

Legal Policy Of Corruption Eradication At State-Owned Enterprises Sector In Indonesia

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Abstract: A mandate of the constitution of the Republic of Indonesia as the highest law is the creation of Indonesia people that is just and prosperous, and then the development in all sectors becomes a necessity for achieving that goal. To achieve continuity and development success, the enforcement of law supremacy in the form of prevention and eradication of corruption is a necessary condition (condition sine qua non). Type of legal research conducted is normative. This research was carried out by discussion of concepts, doctrine and theory (principles) as well as legislation, which is correlated to the philosophical construction on state finances. The results of the research indicated that law enforcement of corruption against the management of limited state-owned enterprises during this that damage SEOs (state) is one of the important parts in the form of control the management of SOEs whose responsible and integrity. Though on the other hand, the debate over the use of the criminal instruments in resolving the problems that occurred in the transaction of SOEs state that damage will continue to occur, but against the actor of state-owned companies still put forward the principle of prudence in running the business, because in some judicial practice has been expanding/constructing carelessness be a part of unlawful action in corruption crime.

Index Terms: Corruption, Law Enforcement, Political Will, State Owned Enterprises

1 INTRODUCTION

Corruption cases is not only as an issue for national development in Indonesia, but has also been the issue of global development. A study presented on October 18th 2013 by the American Survey Institute, *Gallup*, said that people around the world consider government corruption have been widen. Whereas in the context of Indonesia, corruption was widespread in government at both central to local levels, and no exception to the business sector involving state companies (*corporate government*). State Owned Enterprises (SOEs) as a representation of state in national economic activities aimed at facilitating economic growth in order to achieve the welfare of the people, it cannot be separated from the offence of corruption is structurally and systematically difficult to reached (*offenses beyond the reach of law*). Corruption in SOEs is certainly very detrimental to the country, and according to Apung Widadi (Indonesia Budget Center) revealed during the last 6 years (2007-2013), the Audit Board of the Republic of Indonesia (BPK) found the potential of financial loss Rp 4.9 trillion and US \$305 million of 24 SOEs.

In practice, corruption cases associated with Limited SOE, no less sophisticated and its variation. It can be seen the structuring of corruptor in collusion with his cronies together with corruption and disguise his actions neatly. So, in some cases, decisions of judges in corruption cases in Indonesia, not able to provide a deterrent effect against the corruptors, particularly related losses to the state. State finances and an important element in proving the corruption case related to Limited SOE is "meaning the state's money and financial loss to the state", however, interpret the state's money and proving the financial loss to the state is not a simple thing because often there are different perceptions between the parties with other parties both regarding the limitation of state's money and prove the financial loss to the state. In Act No. 31 of 1999 on the Eradication of Corruption (UU PTPT) as amended by Act No. 20 of 2001, there were 2 (two) criminal provisions formulated which must meet the elements of state finance, namely:

Article 2 (1) of UU PTPK:

*Any person who acts unlawfully enrich themselves or another person or a corporation that can be detrimental to **state finance** or economy of the state,..... etc.*

Article 3 of UU PTPK:

*Any person with an intention to benefit themselves or another person or a corporation, abuse of authority, opportunity, or facilities available to him due to position that could harm the **state finance** or economy of the state,..... etc.*

The formulation of the element of "state financial losses" in the provision, has the consequence that there should be a state financial loss caused by an unlawful act (as in Article 2, paragraph 1) or act of abuse of power (as in Article 3), and the loss in question must be a state finances. If not state finances, the provisions of UUTPK cannot be applied. In the term of normative, these provisions have given different interpretations on the position of state financial and state losses at Limited SOEs. Lack of uniformity in defining the notion of state finances would create legal uncertainty both for state-owned enterprises actor in conducting SOEs business or by law enforcement related to the corruption, particularly related to the financial loss to the state. When the meaning of

