LEGAL POLITICS OF MANAGEMENT AND SETTLEMENT OF ACTS AGAINST THE LAW OF LIMITED LIABILITY COMPANY ORGANS

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ABSTRACT

Objective: The legal politics of managing a company in a civil legal entity, management, and law enforcement should be carried out according to civil law and the company's Articles of Association. However, this is not the case at the implementation level because company organs and law enforcers often ignore the provisions of civil law and the company's Articles of Association in managing and enforcing the law. Based on this, the research objective consists of two things, namely: how the legal politics of company management is carried out according to civil law and the articles of association, along with how the legal politics resolve unlawful acts that are suspected of having occurred in the company as a civil legal entity.

Methods: This research is descriptive, and the type of research is normative legal research. The data studied were secondary in the form of primary, secondary, and tertiary legal materials, which were analyzed qualitatively.

Conclusions: This research found that the legal politics of managing a company as a civil legal entity often ignores company management according to civil law as intended in Law Number 40 of 2007, other statutory regulations, and the Company's Articles of Association. Likewise, in law enforcement, unlawful acts in company companies are also often carried out not according to civil law. As a civil legal entity established based on an agreement, a company should comply with all civil law provisions in managing the company.

Keywords: company, civil code, articles of association, law and politics.

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POLÍTICA JURÍDICA DE GESTÃO E LIQUIDAÇÃO DE ATOS CONTRA A LEI DE ÓRGÃOS DE SOCIEDADES DE RESPONSABILIDADE LIMITADA

RESUMO

Objetivo: As políticas legais de administração de uma empresa em uma entidade jurídica civil, administração e aplicação da lei devem ser realizadas de acordo com a lei civil e os estatutos da empresa. No entanto, tal não se verifica a nível da aplicação, uma vez que os órgãos das sociedades e as autoridades responsáveis pela aplicação da lei ignoram frequentemente as disposições do direito civil e dos estatutos da sociedade na gestão e aplicação da lei. Com base nisso, o objetivo da pesquisa consiste em duas coisas, a saber: como a política legal de gestão da empresa é realizada de acordo com o direito civil e os estatutos, juntamente com como a política legal resolver atos ilegais que são suspeitos de ter ocorrido na empresa como uma entidade jurídica civil.

Métodos: Esta pesquisa é descritiva, e o tipo de pesquisa é pesquisa legal normativa. Os dados estudados foram secundários na forma de material legal primário, secundário e terciário, que foram analisados qualitativamente.

Conclusões: Esta pesquisa descobriu que as políticas legais de gestão de uma empresa como uma entidade jurídica civil muitas vezes ignora a gestão da empresa de acordo com o direito civil, como previsto na Lei Número 40 de 2007, outras regulamentações estatutárias, e os Estatutos da Empresa. Do mesmo modo, no âmbito da aplicação da lei, os atos ilícitos cometidos em empresas também são frequentemente cometidos não em conformidade com o direito civil. Enquanto entidade jurídica civil estabelecida com base num acordo, uma sociedade deve cumprir todas as disposições de direito civil em matéria de gestão da sociedade.

Keywords: empresa, código civil, estatutos, direito e política.

1 INTRODUCTION

Mahfud MD said that Political law is a legal policy or an official line (policy) regarding law that will be enforced by making new laws or replacing old ones to achieve state goals. Based on this opinion, legal politics is an effort (policy) to form and update legal regulations. So, in legal politics, three things are done: formation of law, enactment or enforcement of law, and legal reform (Panjaitan, 2017). These three things must be done simultaneously and integrated so that the goals of legal development can be realized in state life. Without that, legal development is of no benefit to human life. For example, Law Number 40 of 2007 concerning Limited Liability Companies as amended by Law Number 6 of 2023 concerning Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation, along with its implementing regulations, as well as the published Articles of Association of Limited Liability Companies as a basis for managing a Limited Liability Company. In order to provide legal benefits, the values contained in the law must be implemented, obeyed, and enforced by law enforcers and
company managers. Because, through law enforcement and managing companies according to law, the values embodied in this law will be realized.

If interpreted more broadly, the implementation, compliance, and enforcement of the law are carried out by everyone in carrying out their activities and by all state institutions in administering the state (Paterson, 2006). The implementation and compliance of all people and state institutions with the values contained in the law are already part of the implementation, compliance, and enforcement of the law itself (Ficsor, 2022). That is why the law is called the guiding principle for all people and state institutions to carry out their social and state life activities. Because, in law, it has been determined what, in certain situations, are the rights and obligations of each legal subject, what must or is prohibited or may be done by certain legal subjects about other legal subjects (Panjaitan, 2019). The law is a binding guideline for all people and law enforcers in their family, community, and state life activities. In other words, life in the family, society, and state will be chaotic if no laws guide it. In this case, the law is formed as a guiding rule for humans or law for humans and not humans for the law. That is the most essential benefit of law in a happy country (Panjaitan, 2017).

One of the law enforcers who has a vital role in realizing the values contained in the law is the judiciary. For Indonesia, for example, according to Article 24 paragraph (1) of the 1945 Constitution in conjunction with Article 1-1 of Law Number 48 of 2009, the judiciary, as the administrator of judicial power, functions as an enforcer of law and justice administered by the Supreme Court and the Constitutional Court. The judiciary is independent, free from political interference and power, and free from the influence of media, religion, society, and money. The idea of independent judicial power is the embodiment of the concept of a rule of law as mentioned in Article 1, paragraph (3) of the 1945 Constitution into the Indonesian judicial system (Riwanto & Gumbira, 2017).

Theoretically, the authority to judge can be exercised absolutely and relatively. Absolute authority to judge is related to the legal field handled, which is related to the judicial environment, such as a) General Court; b) Religious Court; c) Military Court; d) State Administrative Court; e) Tax Court; f) Commercial Court, and g) Industrial Relations Court.

Apart from the judicial environment above, in determining the absolute authority of the court to try a case, it is also related to the substance of the case, for example, what the scope of Criminal, Civil, and State Administrative Law (Black, 2008). Relative
competence is the authority to judge seen from a similar court, which has the authority to examine, try, and decide the case in question. Relative authority is usually also related to the choice of law or territory for adjudicating a case, as is usually stated in an agreement or contract (Illahi & Alia, 2017).

