

Philosophical Criticism of the Betrayal of the Criminal Law Rechtspersoon as a Legal Subject

Wibisono Oedoyo¹ and Rocky Marbun²

^{1,2} Faculty of Law, University of Pancasila, Jakarta

E-mail: oedoyo2005@yahoo.co.id ¹/ rocky_marbun@univpancasila.ac.id²

ABSTRACT--*In every legal case, especially a case that is special in nature, always brings up two side by side. The hegemony of one field of law over other fields of law raises losses for those who experience dominance of the Law Enforcement Officials. The emergence of differences in understanding, in the end will only lead to interpretive authority. That is, the result of a valid interpretation is an interpretation that is revealed only by public authorization by utilizing power and authority. As a result, public law, in this case is criminal law, presupposes the status of the legal subject. Criminal law no longer matters whether it is a person or a recharge person. Although, the Supreme Court has issued Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Corporate Crimes, but the interpretation of the Supreme Court Regulation is still returned to the interpreting public authority.*

Keywords: *civil procedure, domination, public law, criminal, rechtspersoon*

I. INTRODUCTION

The researchers' academic turmoil was based on Van Hattum's explanation that with the formulations of offense there would not be able to be held a perfect picture of the various forms of life. That is because the offensive formulations are only fragments separated from the relationship. Lawmakers cannot do anything other than just a scheme. The acts included in the offense formulation are acts that are generally criminal. Because the formulation of fragments and schemes, it includes actual actions not there properly, because it is not a despicable or unjustified act.[15] That is, for practitioners and academics of criminal law, an understanding of an act that is suspected to be a criminal act will not appear in itself as an act that is whole and perfect, because it is only fragments.

Another analysis technique is to understand that every norm of criminal law always displays "adresaat norms" or targets of legal norms, where the embodiment of adresaat norms is through the phrase "whosoever" or "everyone" both in the Criminal Code or the Criminal Code. (lex generalis) as well as in special laws (lex specialis).

Each formulation is an affirmation or imaging of a matter (to define, definition). Imaging is concept making. In making the concept always begins with restrictions or differences between those formulated and those that are not or those outside it. Because the formulation works in a limiting way, there is a great risk of inaccurate formulation. However, according to Satjipto Rahardjo, we

cannot say that the formulation is a projection of failure. However, it cannot also say that the formulation is absolutely true, complete and comprehensive.[13]

Activities in giving meaning to the authoritative text, according to AbintoroPrakoso, the authoritative text approach in dealing with legal facts, the relevant legal provisions are traced in the articles that contain norms. Norms in logic are propositions (normative). Explaining the norm must begin with a conceptual approach, because the norm as a form of proposition is composed of a series of concepts. Thus, misconceptions result in misguided reasoning and misleading conclusions.[11] For this reason, anyone who reads an authoritative text is required to have a good understanding of the legal concepts contained in the authoritative text. Until this position, it can be explained that an authoritative text contains 3 (three) things that are very important, namely aspects of the purpose of legal norms (norms adressat), aspects of behavior (actions), and aspects of sanctions. Ironically, the norms aspect of address is not a mainstreamed study, whereas when we debate the element of unlawful nature, we will come to a choice which is to whom the burden of criminal liability will be attached. This means that a person will carry out his legal obligations based on coercion from the state through a court decision, which is no longer a material for consideration in criminal law, namely the reasons for criminal offenses.