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state finances that have been separated its management in SOEs is no longer the state finances will mean lawfully acts or abuse of authority by officials of state-owned enterprises even though it resulted in a loss on SOEs, cannot be prosecuted under the provisions of corruption Article 2 and Article 3 UUPTK. In Arifin P. Soeria Atmadja's dissertation suggests there are law errors in interpreting the vast state finances because, firstly; financial management and accountability in the agencies that contained state finance there has been regulated separately. Second; the government does not take care of the financial institutions and agencies which have the status of legal entity, so it does not come accountable. Therefore, Arifin P. Soeria Atmadja suggests the need of transformation theory of finance legal status as a form of formulation of new laws for examiners, supervisors and law enforcer, particularly the criminal law of corruption in Indonesia related to the aspects of state losses. In addition to problems of differences of opinion about the position of state finances that have been separated its management to SOE, other problems arise regarding the losses incurred in a transaction carried out by SOEs actor is the extent of actions that cause losses can be seen as a loss of SOE that may be implicated in the opinion that the loss as losses to the state, since one of SOE's function is as a for-profit business entity, which in its management may be able to profit or loss depends on how the market mechanism. SOEs are managed by professionals who work with certain *rules and regulation*. Measures in the form of for-profit enterprises in money terms, is not free from risks in the form of the possibility to bear the loss. In carrying out the actions, professionals of state-owned enterprises are always faced with the possibility to obtain a profit or a loss. Therefore, losses incurred in professional decision-making should not be granted (not necessarily) be considered as a deliberate action that is equivalent to *financial fraud*.

2 METHOD OF RESEARCH

Type of legal research conducted is normative. This research was carried out by discussion of concepts, doctrine and theory (principles) as well as legislation, which is correlated to the philosophical construction on state finances. In relation with this research, used some research approach i.e statute-approach, conceptual approach, analytical approach, philosophical approach, and case approach. The procedure of legal materials is done deductively; i.e drawing conclusions from a problem that is common to the concrete problems faced. Further, the existing law materials were analyzed to look problem relating to the effective implementation of current and future.

3 ANALYSIS AND DISCUSSION

3.1 Law-Political of Corruption Eradication

Corruption as a *white collar crime* that is often referred as *business crime* do not know boundaries and places, including in the scope of SOEs though, in some cases revealed how SOE into a profit group of people, playing together politicians selfish and his group. The crime of corruption in the scope of SOEs will be increasingly difficult to reach if the shift in the meaning of state finances reach the criminal justice system that has been running interpret the state finances in SOEs as the scope of state finance needs to be monitored and enforced and restored in order to carry out his duties as an organ of the state to build economies are strong and sturdy in global

competition. Criminal law, especially criminal law to eradicate corruption has expressly stated, corruption including that occurring in SOEs remain the reach of criminal law throughout an unlawful act or abuse of authority which impact on state assets managed by SOEs even though a company subject to the rules of the game itself. According Sudarto, legal politics is the policy of state through authorized state agencies to assign the desired regulation, which is expected to be used to express what is contained in the community and to achieve what is aspired. A policy or rational effort to achieve the welfare of people, as well as can be done with "*social defense policy*", also done with "*social welfare policy*". Thus, it can be said criminal law policy is an integral part of social policy (politics). Conceptually, the understanding of state finance law should start by first knowing the sense of state finance. There are some interpretation of state finance, depending on the accentuation of an issue in the definition of experts in the field of public finance. The term *state budget* itself is etymologically derived from the Latin *budga* or *budge* (English) and *etat de roi, bougette/bouge* (France). In Dutch, it called *begroting (groten)*, which can be given meaning estimate. Geodhart was quoted by W. Riawan Tjandra, giving the sense of State Finance as whole laws that set periodically giving the government power to conduct any expenditure on certain period and demonstrate the financing tools necessary to cover these expenses. Elements of state finances by Geodhart include: (a) Periodic, (b) Government as budget executor, (c) Implementation of budget includes 2 (two) authority i.e authority spending and authority to explore the sources of funding to cover expenses concerned. Glenn A. Welsch gave the sense of *Budget* as a *Statement* form of planning and management policy which is used in a given period as a guide or *blueprint* within that period. While Van der Kamp provides a sense of *state finance* as all the rights that can valued with money, and all everything (in the form of money or goods) that can be used as a state-owned associated with these rights. According to John F. Due *Budget* is a financial plan for a specific time period. *Government Budget* is a statement of expenditure or proposed expenditure and revenue for the future along with data on actual expenditures and revenues for the future period and the past period. In connection with the state of *state finances* by John F. Due above, emerge impression that John F. Due to equate the sense of *state finances* with *budget*. Reviewed from the position of state in the administration of the state it is understandable, but if associated with national budget, Muchsan further clarify their relationship. Muchsan stated that the state budget is the core of state financial, because the state budget as mover tool to implement the use of state finances. The same opinion, it expressed by Handaya-ningrat that the budget is a plan, which is an estimate of what will be done in the future. Each budget outlines the specific facts about what is planned to be done by the units/organizations that arranging the expenditure budget for period that will come. According to Djafar Mohammed Saidi, the state budget as a document which contains estimates of revenue and expenditure and details of activities in the areas of state government from the government for a period of one year. Total revenue and expenditure of state sometimes planned in a balanced way balanced for the year concerned. It aims to determine the extent of the government's ability to manage the state budget so as not to cause the deficit of the state budget.

