
LEGAL CONSTRUCTION FOR THE OBLIGORS OF THE BANK OF INDONESIA LIQUIDITY ASSISTANCE FUNDS (BLBI) IN RETURNING STATE ASSETS THAT GUARANTEE LEGAL CERTAINTY AND JUSTICE

Aida Ardini

Universitas Trisakti, Jakarta, Indonesia

aidaardini@outlook.com

Received: 02-08-2022

Accepted: 13-08-2022

Published: 24-08-2022

ABSTRACT

The BLBI dispute has been running for more than 20 years since the BLBI issued by the Government during the monetary crisis that occurred in Indonesia from 1997 to 1998, when the Government of Indonesia decided to implement a *managed floating* exchange rate system and free floating. Until now, the problem of Bank Indonesia Liquidity Assistance (BLBI) has not yet been found. Even BLBI dispute resolution is increasingly unclear in its direction. The deviation of BLBI disbursement amounted to Rp 138,442 trillion from the total BLBI funds issued by the Government to save the economic crisis that at that time occurred amounted to Rp 144,536 trillion. The urgency of legal reconstruction is very necessary in resolving disputes over BLBI funds that are increasingly directionless.

Keyword: legal reconstruction, settlement, liquidity, Bank of Indonesia

Corresponding Author: Aida Ardini

E-mail: aidaardini@outlook.com



INTRODUCTION

The 1997 – 1998 global financial crisis started in Thailand and then quickly affected neighboring countries. It first hit Indonesia, South Korea, and Malaysia, this financial crisis that occurred in Asia became a global crisis that would later hit Russia and Brazil in 1999, followed by Argentina and Turkey in 2001. In Indonesia, it began with the depreciation of Rupiah against American Dollar ("USD"). Indonesian banks ran out of capital due to bad loans, which IMF concluded to have started a domino effect, giving rise to many new policies resulting in the closure of 16 (sixteen) national private banks in Indonesia (Chou, 1999). However, it turned out that the effects of these new policies also had an impact on worsening economic conditions.

As a matter of fact, the government's effort to implement a very tight monetary policy to stabilize the value of the Rupiah (tight money policy) created a negative effect on banking in Indonesia (Yunus et al., 2017). There were also a number of issues that existed in general public, from the loss of foreign exchange transactions to the issue of confiscation, causing the occurrence of massive withdrawal of funds by the customer who would immediately transfer them from a large private bank to a government bank or a foreign bank.

In the audit report by the State Audit Board dated July 22nd 2000, it was stated that there were irregularities in the use of BLBI funds amounting to Rp. 54,5 trillion from the Rp. 106 trillion that the government had given to 10 (ten) frozen operation banks and to 32 (thirty-two) suspended business activity banks. Furthermore, in the final audit report dated August 5th 2000 by the State Audit Board, it was stated that there was a state loss amounting to Rp. 138,4 trillion and Rp. 144,5 trillion of BLBI funds that had been given by the government to bank owners, there was also a misappropriation of Rp. 84,4 trillion BLBI funds by 48 (forty-eight) beneficiary banks and approximately Rp. 34,7 trillion (25%) that had been accounted for.

METHOD

The research carried out by the author is normative research, namely research from in action to the applicability of normative law. This type of research is field research. Normative legal research used in this study aims to examine the implementation or implementation of positive legal provisions (legislation) regarding BLBI factually in legal events that have occurred in society. This method is used to see and ascertain whether the implementation of pre-existing laws is efficient and effective enough to resolve the BLBI sting so that legal events *in concreto* are visible in their application.

RESULTS AND DISCUSSION

The existence of a dispute over BLBI funds gave rise to two options or legal obligations, namely the choice between closing a troubled bank because it was contrary to the laws and regulations or saving the national banking system which was damaged as a result of the monetary crisis and as an effort to restore and maintain public trust in the national banking system and Indonesia's foreign payment system.

