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Basic Study of Judges' Considerations on Unlawful Acts In The Case of Transfer of Rights to State-Owned Enterprise Land In Corruption Crimes

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Abstract

This research aims to analyze and identify the basis of the judge's considerations regarding unlawful acts in the case of the transfer of state-owned enterprise land rights and the application of criminal liability law in the transfer of state-owned enterprise land rights. The type of research used is normative legal research with a statutory approach and a case approach. The results show that the basis for the judge's consideration of unlawful acts in the case of the transfer of state-owned enterprise land rights in corruption should be assessed as a criminal offense, not just a civil one, given that the actions resulted in significant state losses. The HGB approval, which should include legal requirements affirming the defendant's responsibility in safeguarding state interests, was not adhered to. The consignment of IDR 13 billion submitted by the Defendant to PT KAI is considered invalid because Cassation Decision No. 2966 K/Pdt/2013 states that the Defendant had no legal basis for making the consignment, thus it cannot be used as a defense to eliminate the criminal element. Regarding the application of legal certainty in criminal liability for the unlawful transfer of state-owned enterprise land rights, the defendant's actions meet the criminal elements as stipulated in Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law. The defendant is guilty of committing corruption collectively, which includes elements of unlawful material actions, malicious intent, and state financial loss.

Abstrak

Penelitian ini bertujuan untuk menganalisis dan mengidentifikasi dasar pertimbangan hakim tentang perbuatan melawan hukum terhadap kasus pengalihan hak atas tanah milik BUMN dan penerapan hukum pertanggungjawaban pidana dalam pengalihan hak atas tanah milik BUMN . Jenis penelitian yang digunakan adalah penelitian hukum normatif dengan jenis pendekatan perundang –undangan (statute approach) dan pendekatan kasus (case approach). Hasilnya menunjukkan bahwa dasar pertimbangan hakim tentang perbuatan melawan hukum terhadap kasus pengalihan hak atas tanah milik BUMN dalam tindak pidana korupsi seharusnya dinilai sebagai pelanggaran hukum pidana, bukan hanya perdata, mengingat tindakannya

mengakibatkan kerugian negara yang signifikan, persetujuan HGB yang seharusnya mencakup persyaratan hukum yang menegaskan tanggung jawab Terdakwa dalam menjaga kepentingan negara. Konsinyasi sejumlah Rp13 miliar yang diajukan oleh Terdakwa ke PT KAI dianggap tidak sah karena Putusan Kasasi No. 2966 K/Pdt/2013 menyatakan bahwa Terdakwa tidak memiliki dasar hukum untuk melakukan konsinyasi sehingga tidak dapat digunakan sebagai pembelaan yang menghilangkan unsur pidana. Terkait dengan penerapan kepastian hukum pertanggungjawaban pidana pengalihan hak atas tanah milik BUMN yang melawan hukum, perbuatan terdakwa memenuhi rumusan unsur pidana sesuai Pasal 2 Ayat (1) dan Pasal 3 UU Pemberantasan Tindak Pidana Korupsi Terdakwa bersalah melakukan tindak pidana korupsi secara bersama-sama, yaitu adanya unsur perbuatan melawan hukum secara materiil, niat jahat, dan kerugian keuangan negara.

1. Introduction

In the early reform era, the level of corruption in Indonesia reached a worrying point. This phenomenon is not limited to certain sectors, but rather rampant in almost all government institutions and State-Owned Enterprises (BUMN). Corruption has become a chronic disease that undermines the very foundations of state life, hinders development, and erodes public trust (Davai et al., 2025). Worse yet, the efforts to eradicate corruption face very heavy challenges. Corruption perpetrators often involve individuals or groups occupying strategic national political and economic centers (Faisol et al., 2025). This structured and layered corruption network complicates law enforcement and creates impunity for its perpetrators.