3.2 The Scope of Business Crime

Business crime in the era of globalization has a character that is in line with the development of new technologies. The impact of globalization on the development of business crime is a change in the modus operandi which increases the speed of information and communications and transportation, so that law enforcement increasingly easier and more complex than the original. Business crime is often associated with *corporate crime*, but according to Romli Atmasasmita, business crime is wider than corporate crime for several reasons, as follows:

- a) Modus operandi does not always use the corporation as a means to commit a crime but the corporation will be a place to accommodate the results of crime. In fact the corporation is not an actor and even in terms of corporate responsibility, the corporation is represented by management. Whereas in fact, the owner or founder of corporation often becomes the corporation's controller that has been proven to perform an unlawful act and corporations become victims including shareholders, especially in the limited company that has "go public" or public limited company (PT. Tbk). Act No. 40 of 2007 on Limited Company, cannot reach the company's personnel actions – company controller, except directors, commissioners, and shareholders;
- b) The complexity of problem in the corporation's business activities are not only related to national problems but now often associated with international problems. Activity is often a matter of law that has broad impact on the interests of people and even the interest of legal protection of corporation itself. Circumstances and problems of business activity do not only involve an organ of limited company, but also organs of state power. Even in the business activities of money carried by multi-national corporations often used mediator known as *intermediaries*, where on the one hand they are protected by law and include legitimate business activities, but on the other hand, new actors (*new comers*) in these business activity often do lawfully something and detrimental to the parties to the agreement or the interests of state, and until now has yet to be reached by legislation in many countries;
- c) The business activities of both domestic and international has been controlled by *Multi-National Corporation (MNC)* that have networks among countries so that has raised the complexity of law relating to the corporations, especially in the event there has been a violation of criminal law by agents of corporations who have acted without the knowledge of principal that located in other countries. Besides, the complexity of arrangement related to the business activity, the presence of MNC has caused jurisdictional problems in the case of criminal acts by the MNC. In MNC activity to date involvement three corporation parties represented by the Board of Directors, Member of the Board of Commissioners and Shareholders, and interme-diaries, require a range of comprehensive legal and adequate. On the basis of these considerations, the definition of business crime has a scope of legal range that is more adequate than the definition of corporate crime;
- d) International business network with significant and spread capital, in some countries have a major impact both in terms of financial, employment and social welfare in the countries concerned. That condition requires a clear and broad legal basis and has a predictive able to see the future of international business activity both in people's

lives where the *Multi-National Corporation* legal basis to arrange *Multinational Corporation's* activities requires an adequate term, namely business crime.

Philosophically, the term of "*business crime*" implies that there has been a change in values in the community when a business activity is operated in a way that is very detrimental to the public interest, such as capital investment activities in various private export labor-intensive or capital market activities whose shareholders are the public at large, including the middle to lower class. The value change is that the businessman has less or no longer appreciates the honesty in national and international business activities in order to achieve the purpose of obtaining profit at large. Even healthy business ethics often sidelined and colleague's disservice is commonplace as a means to achieve a goal. Sociologically, the term of "*business crime*" has shown real circumstances that have occurred in the activity or the business world but, on the other hand also shows that business activity is no longer the "sociability" (unfriendly business atmosphere) or as if it is not there more trustworthy among business actors. The definition of the term is actually the result of actor's panic that sees business activity has been deviate away from the goals and original ideals which build a trust and honesty in profit. The more complex of market characteristics, the more complex of legal issues that must be faced. Sociologically, the definition of the terms mentioned above also indicates demand of business actor that ignoble to restore comfort in performing their activities.