In the end, the performance of Law Enforcement Officials (APH) in upholding the law no longer, according to Herbert Marcuse, serves the interests of moral praxis (how to run a good life), but instead becomes a dominance of instrumental ratios.[14] Examples of the dominance of instrumental ratios, for example, are cases involving corporations (companies), where the President Director, for example in Central Jakarta District Court Decree Number 36 / Pid.B / TPK / 2012 / PN.PST, Supreme Court Appeals Verdict Number 417 K / Pid.Sus / 2014 and Republic of Indonesia Supreme Court Judgment Verdict Number 41 PK / Pid.Sus / 2015, by declaring the defendant guilty. The Managing Director is Hatosi Nababan at PT. Merpati Nusantara Airlines (PT. MNA), was found guilty of a lease agreement renting two planes with Thirdstone Aircraft Leasing Group (TALG). However, TALG embezzled by unilaterally using a security deposit of US \$ 1,000,000 to a third party. Or, for example the conviction of a criminal offense made against the Supreme Court Decision of the Republic of Indonesia Number 1749 K / Pid.Sus / 2009 with the defendant President Director of PT. Pos Indonesia who was charged

in his position when the act occurred as the Head of the Business Area Pos IV Jakarta, which issued Commission Fees (Customer Development) of PT. Pos Indonesia to provide services to customers, which of the policy has been determined as an act that resulted in losses of PT. Pos Indonesia, assuming it is a loss for state finances as well.

The phenomenon of throwing (*gowerfen-sein*) in the myth of modernity in the form of objectification of humans with a ratio of instrumental actions, is increasingly clear in the Supreme Court Decision Number RI 787 K / Pid.Sus / 2014 dated July 10, 2014 with the defendant IndarAtmanto as President Director of PT. Indosat Mega Media (IM2) and Johnny Swandy as President Director of PT. Indosat, Tbk. Of course, we cannot arbitrarily state whether the decision was inaccurate, so we still have to re-examine the reasons contained in motivating the verdict of the cassation decision. Where the Supreme Court Cassation Court stated as follows: "That it is proven that PT. IM2 because it does not have permission to use the frequency of 2.1 GHz (3.G). Thus, the consequences of the convict's actions as the President Director of PT. IM2 signed a partnership with PT. Indosat, since the signing of the cooperation agreement, PT. IM2 has used the 2.1 GHz frequency frequency (3.G) owned by PT. Indosat. That the agreement contradicts Article 17, Article 29 paragraph (1) and Article 30 of Government Regulation (PP) Number 53 of 2000 concerning Use of the Frequency Spectrum and Satellite Orbit. The article states that the use of radio frequency spectrum for telecommunications operations must obtain ministerial permission. The agreement also contradicts Article 2 paragraph (2) of the Regulation of the Minister of Communication and Information Number 7 of 2006 and Article 34 paragraph (1) of Law Number 36 of 1999. That due to the actions of the convicted, PT. IM2 has benefited from at least enriching IM2 and PT. Indosat as has been considered by the *judex factie* (District Court) and is detrimental to the country's finances or the country's economy in the amount of Rp 1,358,343,346,674. "The criminal cases that we have shown above, are only part of the concrete facts that exist in the practice of criminal justice, including in general criminal cases where norms are addressed to *rechtspersoon* (legal entities / corporations). Of course, such law enforcement brings about the destructive reality of running businesses not just which is in contact with public law but also towards businesses that are purely in the realm of private law. Legal certainty, is not only interpreted as a consistency and predictable in the implementation of law, but also consistency in applying legal concepts on its portion. Thus, the legal protection of directors as an inseparable part of good-faith *persoonrechts* becomes important to be examined and appointed as a principle of restriction against the arbitrary authority of public authorization.

II. RESEARCH METHOD

This study uses a normative juridical method by

using secondary data collected based on library research activities. The logical consequences of using such methods, then we can use several approaches, including philosophical approaches, conceptual approaches and case approaches.

Based on the description above, it becomes something urgent for us to question about "what is the legal protection model for directors of a legal entity (*rechtspersoon*) in good faith?"