Determining the limits of adjudicatory authority must not be deviated from in upholding law and justice in Limited Liability Companies. This is related to the settlement of Case Number 114/Pid/B/2010/PN. Krw, at the Karawang District Court, which, based on the consideration of the Panel of Judges, stated that the sale and purchase were legal. The trial is criminal justice and not civil justice. As a criminal court, the Panel of Judges is not authorized to consider whether a sale and purchase agreement is legal. This is because the authority to consider whether a sale and purchase is legal is the authority of the civil court panel of judges. In Criminal Case Number 187/Pid.B/2021/PN, a similar thing also happened at the Subang District Court. Sbg, which made a Director accused of embezzlement at a Limited Liability Company in Subang. In this case, the Board of Commissioners reported the Board of Directors of embezzlement to the Police. According to Law Number 40 of 2007 and the Articles of Association of the Limited Liability Company, this case should have been resolved first. However, the Board of Commissioners and law enforcers have violated the legal provisions as stated in Law Number 40 of 2007 and the Articles of Association of Limited Liability Companies.

This form of law enforcement deviation also occurs in resolving alleged unlawful acts in State-Owned Enterprises and Regional-Owned Enterprises. It is said to be a deviation because following the scope of legal actions in State-Owned Enterprises and Regional-Owned Enterprises as a company with a civil legal entity, the handling falls within the scope of civil law. Therefore, if legal issues arise in State-Owned Enterprises and Regional-Owned Enterprises, they should be resolved according to civil law as intended in Law Number 40 of 2007 and other statutory regulations, as well as the Articles of Association of State-Owned Enterprise Companies and Regional-Owned Enterprises. However, in many cases, this provision is violated by company managers and law enforcers in resolving alleged unlawful acts in State-Owned Enterprises and Regional-Owned Enterprises. By taking cover behind the lex specialist principle and ignoring the lex posterior derogate legi priori principle, law enforcers subject illegal acts allegedly committed by individual corporate organs in State-Owned Enterprises and Regional-Owned Enterprises to the Corruption Crime Law. For example, this happened in the
Supreme Court Decision Number 1296 K/Pid.Sus/2012 and the Supreme Court Decision Number 1296 K/Pid.Sus/20012, as well as other cases which cannot be mentioned individually in this article.

The use of civil law in resolving allegations of unlawful acts in companies embodies the values of Law Number 40 of 2007 at the implementation level in the management and enforcement of law in companies as civil legal entities. This follows what Article 1 point 1 ACT No. 40 of 2007 says: a company as a legal entity is established based on an agreement. Thus, the company as a legal entity is a legal subject that can carry out legal relations inside and outside the company to benefit a person. According to Article 13 ACT No. 40 of 2007, the company's actions are carried out by 3 (three) company organs: General Meeting of Shareholders, Directors, and Board of Commissioners. These three company organs work to realize the aims and objectives of establishing the company, both inside and outside. When an alleged unlawful act is committed by one of the company's organs, the settlement mechanism must comply with the provisions of LAW No. 40 of 2007, other laws and regulations, and the Articles of Association of State-Owned Enterprises and Regional-Owned Enterprises. If the matter reaches court, the settlement will still be carried out according to the provisions of Law Number 40 of 2007, other laws and regulations, and the Articles of Association of State-Owned Enterprises and Regional-Owned Enterprises, and not according to criminal law. Except for crimes, which are acts of individuals as individuals within a company, such as theft or murder, for example, they are only resolved according to criminal law. When it comes to licensing, for example, they are resolved according to State Administrative Law.

In other words, all legal issues must be resolved according to their respective fields. Suppose we relate this to the legal issues in limited liability companies. In that case, this is a legal issue that needs to receive a more in-depth study of how the legal politics of company management are carried out according to civil law and the Articles of Association. Likewise, with allegations of unlawful acts in Limited Liability Companies, State-Owned Enterprises, and Regional-Owned Enterprises, whether the settlement is in civil court or criminal justice. Based on this, two legal issues must be studied: How is the legal politics of company management carried out according to civil law and the Articles of Association? Moreover, how do legal politics resolve unlawful acts that allegedly occurred in the company as a civil legal entity?
2 THEORETICAL FRAMEWORK

2.1 LEGAL CERTAINTY THEORY

Certainty is an inseparable characteristic of law, especially written legal norms. Laws without the value of certainty will lose meaning because they can no longer be used as guidelines for behavior for everyone. Certainty itself is said to be one of the goals of law. If viewed historically, the discussion regarding legal certainty is a discussion that has emerged since Montesquieu's idea of separation of powers (Simbolon et al., 2023).

The orderliness of society is closely related to certainty in the law because orderliness is the essence of certainty itself. Order causes people to be able to live with certainty so that they can carry out the activities needed in social life. To clearly understand legal certainty itself, below we will explain the meaning of legal certainty from several experts.

Gustav Radbruch put forward 4 (four) basic things related to the meaning of legal certainty, namely: First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning it is based on reality. Third, that facts must be formulated clearly to avoid errors in meaning, as well as be easy to implement. Fourth, positive law must not be easily changed. Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or, more specifically, legislation. Based on this opinion, according to Gustav Radbruch, positive law, which regulates human interests in society, must always be obeyed even though positive law is unfair (Ramdhani, 2023).

The opinion regarding legal certainty was also expressed by Jan M. Otto, as quoted by Khalid & Savirah (2022), namely that legal certainty in certain situations requires the following: 1) The availability of legal rules that are clear, consistent, and easy to obtain (accessible), which are issued by state authorities; 2) That the ruling agencies (government) apply these legal rules consistently and also submit and obey them; 3) That the majority of citizens agree in principle with the content and, therefore, adapt their behavior to these rules; 4) That independent and impartial judges (judiciary) apply these legal rules consistently when they resolve legal disputes; and 5) That judicial decisions are concretely implemented.

The five conditions put forward by Jan M. Otto show that legal certainty can be achieved if the legal substance is by the needs of society. Legal rules that can create legal certainty are laws that are born from and reflect the culture of society. This kind of legal
certainty is called real legal certainty (realistic legal certainty), which requires harmony between the state and the people in orienting and understanding the legal system.

Certainty can contain several meanings, namely clarity, not giving rise to multiple interpretations, not being contradictory, and being implementable. The law must apply firmly in society and contain openness so that anyone can understand the meaning of a legal provision. One law must not be contradictory to another so that it does not become a source of doubt. Legal certainty is a legal instrument of a country that contains clarity, does not give rise to multiple interpretations, does not give rise to contradictions, and can be implemented, which can guarantee the rights and obligations of every citizen by the existing culture of society.

2.2 LEGAL PROTECTION THEORY

Legal protection is protecting human rights that other people harm, and this protection is given to the community so that they can enjoy all the rights granted by law. In other words, legal protection is various legal efforts that law enforcement officials must provide to provide a sense of security, both mentally and physically, from disturbances and various threats from any party (Nasution et al., 2023).

According to Soepadmo (2020), legal protection is an action or effort to protect society from arbitrary actions by authorities that are not by the rules of law, to create order and tranquillity to enable humans to enjoy their dignity as human beings. Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses or victims. Legal protection for crime victims, as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal aid.

