

Risk of Diversion in Lending as One of the Corruption Crimes at BUMN / BUMD Banks

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Abstract

Abuse in granting credit is prohibited binding because the misappropriation is an act that is against the law (statutory regulation) so that it is an act against the law. The act of deviating from the provision of credit is an act that is detrimental to the bank and the general public, because the function of the bank is to drive the community's economy. If the bank is poorly managed and has the potential to cause chaos to the economy in a country. Regarding the management of BUMN / BUMD banks whose capital is from the APBN and APBD which are state money, the act of misappropriation in providing credit to BUMN / BUMD banks has the potential to cause losses to state finances. So that non-creditors qualify as criminal acts of corruption.

Keywords

risk, fraud, credit, corruption



I. Introduction

The term corruption comes from the Latin word *corruptie* or *coorruptus*. The word *corruptie* comes from the old Latin word *corrumpere*. These words are then followed in European languages such as English, namely *corruption*, *corrupt*, French, namely *corruption*, Dutch, namely *corruptie* (*korruptie*). The Indonesian encyclopedia defines *corruptio* as bribery, and *corrumpere* is destructive which is broadly defined as a symptom of officials from state agencies misusing their authority, resulting in bribery, counterfeiting and other irregularities. The literal definition of corruption is:

1. Evil, rottenness, bribery, abnormality, depravity and dishonesty;
2. Bad deeds such as embezzlement of money, receiving bribes and so on;
3. Actions which in fact give rise to bad conditions, for example: actions which are evil and despicable or moral immorality; bribery and forms of dishonesty; something that was corrupted such as a word that was incorrectly altered or replaced in a sentence; corrupt influences.

The term "corruption" is often followed by the terms "collusion" and "nepotism" which are always known by the acronym KKN (Corruption, Collusion and Nepotism). KKN is a world problem that must be prevented and eradicated. Transparency International defines corruption as an act that abuses public power and trust for personal gain. The definition of corruption stated by Transparency International contains three elements, namely:

1. Abuse power;
2. Powers that are entrusted (both in the public sector and in the private sector), have access to business or material benefits;
3. Personal gain is not always only for the person who abuses power, but also for his family members and friends.

The terms corruption or corruptus mean power or depravity. Initially, the public's understanding of corruption used a dictionary source derived from Latin Greek corruptio which means bad, bad, cheating, bribed, immoral, deviates from sanctity, violates material, mental, and legal religious norms.

The definition of corruption above is a very simple definition and cannot be used as a benchmark or standard against corruption. From a juridical point of view, corruption is behavior that benefits one's own interests at the expense of others, by government officials who directly violate the legal boundaries of such behavior, whereas according to government norms, corruption is considered reprehensible if the law is violated or does not act according to authority.

Another view is that corruption implies fraud, abuse or abuse of office for one's own interests, and forgery. The view of corruption is still ambivalent, it is only called punishable or not and as a despicable act. A. Gardiner and David J. Olson, provide several definitions of corruption in various perspectives, namely:

1. The formulation of corruption from a market point of view, which is an act of a state servant (civil servant) with a corrupt spirit to consider his office or agency a trading company so that in his work his income should increase as much as possible;
2. A formula that emphasizes the emphasis on government office, namely a behavior that deviates from the normal obligations of a government agency role due to personal interests (family, class, friends, and friends);
3. The formulation of corruption with an emphasis on the public interest, namely an act of giving in the form of a gift to someone related to the scope of office in the public interest (public); and
4. The formulation of corruption from a sociological point of view, namely corruption is the abuse of trust for personal gain as well as a complicated social phenomenon.

Based on the definition of corruption, it can be understood that corruption is an act that is against the law, either directly or indirectly, which can harm the state finances or the country's economy, which in material terms is seen as an act that is contrary to the values of public justice. The definition of corruption is often interpreted or equated with collusion and nepotism. The three of them have a close relationship in the practice of being tied together in an act or action or are things that are inseparable from the elements of the criminal act of corruption.

Actions that are contrary to the provisions of the APBN / APBN mechanism have implications for a violation or criminal act. Based on the APBN / APBD mechanism, the occurrence of financial losses for BUMN / BUMD Banks as a result of violations of the principle of prudence in providing credit can be imposed on employees, or management, or directors, or commissioners of BUMN / BUMD Banks who are involved in the violation of the provision of credit as a criminal act of corruption.