Efforts to recover BLBI funds could be discerned in several legal aspects, for example in the civil law aspect, the distribution of BLBI funds by Bank of Indonesia was the implementation of the contents of the provisions contained in:

- a. Regulations No. 13 of 1968 concerning Central Bank;
- b. Regulations No. 7 of 1992 and No. 10 of 1998 concerning Banking;
- c. Civil Code;
- d. Presidential Decree No. 26 concerning Guarantees for Payment Obligations for Commercial Banks;
- e. Instruction and Presidential Decree at the Limited Cabinet Session on Economics, Finance, and Development Supervision on September 3rd 1997;
- f. Decree of the Minister of Finance No. 26/KMK.017/1998 dated January 28th 1998 concerning Terms and Procedures for Implementing Government Guarantees for Payment Obligations for Commercial Banks (Roubini & Mihm, 2010).

Recently, the government in 2021 was starting to make serious efforts again to settle the collection rights for BLBI funds by forming a Task Force ("Satgas"). This is stated in the Presidential Decree of the Republic of Indonesia Number 6 of 2021 concerning the Task Force for Handling State Collection Rights for BLBI Funds. This task force was formed in the context of handling and restoring state rights in the form of state claims for remaining state receivables from BLBI funds and property assets. This resulted in state losses of around Rp. 110.4 trillion. The government established a Task Force (Satgas) for Handling State Collection Rights for Bank of Indonesia Liquidity Assistance Funds was stipulated in Presidential Decree Number 6 of 2021.

The establishment of the BLBI Task Force has a noble purpose, namely to carry out the handling, settlement, and restoration of state rights originating from BLBI funds effectively and efficiently as well as fairly through legal and/or other efforts at home or abroad, both to debtors, obligors, company owners and their heirs or other parties who cooperated with them.

The BLBI Task Force has four tasks, namely:

1. Develop strategic policies in the context of accelerating the handling and recovery of state collection rights and BLBI assets;
2. Integrate and determine the steps for implementing strategic policies and breakthroughs needed in the context of accelerating the handling and recovery of state collection rights and BLBI assets;
3. Provide direction to implementers in accelerating the handling and recovery of state collection rights and BLBI assets;
4. Monitor and evaluate the implementation of accelerated handling and recovery of state collection rights and BLBI assets.

The case that the Government is currently handling is the confiscation of assets by the BLBI Task Force is :

1. Assets Owned by Obligor Trijono Gondokusumo

The land located in Jonggol Owned by Obligor Trijono Gondokusumo The assets taken are collateral for the Settlement of Shareholder Obligations (PKPS) of PT Bank Putra Surya Perkasa.

2. Agus Anwar's Assets

The land located in Bojong Koneng covering an area of 340 hectares owned by Obligor Agus Anwar of the Bank Indonesia Liquidity Assistance (BLBI) task force has again carried out confiscation. This time the blbi assets that were confiscated were land covering an area of approximately 340 hectares in Bojong Koneng Village, Babakan Madang, Bogor.

This land is a collateral belonging to BLBI obligor Agus Anwar or known as the assets of PT Bumisuri Adilestari.

The confiscation of Agus Anwar's obligor guarantee goods was carried out based on the Deed of Shareholders' Obligation Settlement Agreement and Debt Recognition Number 6745 / BIDKONS / 1103 dated November 21, 2003 between Agus Anwar and the National Banking Restructuring Agency (BPPN).

3. Assets of Kaharudin Ongko

Two Assets Belonging to the Children of Kaharudin Ongko, the confiscation was carried out for two assets of Irjanto Ongko, who are debt insurers as well as children of Kaharudin Ongko.

The Head of the BLBI Task Force, Rionald Silaban, said that this seizure was carried out considering that Kaharudin Ongko as the insurer of debt to the state has not yet completed all his obligations as an obligor of the National Commercial Bank and Arya Panduarta Bank.

In terms of value, Kaharudin Ongko still has obligations as an obligor of a National Commercial Bank of Rp. 7,727,984,148,737.00 (excluding administrative fees for managing state receivables of 10 percent), and as an obligor of Bank Arya Panduarta of Rp. 359,435,826,603.76 (excluding administrative fees for managing state receivables of 10 percent).