The latest data shows that the situation has not improved significantly. Based on the Indonesian Anti-Corruption Behavior Index (IPAK) for 2023 released by the Central Statistics Agency (BPS), the figure actually shows a slight decline. The Indonesian Anti-Corruption Behavior Index (IPAK) was recorded at 3.92 on a scale of 0 to 5, a figure lower than the achievement in 2022, which was 3.93. This decline indicates that the perception and behavior of the public towards corruption are still not optimal (Hama et al., 2025).

In line with BPS data, the survey results from Transparency International (TI), which annually launches the Corruption Perception Index (CPI) or Indeks Persepsi Korupsi (IPK), also do not show good news. In 2023, TI conducted a survey of 180 countries, and one of the results was Indonesia's CPI score, which remained at 34, the same as the previous year. However, what is more concerning is Indonesia's ranking, which dropped from 110 the previous year to 115 in 2023. This decline in ranking indicates that compared to other countries, Indonesia's efforts in combating corruption are considered stagnant or even lagging behind. This serves as an alarm for the government and all elements of society to be more serious and effective in combating corruption (Ibrahim, 2025).

Indonesian legal politics have firmly categorized corruption as an extraordinary crime. This categorization is not without reason, considering the destructive impact of corruption that can dismantle the state system and the nation's economy. However, despite being classified as

an extraordinary crime, the facts on the ground show that the value of corruption is becoming increasingly astronomical. If in the 2000s to 2020s the value of corruption was still in the billions of rupiah, then in the 2020s many cases of corruption were found with values reaching trillions of rupiah. This drastic increase indicates a scale of crime that is becoming more massive and involves actors with greater financial capacity and power (Purnomo, 2025).

In terms of quantity, Indonesia Corruption Watch (ICW) has recorded a concerning trend. In 2023, ICW recorded 791 corruption cases in Indonesia with a total of 1,695 suspects. This data shows a significant increase compared to previous years, both in terms of the number of cases and the number of suspects. This increase can be interpreted as an enhancement in law enforcement activities, but it can also be seen as an indication that corruption crimes are indeed becoming more rampant (Putra, 2025).

Although the number of cases and suspects has increased, the trend of potential state losses due to corruption in 2023 has actually shown a decrease. The trend of potential state losses in 2023 is at Rp 28.4 trillion, down from Rp 42.7 trillion in 2022. This figure is also smaller compared to the trend of potential state losses in 2021, which was Rp 29.4 trillion. Although there is a decrease compared to the previous two years, the potential state loss in 2023 is still considered very large. The tens of trillions of rupiah lost due to corruption have a direct impact on the welfare of the people and national development. Such a large amount of funds should be allocated for education, health, infrastructure, or poverty alleviation programs.

Based on the mapping results conducted by ICW, the most frequently encountered mode of corruption is the misuse of activity budgets through mark-ups. This modus operandi is relatively simple but very effective in eroding the finances of the state or institution. By inflating the price or cost of a project or the procurement of goods/services unreasonably, corrupt actors can gain substantial personal profit. This modus operandi is often difficult to detect because it involves many parties and documents that have been systematically manipulated (Putri & Prawati, 2025).

To gain a more detailed picture of the corruption situation in Indonesia, it is important to examine data from the judiciary. Based on the 2023 data from the Supreme Court of the Republic of Indonesia's Decision Directory, a total of 3,391 corruption cases have been processed. From those thousands of cases, the breakdown of types of corruption crimes shows significant diversity. As many as 137 cases are related to crimes that cause financial losses to the state, which are the most common and widely impactful forms of corruption. In addition, there are 18 cases of bribery, which reflect the practice of gratuities and illegal rewards to influence decisions. Eight cases of embezzlement in office were recorded, indicating the abuse of authority for personal gain. Six cases were related to gratification, which involves the acceptance of gifts associated with one's position and contrary to the obligations or duties of the recipient. Lastly, 4 cases are related to extortion, where the perpetrators use coercion to gain financial advantage. This data reflects the complexity and various modus operandi in corruption crimes. The diversity of case types shows that corruption is not only centered on one form of crime but also extends into various aspects of state administration and business.