The provisions of criminal acts stipulated in Article 46 to Article 51 of RI Law No.7 of 1992 as amended by RI Law No.10 of 1998 concerning Banking, constitute purely banking crimes or are also known as banking crimes. Perpetrators who violate these criminal provisions can only be charged and only subject to criminal penalties based on RI Law No.7 of 1992 jo. RI Law No.10 of 1998.

Criminal provisions in RI Law No.7 of 1992 jo. RI Law No.10 of 1998 applies to banking crimes, both BUMN / BUMD Banks and private banks. Specifically for employees, managers, directors, commissioners of BUMN / BUMD banks, apart from being subject to criminal sanctions based on RI Law No.7 of 1992 jo. RI Law No.10 of 1998, also has the potential to be subject to criminal penalties based on RI Law No.31 of

1999 as revised in RI Law No. 20 of 2001 concerning Eradication of Corruption Crimes (UUPTPK).

The UUPTPK can be applied to criminal acts committed by employees, managers, directors, and commissioners at BUMN / BUMD Banks in connection with lending activities that violate the principle of prudence. The reason is that the APBN / APBD mechanism for BUMN and BUMD is still in effect based on Article 2 letter g of RI Law No.17 of 2003 concerning State Finance and Article 1 number 1 of RI Law No.1 of 2004 concerning State Treasury.

The element of state financial loss or the state economy can be linked to a criminal act of corruption and can be imposed on employees, managers, directors and commissioners of BUMN / BUMD Banks (BUMN / BUMD Banks) who are involved in the loss of state finances or the country's economy. In practice, the violation of prudence in providing credit is an act of fraud that causes credit to become problematic and can "drag" the officials or officials of BUMN / BUMD Banks and also those employees of BUMN / BUMD Banks who are involved in the process of extending the credit.

II. Research Methods

The research method is a way of conducting an assessment with respect to the problem under study, which consists of the type of research, and the nature of the research that describes how the researcher conducts a study. The type of research used in this research is normative juridical, including research on legal principles, and legal norms regarding positive Indonesian legal provisions governing the Risk of Diversion in Providing Credit as a Corruption Crime at BUMN / BUMD Banks. The data source used in this research is secondary data, which includes three legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials.

The nature of the research used in this research is prescriptive and descriptive. The nature of this research, apart from describing (describing) and describing the facts of the Risk of Diversion in Providing Credit as a Corruption Crime at BUMN / BUMD Banks, it also analyzes these facts normatively with several approaches. Descriptive describes the facts of the practice of lending, while pre-descriptive analyzes, justifies, and assesses the reasons for how the Risk of Diversion in Providing Credit is One of Corruption Crimes at BUMN / BUMD Banks.

III. Discussion

3.1 Regulation of Corruption Crime with regard to abuse of authority and legally linked to the provision of credit to BUMN / BUMD Banks

A criminal act of corruption that is detrimental to state finances or the country's economy is a criminal act of corruption that is detrimental to state finances originating from state or regional finances, APBN and APBD as well as illegal acts that have something to do with the APBN and APBD, either directly or indirectly. Provisions for the criminal act of corruption in the UUPTPK that are directly detrimental to state finances or the state economy are regulated in Article 2 paragraph (1), Article 3 of the UUPTPK.

The elements of a criminal act in Article 2 paragraph (1) UUPTPK: (1) any person, (2) against the law, (3) enrich himself or another person or a corporation, (4) may harm the state finances or the country's economy. The elements of a criminal act in Article 3 UUPTPK: (1) any person, (2) for the purpose of benefiting himself or another person or

corporation, (3) abusing the power, opportunity or means available to him because of his position or position, (4) it may harm the state finances or the state economy.

The element "may be detrimental to the country's finances or economy" shows that the criminal act of corruption is a formal offense, that is, the existence of a criminal act of corruption is sufficient by the fulfillment of the elements of the act that have been formulated in law, not with the consequence. So that the element "can harm the country's finances or economy" ignores the legality principle in Article 1 paragraph (1) of the Criminal Code.

The material offense is sufficient to fulfill the formula "detrimental to state finances or the country's economy" or the occurrence of a financial loss at a BUMN / BUMD Bank is considered a material loss to state finance or the state economy so that it can be subject to criminal acts of corruption. The word "can" before the phrase "detrimental to state finances or the country's economy" in Article 2 paragraph (1) UUPTK and Article 3 UUPTK based on the Decision of the Constitutional Court Number 003 / PUU-IV / 2006 dated 24 July 2006, is still recognized and does not contradict the constitution. .