According to Muthia (2020), legal protection is something that protects legal subjects through applicable laws and regulations, and its implementation is enforced with sanctions. Legal protection can be divided into two, namely: 1) Preventive Legal Protection provided by the government to prevent violations before they occur. This is contained in statutory regulations to prevent violations and provide signs or limitations in carrying out an obligation; 2) Repressive Legal Protection is final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed.
3 METHOD

Following the objectives of this research, the research specification is descriptive research, and the type of research is normative legal research. The data studied is secondary data in the form of primary, secondary, and tertiary legal materials, which are analyzed qualitatively to answer the research objectives.

4 RESULTS AND DISCUSSION

4.1 LEGAL POLITICAL MANAGEMENT OF THE COMPANY IS CARRIED OUT ACCORDING TO CIVIL LAW AND ARTICLES OF ASSOCIATION

Along with the rapid progress of science and technology, the development of a fast-moving global economy without boundaries, as well as the emergence of COVID-19 which not only caused a health crisis but also had an impact on other lives, so that people demand fast and precise services, convenience and legal certainty in doing business, as well as the development of the business world following the principles of good corporate governance. In meeting the demands of the community, previously issued Law Number 40 of 2007 concerning Limited Liability Companies as amended by Law Number 6 of 2023 concerning Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation as well as various laws and regulations others as a form of protection of the rights and interests of the community in conducting business in the company. This opinion follows what was said by Hapsari (2019): the form of protection of the rights and interests of the community is realized through formal law which aims to achieve national economic development through government policies contained in the formal law.

In fulfilling these expectations, Darmawan (2019) said that: Normatively, in the Limited Liability Company Law, there are norms governing the principles of good corporate governance, namely the principles of fairness, transparency, responsibility, and accountability. Based on the two opinions above, it appears that in the Limited Liability Company Law, it has been regulated normatively how to manage a Limited Liability Company as a legal entity according to the principles of good corporate governance, namely the principles of fairness, transparency, responsibility, and the principle of accountability. The management of a Limited Liability Company, according to the principles of good corporate governance, is within the framework of keeping the company
in existence in production based on the principles of fairness, transparency, responsibility, and accountability.

Isfardiyana (2015) said: The position of the company as a legal subject gives the company the same position as humans in general in the legal field, which can carry out legal actions, such as prosecutions in court. On that basis, Sjawie (2017) said that Humans and legal entities have the same position as legal subjects because both can act in law. Both have the position of holding their rights and obligations and therefore, both are responsible. himself for his actions. Supriyatin & Herlina (2020)then said: "As a legal entity, a Limited Liability Company established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares has consequences, namely that it is a legal institution both inside and outside the court and has assets separate from its management and founders.

Based on the opinion above, a Limited Liability Company as a civil legal entity is an independent company with responsibilities as stated in the Limited Liability Company Law and the company's articles of association. In line with the independence of the limited liability company, Indrapradja (2018) said that "the consequence of the independence of the Limited Liability Company, namely that all risks arising from the actions of the Limited Liability Company are the responsibility of the limited liability company itself." Thus, as an independent company, its activities are carried out by three Company Organs. These three Company Organs work according to their authority in managing the company. However, as stated by Indrapradja (2018): "Every organ of the company is given freedom of movement as long as everything is done for the purposes and interests of the company. For this reason, each organ of the company must be given responsibility for completing the tasks assigned to it.

The freedom of movement given to company organs is fundamental so that company organs are not rigid in their work but can carry out various innovations and creativity comprehensively in realizing the aims and objectives of establishing the company, namely seeking maximum profits. However, in managing the company, the company's organs continue to work as stated in Law Number 40 of 2007 and the company's Articles of Association. When a company organ does not work or does not comply with the provisions of Law Number 40 of 2007 and the company's articles of association, this can be categorized as an unlawful act.
Suppose the alleged unlawful act committed by one of the company's organs harms the company. In that case, it must be held accountable by the company's organs, as referred to in Law Number 40 of 2007, other laws and regulations, and the company's Articles of Association. However, as stated by Abdurrahman & Pujiyono (2019), company organs with good intentions in carrying out their duties and authority cannot be held responsible for losses received by the company or third parties. This is related to what was stated by Darmawan (2019), that there is a possibility that shareholders suffer losses due to errors or negligence committed by members of the Board of Directors in managing this Limited Liability Company. Of course, this needs to be balanced with adequate legal protection for shareholders.

Based on the opinion above, all shareholders must receive legal protection against mistakes or negligence committed by members of the Board of Directors. That is why members of the board of directors must work thoughtfully and carefully for the company's progress, as stated by Sudaryat (2020): "Each member of the board of directors is fully responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties in managing the company".

Based on this opinion, if a member of the Board of Directors makes a mistake or is negligent in managing the company, which is detrimental to shareholders, the member of the Board of Directors can be held responsible and can be dismissed from his position as a member of the board of directors. However, accountability and dismissal or replacement of directors are not carried out immediately but must be carried out as stated in Article Law Number 40 of 2007, which:

1. Members of the Board of Directors can be dismissed at any time based on a resolution of the General Meeting of Shareholders by stating the reasons;
2. The decision to dismiss a member of the Board of Directors, as referred to in paragraph (1), is taken after the person concerned has been allowed to defend himself at the General Meeting of Shareholders;
3. If the decision to dismiss a member of the Board of Directors, as referred to in paragraph (2), is made by way of a decision outside the General Meeting of Shareholders following the provisions referred to in Article 91, the member of the Board of Directors concerned is notified in advance of the dismissal plan and is allowed to defend himself before a decision is made to dismiss you;
4. Allowing defending himself, as referred to in paragraph (2), is not required if the person concerned has no objection to the dismissal;

5. Dismissal of members of the Board of Directors takes effect from a) the closing of the General Meeting of Shareholders as intended in paragraph (1); b) the date of decision as intended in paragraph (3); c) other date specified in the decision of the General Meeting of Shareholders as intended in paragraph (1); or d) other date specified in the decision as intended in paragraph (3).

Furthermore, in Article 106 of Law Number 40 of 2007 it is stated that:

a. The Board of Commissioners may temporarily dismiss members of the Board of Directors by stating the reasons;

b. The temporary dismissal, as referred to in paragraph (1), shall be notified in writing to the member of the Board of Directors concerned;

c. Members of the Board of Directors who are temporarily dismissed, as referred to in paragraph (1), are not authorized to perform the tasks referred to in Article 92 paragraph (1) and Article 98 paragraph (1);

d. Within no later than 30 (thirty) days after the date of temporary dismissal, a General Meeting of Shareholders must be held;

e. In the General Meeting of Shareholders, as referred to in paragraph (4), the member of the Board of Directors concerned is allowed to defend himself;

f. The General Meeting of Shareholders revokes or upholds the temporary dismissal decision;

g. If the General Meeting of Shareholders upholds a decision on temporary dismissal, the member of the Board of Directors concerned is permanently dismissed.

h. If within 30 (thirty) days, the General Meeting of Shareholders, as referred to in paragraph (4), is not held, or the General Meeting of Shareholders is unable to make a decision, the suspension shall be canceled;

i. For publicly listed companies, the holding of the General Meeting of Shareholders, as referred to in paragraph (4) and paragraph (8), shall apply the provisions of laws and regulations in the capital market sector.