From several cases that have occurred in Indonesia, various actions related to the transfer of land ownership rights are often carried out in illegal ways, such as document forgery, abuse of authority by officials, or collusion with certain parties. These practices not only harm the state's finances but also create legal uncertainty for the community and investors, and have the potential to cause social conflicts. The complexity of land corruption cases often involves many parties, ranging from officials of the National Land Agency (BPN), notaries, to entrepreneurs or land mafia. This organized network makes handling it very difficult and requires cross-agency coordination. Considering the various phenomena described above, especially regarding the increasingly rampant corruption cases, the fantastic value of losses, and the complexity of cases in the land sector, this article aims to thoroughly examine and analyze two crucial aspects (Ramadhan & Nurunnisa, 2025).

First, this article will discuss the judges' considerations regarding Unlawful Acts (PMH) in cases of land rights transfer owned by state-owned enterprises (BUMN) in the context of Corruption Crimes. This study will examine how judges identify the elements of unlawful acts in the transfer of state-owned land rights, considering the unique characteristics of state land assets. The analysis will cover how these actions meet the criteria of unlawful acts according to civil law, but are then elevated to the realm of corruption crimes due to elements of state loss and abuse of position or authority.

Second, this article will analyze the application of legal certainty in the criminal liability for the unlawful transfer of state-owned enterprise land rights in Corruption Crime Verdicts. This aspect will explain how the judge's ruling creates legal certainty for the perpetrators, both in terms of determining guilt, the type of criminal sanctions, and efforts to return the state assets that have been harmed. This analysis will cover the challenges in applying legal certainty, considering that there are often differences in interpretation or legal loopholes exploited by the perpetrators. Thus, it is hoped that this study can contribute to a better understanding of the complexities of law and law enforcement in land sector corruption cases.

2. Method

This research adopts the type of normative legal research or doctrinal legal research, which fundamentally focuses on the systematic analysis of applicable legal norms, principles, and doctrines. In this context, the research will use the statute approach to thoroughly examine the relevant legislation, in order to identify the legal framework governing the issue being studied, as well as to analyze its consistency and relevance. In addition, a case approach will also be used, where court decisions that have permanent legal force, especially those related to the main research issue, will be analyzed to understand how legal norms are interpreted and applied in judicial practice, as well as to identify patterns or inconsistencies in the application of the law by judges.

3. Results and Discussion

3.1 Basic Analysis of the Judge's Considerations on Unlawful Acts in the Case of Transfer of Rights to State-Owned Enterprise Land in Corruption Crimes

The Handoko Lie case has become one of the focal points in the landscape of corruption criminal law in Indonesia, particularly due to the striking differences in views and legal interpretations among judges at various levels of the judiciary. This dynamic not only reflects the complexity of handling corruption cases but also highlights the importance of consistency in the application of legal norms.

At the level of the Corruption Court (Tipikor) at the Central Jakarta District Court, through Decision Number: 78/Pid.Sus/TPK/2015/PN. Jkt. Pst., Handoko Lie was declared acquitted. The main consideration of the panel of judges at this first level was that the public prosecutor's indictment was deemed premature. According to the judge, the disputed object, namely the land of A and C, is still in the process of legal dispute, so the prosecutor's demand cannot be accepted or, in legal terms, is referred to as **Niet Ontvankelijke Verklaard**. This acquittal immediately triggered a reaction from the Public Prosecutor, who then filed an appeal.

At the appellate level, specifically at the Corruption Crime Court in the Jakarta High Court, the panel of judges still held a view consistent with the first-instance decision. Although it was stated that the defendant's actions were proven to have committed the alleged act, the appellate judges decided that the actions did not constitute a criminal offense. The main reason is that this case is more inclined to fall within the scope of civil law. The Appellate Court judges opined that the failure to fulfill the obligations in the sale and purchase agreement of the Right to Build (HGB) by PT Arga Citra Kharisma, such as the obligation to build housing for PJKA employees, constitutes a civil matter. Therefore, the actions of the Defendant as the President Director of PT Arga Citra Kharisma, who applied for and obtained an extension of the HGB without fulfilling those obligations, are not considered a criminal offense. Handoko Lie was once again declared not guilty and freed from punishment.

