Confiscation of Corporations Related to Corruption and Money Laundering in Economic Law

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***Abstract*—Corporations, including both closed and public entities (Tbk), are notable developments of the contemporary era. Public companies (Tbk) are particularly noteworthy due to their global reach, enabling investors from any location with access to capital markets to participate and own these corporations. Therefore, it does not preclude the possibility that funds or money obtained through criminal activity could be invested in corporations for the purpose of developing, concealing, or laundering money. This essay is required to present logical justifications for why corporations may be seized on suspicion of engaging in criminal activity, despite the fact that the legal standing, rights, and responsibilities of a corporation are, in essence, equivalent to those of a "person" (*natuurlijk person*). The dispute arose when the Jakarta Corruption District Court denied the confiscation of corporations associated with PT. Jiwasraya (Persero) in the corruption and money laundering case. The court's decision stated that corporations, being subjects of the law, cannot be seized. Nonetheless, corporate expropriation is a customary occurrence that is governed by various laws and regulations, including Article 18 of the Money Laundering Law and Article 15 of the Corruption Law. An examination of the opposition to corporate foreclosure through the lenses of economic analysis of the law and legal positivism is proposed. This analysis is anticipated to shed light on the essence of the law and safeguard the interests of investors at large.**

***Keywords*—Corporation; Corruption; Money Laundering.**

I. INTRODUCTION

In the contemporary era, corporations play a significant role in facilitating the growth of economic and business endeavors within the community.[1] They serve as a conduit or instrument that aids in the prerequisites for entering a more global business arena and acquiring a greater market share. Furthermore, the presence of corporations provides a forum for capital owners to collaborate and pool their resources in pursuit of shared objectives that yield the greatest possible benefit.[2] Additionally, businesses are regarded as the engine of global economic expansion due to their ability to generate employment and income, both of which have a positive effect on prosperity.

Furthermore, in order to enhance comprehension or recognition of the function of corporations and public companies (Tbk), Onora O'Neill categorizes transnational or multinational corporations as agents of justice (agents of justice) with the capacity to generate policies that surpass compliance with regulations pertaining to labor, environmental preservation, anti-corruption, or living standards in the nation where they operate, or with domestic legislation. Furthermore, it has been observed by a number of analysts, including Peter Davis, that corporations possess the capacity to enhance economic, social, and political stability in conflict and post-conflict settings. Moreover, they can facilitate post-conflict reconstruction by supplementing (rather than substituting) the functions of ineffective or recently established governments in areas such as infrastructure development, provision of essential services.

The emergence of publicly traded corporations that offer profits through share ownership and facilitate entry for any individual, a go-public corporation is certain to attract and retain investors.[3] Furthermore, the possibility exists that the funds or money used to purchase these shares originated

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from illicit activities. In accordance with the money laundering typology, illicit funds are transformed into financial systems or transactions through a variety of methods so as to avoid suspicion (placement stage). Such as placement, on investment-worthy products, including equities, time deposits, insurance policies, and bonds, which PPATK classifies as money laundering typologies.[4]

Several sections of this writing will be subdivided to facilitate comprehension for the audience. The initial segment comprises the introductory subchapter, which furnishes a synopsis of the pertinent context and delineates the writing challenges that are anticipated to be resolved. Subsequently, the court ruling regarding the Corruption Crime will be examined in the second section (Discussion) through the lens of legal positivism.[5] This will involve an initial explanation of the legal positivist theory as a whole, followed by an assessment of whether the court ruling can be deemed to have adhered to the methodology delineated in legal positivism.

The ultimate objective is to ascertain whether confiscation of the corporation is permissible or not. The third section will then provide an analysis of corporate confiscation through the lens of economic analysis theory to law (analysis economy of law), which attempts to characterize succinctly the seizure's ontology/nature, epistemology, and axiology. Subsequently, in the concluding section (Part IV), a summary of conclusions and recommendations will be presented. These will hopefully be beneficial to the public and will prompt the government, in its capacity as a regulator, to consider implementing the recommendations so that law enforcement officials can utilize them to aid in the execution of future endeavors.