3.3 Corruption Eradication and Good Corporate Governance

SOEs as a business entity that is faced with the challenge of economic development is increasingly growing, open and competitive, the management and supervision of state-owned enterprises to be important, and extremely important for the implementation of the principles of *good corporate governance*. Experience proves that economic downturn in many countries, including Indonesia, partly because firms in the country do not implement the principles of *good corporate governance (GCG)*. The implementation of *good corporate governance* principles, intended for the management of state-owned companies can become more efficient and productivity as well as improve the performance and value of the company itself, and prevent SOEs from the actions of exploitation outside the principles of *Good Corporate Governance*. In the explanation of Article 5, paragraph (3) of UU BUMN, mentioned that the principles of *good corporate governance*, including:

- a) **Transparency**, openness in the decision making process and openness to reveal material and relevant information about the company;
- b) **Independence**, a situation in which the company is managed in a professional manner without any conflict of interest and influence/pressure from any party that does not comply with the legislation and the principles of health corporate;
- c) **Accountability**, clarity of function, implementation, and organ accountability so the management of corporate run effectively;
- d) **Responsibility**, suitability in the management of the corporate to the legislation and principles of healthy corporate;

e) **Fairness**, suitability in the management of the corporate to the legislation and principles of healthy corporate.

The provisions concerning *good corporate governance* stipulated in the Regulation of the Minister of State Enterprises No. PER-01/MBU/2011 on the Implementation of *Good Corporate Governance* (GCG) in SOEs. The principles of *Good Corporate Governance* is in line with the spirit to be realized in the eradication of corruption is increasing integrity in the form of trans-parency, accountability, and responsibility particularly in public finance management, including the management of state assets that separated in SOEs.

3.4 Legal Policy of Corruption on Limited SEOs

On a historical level, since the reform in 1998 and general elections in 1999, to form a new institution that increasingly encourages measures towards democra-tization. Until now, some public's demands which emerged at the beginning of reform have been met, although in reality cannot be fulfilled all and lasts no smoothly step by step the Indonesian nation has entered the post-reform era. According to Satya Arinanto, so-called "*post-reform*", some demands put forward the community will remain, especially relating to sectors that have not been achieved in the reform period. Those sectors are related to the law enforcement, human rights, and the eradication of corruption, collusion and nepotism. One thing that is very important in building a new legal order is the principles that will be used as the basis of national law to be created it. The selection of national law principles will to be related to a view of life and culture of the nation. These principles will determine which law system that we have adopted. In reviewing the principles of national law we need to base ourselves to Pancasila, the Constitution of 1945 and Broad Outlines of the Nation's Direction or the general policy direction of development because this material that gives a fundamental principle in our nation. The constitution of 1945 has been a system that provides standards that must concretized by lower regulations. This differs from the philosophy of Pancasila, which still requires an assessment of how the principles formulated in it can be formulated in the body of the national positive law. After reforms until now, Indonesia amended the Constitution of 1945 for 4 times. In the Transitional Provisions as the Fourth Amendment to the Constitution of 1945 Article III stated "Constitutional Court established no later than on 17 August 2003 and before the establishment, all authorities shall be exercised by the Supreme Court". It is also an important part of amendment as institutional strengthening, increased scrutiny, especially on the management of state finances that are all geared towards the improvement of education and social welfare. The increase of state institutions supervision, especially on the management of state finances as one important step in the management of the country for future. Corruption in the past regime had destroyed all the principle of life which further led to misery and poverty due to the many national development (marked by corruption) is not reached. A paradigm shift in the field of law after the reform is seen in terms of eradication of corruption, collusion and nepotism. In the New Order era, corruption is not the most important part in the agenda of government so that corruption becomes rampant that occurred from the bottom to top levels in the government. This then became one of the most important demands of the majority of people against the government. Perhaps, this is meant by