However, the legal drama reached its peak when the Public Prosecutor filed a cassation to the Supreme Court. At this cassation level, the panel of judges has fundamentally different views and interpretations compared to the panel of judges at the appellate and first instance levels. The Supreme Court decided that Handoko Lie was proven to have committed corruption, thus he was sentenced to imprisonment and a fine. The differing legal interpretations at various levels of the judiciary underscore the complexity of enforcing anti-corruption laws, particularly in determining the boundary between civil and criminal acts. This also underscores the role of the Supreme Court as the highest interpreter of the law, authorized to harmonize differing judicial perspectives.

The Supreme Court's decision to impose a sentence on Handoko Lie at the cassation level is based on a series of profound legal considerations that significantly differ from the lower court's ruling. The Supreme Court interpreted that the grounds for the cassation petition submitted by the Public Prosecutor were justified, considering the erroneous application of legal regulations by the *Judex Facti* (first-instance and appellate judges) in the decision of the *a quo* case. This error primarily relates to the application of evidentiary law that does not comply with the procedural law of criminal proceedings.

Structure of Charges and Burden of Proof, the Supreme Court highlighted that the Prosecutor's charges were structured in the form of subsidiary charges, namely the Primary Charge violating Article 2 Paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, and the Subsidiary Charge violating Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. The Jakarta High Court Decision Number 05/Pid/TPK/2016/PT.DKI, which stated that the Defendant was proven to have committed the alleged act but that the act was not a criminal offense, is considered contrary to the order of criminal procedural law and the prevailing judicial practice. The Supreme Court emphasized that in accordance with Jurisprudence and Guidelines for the Implementation of Court Duties and Administration, each charge must be examined and proven one by one (except for alternative charges). If the previous charge has been proven, then the subsequent charge does not need to be examined further. However, the *Judex Facti* in this case did not examine and prove each element formulated in Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law as charged.

The Principle of Independence of Criminal Cases, the Supreme Court also bases its decision on the Supreme Court Regulation of the Republic of Indonesia Number 1 of 1956 Article 3, which explicitly states that "The court in the examination of criminal cases is not bound by a decision of the court in the examination of civil cases regarding the existence or non-existence of a civil right." This principle is crucial in the Handoko Lie case, as the appellate court's decision tends to get trapped in the civil realm related to land disputes and HGB agreements. The Supreme Court emphasized that although there are civil aspects, they do not hinder the examination of the elements of corruption. Furthermore, Article 25 of Law Number 31 of 1999 also serves as a basis, which states that "Investigation, prosecution, and examination in court proceedings for corruption cases are prioritized over other cases for expedited resolution." This shows the priority in handling corruption cases, regardless of the accompanying civil aspects.

Thus, the Supreme Court annulled the Corruption Court Decision at the Jakarta High Court Number 05/PID/TPK/2016/PT.DKI dated March 14, 2016, which had previously annulled the Corruption Court Decision at the Central Jakarta District Court Number 78/Pid.Sus/TPK/2015/PN.Jkt.Pst. dated December 18, 2015. This Supreme Court decision reaffirms the principle that corruption crimes must be viewed independently from civil aspects and must be proven based on the criminal elements contained in the anti-corruption law.

The Supreme Court's decision to uphold the charges against Handoko Lie as a perpetrator of corruption was not only based on procedural considerations but also on the relevant substantive criminal law. The panel of judges at the cassation and review levels held a consistent and firm view: the defendant was proven legally and convincingly guilty of committing corruption together. This consideration indicates that the unlawful act committed by the defendant is not merely regarded as an administrative or civil violation, but rather as a reprehensible or blameworthy act (*mens rea*) that can be subject to criminal liability. This is a crucial point that distinguishes the cassation ruling from the previous level's ruling. The judges at the cassation level believe that the defendant possesses malicious intent (*mens rea*) to commit the crime, not merely negligence or civil issues.