Then, in Article 107 of Law Number 7 of 2007, it is said that: the articles of association regulate provisions regarding: a) Procedures for the resignation of members of the Board of Directors; b) Procedures for filling vacant positions of members of the
Board of Directors; and c) The party authorized to carry out management and represent the Company if all members of the Board of Directors are absent or temporarily dismissed.

As stated above, several legal provisions must be complied with by all parties in the appointment, accountability, termination, and resignation of members of the Board of Directors, whether members of the Board of Directors make mistakes and negligence or do not make mistakes and negligence. If, for example, the Board of Commissioners changes the Board of Directors outside the provisions stated above, replacing the Board of Directors is invalid. It must be canceled because it contradicts Law Number 40 of 2007 without complying with the provisions referred to in Article 105 of Law Number 40 of 2007, and the Company's Articles of Association are invalid and void. Suppose there is an allegation of financial irregularities committed by the Board of Directors; then resolve the alleged irregularities. In that case, it must be carried out through the General Meeting of Shareholders to obtain a basis for conducting a company audit. Wibisono (2018) states that directors are dismissed by stating the reasons after the person concerned is allowed to defend himself at the General Meeting of Shareholders.

When the settlement of unlawful acts cannot be carried out within the company, the General Meeting of Shareholders can request assistance from the District Court, as referred to in Article 138 of Law Number 40 of 2007, which states that:

1. Examination of the Company can be carried out to obtain data or information if there is an allegation that: a) the company has committed an unlawful act that is detrimental to shareholders or third parties, or b) Members of the Board of Directors or the Board of Commissioners commit acts against the law that are detrimental to the company or shareholders or third parties;

2. The examination, as referred to in paragraph (1), is carried out by submitting a written application along with the reasons to the district court whose jurisdiction covers the domicile of the company;

3. The application, as referred to in paragraph (2), may be submitted by: a) 1 (one) shareholder or more representing at least 1/10 (one-tenth) of the total shares with voting rights; b) other parties who, based on statutory regulations, the articles of association of the company or the agreement with the company, are authorized to submit requests for inspection; or c) prosecutors in the public interest;
4. The application, as referred to in paragraph (3) letter a, is submitted after the applicant first requests data or information from the company at the General Meeting of Shareholders and the company does not provide such data or information;

5. Requests to obtain data or information about the company or requests for inspection to obtain data or information must be based on reasonable reasons and good faith;

6. The provisions referred to in paragraph (2), paragraph (3) letter a, and paragraph (4) do not preclude the possibility that the laws and regulations in the capital market sector may stipulate otherwise.

Then in Article 139 of Law Number 40 of 2007 it is stated that: a) The head of the district court may reject or grant the application as referred to in Article 138; b) The head of the district court as referred to in paragraph (1) rejects the application if the application is not based on reasonable reasons or is not made in good faith; c) In the event that the application is granted, the chairman of the district court shall issue an examination order and appoint a maximum of 3 (three) experts to conduct the examination with the aim of obtaining the required data or information; d) Each member of the Board of Directors, member of the Board of Commissioners, Company employee, consultant and public accountant who has been appointed by the company cannot be appointed as an expert as referred to in paragraph (3); e) The expert as referred to in paragraph (3) has the right to examine all documents and assets of the company that the expert deems necessary to know; f) Each member of the Board of Directors, members of the Board of Commissioners, and all employees of the company are required to provide all necessary information for the implementation of the audit; g) The expert as referred to in paragraph (3) is required to keep the results of the examination that has been carried out confidential.

Furthermore, in Article 140 of Law Number 40 of 2007 it is stated that: a) The report on the results of the examination shall be submitted by the expert as referred to in Article 139 to the chairman of the district court within the period specified in the court's order for examination no later than 90 (ninety) days starting from the date of appointment of the expert; b) The head of the district court provides a copy of the examination report to the applicant and the company concerned within a period of no later than 14 (fourteen) days from the date the audit results report is received.
Article 141 of Law Number 40 of 2007 also states that: a) If the request to conduct an examination is granted, the chairman of the district court determines the maximum amount of examination fees; b) The company pays the inspection fees as intended in paragraph (1); c) The chairman of the district court, at the request of the company, may charge reimbursement of all or part of the examination costs as intended in paragraph (2) to the applicant, members of the Board of Directors, or members of the Board of Commissioners.

Legal provisions involving the District Court to resolve alleged unlawful acts in the company, as stated in Law Number 40 of 2007, must be complied with. The examination at the District Court was specifically carried out at the request of the General Meeting of Shareholders because what was being examined was the activities of the Directors or Board of Commissioners in managing the company. In this case, what is requested is the civil responsibility of a Director or Board of Commissioners in managing the company, and not criminal responsibility in managing the company. Because, as stated by Setyarini et al., (2020) the company is not bound by all actions of its organs that act outside the limits of authority." This means that company organs in managing the company can only act as intended in Law Number 40 of 2007 and the Articles of Association.

In line with the General Meeting of Shareholders' request to conduct an audit of the company, the audit must be carried out by a professional accounting auditor with a certificate. The results of the professional accounting audit were presented at the General Meeting of Shareholders to serve as a basis for resolving irregularities in the company's financial management carried out by members of the board of directors to demand the return of company losses (Murphy et al., 2023). This is because the General Meeting of Shareholders was held not to find out how to punish the company's organs but how to recover the company's losses. Thus, the audit was not carried out at the request of the investigating police after a report was made to the police by the company's Board of Commissioners, for example. However, the audit was carried out at the request of the General Meeting of Shareholders as a basis for finding out the company's losses. This means that the audit is not carried out as a basis for reporting the Directors or Board of Commissioners to the police but is carried out to find irregularities committed by the Directors or Board of Commissioners, resulting in losses to the company. If, during the audit, it is discovered that a company loss occurred, which was not solely done to benefit
the Directors or Board of Commissioners themselves. However, if the loss occurred solely because of a business relationship, then the Directors or Board of Commissioners cannot be blamed. However, suppose the loss is genuinely intentional by the Directors or Board of Commissioners to benefit themselves or others (Kusumaningtyas, 2022). In that case, the Directors or Board of Commissioners can be sued to return the company's losses civilly.