III. FINDINGS AND DISCUSSION

Reasoning Model Law Enforcement Officials in Indonesia Bernard Arief Sidharta explained, in relation to the decision-making process based on the perspective of legal science, the implementation of legal rules by authoritative decision makers requires flexibility. So, on the one hand, decision makers must adapt the rule of law to situations in which concrete forms are impossible to be anticipated or imagined by the legislators (lawmakers), but, on the other hand, they must remain predictable (predictable). In the tension between stability and flexibility, the implementation of the law must always create a compromise between predictability and fairness, using appropriate methods of interpretation and juridical construction by always referring to the ideals of the law. Then the decision maker will be encouraged to consider the "policy" and teleological aspects that underlie the relevant legal rules.[22]

The activity described by Bernard Arief Sidharta mentioned above is an activity related to the formation of juridical argumentation or legal reasoning. Where according to Shidarta, that the study of legal reasoning (juridical argumentation) cores the relationship between law and logic[20], as an intellectual process to reach conclusions in deciding cases used by judges to preserve and justify doctrinal rationality and consistency, and to carry out various other juridical activities such as the formation of laws, application of the law, administration of justice, legal drafting, negotiating legal transactions and so on.[23] Although, the description above refers more to the judge as the final decision maker, but in essence, every component of the criminal justice system also has the same power and authority, namely making decisions.

Thus, in order to trace the legal reasoning model, it becomes important to first trace the paradigm that houses the patterned reasoning. As explained by Bernard Arief Sidharta that an activity of developing legal knowledge cannot be carried out without guidance. Whether we realize it or not, legal scientists in their scientific activities depart from a number of assumptions and work within certain general basic frameworks that guide scientific activities and allow for discourse (communication and discussion rationally) within the environment of legal scientists. These general assumptions and frameworks at present can be called "paradigms" in legal science (Bernard Arief Sidharta, 2013: 71).

Furthermore, according to Bernard Arief Sidharta, the thinking activities of a person who works in the field of

law in an effort to find law can be divided into two, namely axiomatic and problematic thinking. Axiomatic thinking begins with unquestioned truth so that it is easy enough to arrive at a binding conclusion. Axiomatic thinking is needed to find a basis and justification for an opinion by taking into account the interrelationship between legal issues with legal provisions and between legal provisions with other legal provisions. While thinking problematically, the main problem is not finding a legal basis, but rather the most acceptable legal reasons (Bernard AriefSidharta, 2009: 163).

More specifically expressed by Shidarta that legal reasoning is basically an activity of problematic thinking.[21] Therefore, legal reasoning is not a simple and easy scientific activity. Therefore, in the practice of criminal justice in the trial process there is a phenomenon of simplification of the reasoning process. Throwing (gowefen-sein) Law Enforcement Officers in carrying out law enforcement, actually starts from giving an incorrect meaning to the criminal procedure law itself. The meaning of absolutism and totalitarianism in criminal procedural law is given by Simon who explains that criminal procedure law is also called formal criminal law, to distinguish it from material criminal law. Material criminal law is a criminal law containing instructions and a description of offense, a regulation regarding the conditions for the conviction of an act, instructions about a person who can be convicted, and rules about criminal prosecution. Regulate to whom and how the crime can be imposed. Whereas formal criminal law regulates how the state can through its means carry out its right to convict and impose a crime, so it contains a criminal procedure.[7]

In line with Simon's view, there is also the view of J. Dc Bosch Kemper who explains the meaning of criminal procedural law are a number of principles and legislation governing the right of the state to punish when the criminal law is violated.[5] The views of these two classical jurists have the most influence on criminal law practitioners in Indonesia.

Simon and J. Dc Bosch Kemper, in their view only mentioned "the State can through its instruments implement their rights," whereas if the state and its organizations are seen as legal subjects, the state and its instruments are rights and obligations bearers. Therefore, when talking about the issue of authority, then in essence is a matter of talking about rights and obligations.[10] At this point, the whole Law Enforcement Apparatus sees the hierarchical network of meanings as binary opposition, where the meaning of power dominates and hegemony over the meaning of authority.