Specifically, the defendant is stated to fulfill the elements of Article 2 Paragraph (1) of Law Number 31 of 1999 juncto Law Number 20 of 2001 concerning the Eradication of Corruption

Crimes juncto Article 55 Paragraph (1) ke-1 of the Criminal Code. Article 2 Paragraph (1) of the Corruption Eradication Law regulates that any person who unlawfully enriches themselves or others or a corporation that can harm the state finances or the state economy. The connection with Article 55 Paragraph (1) point 1 of the Criminal Code indicates the element of participation or being carried out jointly, which in this case is alleged to involve other parties, including the Mayor of Medan.

The legal basis used by the panel of judges at the cassation level is very comprehensive, covering:

- 1) The annulment of the High Court's decision deemed inconsistent with criminal procedural law and jurisprudence.
- 2) The application of Article 2 paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001. Article 18 regulates additional penalties in the form of compensation for state losses, emphasizing the focus on the recovery of state losses.
- 3) The application of Article 55 paragraph (1) point 1 of the Criminal Code, which indicates that the crime was committed jointly or collectively, reflecting the existence of collusion and conspiracy in corruption cases.
- 4) Reference to Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), which serves as the procedural basis for criminal law enforcement.
- 5) Reference to Law Number 48 of 2009 concerning Judicial Power, as well as Law Number 14 of 1985 which has been amended by Law Number 5 of 2004 and the Second Amendment by Law Number 3 of 2009 concerning the Supreme Court. This law strengthens the authority of the Supreme Court in correcting decisions made by lower courts.

By adhering to those legal principles, the Supreme Court affirmed that Handoko Lie's actions met all the elements of the crime of corruption, making him liable for criminal responsibility. This is an important step in ensuring that perpetrators of corruption cannot hide behind civil excuses or improper procedures.

The judges' considerations at the cassation and review levels, which state that Handoko Lie is proven guilty, align with legal experts' views on the importance of proving the elements of intent and mens rea (mental element) in uncovering corruption crimes. Mallarangeng, et al., in their research, emphasize that in corruption cases, sufficient evidence is essential to impose criminal sanctions. This proof not only aims to determine whether the defendant's actions are lawful or not, but also to delve into the aspects of intent and mens rea of the perpetrator.

The elements of intent and mens rea are very vital in corruption crimes, because this crime, which is now categorized as an extraordinary crime, is not always committed with full awareness or explicit malicious intent by all parties involved (S, 2016). There is a possibility that low-level staff or employees get caught up in corruption cases due to following their superior's orders, even though such actions contradict their conscience and without any personal intent to enrich themselves (Sinaga, 2025). The question that arises is: is someone who commits a crime because of an order, without personal intent, deserving of punishment or condemnation? Chairul Huda in

his work also discusses this concept, from "no punishment without guilt" to "no criminal liability without guilt," which underscores the importance of the mental element in criminal liability.

In the case of Handoko Lie, the Supreme Court panel of judges explicitly stated that the unlawful act committed by the defendant was a reprehensible or blameworthy act (*mens rea*) and could be subject to criminal liability. This shows that the judge believes there was malicious intent or deliberate action on the part of the defendant in transferring the rights to state-owned enterprise land, which resulted in state losses. Although there are civil aspects related to PT Arga Citra Kharisma's failure to fulfill its obligation to build housing for PJKAs employees, the actions of the defendant Handoko Lie, who continued to apply for and obtain an extension of the HGB without fulfilling that obligation, are considered manipulative and an abuse of authority. This action, in the view of the cassation judge, indicates an intention to gain illegal profits, which subsequently caused financial losses to the state (Sugianto et al., 2025).