Company management, as stated above, is legal politics in company management, which should also be adhered to in managing State-Owned Enterprises and Regional-Owned Enterprises as civil legal entities. State-Owned Enterprises and Regional-Owned Enterprises as civil legal entities are obliged to comply with the legal provisions as intended in Law Number 40 of 2007 and other statutory regulations, as well as the Articles of Association of State-Owned Enterprises and Regional-Owned Enterprises (Abdurrahman & Pujiyono, 2019). In other words, even though State-Owned Enterprises and Regional-Owned Enterprises are state-owned enterprises, following the form of their legal entity, which is a limited liability company, as well as the legal relationship they carry out with other parties, the provisions as intended in civil law apply to them. According to what was said by Akbar (2020), this is that government actions take the form of legal actions according to private (civil) law and legal actions according to public law. For example, this can be seen when the government grants a business permit. The provisions of public law apply when granting the permit. However, when the government carries out buying and selling, for example, in the buying and selling process, the government is subject to the provisions of private law. The same thing also applies to the management of State-Owned Enterprises and Regional-Owned Enterprises, where the government, including shareholders, must comply with the provisions of private law as regulated in Law Number 40 of 2007 and other statutory regulations, as well as the Articles of Association of the Business Entity State-Owned and Regional-Owned Enterprises.

4.2 POLITICAL LAW RESOLVES UNLAWFUL ACTS ALLEGEDLY OCCURRING IN THE COMPANY AS A CIVIL LEGAL ENTITY

In society, two forms of companies are known as business entities: Private Owned Enterprises, State Owned Enterprises/Regional Owned Enterprises. These two forms of business are corporate companies, which are the foundation of the community in
developing businesses, getting jobs, and being a place for the government to develop the national economy to obtain income from the taxation sector. Based on this, these two companies must be maintained and developed in an integrated and simultaneous manner with the national development program so that all hopes can bring happiness to all parties (Pangestu & Aulia, 2021). This is because if the company is closed or bankrupt, it will not only be the company's owner who loses, but all parties will suffer losses.

Generally, a privately owned business entity is defined as a business entity managed by an individual or a group of people, the entire capital of which the private party owns. As individuals or groups of people manage business entities, and all of their capital is owned by themselves, they enter into legal relations with other legal subjects based on civil law regulated by themselves. However, in the legal certainty and usefulness framework, the state is present in making legal regulations to regulate the relationship between legal subjects and each other so that they can run well and do not conflict with each other. The presence of this state also follows its role as the bearer of popular sovereignty, whose task is to control various legal relations of society within the state towards a common goal, namely realizing happiness for all within the state. In this case, the state must show that the law created can create happiness for all in the state and is obeyed by all without exception. This follows what Riwanto & Gumbira (2017) said: "A strong state is characterized by its ability to guarantee that the laws and policies that are issued are obeyed by the community".

For this reason, the state issued Law Number 40 of 2007 as the basis for managing a company. The issuance of this law is in line with the concept of a rule of law as regulated in Article 1 paragraph (3) of the 1945 Constitution, which must be obeyed by all parties without exception, including law enforcers, such as the Panel of Judges, the Prosecutor's Office of the Republic of Indonesia, the Police of the Republic of Indonesia, Indonesia, and the Corruption Eradication Commission.

As previously stated, apart from privately owned companies, there are State Owned Enterprises/Regional Owned Enterprises. Where in managing State-Owned Enterprises/Regional-Owned Enterprises, apart from using Law Number 40 of 2007, Law 19 of 2003 concerning State-Owned Enterprises is also used, and for Regional-Owned Enterprises based on Article 1 number 40 of the Law -Law jo Chapter XII, from Article 331 to Article 343 of Law Number 23 of 2014 concerning Regional Government, and the Articles of Association. So, in Article 1 point 1 of Law Number 19 of 2003, it is stated
that: "State-Owned Enterprises are business entities whose capital is wholly or largely
owned by the state through direct participation originating from separated state assets."

The same thing is also said in Article 1 number 40 of Law Number 23 of 2014, that Regionally Owned Enterprises are "business entities whose capital is wholly or largely owned by the Region". Through this understanding, the capital of State-Owned Enterprises comes from separated state assets, and Regional-Owned Enterprises originate from separated regional assets. Concerning the amount of state or regional shares separated for State-Owned Enterprises, in Article 1 point 3 of Law Number 19 of 2003, it is said is all or at least 51% (fifty-one percent), and for Regional-Owned Enterprises, according to Article 339 paragraph (1) of Law Number 23 of 2014, in whole or at least 51% (fifty percent). According to Article 1 number 10 of Law Number 19 of 2003, the separated state assets come from the State Revenue and Expenditure Budget to be used as state capital participation in Persero or Public Companies and other limited liability companies. This was then reaffirmed in Article 4 of Law Number 19 of 2003, that:

1. Capital of State-Owned Enterprises constitutes and originates from separated state assets;
2. State capital participation in the context of establishment or participation in State-Owned Enterprises originates from a) State Revenue and Expenditure Budget; b) Capitalization of reserves; c) Other sources;
3. Any participation in the state capital in the context of establishing a State-Owned Enterprise or limited liability company whose funds come from the State Revenue and Expenditure Budget shall be stipulated in a Government Regulation;
4. Every change in state capital participation as referred to in paragraph (2), whether in the form of additions or reductions, including changes in the structure of state ownership of Persero or limited liability company shares, shall be stipulated in a Government Regulation;
5. Exempted from the provisions referred to in paragraph (4) for the addition of state capital participation originating from reserve capitalization and other sources;
6. Further provisions concerning procedures for participation and administration of state capital in the context of establishment or participation in State-owned enterprises or limited liability companies whose shares are partly owned by the state shall be regulated in a Government Regulation.
Regarding separated state assets, in the explanation of Article 4 paragraph (1) of LAW Number 19 of 2003, it is stated that the separation of state assets from the State Revenue and Expenditure Budget to be used as state capital participation in State-Owned Enterprises for further guidance and management is not again based on the State Revenue and Expenditure Budget system. However, its guidance and management are based on healthy company principles, which are based on LAW 19 of 2003 in conjunction with Article 1 number 40 of the Law in conjunction with Chapter XII, starting from Article 331 to Article 343 of the Law -Law Number 23 of 2014 in conjunction with Law Number 40 of 2007.

