

**RESOLUTION OF NORMATIVE CONFLICTS IN THE REGULATION OF
LOSSES ARISING FROM BUSINESS RISKS OF STATE-OWNED
ENTERPRISES ORGANIZED AS LIMITED LIABILITY COMPANIES
ACCORDING TO STATE FINANCIAL LAWS**

Anas Puji Istanto¹, Marcus Priyo Gunarto², Sulistiowati³

ABSTRACT

The objective of this study is to identify and analyze the differentiation between losses incurred by State-Owned Enterprises (SOEs) in the form of Limited Liability Companies (Persero) due to business risks and losses arising from errors or negligence that constitute criminal offenses, including their parameters, and to propose mechanisms to resolve ambiguities in distinguishing between business risks and unlawful acts in criminal offenses.

This research is normative legal research. The data sought includes regulations governing SOEs, Limited Liability Companies (PT), director liability, criminal offenses, corruption crimes, state losses, court rulings on criminal offenses and corruption crimes involving SOEs (Persero), legal doctrines, and principles of law. All collected data are analyzed qualitatively and conclusions are drawn inductively.

The conclusions of the research are: FIRST, losses incurred by SOEs not due to errors or negligence, and which comply with business judgment rules and good corporate governance and fulfill the objectives of the establishment of SOEs, cannot be subject to either criminal or civil liability. Conversely, if the losses are due to errors or negligence of the directors and do not meet the criteria of business judgment rules, the directors may be held liable civilly. Directors can only be held criminally liable if there is intentionality (unlawful act) involved in the losses of the SOEs. SECOND, the parameters for determining that losses of an SOE fall under business risks are if the directors can cumulatively prove: that the losses are not due to their errors or negligence; that they have managed the company in good faith and with due care in accordance with the objectives of the establishment of the SOE; that there is no mens rea (malicious intent) to commit a criminal act; that there is no conflict of interest or personal gain in business decisions; and that there are no violations of criminal provisions. THIRD, the proposed solutions and mechanisms to resolve normative conflicts are: a. Short-term measures by applying Article 97 paragraph (6) of the Limited Liability Company Law (UU PT); b. Medium-term measures by amending the Limited Liability Company Law to include requirements related to business judgment rules concerning personal gain for directors; c. Legal reform using an omnibus law method, as this method allows for comprehensive, simultaneous, coordinated, and expedited alignment of all related laws.

Keywords: Norm Conflict, SOE Losses, State Financial Losses, Criminal Acts in SOEs

¹ Student of Doctoral Degree, Faculty of Law, Gadjah Mada University

² Professor of the Faculty of Law, Gadjah Mada University

³ Professor of the Faculty of Law, Gadjah Mada University