The fact that the defendant, together with the Mayor of Medan, exploited influence and authority to obtain an extension and certification of HGB over land owned by PT KAI, causing state losses amounting to Rp187,800,000,000, further strengthens the judge's conviction of the presence of *mens rea*. This substantial state loss serves as concrete evidence of the impact of the unlawful act committed with malicious intent. Therefore, proving the elements of intent and *mens rea* becomes a strong foundation for the cassation judge to impose criminal liability on Handoko Lie. This also sends a message that corruption, especially when it harms state finances, will be dealt with firmly regardless of the complexity of the case background.

A crucial point in the Supreme Court of the Republic of Indonesia Decision No. 1437 K/Pid.Sus/2016 regarding the Handoko Lie case is the acknowledgment and determination that the issue of the transfer of rights over state-owned enterprise land can be classified as a criminal act of corruption. This case originated from Decision Number 78/Pid.Sus/TPK/2015/PN. Jkt. Pst., which involved the defendant Handoko Lie, President Director of PT Arga Citra Kharisma. He was charged with violating Article 2 Paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which has been amended by Law Number 20 of 2001 in conjunction with Article 55 Paragraph (1) point 1 of the Criminal Code.

In the trial, the prosecutor accused the defendant of enriching himself or others, as well as causing state losses through the transfer of land rights involving state-owned enterprises. What is interesting about this indictment is the emphasis that the act was committed unlawfully, both formally and materially. Formally unlawful means violating the applicable legal provisions, while materially unlawful means contrary to the principles of propriety, prudence, or ethics, even if there are no explicitly written regulations being violated (Syah et al., 2025). In the context of corruption, the element of material unlawfulness often becomes important to capture practices that are not explicitly regulated but substantively harm the state.

At the cassation level, the panel of judges firmly opined that the defendant's actions met the elements of unlawful conduct as stipulated in Article 2 Paragraph (1) of Law Number 31 of 1999 juncto Law Number 20 of 2001. The judge's consideration is based on trial facts that show the defendant, together with the Mayor of Medan, exploited their influence and authority to obtain

extensions and certifications of Building Use Rights (HGB) over land owned by PT KAI. This rights transfer process, which should have gone through a transparent and accountable procedure, was instead manipulated for personal or group interests.

The direct impact of this act is a state loss amounting to Rp187,800,000,000. This staggering loss figure serves as concrete evidence of the element of harming the state's finances or economy, which is a key element in the crime of corruption. The judge also specifically identified the element of mens rea or malicious intent in the action, which indicates that the act was carried out with the awareness and intention to obtain illegal gains.

Moreover, the judges also assessed that the decisions at the first and appellate levels overlooked several essential procedural law principles, such as the obligation to examine and prove all elements in the indictment. They argued that the subsidiary charges brought by the public prosecutor were not thoroughly examined at the previous level. The fact that the defendant applied for an extension of HGB despite not fulfilling the obligation to build housing for PJKA employees indicates manipulation and abuse of authority. This is considered an unlawful act that directly impacts the state's finances. Thus, this cassation ruling reinforces the view that the unlawful transfer of state assets, even if it involves civil aspects, can and should be prosecuted as a corruption crime if there is evidence of unlawful elements, malicious intent, and state loss.

The legal considerations at the cassation level in the Handoko Lie case reflect a strong view that corruption offenses require solid evidence to demonstrate not only the physical act (*actus reus*) but also the intent and awareness of the perpetrator (*mens rea*). This is in line with modern criminal law principles that emphasize that criminal liability cannot be separated from the element of mens rea. In the context of corruption, proving the element of malicious intent becomes a very important aspect, because this crime often involves collusion, abuse of power, and influence from authoritative parties that are difficult to uncover without strong evidence of the perpetrator's intent.

The panel of judges at the cassation level affirmed that the corruption committed by the defendant contained sufficient elements of intent to establish criminal liability. This means that Handoko Lie's actions to obtain an extension of the HGB without fulfilling the obligation to build housing for PJKA employees, which subsequently caused state losses, are considered acts carried out with full awareness and intent to unlawfully enrich himself or others. The emphasis on the element of intent is very important, as it distinguishes between administrative errors or pure negligence and deliberate acts of corruption.