Formal offenses based on the Constitutional Court Decision are maintained in Article 2 paragraph (1) UUPTK and Article 3 UUPTK, while material offenses in these two articles remain debatable. On the one hand the Constitutional Court stated that actions deemed disgraceful because they are not in accordance with the sense of justice or norms of social life in society even though they are not formulated in legislation can be punished "declared invalid because they are contrary to the 1945 Constitution. that material offenses do not meet the principle of legal certainty and state financial losses. As long as it can be proven by calculating the loss from the competent agency, it can also be punished.

The element "may be detrimental to the country's finances or economy" contains formal offenses, the existence of a criminal act of corruption is sufficient by fulfilling the elements of the act that have been formulated in law, not with the resultant consequences. Meanwhile, there is a real consequence, namely the loss of state finances or the state economy which is a provision which contains material offenses.

Harming state finances or the country's economy is one of the elements of the criminal act of corruption. The element "can harm state finances" is a formal offense, so that acts that have the potential to harm state finances can be punished. It doesn't have to be the result. As long as the strong evidence points to potential losses to the state, it can be punished.

Formal offense, namely that the act was actually carried out even though there was no consequence, namely that the state financial loss could be punished. The material offense that is safeguarded is not the elements that must be fulfilled in the formal legal provisions but rather the real action (consequence) which can already be convicted. In practice, the consequence is that state financial losses to BUMN / BUMD banks are often suspected of criminal acts of corruption. This is coupled with evidence of calculation of state financial losses by the competent institution, namely the Supreme Audit Agency (BPK).

Article 2 paragraph (1) UUPTK and Article 3 UUPTK are criminal acts of corruption that are detrimental to state finances or the country's economy because the object of the crime is money and / or goods sourced from state finances or regional finances, from APBN or APBD and / or there are in relation to the APBN / APBD, either directly or indirectly. The formulation of the elements in Article 2 paragraph (1) UUPTK and Article 3 of this UUPTK can involve employees, managers, directors, commissioners at BUMN / BUMD Banks in connection with the management of state finances channeled through credit.

The provisions for the criminal act of corruption in the UUPTPK do not rule out the possibility that it can only be imposed with Article 2 paragraph (1) and Article 3 of the UUPTPK which is purely detrimental to the finances of BUMN / BUMD Banks or state finances or the state economy. However, other articles besides Article 2 paragraph (1) and Article 3 of the UUPTPK can also be imposed to ensnare individuals or employees, managers, directors, commissioners at BUMN / BUMD Banks who are involved in violating the principle of prudence in extending credit to customers. debtor, depending on the offense committed by the perpetrator.

For example, Article 9 UUPTPK regarding document falsification. Although it is not included as an article that is detrimental to state finances, in principle it can also be detrimental to state finances. Employees, managers, directors, commissioners at BUMN / BUMD Banks or who act as credit analysis teams involved in the criminal act of credit document forgery may be subject to Article 9 UUPTPK.

Comparison between the formulation of Article 416 KUHP and Article 9 UUPTPK, it turns out that Article 416 of the Criminal Code contains elements of the criminal act of corruption "making fake" (valselijk opmaken) and "faking" (vervalsen), while Article 9 UUPTPK only contains elements of the crime of "faking", but in fact In essence, Article 9 of the UUPTPK also contains elements of the criminal act of corruption that is not implicitly "fabricating".

The criminal act of document forgery in the provision of credit can result in a credit application that is less than eligible to be approved even though the credit application file does not meet the bank credit requirements in accordance with laws and SOPs. This of course can allow the occurrence of state financial losses when the credit runs into non-performing loans. The same is true in the case of gratuities or bribes, the credit applicant may promise something to the credit analysis team or give a bribe so that his credit application that lacks these requirements is still approved.

Acts containing elements of corruption in the UUPTPK can be grouped into three categories, namely:

1. Category of criminal acts that directly harm the state finances or the country's economy.
2. Categories of criminal acts that indirectly harm the state finances or the country's economy (bribery, extortion, gratuities).
3. Other categories of criminal acts related to corruption include:
 - a. Obstruct the process of examining corruption cases.
 - b. Not giving information and giving information that is not true.
 - c. Banks that do not provide the suspect's account information.
 - d. Witnesses or expert witnesses who do not provide information or give false information.
 - e. The person holding the secret of the position did not give any information or give false information.
 - f. Witness who discloses the identity of the Reporting Party.