II. LITERATURE REVIEW

A. The concept of Confiscation in the Context of Corruption and Money Laundering

Confiscation in the context of corruption and money laundering involves a review of the realm of economic law, especially concerning acts of corruption and money laundering.[6] Confiscation is an effective legal instrument to punish companies involved in illegal activities and harm the economy.[7] In this context, Confiscation is not only a criminal sanction but also a proactive step to eliminate the proceeds of crime and prevent companies from carrying out similar actions in the future. This concept reflects the legal system's efforts to provide a deterrent effect and uphold economic justice.

The role of economic law in prosecuting corporations involved in acts of corruption and money laundering is crucial. A deep understanding of how economic law contributes to upholding justice and economic efficiency is essential.[8] Evaluation of the effectiveness of existing legal tools needs to be carried out, and legal capacity needs to be expanded to address new challenges that arise along with the development of corporate crime. This includes improving regulations, strengthening law enforcement mechanisms, and providing sanctions in line with the level of violations. Thus, economic law is a means of enforcement and a front guard in protecting economic integrity and justice within the corporate sphere.

B. Strategies to Mitigate Corruption and Money Laundering in Corporations

The legal process involved in company formation necessitates a meticulous strategy encompassing multiple stages. The first phase entails a thorough examination, during which legal authorities must ascertain potential corporate infractions. The process necessitates the collection of compelling evidence to substantiate future judicial proceedings. In this stage, case determination is conducted, wherein the authorities must ascertain the legal foundation and structure of the case.[9]

The court process is crucial in enforcing penalties on firms engaged in illicit activity. This is where the court evaluates the gravity of the offense and administers a suitable penalty. A thorough examination of these procedures guarantees that justice is upheld and firms are appropriately penalized based on the demonstrated severity of their transgressions.

Implementing preventive measures is essential for mitigating the risk of corruption and money laundering within the corporate setting. Companies should establish robust internal policies encompassing employee training to enhance their comprehension of business ethics and regulatory compliance. A stringent surveillance system is also necessary to guarantee continuous adherence.[10]

The processing of corporate corruption and money laundering cases is grounded in international legal rules. International collaboration is essential to enhancing law enforcement's ability to exchange information and create synergies. Assessing the execution of global legal regulations at both the domestic and international levels is crucial for enhancing efficacy in addressing transnational economic misconduct. Collaboration among nations can foster a more robust resilience against these offenses.

III. METHOD

This study uses the library research methodology to gather and examine literature, statutory rules, and judicial rulings about corporate structures associated with corruption and money laundering in economic law. Literature surveys and legislative analysis will establish the comprehension of legal matters about this research topic. This research is organized into multiple sections, with the initial section comprising an introduction, a comprehensive discussion of the pertinent backdrop, and a complete exposition of the encountered writing difficulties. This section will examine court rulings of Corruption Crimes from the perspective of legal positivism. It will elucidate the theory of legal positivism and evaluate whether court decisions adhere to the prescribed methodology of legal positivism. The third section provides a detailed examination of the company's structure using the economic theory of legal analysis. It briefly discusses the fundamental nature, knowledge, and values associated with the takeover. The concluding section offers a concise overview of the findings and suggestions, which are anticipated to yield advantages and motivate the government to adopt the recommendations to assist law enforcement agencies in their future endeavors.

IV. RESULT AND DISCUSSION

The Jakarta District Court dismissed the Public Prosecutor's contention concerning the seizure of a corporation associated with the suspect, or as the Public Prosecutor put it, the corporation was acquired with illicit proceeds, in the Tipikor and Money Laundering case, Investment and Financial Funds of PT. Jiwasraya (Persero), and Suspect Heru Hidayat No. Register 30/Pid.Sus/Tpk/2021/JKt. Pst. Scholars would do well to provide a general explanation of the legal positivism theory, as proposed by eminent figures including Auguste Comte, John Austin, Gustav Radbruch, Hans Kelsen, and HLA Hart, in light of the discrepancy between the public prosecutor's and the panel of judges' opinions.