In the context of corruption cases, there is often a debate about whether an action was taken with malicious intent or merely as a result of following orders from superiors without awareness of its illegality. However, the cassation court judges in this case seem to see a pattern of systematic and planned actions, leading to the conclusion that Handoko Lie was not merely following orders but was also actively participating with the intent to gain benefits from the illegal practices.

Furthermore, the judges at the cassation level emphasized the importance of proving the elements of mens rea and intent in corruption offenses to ensure that the actions taken qualify as extraordinary crimes. Corruption is considered an extraordinary crime because its impact

fundamentally damages the social, economic, and political order of a country. Therefore, the law enforcement must also be extraordinary, meaning it must be able to reach the root of the perpetrators' malicious intent, not just their outward actions.

The Supreme Court's ruling in the Handoko Lie case provides important jurisprudence. He emphasized that the court should not get caught up in civil or administrative formalities when the substance of the case shows strong elements of criminal corruption, especially if it involves state assets and significant financial losses. Emphasis on proving the intent and deliberation of the perpetrator is key to ensuring that corruption crimes are punished according to their weight as extraordinary crimes, in the interest of upholding justice and combating corruption in Indonesia

3.2 The Application of Legal Certainty in Criminal Liability for the Transfer of State-Owned Enterprise Land Rights that Violates the Law in Corruption Verdicts

The Handoko Lie case has become a focal point in the enforcement of anti-corruption laws in Indonesia, particularly due to the striking differences in legal perspectives and interpretations among judges at various levels of the judiciary. At the Central Jakarta Corruption Court level, Handoko Lie was acquitted on the grounds that the prosecutor's indictment was premature because the disputed land was still under legal dispute. This decision refers to the Supreme Court Regulation (PERMA) Number 1 of 1956, which states that criminal proceedings can be postponed if there is a related civil legal relationship. The first-instance judge considered Handoko Lie's actions as a civil matter related to the sale and purchase of HGB, not a criminal one, despite criticism regarding the fulfillment of the obligation to build housing for PJKA employees. This decision was later upheld at the appellate level by the DKI Jakarta High Court. Although the appellate judges acknowledged that the defendant's actions were proven as charged, they still acquitted Handoko Lie on the grounds that the actions were not criminal but purely civil matters related to the breach of the HGB agreement. The appellate judges considered that the issues of HGB transfer and non-compliance with housing construction obligations were contractual matters that should be resolved in civil court, not criminal court. They adhere to the principle that a breach of contractual obligations does not automatically constitute a criminal act of corruption unless there is proven malicious intent or fraud that directly harms the state. This ruling clarifies the distinction between civil disputes and criminal offenses within the context of Indonesian law.

However, the course of the case took a drastic turn during the cassation legal proceedings at the Supreme Court (MA). The MA overturned the acquittal and firmly stated that Handoko Lie was proven guilty of committing corruption in collusion. The Supreme Court imposed a 10-year prison sentence, a fine of IDR 750,000,000, and ordered the payment of state compensation amounting to IDR 52,700,000,000. This decision is based on a series of key considerations. First, the Supreme Court assessed that the lower court erred in applying the element of "against the law" in Article 2 Paragraph (1) of the Anti-Corruption Law, emphasizing that Handoko Lie's actions in controlling PT KAI's land (a state-owned enterprise asset) constituted a criminal offense resulting in significant state losses, not merely a civil matter. Second, the Supreme Court opined that the trial court misinterpreted the HGB agreement, as the HGB approval should include legal requirements binding the Defendant to safeguard the state's interests. Third, the consignment of

Rp13,000,000,000 by the Defendant was deemed invalid by the MA, referring to a previous civil cassation ruling. Fourth, the MA corrected the *judex facti*'s misinterpretation of the land's status as free state land, asserting that the land is an asset of PT KAI that cannot be transferred without proper procedures. Fifth, the MA found the neglect of special conditions in the extension of HGB by the Defendant, indicating an abuse of authority. Finally, the state loss amounting to more than Rp52,700,000,000 serves as strong evidence of the elements of corruption.