4. Miki Santoso's Assets

The Task Force (Satgas) for The Collection of State Rights for Liquidity Assistance of Bank Indonesia (BLBI) or the BLBI Task Force again carried out asset confiscation. Together with the DKI Jakarta Branch

of the State Receivables Affairs Committee (PUPN), the BLBI Task Force confiscated assets belonging to Santoso Sumali.

Director of Law and Public Relations of the Directorate General of State Assets (DJKN) of the Ministry of Finance (Kemenkeu) Tri Wahyuningsih Retno Mulyani said that the seizure was carried out as an effort to settle the state collection rights of BLBI funds derived from the obligor of Shareholders' Obligation Settlement (PKPS) of Bank Metropolitan Raya and PKPS Bank Bahari.

The assets taken were in the form of two plots of land covering an area of 848 square meters along with buildings on it. These confiscated assets are located on Pilar Road, Kedoya Kav Delta Housing Complex. G1 and G12, Kedoya Selatan Village, Kebon Jeruk District, West Jakarta.

The foreclosure was carried out as an effort to collect debts from the obligors of the Settlement of Shareholders' Obligations (PKPS) of Bank Metropolitan Raya and PKPS of Bank Bahari. The value of the debt amounted to IDR 524.56 billion.

5. Assets Owned by Ulung Bursa

The Task Force on State Bill of Rights of Bank Indonesia Liquidity Assistance Fund (Satgas BLBI) confiscated 2 assets belonging to the obligor Ulung Bursa who received BLBI funds in 1998.

The two assets seized from Ulung Bursa are land and houses located in Menteng, Central Jakarta and Matraman, East Jakarta.

Meanwhile, other assets are also still in the form of land and its buildings covering an area of 1,658 m² located on Jalan Matraman Raya No. 71, Palmeriam Village, Matraman District, East Jakarta.

6. Assets Belonging to the Texmaco Group

The Bank Indonesia Liquidity Assistance Task Force (BLBI) has again confiscated Texmaco group guarantee assets totaling 159 plots of land in 6 regencies/cities.

This was conveyed by the Coordinating Minister for Politics, Law, and Security (Menko Polhukam) Mahfud Md, in a press conference, Thursday (20/1/2022).

The 6 regencies/cities in question, including tangerang city, Semarang city, Karawang regency, Pemalang regency, Kendal regency and Batang regency with a total land area of 1.9 million square meters.

Previously, the BLBI task force had carried out the first phase of the seizure on December 23, 2021, to the Texmaco group. The BLBI task force has seized 587 parcels of collateral land from and for credit of the Texmaco group covering an area of 4.8 million square meters.

7. Assets belonging to Tutut Soeharto and Tommy Soeharto

The head of the Task of Handling State Collection Rights of Bank Indonesia Liquidity Assistance Fund (BLBI Task Force) continues to hunt for assets once pledged by BLBI debtors and obligors in 1998. If blbi debtors and obligors are stubborn then the BLBI task force does not hesitate to make foreclosures. One of the BLBI obligors that has been confiscated by the task force is the assets of PT Timor Putera Nasional (TPN) owned by Hutomo Mandala Putra aka Tommy Soeharto who is the son of the Second President Soeharto. Nili's seized assets are approximately IDR 600 billion. Director General of State Assets of the Ministry of Finance who also serves as The Daily Chairman of the Task Force for Handling State Collection Rights for Bank Indonesia Liquidity Assistance Funds (Satgas BLBI) Rionald Silaban said, The confiscated assets from Tommy Soeharto are in the form of 124.6 ha of land worth Rp 600 billion located in Karawang Regency, West Java.

The returning of BLBI funds with legal certainty and justice must refer to strict legal rules from the government in an effort to restore state assets. As previously explained, the settlement of BLBI funds must be conducted in an assertive manner that would make obligors return the funds that they

had taken away and also there should be an implementation of severe sanctions for forfeiture of the obligor's assets and confiscation of all assets generated by crime. The legal framework to achieve this is by implementing the Money Laundering Act, so that all parties involved or had been accommodating and assisting also get the appropriate punishment as has been stated in the Corruption Crime Act and the Money Laundering Act.