This category of criminal acts of corruption can be imposed on employees, managers, directors, commissioners at BUMN / BUMD Banks in connection with violations of the principle of prudence in providing credit which results in non-performing loans, harming BUMN / BUMD Banks and / or state finances, either directly or indirect. The imposition of provisions for criminal acts of corruption on employees, managers, directors, commissioners at BUMN / BUMD Banks is also confirmed in the explanation of the UUPTPK.

The subject of the perpetrator of the criminal act of corruption can be understood from the provisions of Article 1 point 2 of the UUPTPK and includes those who have the

duties, functions and authorities as state administrators as stipulated in the Law of the Republic of Indonesia Number 28 of 1999. Employees, managers, directors, commissioners at BUMN / BUMD Banks are included as people who receive salaries or wages from state or regional finances and are also state administrators.

3.2 Risk of Misappropriation of Credit in BUMN / BUMD Banks as a Corruption Crime in Indonesia

According to the KPK, corruption in the UUPTPK consists of 30 (thirty) forms / types, namely: Article 2, Article 3, Article 5 paragraph (1) letter a, Article 5 paragraph (1) letter b, Article 5 paragraph (2) , Article 6 paragraph (1) letter a, Article 6 paragraph (1) letter b, Article 6 paragraph (2), Article 7 paragraph (1) letter a, Article 7 paragraph (1) letter b, Article 6 paragraph (2) , Article 7 paragraph (1) letter a, Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter c, Article 7 paragraph (1) letter d, Article 7 paragraph (2), Article 8, Article 9, Article 10 letter a, Article 10 letter b, Article 10 letter c, Article 11, Article 12 letter a, Article 12 letter b, Article 12 letter c, Article 12 letter d, Article 12 letter e, Article 12 letter f, Article 12 letter g, Article 12 letter h, Article 12 letter i, Article 12B juncto Article 12C, and Article 13 UUPTPK.

Corruption crimes classified by the KPK include crimes: (1) causing losses to state finances, (2) bribery, (3) embezzlement in office, (4) extortion, (5) fraudulent acts, (6) conflict of interest in procurement, and (7) gratuities. The UUPTPK is classified into seven types of criminal acts of corruption, namely: (1) detrimental to state finances (enriching oneself or abusing authority so as to cause losses to state finances), (2) bribery, (3) gratification, (4) embezzlement in office, (5) extortion, (6) fraudulent acts, and (7) conflicts of interest.

The articles relating to corruption offenses purely to harm state finances according to the KPK are contained in Article 2 of the UUPTPK and Article 3 of the UUPTPK. Corruption related to bribery is contained in Article 5 paragraph (1) letter a, Article 5 paragraph (1) letter b, Article 13, Article 5 paragraph (2), Article 12 letter a, Article 12 letter b, Article 11, Article 6 paragraph (1) letter a, Article 6 paragraph (1) letter b, Article 6 paragraph (2), Article 12 letter c, and Article 12 letter d UUPTPK.

Corruption related to embezzlement in office is regulated in Article 8, Article 9, Article 10 letter a, Article 10 letter b, and Article 10 letter c UUPTPK. Corruption related to extortion is regulated in Article 12 letter e, Article 12 letter g, and Article 12 letter f UUPTPK. Corruption related to fraudulent acts is regulated in Article 7 paragraph (1) letter a, Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter c, Article 7 paragraph (1) letter d, Article 7 paragraph (2), and Article 12 letter h UUPTPK. Corruption related to conflict of interest in procurement is regulated in Article 12 letter i of the UUPTPK. Corruption related to gratification is regulated in Article 12B and Article 12C of the UUPTPK.

Other criminal acts related to corruption are regulated in Article 21 (obstructing the case examination process), Article 22 and Article 28 (not giving information or giving false information), Article 22 and Article 29 (the bank does not provide information on the suspect's account.), Article 22 and Article 35 (witnesses or experts who do not give information or give false information), Article 22 and Article 36 (people who hold secret positions do not provide false information or information), Article 24 and Article 31 (witnesses who reveal their identity whistleblower).

The category of criminal acts of corruption that is purely detrimental to state finances or the country's economy is the direct reduction in state finances due to the occurrence of criminal acts of corruption. Employees, managers, directors, commissioners

or anyone who works at a BUMN / BUMD Bank may be subject to provisions on corruption that are purely detrimental to state finances. Harming state finances purely is a criminal act that directly results in state financial losses at BUMN / BUMD Banks.