Beginning in the nineteenth century, the philosophy of positivism experienced significant growth and influence, particularly in the realm of science, according to historical records.[11] Moreover, the contribution of rational and objective ideas, which can be considered the foundation of modern science, substantially shaped the nineteenth century. In the past, philosophy was primarily concerned with aspects of life that governed both good and evil human behavior and deeds. However, the positivistic value of philosophy now determines its value. The renowned doctrine of the law of three phases was formulated by Auguste Comte (1798–1857), a major figure or pioneer of the philosophical school of positivism.

These phases make up the history of humanity as either society or individuals have recorded it. Human beings, as described in the initial theological phase, have a limited capacity to provide explanations for external and internal objects that exist. It is believed that the essence and power of each of these objects originate from or are the product of God's creation. Subsequently, during the metaphysical phase, human cognition becomes more receptive and forward-thinking due to its capacity to formulate a comprehensive notion that attributes causes to all consequences. Additionally, it is worth noting that the final stage of human intellectual development occurs during the positive phase, which stands as the final and comprehensive stage.

During this stage, humans are deemed to have achieved success in elucidating nearly all known phenomena through the application of empirically tested theories or laws.[12] Objects that are perceived by humans and, furthermore, that can be weighed, measured, or assessed in a way that ensures clarity, accuracy, and utility serve as the foundation for testing and can be identified for their veracity. The development of modern society, including humans, science, philosophy, and law, was predicated on the progression of human intellectual capacity until the advent of positivism.

In response to the deficiencies of the preceding theory, specifically the theory of natural law (natural law/theological), the positivism school of law was established. This theory has two deficiencies: first, its comprehension of natural law fails to establish objectivity, and second, normative conclusions regarding events or objective facts cannot be drawn from this comprehension. The claim that positive law is lawful exclusively in accordance with the principles delineated in natural law, however, constitutes the theory of natural law's most fundamental fallacy. Positive law ultimately acquires the same ambiguity that the concept of natural law does. For instance, positive law lacks force or validity and has repercussions on legal certainty if it contradicts natural law, which reflects an eternal sense of justice from God.

Positive law's establishment of justice does not use an external measure of justice because it is not based on the value of justice under natural law.[13] As opposed to natural law, which holds that unjust positive law inevitably becomes invalid or void, positive law theory posits that justice is the primary and fundamental aim of law.[14] However, positive law does not apply when positive law is unjust. If one believes that the law is unjust, it is necessary to modify it in a controlled fashion via established

mechanisms. Legal certainty and the advantages derived from the law are ensured by positive legislation founded on concrete evidence that places an emphasis on precision.

The foundation for attitudes and behaviors, after which values serve as the foundation for principles (sila beginsel, principle).[15] Equal to value divided by its antinomic value, value can also be expressed as the product of two values that restrict one another rather than eliminate one another. Legitimate comparability, which constitutes one of the antinomial values, is one such value. To provide an example, any transgression of a norm or law necessitates recourse through the legal system and punishment. However, the severity of the sentence should be proportionate to the value of the stolen goods and/or variables that impact the offender's condition, such as employment status, psychological state, age, or professional history.

A verdict is considered fair if the offender receives a sentence that is proportional to the value of products and/or circumstances associated with the crime (legal comparability) and guarantees legal certainty regarding the sentence for the offender.[16] John Austin (1790–1859), Gustav Rachbruch (1878–1949), Hans Kelsen (1881–1973), and HLA Hart, among others, contributed to the development of legal positivist concepts and theories. Analytical jurisprudence, of which John Austin is renowned, posits that the law is a codified order of legal authority consisting of legal regulations, with command being the most essential component.

Consequently, the law behaves in a closed logical system, being logical, immutable, and closed. Devoid of consideration for the present good or poor values, the appropriate legal provisions are derived through the use of logical devices from predetermined legal regulations. According to John Austin, "law is a command set, either directly or circuitously, by a sovereign individual or body to a member of some independent political society in which his authority is supreme." J. Austin identifies the command, which he defines as a directive issued by a powerful political group—specifically, the paramount political authority responsible for overseeing public conduct—as a crucial element of law.