Based on data compiled by ICW to date, 16 BLBI corruption cases have been processed in court, but overall the results achieved are still very disappointing. This is because 3 suspects have been released by the court (Leonard Tanubrata, Kaharudin Ongko and Leo Ardiyanto). Of the 13 suspects who have been sentenced to prison by judges at the first level (PN), Appeal (PT) or Cassation (MA), it turned out that 6 defendants were sentenced to under 18 months and 2 defendants were sentenced to 4 and 8 years. The remaining 5 defendants were sentenced to life and 20 years in prison but the verdict was handed down without the defendant present (in absentia). The following is a table regarding corruption cases of recipients of BLBI funds that were processed in court compiled by ICW.

To produce the appropriate legal construction in returning state assets in a just manner, the government should issue strict rules against the perpetrators of these crimes, not only through a Presidential Decree / Presidential Instruction but if necessary special regulations should be constructed that can accommodate law enforcement officials in pursuing irresponsible obligors. As the theory of development law explains that the law must accommodate the wider public in order to create justice in society and can provide a deterrent effect to criminal acts who misappropriated BLBI funds because the policies taken today are not yet strong in upholding justice to all Indonesian people and due to the effects of from the misappropriation of BLBI funds, it is undeniable that Indonesia experiences a deficit every year (Arifin, 2018).

A. Liquidity Dispute Resolution Efforts in Several Countries

In modern financial history, banking crises have occurred one after another in various regions and countries of the world. According to an IMF study (1997) in the last fifteen years there are about 30 countries that have carried out systemic banking restructuring programs (Kawai, 2005)

Experience in various countries shows that systemic restructuring of banking is a long process (multi-year) and its resolution often intersects with social and political dimensions. This is understandable given that the systemic banking crisis has had a far-reaching negative impact on an economy.

Broadly speaking, the banking settlement strategy adopted in various countries can be seen in several aspects, namely:

1. The Application of Skim Blanket Guarantee

In general, the definition of *blanket guarantee* in the international world is an instrument of emergency action in the form of providing payment guarantees for the obligations of non-performing banks both to depositors and their creditors. The enactment of this instrument is usually temporarily until the banking systemic crisis is restored and the budgetary burden will be borne by the Government through a supervisory authority or institution specially established or appointed to carry out the restructuring and restructuring of the banking system may be reduced or terminated.

In some countries such as Sweden, Turkey, Finland, Thailand, and Korea, the application of *blanket guarantee schemes* to both depositors and creditors is a fairly successful part of stabilizing the financial system as a whole and high interest rate penalties or forms of non-monetary

penalties such as management replacement, control of bank assets/ownership, and so on, namely with the aim of how to stabilize the financial system. The strategy implemented here aims to alleviate the crisis, restore the trust of depositors, and protect the national payment system as soon as possible.

2. *Financial Restructuring*

How to solve the problem of solvency (stock) of banks. After the crisis can be controlled, banking restructuring is directed to restore the health of the bank's financial position through *financial restructuring*. The problem that will be faced is how the impact of the instruments used on monetary and fiscal conditions, the distribution of losses charged to the government, bank owners, creditors, and depositors, and the effectiveness of the return of non-performing loans (*loan recovery*).

3. How to encourage banks to return to healthy operations. As mentioned earlier, the restructuring of the bank's financial position will be incomplete if it is not followed by an improvement in the external environment in which the banking operates (operational restructuring). Therefore, the banking restructuring strategy in the operational restructuring stage is directed at addressing the existing weaknesses in the accounting system, the configuration of the banking sector and the legal framework that will affect the operational movement of the banking industry in the future. In practice, the measures taken in many countries are related to efforts to create a banking system that can encourage *market discipline* through competition and firm *exit-policies*. In terms of banking authorities, this means that it will also involve improving aspects of the legal framework and banking supervision.