Lewis about the meaning of democracy as "*the willingness of the majority should prevail*", so that the government of Indonesia's reform when it changed its legal paradigm, especially in terms of corruption eradication has been rooted to redraft the constitution and gave birth to some of legislation in the field of corruption. Democratic processes that occurred in Indonesia in 1998 have political implications for the government's law and political to eradicate corruption. This is due to the previous regime labeled as corrupt regime and is regarded as one of the causes of economic crisis in Indonesia which is also causing misery for many residents of Indonesia. The new government to reforms Indonesia has set the policy direction in the field of corruption eradication. Beginning with the enactment of TAP MPR No. IX/MPR/1998 on the state management clean and free from Corruption, Collusion and Nepotism, which is then used as Act No. 28 of 1999 on the state implementation clean and free from Corruption, Collusion and Nepotism. This policy was followed by the establishment of Act No. 31 of 1999 on the Eradication of Corruption which replaces the old act, which is Act No. 3 of 1971 on the Eradication of Corruption, which is considered to be no longer compatible with the development of legal needs in the community. Law-political of government in the field of corruption eradication is not only towards the repair and improvement of anti-corruption legislation (substance) but also institutionally (structure) to strengthen by establishing a new anti-corruption agency, known as the Corruption Eradication Commission (KPK) through Act No. 30 of 2002 on the Corruption Eradication Commission. Besides the establishment of KPK, after reforms many formed the team, institution even the judicial institutions in the field of corruption eradication. In post-reform, since the President of Susilo Bambang Yudhoyono, has issued various policies as a manifestation of the government's seriousness to eradicate corruption. Beginning with the establishment of the World Anti-Corruption Day by the United Nations on December 9, 2004. Issued Presidential Instruction No. 5 of 2004 on Corruption Eradication Acceleration specifically to the Attorney General and the Police. The next policy is to establish a National Action Plan for the Eradication of Corruption (RAN-PK) 2004-2009 through preventive and prosecution measures. But in fact, the implementation of law enforcement to eradicate corruption until now, still unfinished. At the beginning of transition period that took place in Indonesia, since that the economic crisis was hit in various countries around the world, especially to countries in Asia. The economic crisis affects a little more attention and direction of future development policies, so that even if the demands towards the eradication of corruption is so big voiced, but concern for the country's economic recovery is still a major concern of the government. Law-politics in the field of corruption eradication, especially relating to the management of state finances separated in SOEs, the government through some provisions of the legislation, has put the managers/ administrators of SOE as the subject of corruption. In line with the development of corruption is not only involves the public sector, then in the business sector both in SOEs that has been operating, law-political of corruption eradication should also be directed at the private sector. Private sector is *supply side* of corruption; their demand sides are government officials. If the supply side can discipline it is expected that there will be a decrease in the level of corruption on the *demand side*. To minimize the corrupt behavior of government officials cannot simply rely on

the role of law, regulation or community pressure. Complexity of global business practices and the increasing opportunities of corruption impossible can be monitored or controlled only by law enforcer. Some corruptor may be detected and subsequently punished. However, business environment and good governance will not be realized unless it can empower the role of *supply-side* is to create and implement business ethics standard or *good corporate governance*. And it takes a strong commitment from the private sector to implement it. One of the concepts introduced by the United Nations Convention against Corruption which has been ratified by Indonesia through Act No. 7 of 1996 is to prevent and to eradicate corruption in the private sector. This concept brings a new paradigm for the eradication of corruption in Indonesia. During this that has been roped with corruption legislation related to the public sector (government), state losses and involves the government apparatus. To reduce corruption in the private sector, the convention stipulates that each country participating in the convention shall take measures to prevent corruption involving the private sector is to improve the accounting and auditing standards in the private sector as well as imposing sanctions whether civil, administrative or criminal. The provisions related to the private sector as stipulated in the United Nations Convention on Anti-Corruption (UNCAC) in 2003, as follows:

1. Each member state shall take measures in accordance with the fundamental principles of its national law to prevent corruption involving the private sector, improving the accounting and auditing standards in the private sector and as appropriate provide civil penalties, administrative, or criminal effective, proportionate and dissuasive for those who do not fulfill these efforts.
2. Measures to achieve these goals may include, among others:
 - a. To improve cooperation between law enforcement agencies and related private entities;
 - b. To improve the development of standards and procedures designed to maintain the integrity of related private entities, including the rules of behavior for the implementation of business activities and all related professions are true, honorable and reasonable, as well as the prevention of conflicts of interest, and to improve the use of good commercial practices and contractual relations of businesses with the state;
 - c. To improve transparency among private entities, including as appropriate actions regarding the identity of legal entities and individuals involved in the establishment and management of corporate entities;
 - d. To prevent the misuse of procedures regarding subsidies and licenses granted by public bodies authorized for commercial activities;
 - e. To prevent conflicts of interest by imposing standards as appropriate and for a reasonable period of time on the professional activities of former public officials or on the positioning of public officials by the private sector after resignation or retirement them, i.e those activities relate directly to the functions held or supervised by public officials during their tenure;
 - f. To ensure that private enterprises, by considering their structure and size, have sufficient internal

auditing controls to assist in preventing and detecting corruption acts. That records and financial statements that are required for private companies is subject to the appropriate auditing and procedures.