The meaning of such criminal procedure law, of course, reminds us of the teachings of Austinism and the teachings of Kelsenianism which are based on the paradigm / philosophy of legal positivism. But, in fact, the problem of "state rights" is that if examined theoretically, the state has the right in the form of power obtained from the teachings in various theories of sovereignty. Thus, the emergence of these rights is not from the realm of criminal law, it actually arises from the realm of state

science. Therefore, it cannot be interpreted merely as a collection of rules. Because, if we once again believe that criminal law is one branch of science from the science of law, then the pattern of reasoning against concrete facts (legal events) that occur should systematize and interpret the whole positive legal system, not just criminal laws.

So, it is not surprising when a scathing criticism from a Professor of Criminal Law in the past, namely Roeslan Saleh, where he gave a stigma to the criminal justice process is only "juridical automation" [15]. The term juridical automation reflects the existence of an interpretive behavior in the grammatical-lexical-assumptive legal discovery process and its enticement in legal reasoning with a closed logical system (closed logical system).

According to Ahmad Mujahidin, that after knowing the concrete facts, the question is how to apply the law to the concrete facts. Many ways can be done, an effective way to apply the law is by analyzing and using the syllogism method.[6] Furthermore, SudiknoMertokusumo explained that the judge, as well as other law enforcers, only worried that the law could be applied to the event, then the judge applied it according to the sound of the law. Thus, the invention law is nothing but the application of laws that occur logically-forced as syllogism .[8]

Such patterns of reasoning are a consequence of the adoption of methods in the naturwissenschaftendiscipline in jurisprudence, which is essentially a geisteswissenschaften discipline. The flow of thought is a reflection of the school of positivism in science pioneered by August Comte (1798-1857). Thought in positivism was developed from August Comte's theory which departs from the certainty that there is a law of development that rules humans and all the symptoms of living together are absolute.[19] Of course we will wonder, is there no regulation in the Criminal Code, which currently applies, which contains an idiom that is identical to "directors." If we refer to Article 51 of the Criminal Code, then we will find the word "position." The problem is the meaning from that position, according to R. Soesilo is a position that is civil service, not a private (private) employee.[24] Likewise with the word "management," we can find Article 59 of the Criminal Code. However, management as a legal subject can only not be convicted if committing a type of criminal offense in the form of a violation and not a crime. Regarding the meaning of the word board is not explained further. Although, the word management in the authoritative text is contradicted by the word "commissioner," then we can assume that Article 59 of the Criminal Code is talking about management in the context of directors as rechtspersoon (legal entity).

So, it is not surprising when a tendency arises to make directors as corporate criminal offenses because proofs towards people / individuals are easier than proving the mistakes of a corporation, because it is difficult to prove the existence of mens rea by corporations. The difficulty of finding mens rea corporation is related to the nature of the corporation itself,

as a legal entity which is an independent legal subject which is equated before the law with individual private individuals. Although the corporation is equalized in law with humans in a natural biological connotation (*natuurlijkepersoon*), but in carrying out its life activities the corporation has different characteristics from ordinary people in general. The legal relationship between corporations and other parties raises more complex rights and obligations when compared to legal relations by humans, which in turn will lead to misconceptions in the application of law to corporations or their management.[29]

Through a closed logical system[25] and the syllogism method adopted by criminal law practitioners, then the right of the state is enforced, in the context of power, to implement interpretations in absolutism and totalitarianism, by ignoring the systematization process of the system positive law. This is a reluctance to carry out interpretive cognitive activities by maintaining the "grand narrative" which is a myth of modernity.

A. *Legal Protection of Directors as a Persoon Rechts in Good Will*

Legal development is carried out through legal reform while taking into account the plurality of applicable legal arrangements and the effects of globalization. Such conditions are an effort to increase certainty, awareness, service and law enforcement with the core of justice, truth, order and prosperity in the framework of running an increasingly orderly and orderly state. Thus, a legal politics as the direction of legal development policy must be used as a measure to be able to see the results achieved by the current legal development. Law enforcement is one of the main milestones in the country even placed as a separate part of the legal system. The existence of law enforcement causes every dispute that can be resolved, be it a dispute between fellow citizens, between citizens with the state, with other countries, thus, law enforcement is an absolute requirement for efforts to create a peaceful and prosperous Indonesian state.[26]

Thus, an objective of the existence of the law is to create legal certainty for the community. Where, legal certainty can only be achieved through the process of law enforcement, because the law cannot be upright by itself. Thus, it requires legal subjects as the holder of authority in carrying out the law itself.