Based on the legal provisions as stated above, it appears that the separated state assets are obtained from the State Revenue and Expenditure Budget for State-Owned Enterprises and the Regional Revenue and Expenditure Budget for Regional-Owned Enterprises, and their guidance and management is no longer based on the system. State Revenue and Expenditure Budget or Regional Revenue and Expenditure Budget, but based on good corporate governance in State-Owned Enterprises or Regional-Owned Enterprises. The aims and objectives of establishing a State-Owned Enterprise, according to Article 2 paragraph (1) of Law Number 19 of 2003, are: a) to contribute to the development of the national economy in general and state revenues in particular; b) pursue of profit; c) providing public benefits in the form of providing goods or services of high quality and adequate to fulfill the livelihood needs of many people; d) pioneering business activities that the private sector and cooperatives cannot yet implement; e) actively participate in providing guidance and assistance to entrepreneurs from economically weak groups, cooperatives and the community.

Through the aims and objectives of establishing a State-Owned Enterprise as stated above, following Article 2 paragraph (2) of Law Number 19 of 2003, the activities of a State-Owned Enterprise must follow the aims and objectives and not conflict with statutory regulations, public order, or decency. The aims and objectives of the company are normatively stated in the company's Articles of Association. Therefore, as stated by Akbar (2020): The existence of the Articles of Association is essential for a company; apart from being a guideline for the Board of Directors in running the company, the Articles of Association can also be a benchmark for assessment to determine an action taken by the Board of Directors. Akbar (2020) further emphasizes the existence of the Articles of Association, which are very strong and are the basis for managing the
company. Within this framework, Sandi et al., (2023) said that the Board of Directors must be responsible for carrying out their duties for the company's benefit.

Regarding state assets that are separated and used as capital (shares) in State-Owned Enterprises as stated in Law Number 19 of 2003 in conjunction with Article 1 number 40 of Law Number 23 of 2014, there appears to be a difference in understanding when linked to Article 2 letter g Law Number 17 of 2003 concerning State Finance. This difference is based on the definition of state assets as stated in Article 2 letter g of Law Number 17 of 2003, which states that: "State assets/regional assets managed by themselves or by other parties in the form of money, securities, goods receivables, and rights -other rights that can be valued in money, including assets that are separated from state companies/regional companies."

Through the meaning of Article 2 letter g of Law Number 17 of 2003, it appears that even though state assets have been separated and converted into shares in state companies/regional companies, these shares are still categorized as state assets, something that is different from Article 4 paragraph (1) Law Number 19 of 2003, that: "State assets that have been separated and made into shares in State-Owned Enterprises, their guidance and management are no longer based on the State Revenue and Expenditure Budget system, but their guidance and management are based on the principles of principles of a healthy company".

Based on the legal provisions above, it appears that the state assets that have been separated have become shares in State-Owned Enterprises/Regional-Owned Enterprises, which, according to Article 84 (1) of Law Number 40 of 2007, states that "every share issued has one voting rights unless the Articles of Association provide otherwise." This provision further emphasizes the state's rights as a shareholder in a State-Owned Enterprise, which only has one voting right per share. In other words, the limit of the state's authority over assets that are separated and converted into shares in State-Owned Enterprises or Regional-Owned Enterprises is only limited to the shares invested, and in managing these shares, the state is obliged to comply with the provisions of the laws and regulations and the Articles of Association Company (Kusdarini et al., 2022). According to Haryono (2016): "All rights and obligations must be stated in the articles of association, which can be designated as an "agreement" between them. Because it is considered an "agreement", the articles of association must comply with the Limited Liability Company Law, Laws and other regulations relating to the rights and obligations of holding shares."
Based on the above understanding, the management of state assets that have been separated and made into shares in State-Owned Enterprises should be carried out according to Law Number 19 of 2003 in conjunction with Law Number 40 of 2007. Regional Owned Companies are managed according to Article 1 Number 40 Law Number 6 of 2023 in conjunction with Chapter XII, from Article 331 to Article 343 of Law Number 23 of 2014. This is also in line with the Legal Fatwa of the Supreme Court, dated August 16, 2006, addressed to the Minister of Finance of the Republic of Indonesia, Number: WKMA/Yud/20/VII/2006, which in number 5 among other things says, that: "...with the existence of Law Number 19 of 2003 concerning State-Owned Enterprises, the provisions in Article 2 letter g concerning State Finance specifically "Regarding assets that are separated from state companies/regional companies, they also do not have legal binding force."

Through the Supreme Court Fatwa above, it is clear that the existence of state assets that have been made into shares in State-Owned Enterprises/Regional-Owned Enterprises is no longer managed by the state but is carried out according to company law as a civil legal entity. All parties should understand the legal provisions as stated in Law Number 19 of 2003 in conjunction with Law Number 40 of 2007 in conjunction with Article 1 number 40 of the law in conjunction with Chapter XII, starting from Article 331 to Article 343 of Law Number 23 of 2014 concerning Regional Government in conjunction with the Legal Fatwa of the Supreme Court, dated 16 August 2006, Number: WKMA/Yud/20/VII/2006 in understanding state assets that are separated and have been made into shares in State-Owned Enterprises or Regional-Owned Enterprises, by organs company, and law enforcement as a whole.

This understanding is necessary to avoid differences in perception in law enforcement. Suppose you follow the definition of state assets according to Article 2 letter g of Law Number 17 of 2003. In that case, the Panel of Judges of the Corruption Eradication Committee, the Attorney General's Office, and the Police can intervene in unlawful acts committed by the organs of State-Owned Enterprises and Regional-Owned Enterprises. However, if you follow the definition of separated state assets as referred to in Article 4 paragraph (1) of Law Number 19 of 2003 in conjunction with Law Number 40 of 2007 in conjunction with Article 1 paragraph 40 of law in conjunction with Chapter XII, from Article 331 to Article 343 Law Number 23 of 2014 Jo Fatwa Law of the Supreme Court, dated 16 August 2006, Number; WKMA/Yud/20/VII/2006, therefore,
the Panel of Judges, the Corruption Eradication Commission, the Prosecutor's Office, and the Police cannot interfere anymore with acts against the law allegedly committed by one of the organs of a State-Owned Enterprise and a Regional-Owned Enterprise. This is because alleged unlawful acts can be resolved according to the civil law applicable to the company. However, as stated by Zulkipli (2021): "Legal politics in the field of eradicating corruption, especially related to the management of state finances which is separated from State-Owned Enterprises, the government through several statutory provisions, has placed managers/administrators of State-Owned Enterprises as a subject of corruption".

As a result, in many cases, many organs of State-Owned Enterprises and Regional-Owned Enterprises have been convicted of corruption by using the Corruption Crime Act as a basis for taking action against them by linking them with the provisions of Article 2 letter g of Law Number 17 Year 2003 (Simanjuntak, 2010). For example, this can be seen in the Supreme Court Decision Number 1144K/Pid/2006, which granted the Public Prosecutor's cassation request. In the primary indictment, the Public Prosecutor stated, among other things, that: "The actions of the Defendants as described above could be detrimental to state finances cq. Bank Mandiri Company (Persero) in the amount of USD. 18,500,000 at least Rupiah 160,000,000,000.00 (one hundred and sixty billion) at least around that amount."