B. BLBI Refund Legal Construction

The provision of BLBI funds occurred during a time when Indonesia experienced a monetary crisis from 1997 to 1998. Many efforts have been made by the Government in returning BLBI funds, one of which is through criminal settlement mechanisms in court and outside the court. The legal construction taken by the Government in seeking the return of BLBI funds has been widely pursued, with the MSAA or MRNIA method including the R & D clauses implemented in Presidential Instruction No. 8 of 2002 concerning the Provision of Legal Certainty Guarantees to Debtors Who Have Completed Their Obligations or Legal Actions to Debtors Who Do Not Settle Their Obligations Based on Settlement of Shareholder Obligations so that the issuance of many SKL (Certificate of Payment) abused by obligors. The weak regulation was eventually misused by obligors.

Numbers that can be taken in the completion of BLBI according to the MSAA mechanism: (Apriadi et al., 2016)

1. The bank's PSP takes over the obligation on loans to related parties (BMPK), so that loans from banks to related parties switch to loans to bank PSPs;
2. The bank transfers loans that violate the BMPK (afiliated loans to related parties) to BPPN. And upon this transfer, BPPN's Finance Ministry paid by issuing Government bonds. After this transfer, BPPN has the status of a creditor of the bank's PSP;
3. The psp bank (now the debtor of BPPN) handed over its assets (in the form of shares) to AVIHolding Company with a transfer agreement. Upon the handover of these assets, the bank's PSP receives payment in the form of Promissory Notes which can be converted into

- Convertible Bonds, which at any time can be converted into validarns with AVIHolding Company;
4. The bank's PSP submits the Promissory Notes received from AVIHolding Company to BPPN as payment for the obligations owed;
 5. At the time of the handover of assets by the bank's PSP as outlined in **letter c** above, the BPPN consultant conducts research on the assets submitted regarding their conformity with the Disclosure, Rerepresentation & Warranties stated by the bank's PSP on these assets. Disclosure is a statement regarding the condition of the assets submitted, which is made by the bank's PSP prior to the handover of assets **and** attached to the MSAA. Representation and Warranties is a statement made by the bank's PSP that guarantees that there is no lawsuit from a third party over the assets submitted and if there is a lawsuit, the surrendering party (PSP bank) will replace the assets with other assets or bear the lawsuit. As a guarantee of the correctness of the Disclosure, Representation & Warranties, the bank's PSP hands over assets other than the assets used to pay the obligations, to an independent third party. For example, BDNI handed over assets to Chase Manhattan Bank Singapore. Assets surrendered **to** guarantee the correctness of Disclosure, Representation & Warranties are referred to as Holdback Assets or Escrow. Disbursement of these assets can only be done at the request of BPPN;
 6. After the assets are handed over to AV and BPPN through AV/Holding Company accepts the surrender (closing), it means that the parties have carried out their obligations and received their rights. Thus, the bank's PPSP is considered to have completed its obligations completely (settlement);
 7. The MSAA also regulates release and discharge (R & D). R & D can be issued during the settlement process or after the completion process ends (closing). Nevertheless, the R & D that can be equated with the receipt is the one whose amount corresponds to the amount received as payment. That is, if the amount paid is only 30% then R & D also only mentions the figure of 30%.

C. BLBI Dispute Resolution Efforts through Deferred Prosecution Agreement (DPA) in Indonesia as an Alternative

In the provisions of Law Number 7 of 2006 which is a ratification of UNCAC (United Nations Convention Against Corruption) where article 26 paragraph (4) states that the state party is also obliged to strive for the responsible corporation to be subject to effective, proportional and prohibitive criminal or non-criminal sanctions, including financial sanctions. If non-criminal sanctions are effectively and proprionally considered more effective according to law enforcement and judges then the use of criminal law can be considered and set aside (Suhariyanto, 2016).

The absence of DPA arrangements in Indonesia needs to be considered in resolving economic crimes committed by corporations, because until now the settlement of economic crimes committed by corporations with the current law enforcement model has not met justice, legal certainty and legal expediency are still carried out and reduce the potential for conflicts of interest. On the other hand, the inequality of *costs and benefits* in the seizure of assets is large, where the cost of dispossessing assets is greater than the assets to be seized.