In every action of the legal subject which is charged to carry out the law and the law is required to consider all aspects of the juridical aspects of the concrete events that it faces. So that every legal decision must always have sufficient legal considerations and are based on steady legal reasoning. Legal reasoning based on problematic thinking activities of Law Enforcement Officials (APH) as human beings is not only an individual creature, but also as a social creature in the hermeneutical circle of life and culture around it. Therefore, the pattern of legal

reasoning is not possible to resolve disputes in a vacuum and free of value. Although there is a demand for a legal reasoning process to ensure the stability and predictability of each form of decision made while still referring to a positive legal system. Instead of pursuing legal certainty, legal arguments as a result of legal reasoning should still follow the principles of structuring in the form of exposure stages and systematization stages which both contain cognitive interpretation activities, so that each form of decision produced by Law Enforcement Officials (APH) is relatively maintained (the consistency) *similia similibus*).

An appropriate illustration was put forward by Simons (Dutch criminal law expert) in explaining our description above that to eliminate the nature of violating formal law based on justification reasons, which is not only on the basis of regulations by criminal law which are general justification reasons and specifically, but must be determined on the basis of rules in its entirety, so it must also pay attention to the norms in civil law and other norms that cause certain acts to be justified.[16] However, this position, we do not want to say that a director or an official in a certain position to be justified his actions, but demanded the Law Enforcement Officials (APH) to first explore the theoretical world in law based on continuous circular motion and alternating. According to Paulus Hadisuprpto explained that the paradigm of legal science is the result of a constellation of legal frameworks and the commitment of legal experts to legal science, containing inductive deductive and empirical studies that are inductive, meta-theoretical in nature aiming to humanize humans who prioritize moral ethics and aesthetics that originate from the Creator. The study of approaches in legal research is entirely dependent on the problem and research objectives relevant law, if the problem and research objectives are ideal legal elements or legal concepts *iusconstituendum* and *iusconstitutum*, then the study of the approach is juridical normative deductive logic, if the legal element or concept of behavior and social meaning is included, the study of the approach is empirical / sociological- inductive logic. If we refer to the doctrine of Roeslan Saleh, who explains that however perfect the law is, it still has to be done by those who apply the law. This means that it still needs to be refined and also equipped. But on the contrary, those who apply the law are also bound by the principles of balancing interests which by law have been given a positive form. If this is the case, in the formation of laws and law enforcement, the bearer of criminal law knowledge must also take such a stance. On the one hand systematic and normative responses must be carried out, while on the other hand realities of life must be followed farther from the normative-systematic determinations that are patterned (plagiarized and repeated). The bearers of criminal law will try to link them both by making modifications that are refinement and if necessary new thoughts on criminal law theories so that they can be adapted to the growth and development of society.[17]

Furthermore, Roeslan Saleh asserted that prosecuting is not doing something about things that are outside the defendant's self. Judging is a process that has painstakingly taken place between humans and humans. Judging is a humanitarian struggle to realize the law. Judging without a relationship that is fellow human beings is virtually impossible. Therefore trying without a human relationship between the judge and the defendant is often perceived as treating an injustice. And a crime that is inflicted after entering into a settlement without regard to oneself litigation will be a destruction of the future. Ways of judging like that not only harm the creator, but also harm the general welfare.[18] So, in our opinion, the inference pattern is more appropriate using abduction logic, as explained by C.S. Peirce and strengthened by Jürgen Habermas.[25]

When we consider the editorial sequences constructed by the investigator-prosecutor-judge in criminal justice as a struggle between humans and humans, then there are a number of constructed arguments aimed at destroying the defendant's future without regard to the imposition of his rights and obligations as a director.