Everyone knows that the Bank Mandiri Company (Persero) is a State-Owned Enterprise whose shares do not all belong to the state but in which there are also private shareholders (individuals). However, regarding the indictment of the Public Prosecutor, the Supreme Court, in its ruling number 1, Declared the defendants: I. EDWARD CORNELLIS WILLIAM NELOE, II. I WAYAN PUGEK, III. M. SHOLEH TASRIFAN has been proven legally and convincingly guilty of committing a crime: "Corruption jointly and continuously."

Likewise, in the Supreme Court Decision Number 1296 K/Pid.Sus/20012, in his indictment, the Public Prosecutor stated, among other things, that: "He is the Defendant Ivan CH Litha as the Main Director of the Indonesian Discovery Company based on the Aphorism of Notary Musa Muamarta, SH Number 21 concerning the Establishment of a Limited Liability Company on October 21, 2008, and the President Commissioner of the Harvestindo Asset Management Company together with witness Santun Nainggolaan, witness Itman Harry Basuki, witness Andhy Gunawan, witness Ricard Latief and witness Teuku Zulham Sjuib whose prosecution was carried out separately in September 2009.
until July 19, 2010...etc...as those who commit, or who participate in committing acts, which unlawfully carry out acts of enriching themselves or other people or a corporation which can harm the State's finances so that it must be seen as a continuous act, which committed by the Defendant Ivan CH Litha...

Through the indictment of the Public Prosecutor above, it appears that in the Elnusa Tbk Company as a subsidiary of Pertamina, there has been corruption, which, among others, was carried out by Santun Nainggolan as the Finance Director of Elnusa Tbk Company, and the Defendant Ivan CH Litha as the Main Director of Discovery Indonesia Company and the Company's Main Commissioner Harvestindo Asset Management. One questionable thing is whether the Elnusa Tbk Company is a State-Owned Enterprise or a purely private company. This is questionable, based on the indictment of the Public Prosecutor, which states, among other things, that: Elnusa Tbk Company based on Article 23 of Deed Number 29 dated May 6, 2009, concerning Statement of Meeting Decisions on Amendments to the Articles of Association of Elnusa Company with the composition of shareholders as follows:

a. PERTAMINA Company (Persero) with 3,000,000,000 shares or a total nominal value of Rp. 300,000,000,000,--;
b. Tridaya Esta Company with 2,711,565,890 shares or a nominal value of Rp. 2,711,565,890,000,--;
c. Danareksa Daiwa Nif Ventures Company with 85,075,580 shares or with a total nominal value of Rp. 85,075,580,000,--;
d. Danareksa Company (Persero) with 28,358,530 shares or a total nominal Rp value. 2,835,853,000,--;
e. Elnusa Employee Old Age Foundation (YHTE) with 4,012,500 shares or a total nominal value of Rp. 401,250,000,--;
f. Elnusa Employees Cooperative (KOPEN) with 500,000 shares or a total nominal value of Rp. 50,000,000,--;
g. Company employees totaling 8,987,500 shares with a total nominal value of Rp. 898,750,000,--;
h. The public has 1,460,000,000 shares or a total nominal value of Rp. 146,000,000,000,--:

Following Deed Number 29 dated 6 May 2009 concerning the Statement of Meeting Decisions on Amendments to the Elnusa Tbk Company's Articles of
Association, it is explained that the composition of the Board of Directors of Elnusa Tbk Company is as follows:

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>President director</td>
<td>Ir. Eteng Ahmad Salam</td>
</tr>
<tr>
<td>Director</td>
<td>Ir. Eddy Sjahbuddin, MBA</td>
</tr>
<tr>
<td>Director</td>
<td>Santun Nainggolan</td>
</tr>
<tr>
<td>The main commissioner</td>
<td>Waluyo</td>
</tr>
<tr>
<td>Independent Commissioner</td>
<td>Sahat Mununtun Hari Kustoro</td>
</tr>
<tr>
<td>Commissioner</td>
<td>Anton Sugiono</td>
</tr>
<tr>
<td>Commissioner</td>
<td>Soehandjono</td>
</tr>
<tr>
<td>Independent Commissioner</td>
<td>Dr. Ir. Surat Indrijarso</td>
</tr>
</tbody>
</table>

Through Article 23 of Deed Number 29 dated 6 May 2009 concerning Statement of Meeting Resolutions Amending the Articles of Association, as stated in the Public Prosecutor's indictment, it is clear that the shares of the Elnusa Tbk Company do not originate from state assets which are separated from the State Revenue and Expenditure Budget, but comes from several companies. However, regarding the indictment of the Public Prosecutor, the Supreme Court, in point 1 of its decision, stated that: "Declaring the Defendants: Ivan CH Litha has been proven legally and convincingly guilty of committing a crime: "Corruption is jointly and continuously".

This decision is based on the following legal considerations: "The definition of state finances is not the same as state losses in Law Number 17 of 2003 concerning state finances because corruption is a special crime, so what applies is lex specialist, namely applying the definition or the meaning of "State finance" according to the explanation in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Eradication".

Considering the Supreme Court Decision as stated above, the Supreme Court equated Elnusa Tbk Company as a State-Owned Enterprise whose shares were obtained from state assets separated from the State Revenue and Expenditure Budget. When viewed by the shareholders as referred to in Article 23 of Deed Number 29 dated 6 May 2009 concerning the Statement of Resolutions of the Meeting on Amendments to Elnusa's Company Articles of Association, none of them said that their shares came from state assets separated from the State Budget. If the Elnusa Tbk Company is considered a State-Owned Enterprise, then in managing its assets, what applies is Law Number 40 of 2007 and Law Number 19 of 2003, and not according to Law Number 17 of 2003. For example, the Supreme Court. Linking it with the principle of lex
specialist is also inappropriate because it contradicts the lex posterior derogate legi priori principle, which states that the latest law overrides the old law.

It is contradictory because if Law Number 40 of 2007 is linked to Law Number 17 of 2003, it appears that Law Number 40 of 2007 was issued earlier than Law Number 17 of 2003. That means that Law -Law 17 of 2003 cannot be used as a basis for consideration to decide on the Supreme Court Decision Number 1296 K/Pid.Sus/20012 links it to the lex specialist principle because it contradicts the lex posterior derogate legi priori principle. In addition, this Supreme Court decision also contradicts the Legal Fatwa of the Supreme Court, dated 16 August 2006, Number: WKMA/Yud/20/VII/2006. Because in the Supreme Court, Fatwa states that "Article 2 letter g specifically regarding assets that are separated in state companies/regional companies also does not have legally binding force". If Article 2 letter g of Law Number 17 of 2003 is declared to have no binding legal force, then the provisions referred to in Article 2 letter g of Law Number 17 of 2003 cannot be used to decide case Number 1296 K/Pid.Sus/ 2012.