To further focus on the scope that will be discussed, the formulation of the proposed problem, namely *the provisions of Schedule 17 of the Crime and Courts Act 2013* against criminal acts committed by corporations and the opportunity for the application of DPA in the Indonesian Legal System.

Indonesia in handling corruption crimes committed by corporations based on Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the PTPK Law). In Article 2, Article 3, Article 20 of the PTPK Law, it is recognized that corporations as legal subjects who have criminal responsibility in corruption crimes.

Looking at other countries such as the UK handling corruption crimes committed by corporations based on *Schedule 17 of the Crime and Courts Act 2013* (hereinafter referred to as Schedule 17 of C&C Act 2013), where the policy used in dealing with corruption crimes committed by corporations uses *the DPA (Deferred Prosecution Agreement)* policy.

Schedule 17 of the Crime and Courtst Act 2013 provides for the provisions of the Deferred Prosecution Agreement (DPA). The DPA is an agreement entered into under the supervision of a judge, made by the British public prosecutor (JPU) with the corporation to be prosecuted. The agreement contains the permissibility of a temporary termination of prosecution with a specified period of time in order for a corporation to meet certain conditions.

The criminal acts that the DPA can apply are only certain criminal offenses, namely fraud, tax evasion, theft, forgery of accounting, bribery and other economic crimes contained in the provisions of the Theft Act 1968, Customs and Excise Management Act 1979, Forgery and Counterfeiting Act 1981, Section 450 of The Companies Act 1985, Section 72 of the Value Added Tax Act 1994, Financial Services and Markets Act 2000, Proceeds of Crime Act 2002, Companies Act 2006, Fraud Act 2006, Bribery Act 2010, Regulations 45 of the Money Laundering Regulations 2007. The DPA can only be applied to corporations not to individuals.

The DPA is not implemented in order to punish as severely as possible or in other words kill the corporation, if it uses this principle it will result in the closure of the corporation, causing unemployment and a decrease in the company's investment.

In order for the Deferred Prosecution Agreement to be implemented, there are two stages that must be met in order for a case to be applied deferred prosecution agreement, these stages must be considered by the prosecutor in determining whether or not a case is implemented deffered prosecution agreement. The stages are: (Januarsyah et al., 2021)

1. Evidentiary Stage In this stage the prosecutor proves whether what is the evidence that a criminal act has been committed, but if there is no concrete evidence, it can also be considered the existence of an allegation that has reasonable grounds to say that the corporation has committed a criminal act and if an investigation is carried out it will find evidence of the allegations.
2. The Public Interest Stage The public interest should be considered by prosecutors in determining whether the Deferred Prosecution Agreement can be implemented. The public interest in question usually relates to the seriousness of the crimes that have been committed, the mistakes of the corporation, and the magnitude of the damage caused to the victim.

The determination of whether or not the DPA is appropriate to apply to the company is charged to the objectivity of the prosecutor himself so that the basis for consideration differs from one case to another.

The public interest means to consider the seriousness of the evil deeds that inflicted harm on the victim, As in the case of *sfo v. rolls royce*¹⁰ one of the considerations of the public interest in the case is that the crimes that the roll royce has committed have caused a fundamental harm to the integrity and confidence of the market. If the stage is considered to have been met, then the prosecutor may invite the corporation to carry out the DPA negotiations. The negotiations carried out are to determine what conditions the corporation must meet within a certain period of time. These conditions are described in article 5 which reads as follows:

1. Paying fines;
2. The necessity to pay compensation to the victim;
3. Donate a certain amount of money to a charity or other designated third party;
4. the necessity to return any profit resulting from a criminal offense;
5. the necessity to improve company policies and employee training so that these crimes do not occur again;
6. the necessity to cooperate in investigations;
7. paying the costs of the case.

These conditions may be imposed more than one depending on the negotiations between the prosecutor and the corporation. These predetermined and agreed conditions must later be carried out and fulfilled by the corporation within a certain period of time which has also been agreed upon.