Examples of the Supreme Court Decision of the Republic of Indonesia Number 787 K / Pid.Sus / 2014 dated July 10, 2014 contain information that the defendant IndarAtmanto has a job as President Director of PT. Indosat Mega Media (IM2) based on Notarial Deed Number: 71 dated May 31, 2006 signed by Notary Julius Purnawan on November 24, 2006 until January 15, 2012. Where, according to the public prosecutor in his indictment, that to increase the number of customers and quality internet access services and additional business income, then PT. IM2 in collaboration with PT. Indosat, Tbk to use the 3G frequencies of PT. Indosat, so that PT. IM2 can move faster (mobile) and reach the residential user segment, an act that violates the laws and regulations in the telecommunications sector. Ironically, the defendant was indicted, prosecuted and decided based on the Corruption Law.

In other cases, with the suspect / defendant / convict Hatosi D.P. Nababan in the Decision of the Central Jakarta District Court Number 36 / Pid.B / TPK / 2012 / PN.PST, Cassation Decision of the Supreme Court of the Republic of Indonesia Number 417 K / Pid.Sus / 2014 and Decision for Review of the Supreme Court of the Republic of Indonesia Number 41 PK / Pid.Sus / 2015. Where can be briefly described that Hatosi D.P. Nababan as President Director of PT. Merpati Nusantara Airline (PT. MNA), after the end of his term of office, an examination of him by the Attorney General's Office regarding legal actions within the scope of the company PT. MNA, which is a BUMN, has entered into a rental agreement to lease 2 (two) Boeing 737 Family Series 400 and 500 Series (hereinafter referred to as "Boeing 737 400/500") with Thirdstne Aircraft Leasing Group (TALG) based on the placement of Security Deposit to a third

party namely Hume and Associates PC (attorney's office) appointed by TALG for \$ 1,000,000 (one million United States dollars) on December 21, 2006. The Boeing 737 400/500 election was because the aircraft is more efficient in operation, so it will be more profitable for PT. MNA that is experiencing a financial crisis. Legal issues then arose, because, TALG until the deadline of January 5, 2007 for the 400 series and March 20, 2007 did not also send the aircraft that had been agreed between PT. MNA with the TALG. And TALG and Hume and Associates PC were unable to return a Security Deposit of \$ 1,000,000 (one million United States dollars), because based on the Summary of Term for the Sale and Term of Offer, it could be returned if it was not as promised. Hatosi DP Nababan was also indicted, prosecuted, and convicted based on the Corruption Law. Referring to the entirety of Article 92 of Law Number 40 Year 2007 concerning Limited Liability Companies (Law No. 40/2007) it can be seen that the organ of the company in charge of managing the company is the directors. Each member of the board of directors is required in good faith and full responsibility to carry out their duties for the interests and business of the company based on the Company's Articles of Association. So, to understand the authoritative text, as we have stated before, it should start from the process of understanding the legal concepts of the directors first. According to the theory of organisms from Otto von Gierke, as quoted by Syuiling (1948), the Directors are organs or equipment of legal entities. Just as humans have organs, such as hands, feet, eyes, ears and so on and because every movement of these organs is desired or ordered by the human brain, every movement or activity of the directors of legal entities is desired or governed by their own legal entities, so directors are personifications of the legal entity itself. Otherwise

Paul Scholten and Bregstein (1954), immediately said that directors represented legal entities.[12] This, according to GunawanWidjaja, brings legal consequences that each member of the board of directors is personally responsible if the person concerned is guilty or negligent in carrying out his duties for the interests and business of the company.[28] The words "guilty" and "negligent" stated above, are not presumed to be simply the meaning of guilt and neglect in the context of criminal law, but the word is put forward in the context of civil law, especially limited company law. Of course, the question will arise what if a director really does have a mens rea and his actus rea is realized as a criminal offense, it cannot be convicted? To answer this problem, it is indeed not simple. The simplicity and complexity is carried out by a criminal law practitioner passing by. Even though in reality, according to Try Widiyono, it is possible for a legal entity to become a vehicle (a means to an end; a vehicle) for purposes that deviate from legal norms[27].