3. In order to prevent corruption, each state shall take the necessary measures in accordance with national laws and regulations regarding the storing of books and records, financial statement dis-closures and accounting and auditing standards, to prevent the following acts for the purpose of execution of the crime established in accordance with this convention:
 - a) The implementation of extra-bookkeeping accounting;
 - b) The making of extra-bookkeeping or transactions that are not quite clear;
 - c) The recording of expenditures that are not real;
 - d) The entering of liabilities with an incorrect identification;
 - e) The use of false documents; and
 - f) Deliberate destruction on bookkeeping documents earlier than foreseen by the legislation.
4. Each country shall disallow the tax deductibility of expenses that constitute bribes the latter is one of the main elements of offenses defined as bribery of national public officials as well as foreign public officials and public international organizations officials in accordance with the sound of this convention and if there are appropriate other expenses incurred in furtherance of corruption.

As described above, that the Organization for Economic Cooperation and Development (OECD), which consists of 38 countries on November 21st, 1997 launched *The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (OECD Bribery Convention and has been applied since February 15th 1999.) The convention agreed to punish companies and individuals that engage in bribery (*bribery transaction*). On December 3rd, 2009 in Jakarta have formed the *Komunitas Pengusaha Anti Suap Indonesia* (KUPAS) by NCG in collaboration with the Indonesian Chamber of Commerce which is an embryo in order to realize the national business world is clean, transparent, and professional and ethical as a joint effort to improve the future life of the nation. KUPAS calls to employers, government entities and elements of society to work together with the *Komunitas Pengusaha Anti Suap Indonesia* in order to realize Indonesia as a developed country by 2025. The inclusion of some offenses can be classified as a corruption in the UN's Convention of Anti-Corruption in 2003, such as bribery and embezzlement in the private sector, proves the UN's Convention of Anti-Corruption in 2003 has pioneered innovations in legal literature of corruption eradication, which is set the corruption in the private sector. This update at the same time eliminate the initial paradigm of corruption eradication that always puts the public sector as an object and the target of significant law enforcement and to determine the presence and absence of corruption in a country. According to Romli Atmasasmita, development of the UN's Convention (2003) was a turning point for the icon of fighting corruption, which has been established that, both public and private sectors are the two sides of a coin that cannot be separated from one another. It is not impossible

because the experience of corruption eradication in almost all countries always involve those with activity in the private sector to collaborate with public officials, especially in infrastructure development. The limitations of state's budget to fund national development are an important factor that strengthens the linkage of the two sectors, especially in developing countries. A relationship of mutual influence between the two sectors in corruption cannot be denied because globalization set the concentration of power to create a welfare state to the private sector has a greater role than the public sector (government). There are 2 (two) reasons to criminalize involving the private sector as formulated in UNCAC 2003. *First*, corruption in the private sector has weakened values such as: trust, loyalty necessary to maintain and improve the social and economic relations. Therefore, the criminalization of corrupt behavior involving the private sector is an effort to restore confidence and loyalty. *Second*, based on the theory of *interdependence of others* who believe that the whole of social subsystems affect each other reciprocally, including the values in it. If the corrupt behavior in economic activities involving the private sector is not criminalized, it will affect and impact on other aspects of life. Actually, we already have the Draft of Act on Corruption Eradication which adopted the *United Nations Convention against Corruption* (UNCAC 2003) which was ratified by Act No. 7 of 2006. Compared with the Act No. 31 of 1999 in conjunction with Act No. 20 of 2001, seen the draft of this act is not only have to formulate efficiently and effectively in efforts to prove the crime, but also has expanded the understanding of corruption to some sectors such for private business:

Article 7

- (1) *Any person who in an economic, financial, commercial activities promising, offering, or give directly or indirectly, a person occupying any position in the private sector an undue advantage for the benefit of himself or another person, that person is doing or not to do anything contrary to his duty, shall be punished with imprisonment of 1 (one) year and a maximum of 5 (five) years.*
- (2) *Public officials who solicit or receive directly or indirectly from a person occupying any position in the private sector an undue advantage for the benefit of himself or for another person with the intent to acts or not that are contrary to its obligations, shall be punished with imprisonment at least 1 (one) year and no later than 7 (seven) years and/or a fine of Rp. 50.000.000,00 (fifty million rupiah) and a maximum of Rp. 350.000.000,00 (three hundred and fifty million rupiah).*