After the cassation ruling, Handoko Lie filed a Review (PK) with the argument that there was an error in the previous ruling, particularly regarding the legality of the deposit of Rp13,000,000,000 to PT KAI as a legitimate payment. He attempted to convince the Supreme Court that the action was in accordance with the company's rights and obligations. However, the Supreme Court firmly rejected the PK application. The Supreme Court stated that the evidence and arguments presented were insufficient to overturn the cassation ruling, and the grounds for the PK did not meet the criteria for a manifest error by the judge. This rejection further reinforces that the Defendant's actions are still considered legally detrimental to the state and the elements of the corruption crime remain relevant. Although the Supreme Court acknowledged that the extension of the HGB certificate might be in accordance with formal procedures, the expansion of land control beyond the agreement was deemed invalid and resulted in state losses.

The Handoko Lie case serves as a concrete example of how differing perspectives in assessing a legal act can lead to contrasting rulings across different levels of the judiciary. The Supreme Court's decision at the cassation level emphasized that acts of manipulation and abuse of authority in the transfer of state assets, which result in significant losses, must be punished as corruption, regardless of any attached civil aspects. The Supreme Court emphasized that the Defendant, as the holder of the HGB, had manipulated the control of PT KAI's land as a whole, in collaboration with the Mayor of Medan, who recommended the approval of the HGB extension for land not included in the initial agreement.

The importance of legal certainty (*rechtssicherheit*) in this case is crucial, in accordance with the legal ideal (*idee des recht*) of Gustav Radbruch, which also encompasses justice (*gerechtigkei*) and utility (*zweckmaszigkei*). Legal certainty ensures that every legal violation can be held accountable according to the applicable regulations, without exception. In the case of Handoko Lie, the trial facts show a significant financial loss to the state, amounting to Rp187,815,741,000.00, due to manipulation in the transfer of land rights owned by PT KAI. Legal certainty demands criminal accountability for the Defendant's actions that harmed the state. In accordance with Article 25 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, the examination of corruption criminal cases must be prioritized for a swift resolution, even if there are related civil cases. This shows that the enforcement of criminal law against corruption must be the top priority in order to uphold justice and recover state losses.

4. Conclusion

Based on the research and discussion that have been explained, it can be concluded that the basis for the judge's consideration in determining unlawful acts related to the transfer of

state-owned enterprise land rights in corruption crimes is the presence of elements of materially unlawful acts, malicious intent, and actual financial loss to the state. At the cassation level, the Supreme Court assessed that the involvement of the defendant along with the Mayor of Medan in the transfer and manipulation of PT KAI's land rights violated the applicable legal procedures, including the neglect of the initial agreement obligations. The judge opined that the defendant's actions not only involved violations of civil law but also met the criminal elements as stipulated in Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law. With sufficient evidence, including malicious intent and unlawfully obtained profits, the judge declared the act as a corruption crime that harmed the state by Rp187,800,000,000.

The application of legal certainty in criminal liability for the unlawful transfer of state-owned enterprise (SOE) land rights, as reflected in the Supreme Court of Indonesia Decision No. 1437 K/Pid.Sus/2016, demonstrates that the Supreme Court has considered the principle of legal certainty in imposing a sentence on the defendant Handoko Lie. Although there are elements of civil disputes, the enforcement of criminal law against corrupt actions must be prioritized in accordance with the principles of legal certainty, justice, and utility, given that the act has caused significant harm to state finances. Therefore, criminal liability must be enforced firmly and transparently to ensure justice and prevent legal practices that do not comply with applicable regulations. To prevent similar cases, it is recommended to enhance supervision and compliance with legal procedures in the management of state-owned enterprise (BUMN) assets, through strict audits and compliance standards, as well as more in-depth legal education for public officials and related parties to understand the criminal consequences of legal violations in the management of public assets.

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