1. DPA Implementation in Indonesia a. DPA Implementation Opportunities

DPA as a tool in law enforcement in the UK, namely prosecutors. The DPA has successfully ensnared several corporations, namely Standard Bank, XYZ Limited, Tesco Plc and Roll Royce. Dpa. For this reason, it can explain the opportunity to implement DPA in Indonesia, if law enforcement and legislators intend to implement it, several things can be stated that explain the relationship between DPA and the Indonesian legal system. Some of these things are as follows:

Elements of corporate misconduct In the UK corporations have been regarded as legal subjects who have had criminal liability. It is seen in one of the laws, namely the Bribery Act 2010. On "Article 7" of the *Bribery Act* it reads:

"A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending: (a) to obtain or retain business for C, or (b) to obtain or retain an advantage in the conduct of business for C. "

Prior to this provision, in Inggris the corporation as a subject of criminal law was indeed nothing new, namely in the case of *R v Birmingham & Gloucester Railway Co.*¹² To assume the guilt of a British corporation using the theory of identification. This doctrine assumes that all legal or illegal acts committed by *high-level managers* or directors are identified as corporate acts (Sjahdeini, 2006).

Denning LJ, in the case of *H.L Bolton Engineering Co. Ltd v T. J. Graham & Sons Ltd.* explains the theory of identification likens an enterprise to a human body, where in full he expresses: (Sjahdeini, 2006)

"A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tool and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such."

Indonesia recognizes corporations as owners of criminal liability in corruption crimes, namely based on the provisions of Article 20 of the PTPK Law. It is also added in the Passage of the PTPK Law, where it is stated that in the law the corporation as the subject of corruption crimes that can be subject to sanctions and in the explanation of article 20 (1) it is stated that what is meant by "management" is a corporate organ that carries out the management of the corporation concerned in accordance with the articles of association, including those who in reality have the authority and participate in deciding corporate policies that can be qualified as a criminal offence of corruption.

The provisions of the UUPTPK regulate the scope of criminal acts that can be held accountable to corporations. These criminal acts are bribery, unlawful acts that can harm the country's finances or economy, fraudulent acts, giving compensation and other criminal acts that are considered as criminal acts of corruption. In the history of Indonesian laws and regulations, criminal corporate liability for criminal acts committed, known as three corporate criminal liability systems, namely:

It is the management of the corporation as the maker and the management who is responsible (the development of corporate responsibility in the first stage);

1. The corporation as the maker but the management is responsible (the development of corporate liability in the second stage)
2. Corporations as makers and corporations must also be responsible (the development of corporate liability in the third stage) Another opinion expressed by Sutan Remy Sjahdeini, namely adding the concept of management and corporate accountability both as perpetrators of criminal acts and both must also bear criminal liability. On the concept of management and corporate accountability, Sutan Remi Sjahdeini argued (Sutan Remy Sjahdeini, 2018)
3. If only the administrator is burdened with criminal liability, it becomes unfair to the people who have suffered losses because the management in carrying out their actions is for and on behalf of the corporation and is intended to provide benefits or avoid reducing financial losses for the corporation.
4. If the person who is burdened with criminal liability is only the corporation while the administrator does not have to bear the responsibility, then the administrator will "throw stones in hiding hands".
5. The imposition of liability to the corporation is only possible in a vicarious manner because the corporation is unlikely to be able to do a legal act on its own.

Indonesian law actually recognizes corporate criminal liability. However, in the criminal justice process against BLBI cases based on Law Number 3 of 1971 concerning the Eradication of Corruption, it is not expressly regulated regarding corporate criminal liability, so that in the case of BLBI, all perpetrators convicted are the administrators of the corporation, using the

construction of individual criminal responsibility. Although efforts to resolve BLBI cases are also carried out using settlement methods other than criminal, the public still hopes that the criminal justice process will take precedence. The absence of a positive law governing this matter makes the BLBI case unable to be resolved by focusing on the punishment of corporations that have legal relations with the State (Bank Indonesia) in providing BLBI. Meanwhile, the countries of France, Finland, Norway and Australia, already have provisions for corporate criminal liability in their respective criminal laws, thus further clarifying the criminal liability of corporations.