Article 8

Any person in any position in the private sector doing embezzlement of wealth in any form, private funds, securities, or valued other items that entrusted to him by post, shall be punished with imprisonment of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp. 50.000.000,00 (fifty million rupiah) and a maximum of Rp. 250.000.000,00 (two hundred and fifty million rupiah).

In the UN's Convention (2003) have stated explicitly in Article 3 paragraph 2 as follows: *"For the Purpose of implementing this Convention, it shall not be necessary, except as otherwise*

stated herein, for the offences set forth in it to result in damage or harm to State Property". The provision of this convention proves that the UN's Convention does not conditioned, needed state losses in corruption according to the convention. This, in contrast with the provisions of corruption in Indonesia, as contained in Act No. 31 of 1999 jo. Act No. 20 of 2001 on Corruption, which conditioned compliance with elements of "causing financial loss to the state or state economy" in proving a criminal act of corruption. According to Romli Atmasasmita, the ratio-nalization of drafting Act 3 of 1971 to the preparation of Act 20 of 2001, interest (loss) to the state take precedence over the interests of (loss) private sector. UN's Convention (2003) built on the philosophy of liberalism and global capitalism that has influenced politic policy in the whole of country especially which has ratified free trade agreements (GATT-WTO) includes Indonesia. Philosophy of liberalism and global capitalism has put the role and interests of private sector (the owners of capital) is equivalent to the role and interests of the state, even global capitalism aspire to delegitimize the role of state is only to maintaining order and security for the activities of each investors (capitalists), the rest of community life activity is the duty and responsibility of capitalist or the owner of capital. Therefore, a paradigm shift as described above should be recognized and become the soul of the amendment to the Act No. 31 of 1999 as amended by Act No. 20 of 2001 on Corruption Eradication. On the basis of the paradigm change, the provisions of Article 2 and 3 Act on Corruption Eradication, it is important to consider in a legal study that is to eliminate the element of "financial loss to the state or state economy" as one of conditions (elements) of corruption.

4 CONCLUSION

Law enforcement practices of corruption against the management of limited state-owned enterprises during this that damage SEOs (state) is one of the important parts in the form of control the management of SOEs whose responsible and integrity. Though on the other hand, the debate over the use of the criminal instruments in resolving the problems that occurred in the transaction of SOEs state that damage will continue to occur, but against the actor of state-owned companies still put forward the principle of prudence in running the business, because in some judicial practice has been expanding/constructing carelessness be a part of unlawful action in corruption crime. The complexity of global business practices are increasingly faced by Limited SOEs as well as the private sector, open opportunities of corruption, which is very difficult to be monitored or controlled only by law enforcer. There are 2 (two) reasons to criminalize involving the private sector as formulated in UNCAC 2003. *First*, that corruption in the private sector has weakened values such as: trust, loyalty necessary to maintain and improve the social and economic relations. Therefore, the criminalization of corrupt behavior involving the private sector is an effort to restore confidence and loyalty. *Second*, based on the theory of *interdependence of others* believe that the whole of social subsystems affect each other reciprocally, including the values in it. If the corrupt behavior in economic activities involving the private sector is not criminalized, it will affect and impact on other aspects of life. Legal policy of corruption eradication towards the management of Limited SOEs that irresponsible and corrupt to keep operates. However, its implementation must be carefully and completely in a just law enforcement. To that end, the

authors recommends the following: 1) The law enforcer (particularly for judges) to carefully carry out a comprehensive review any reports of alleged corruption in determining a business transaction as corruption, thus minimizing the formation of legal uncertainty opinion for SOEs in doing their duties; 2) For the state-owned companies do not overestimate in response to fears of prosecution (criminal) in doing their duties, because criminal law has the principles that are in line with the principles of good corporate governance; and 3) Given the characteristics of business transactions are complex and involve a wide range of disciplines branch of the law, the authors encourage to do further research that at least can be used as a reference in determining the parameters of branches of law in resolving legal issues involving SOEs.

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