As stated above, the legal cases are a small part of several cases that have made the organs of state-owned companies/regional-owned companies become convicts of corruption. It is a small part because if traced, there are still many other cases similar to the case that it is impossible to mention one by one in this paper. This is because every day, through the media, we can see and hear that several company organs of State-Owned Enterprises and Regional-Owned Enterprises are made suspects and convicted of corruption. However, in this case, the author is not positioning himself to defend the corporate organs of State-Owned Enterprises/Regional-Owned Enterprises so that they are free from allegations of unlawful acts they have committed. However, the author wants to manage and enforce the law in the company. It should be carried out according to the law (Harahap et al., 2021). On that basis, when, for example, the organs of State-Owned Enterprises and Regional-Owned Enterprises commit acts against the law that are detrimental to the company, there is a legal mechanism that can be used to hold them accountable for the legal actions taken.

In the sense that the corporate organs of State-Owned Enterprises and Regional-Owned Enterprises do not mean that they are free to do anything that can harm the company, but they are obliged to be held accountable for all their actions that have the potential to harm State-Owned Enterprises and Regional-Owned Enterprises
However, in law enforcement, you should adhere to the values contained in Law Number 19 of 2003 in conjunction with Law Number 40 of 2007 in conjunction with Article 1 point 40 of the law in conjunction with Chapter XII, from Article 331 to Article 343 of the Law. Number 23 of 2014 Jo Fatwa Law of the Supreme Court, dated 16 August 2006, Number; WKMA/Yud/20/VII/2006.

The objective in terms of legal expediency, the legal provisions referred to in Law Number 19 of 2003 in conjunction with Law Number 40 of 2007 in conjunction with Article 1 number 40 of the law in conjunction with Chapter XII, from Article 331 to Article 343 of Law Number 23 of the year 2014 Jo Supreme Court Legal Fatwa, dated 16 August 2006, Number; WKMA/Yud/20/VII/2006 is to provide legal protection and justice to all people without exception who have legal relations with Limited Liability Companies, State Owned Enterprises, and Regional Owned Enterprises. It must also be understood that in law enforcement, even a criminal who is very bad has the right to receive legal protection and justice. Therefore, enforce the law simultaneously and be integrated with the values of legal benefits embodied in a legal product. So that this can be realized, complete the unlawful act according to the law, not according to law enforcers' wishes.

In an ideal and dynamic rule of law, never violate the law in law enforcement. If there is a will by law enforcers to turn allegations of unlawful acts that harm the company, carried out by the company's organs in managing the company, into acts of corruption in the framework of saving state finances, which are made into shares in said State-Owned Enterprises/Regional-Owned Enterprises, this is not wrong. However, the intention of law enforcers must be carried out according to the law and cannot be done according to their wishes. In addition, it must be remembered that the purpose of overcoming corruption is to return state losses and not to punish people's bodies (The state loss must be returned with the money and may not be replaced with corporal punishment) (Pangestu & Aulia, 2021).

This is different from what has been done so far, which prioritizes a criminal law approach by punishing corruptors with the most severe corporal punishment and, if necessary, the death penalty. As stated by Panjaitan (2019), the return of state financial or economic losses does not eliminate the punishment of perpetrators of criminal acts. The perpetrator must still be criminally responsible for his actions. It turns out that this criminal law approach cannot suppress the growth of corruption in Indonesia. Because,
at the implementation level, corruption continues to thrive.

This should not be done again in dealing with recovering state losses in State-Owned Enterprises and Regional-Owned Enterprises because, as stated in the previous discussion, State-Owned Enterprises and Regional-Owned Enterprises, as Persero, which are civil legal entities, in carrying out their purposes and the purpose of establishing the corporation must comply with the provisions of Law Number 19 of 2003 in conjunction with Law Number 40 of 2007 in conjunction with Article 1 point 40 of the LAW in conjunction with Chapter XII, from Article 331 to Article 343 of Law Number 23 of 2014 Jo Fatwa Supreme Court Law, dated 16 August 2006, Number: WKMA/Yud/20/VII/2006.

However, suppose there is a desire for law enforcers to make a company organ that commits an unlawful act as the perpetrator of a criminal act of corruption to save state assets made into shares in State-Owned Enterprises and Regional-Owned Enterprises. What is done is how to recover all financial losses. State that occurred in the State-Owned Enterprises and Regional-Owned Enterprises instead of punishing the perpetrators of corruption with severe corporal punishment. Because there is no point in punishing people with the most severe corporal punishment if the loss to the country will not be returned, in order to comply with this, changes must first be made to the laws and regulations that serve as the legal basis for the management of State-Owned Enterprises and Regional-Owned Enterprises.

The amendment emphasizes that State-Owned Enterprises and Regional-Owned Enterprises are no longer managed by Law Number 40 of 2007. The privatization carried out on State-Owned Enterprises and Regional-Owned Enterprises so far must also be changed by asserting that all shares of State-Owned Enterprises and Regional-Owned Enterprises originate from state assets. None originate from individuals or are privately owned. Suppose all shares of State-Owned Enterprises and Regional-Owned Enterprises come from state assets. In that case, their financial management can be carried out using state financial law and the Corruption Crime Law. After the changes are made, can law enforcers intervene to save state assets in State-Owned Enterprises and Regional-Owned Enterprises by using the Corruption Crime Act?

As long as no changes have been made to the laws and regulations used as the basis for managing state-owned and regionally-owned companies, the political law in managing and enforcing the law must be carried out according to civil law provisions.
and not criminal law. This is the embodiment of the rule of law concept as mandated in Article 1 paragraph (3) of the 1945 Constitution in the life of the state in Indonesia, that law enforcement must be based on law and may not violate the law.

5 CONCLUSION

At the implementation level, two forms of business entities are the basis of society in developing businesses and getting jobs, as well as a place for the government to collect taxes. Following the form of business, a legal entity, management, and law enforcement within the two business entities should be carried out according to civil law and the company's Articles of Association. However, this is not the case at the implementation level because company organs and law enforcement often ignore the provisions of civil law and the company's Articles of Association. The legal politics of managing a company as a civil legal entity are not managed according to civil law as intended in Law Number 40 of 2007, other statutory regulations, and the Company's Articles of Association. Likewise, in law enforcement, there are also unlawful acts in companies that are not carried out according to the Law on Limited Liability Companies, State-Owned Enterprises/Regional-Owned Enterprises. Limited Liability Companies, State-Owned Enterprises/Regional-Owned Enterprises as civil legal entities established based on an agreement, should comply with all civil law provisions in managing the company.
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