In practice, the settlement of BLBI cases is carried out by means of litigation and non-litigation. For settlement with criminal justice proceedings, the construction of indictments is based on the individual criminal liability of the corporate management, shareholders and persons who play an important role in relation to the BLBI that has been granted by Bank Indonesia against the banking corporation.

CONCLUSION

So that legal reconstruction is needed to have effective rules in and become a *grand strategy* that has full authority in implementing banking restructuring programs with financial *restructuring* efforts by "reviving" previously inactivated institutions such as BPPN which has considerable experience in handling BLBI cases by handling the AMU method and existing institutions handling Banking restructuring has been relatively large, starting from Bank Indonesia, to the Ministry of Finance. The reactivation of these Institutions must have political support, for the establishment of the law itself. As explained in the previous chapter, the attachment between law and politics greatly affects the implementation of the law itself, so that the need for continuous law and politics in order to create a clear vision and mission about the direction of goals in law enforcement BLBI that is legally effective and fair, because often policies undergo sudden changes that result in slowing down the smooth running of the program itself.

Therefore, new or existing institutions are needed to be reactivated in handling restructuring, starting from Bank Indonesia, the Ministry of Finance, BPPN, Bappenas, but the obstacle in this implementation is the lack of political support, to the establishment of the law itself. As explained in the previous chapter, the attachment between law and politics greatly affects the implementation of the law itself, so that the need for continuous law and politics in order to create a clear vision and mission about the direction of goals in BLBI law enforcement, because often policies undergo sudden changes, resulting in slowing down the smooth running of the program itself.

Efforts to implement the DPA system in Indonesia in resolving at least can be applied to resolving BLBI disputes, as stated in Corporate Responsibility in Article 20 paragraph (1) of Ri Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Reflecting on this, the BLBI case that can be resolved using the DPA method is not only for individuals but can be carried out corporate punishment, but Indonesia does not yet have special provisions regarding corporate criminal liability in criminal law (the Criminal Code does not recognize the term corporation)

REFERENCES

- Apriadi, I., Sembel, R., Santosa, P. W., & Firdaus, M. (2016). Banking fragility in Indonesia: A panel vector autoregression approach. *International Journal of Applied Business and Economic Research*, 14(14), 1193–1224.
- Arifin, R. (2018). Law Enforcement in Banking Criminal Act Involving Insiders. *Jambe Law Journal*, 1(1), 55–90.
- Chou, C. (1999). Indonesian banks: survival of the fittest. *Rising to the Challenge in Asia: A Study of Financial Market*, 6, 1–72.
- Januarsyah, M. P. Z., Pratama, M. R., Pujiyono, P., & Gultom, E. (2021). The Implementation of the Deferred Prosecution Agreement Concept to Corruption by Corporations with the Anti-Bribery Management System (SNI ISO 37001: 2016). *Padjadjaran Journal of Law*, 8(2), 230–252.
- Kawai, M. (2005). Reform of the Japanese banking system. *International Economics and Economic Policy*, 2(4), 307–335.
- Roubini, N., & Mihm, S. (2010). *Crisis economics: A crash course in the future of finance*. Penguin.
- Sjahdeini, S. R. (2006). Corporate criminal liability. *Jakarta: Grafittipress*.
- Suhariyanto, B. (2016). Restoratif justice dalam pemidanaan korporasi pelaku korupsi demi optimalisasi pengembalian kerugian negara. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 5(3), 421–438.
- Sutan Remy Sjahdeini, S. H. (2018). *Perbankan Syariah: Produk-produk dan aspek-aspek hukumnya*. Kencana.
- Yunus, A. M. A., Zain, M. Y., Yunus, A. K. F., & Mubarak, M. S. (2017). Is Real Exchange Rate of Indonesian Domestic Rupiah to USD Really Affected by Fiscal and Monetary Policy? *Scientific Research Journal*, 5(11).



© 2022 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>).