Subsequently, the notion emerged of an additional positivist figure, Gustav Radbruch, who delineated three fundamental values that must coexist within the realm of law: the value of justice (from a philosophical standpoint), the value of certainty (from a legal standpoint), and the value of expediency (from a sociological standpoint). which fundamental values upon which legal standards must be founded their validity. This concept was also put forth by G. Radbruch, who defined law as a fusion of realities that are forbidden to violate values that must be realized. Fairness is the value at issue. As a result, legitimate standards in the form of written regulations are necessary for the establishment of justice.

The foundation of rule of law instruction lies in the significance attributed to certainty as embodied in written regulations. Legal principles are a system of rules *(grundnorms)* established by necessity and integrity or moral value, according to the renowned *Grundnorm* theory of Hans Kelsen. When a rule or norm embodies directives and the governing authority codifies it in written form, the rule or norm establishes its metajuridical nature.

Legislation is obeyed not because it is just but because it is authored and passed by authoritative bodies, according to Hans Kelsen's Pure Theory of Law. Written regulations containing orders and sanctions, which are subsequently compiled and ratified by the state as the governing authority, are the subject of legal science, as evidenced by the aforementioned positivist figures' opinions.[17] Consequently, the sole emphasis of the law is on elucidating its intent and method of formation. This ruling is deemed discriminatory and inappropriate when viewed through the lens of legal positivism.

Investigators carried out the expropriation in line with the law, specifically Article 18 of the Corruption Crimes Law and Article 7 of the TPPU Law. They also found information about the company's history, which suggested that Heru Hidayat may have bought or controlled it. Constraints on interpretation are absent in the interpretation of regulations, in accordance with the legal positivist principle. The council of judges, however, disregarded this principle, which is considered improper. The judicial panel's refusal to comply with the public prosecutor's demands remains a matter of uncertainty. The adequacy of the investigator's formal procedure remaining unelucidated, as well as the judge's presumption that corporations are legal entities immune from confiscation, were not addressed in the decision.

Confiscation serves an evidentiary function at the investigation, prosecution, and trial levels, in accordance with criminal procedure law in Indonesia. Concerning objects or items that may be seized in accordance with Article 39 of Law No. 8 of 1981 on the Criminal Procedure Code, PT. GBU is affiliated with the suspect, Heru Hidayat, according to information obtained during the investigation. Objects or goods that are the proceeds of criminal acts; utilized directly for criminal acts; utilized to obstruct investigations; manufactured specifically to commit criminal acts; and other objects that have a direct connection to the criminal act in question qualify as such.[18] The fulfillment of the objective

of economic analysis of law theory will remain elusive so long as these profits persist without cessation.

Economic analysis methods can assist in comprehending how the law operates, assessing its efficacy, and identifying potential weaknesses or deficiencies in the legal system, according to Richard Posner.[19] The theory of economic analysis of the law enables one to view the law as a system comprised of regulations intended to manage human behavior and incentivize individuals to act rationally and efficiently in pursuit of optimal outcomes.

The Corruption and Money Laundering Crimes Law fails to accomplish its goals and possesses deficiencies when it fails to execute the confiscation or forfeiture of corporations implicated in illicit activities of money laundering and corruption.[20] One of the shortcomings or weaknesses found is justification for the state or community that has suffered harm as a result of the act. The state, in its capacity as the victim, does not receive any proceeds or recovery for financial losses incurred as a consequence of the criminal act, while the criminal perpetrator continues to benefit and behold the proceeds of his illicit activity.

V. CONCLUSION

The act of confiscating a corporation is essentially permissible in accordance with the regulations and standards that govern it. Such confiscation does not contravene the principle that the corporation, being a legal entity, is equivalent to rights and obligations such as "natuurijk persoon," as it should be associated with the shareholder's share ownership in the corporation. The corporation's ownership status is undoubtedly affected by law enforcement officials' seizure of shareholders' shares, which they suspect were obtained with criminal proceeds. This action does not infringe upon the rights and responsibilities of other shareholders or third parties with an interest in the corporation. The rationale behind the judge's denial of the prosecutor's requests concerning the confiscation of the corporation was neither specified nor elaborated upon in the judge's Jakarta Corruption District Court ruling.

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