalam Tindak Pidana Korupsi", *Badan Diklat Hukum dan Peradilan Mahkamah Agung*, Selasa, 15 November 2016, Hotel Grand Mercure, Jakarta Pusat.
- 3) Purwoleksono, DE, 2016, *Tindak Pidana Korporasi: Catatan Kritis Pengaturannya dalam Undang-Undang*, disampaikan pada saat *FGD Penelitian tentang "Pembaruan Hukum Pidana: Pertanggungjawaban Korporasi sebagai Subjek Tindak Pidana dalam RUU KUHP"*, Fakultas Hukum Universitas Airlangga, 14 Agustus 2016.
- 4) Saputra, R, 'Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi Yang Merugikan Keuangan Negara Terutama Terkait Dengan Pasal 2 Ayat (1) UU PTPK)', *Jurnal Cita Hukum*, Vol. II No. 2 Desember 2015, ISSN: 2356-1440.

Website:

- 1) Subrata, Agus. "Tata Kelola Perusahaan Asuransi, Studi Kasus: Gagal Bayar PT Asuransi Jiwasraya". <https://icopi.or.id/tata-kelola-perusahaan-asuransi-studi-kasus-gagal-bayar-pt-asuransi-jiwasraya/> diakses pada tanggal 17 Maret 2021.

The Law

- 1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- 2) Undang-Undang Nomor 1 Tahun 1946 tentang Kitab Undang-Undang Hukum Pidana. (Lembaran Negara Republik Indonesia Nomor 127 dan Tambahan Lembaran Negara Republik Indonesia Nomor 1660)
- 3) Undang-Undang Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana. (Lembaran Negara Republik Indonesia Nomor 76 dan Tambahan Lembaran Negara Republik Indonesia Nomor 3209).
- 4) Undang-Undang Republik Indonesia Nomor 19 Tahun 2019 Tentang Perubahan Kedua Atas Undang-Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi. (Lembaran Negara Republik Indonesia Nomor 197 dan Tambahan Lembaran Negara Republik Indonesia Nomor 6409).
- 5) Undang-Undang Nomor 19 Tahun 2003 Tentang Badan Usaha Milik Negara. (Lembaran Negara Republik Indonesia Nomor 70 dan Tambahan Lembaran Negara Republik Indonesia Nomor 4297).
- 6) Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang (Lembaran Negara Republik Indonesia Tahun 2010 Nomor 122 dan Tambahan Lembaran Negara Republik Indonesia Nomor 5164).
- 7) Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 140 dan Tambahan Lembaran Negara Republik Indonesia Nomor 3874).

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- 8) Peraturan Mahkamah Agung Nomor 1 Tahun 2020 Tentang Pedoman Pemidanaan Pasal 2 dan Pasal 3 Undang-Undang Pemberantasan Tindak Pidana Korupsi. (Berita Negara Republik Indonesia Tahun 2020 Nomor 832).
- 9) Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi. (Berita Negara Republik Indonesia Tahun 2016 Nomor 2058).
- 10) Putusan Nomor: 29/Pid.Sus-TPK/2020/PN.Jkt.Pst
- 11) Putusan Nomor: 30/Pid.Sus/Tpk/2020/PN Jkt.Pst.
- 12) Putusan Nomor: 2/Pid.TPK/2020/PT.DKI.
- 13) Putusan Nomor: 3/Pid.TPK/2021/PT.DKI.
- 14) Putusan Nomor: 4/Pid.TPK/2021/PT.DKI.
- 15) Putusan Nomor: 5/Pid.TPK/2021/PT.DKI.
- 16) Putusan Nomor: 6/Pid.TPK/2021/PT.DKI.
- 17) Putusan Nomor: 7/Pid.TPK/2021/PT.DKI.