However, it is naive when Law Enforcement Officials (APH) consider that the piercing the corporate veil theory does not appear in a vacuum and is free of values, so it is simply ignored. Therefore, according to Jürgen Habermas, that every scientific research is directed by the vital interests of humanity (both in the natural sciences and

social sciences). Therefore, the postulate on freedom of values is an "illusion" not only for social sciences, but also for natural sciences (Jürgen Habermas, 1990: 158). It implies that every theory as a result of scientific research is always directed towards practical interests, both sensory and non-sensory, which are posited by the positivism.

The meaning of piercing the corporate veil is a legal process carried out by the court usually by ignoring the general immunity of company officials or certain parties of the company from the responsibility of the company's activities: for example when a company intentionally commits a crime. Existing doctrine holds that the structure of the company with the existence of limited liability of shareholders may ignore the responsibilities of shareholders, company officials and company directors. The court in this matter will view the company only in terms of failure to defend a crime or a crime or impose sanctions.[That is, a director can be ignored legal status as an organization of a company, as long as the court can prove it. Basic and universal criteria so that a legal piercing of the corporate veil can be dropped if fraud occurs; an injustice is found; the occurrence of an oppression (oppression); does not meet the legal element (illegality); excessive shareholder dominance; the company is the alter ego of its majority shareholder.[2]

However, the use of the piercing of the corporate veil contains the requirements for its assessment of the doctrines that grow and develop in corporate law, for example intravires, ultravires, business judgment rules, fiduciary duties and so forth. Therefore, criminal law practitioners cannot understand the purpose and function of these doctrines. If previously, Habermas had explained that there was a correlation between theory / knowledge and interests, these doctrines had practical interests, at least first, providing legal protection for directors in good faith; and second, to ensure the continuity of the company's business in general. However, if we return to concrete facts in the form of secondary data derived from court decisions, these doctrines appear to be assumed by the realm of public law. Therefore, in this position, in our opinion there is a violation of absolute potential by the criminal justice. Indeed, we should appreciate the efforts of the Supreme Court of the Republic of Indonesia by issuing Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Corporate Crimes (Perma No. 13/2016), which arose due to critical awareness after dozens of directors became victims, to close empty gaps (loop holes) in the Criminal Procedure Code (KUHAP) on legal subjects subjecting themselves to limited company law.

However, if it returns to the hegemony of Simons and J. De Bosch Kemper's opinion which gives meaning to criminal procedural law as "the State can through its instruments exercise their rights," then again the determinant of legitimate interpretation is public authority. Although the rationality of argumentation can actually be constructed in authoritative texts in Law No. 40/2007 that

the absolute competence to judge a director is in civil justice, but in cognitive activities in criminal law it is impossible to break away from two things, namely tradition and authority. So, in fact there will never be legal protection for *persoonrechten* in good faith, when the sole and absolute meaning is in the hands of power which refers to the binary anomaly of authority.

IV. CONCLUSION

In the end, indeed all Law Enforcement Officials (APH) experienced a throw (*gowerfen-sein*) in glorifying the positivistic myths of modernity, so that Law Enforcement Officials (APH) work based on the ratio of instrumental actions. Thus, violations of human rights (HAM), as a result of weak cognitive abilities, actually begins with the inability and unwillingness and the idea of maintaining a great narrative in the myth of modernity. Legal reasoning that is patterned among Law Enforcement Officials (APH) as criminal law practitioners, is only a juridical automation activity without the need for cognitive activities.

Thus, based on tradition and authority in criminal justice, in order to provide legal protection to directors as representatives of *rechtspersoon*, it is necessary to design, formulate and ratify legal norms in the Draft Civil Code Act that limits public authority to assess the good faith of directors unless it has been proven beforehand through a civil court, especially by judges based on limited liability company knowledge.

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