Credit Lending Risk is the responsibility of the official credit provider, the mechanism for providing credit at BUMN / BUMD Banks which can measure how the accountability for the risk of misappropriation of credit in BUMN / BUMD banks is carried out. So that the risk of misappropriation of credit at BUMN / BUMD banks is a criminal act of corruption that can be categorized as misuse of authority and / or acts against the law that result in losses to state finances.

Meanwhile, bribery, extortion, and gratuity are included in the category of criminal acts of corruption which also harm the state finances or the country's economy but have indirect consequences. For example, unscrupulous employees, managers, directors, commissioners at BUMN / BUMD Banks who are involved in criminal acts of bribery or extortion or gratification in providing credit that do not meet creditworthiness to debtor customers can also result in state financial losses or losses to BUMN / BUMD Banks. indirectly when the debtor customer has problem loans or also because of default.

Acts such as bribery, extortion and gratification do not directly harm state finances, but these actions can also make the state or BUMN / BUMD banks lose money. For example, by bribing Government Bank employees so that the credit application business can be smoothed even though the applicant lacks the document requirements for that. If this action is approved, it can lead to non-performing loans and the employee may be subject to the criminal act of corruption by accepting bribes.

The criminal act of pure corruption that is detrimental to state finances is an act committed by a person, civil servant, or state administrator who violates the law, abuses the power, opportunity or means available to him because of his position or position by committing an act of enriching himself or another person or a corporation that can harm state finances or the country's economy.

According to Ermansyah Daja, criminal acts of corruption are classified as (1) purely detrimental to state finances, (2) bribery, (3) extortion, (4) seizure, (5) gratification, (6) trial, assistance, and consensus, and (7)) other criminal acts of corruption. According to Ermansyah Djaja, the criminal act of pure corruption is detrimental to state finances, apart from being regulated in Article 2 and Article 3 of the UUPTPK, it is also contained in Article 7, Article 8, Article 9, Article 10, Article 12, Article 12A, and Article 17 of the UUPTPK. The types of bribery corruption are regulated in Article 5, Article 6, Article 11, Article 12 letters (a, b, c, d), Article 12A, and Article 17 of the UUPTPK.

The criminal act of extortion corruption is regulated in Article 12 letters (e, f, g), Article 12A, and Article 17 of the UUPTPK. The criminal act of corruption is regulated in Article 12 letter i, and Article 17 UUPTPK. Gratification corruption is regulated in Article 12B, Article 12C, Article 13, and Article 17 of the UUPTPK. Trial, assisting and consensual corruption are regulated in Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter d, Article 8, Article 10 letter b, Article 10 letter c, Article 15, Article 16, and Article 17UUPTPK. . Other acts of corruption are regulated in Article 21, Article 22, Article 23, and Article 24 of the UUPTPK.

The classification of criminal acts of corruption according to the study team from Indonesia Corruption Watch, includes: detrimental to state finances (enriching oneself or abusing authority so as to cause losses to state finances), (2) bribery, (3) gratification, (4) embezzlement in office, (5) extortion, (6) fraudulent acts, and (7) conflicts of interest. The following are the articles that define the criminal act of corruption in the UUPTPK:

Table 1. Corruption Crime Classification

No.	Corruption Crime Classification	Article used in the UUPTPK
1.	Harm to state finances	Article 2 and Article 3.
2.	Bribes	Article 5 paragraph (1) letters a and b, Article 5 paragraph (2), Article 12 letters a, b, c and d, Article 6 paragraph 1 letters a and b, Article 6 paragraph 2, Article 11, Article 13.
3.	Gratuities	Article 11, and Article 12B jo. Article 12C.
4.	Embezzlement in office	Article 8, Article 9, Article 10 letters a, b, c
5.	Extortion	Article 12 letters e, g and f
6.	Cheating	Article 7 paragraph 1 letters a, b, c and d, Article 7 paragraph 2, Article 12 letter h.
7.	Conflict of interest in procurement	Article 12 letter i

Source: Indonesia Corruption Watch 2014

The UUPTPK not only regulates the formulation of criminal acts of corruption, but also regulates the types of derivative crimes, namely certain acts or actions that are not types of criminal acts of corruption, but which can be charged under the UUPTPK. These acts can be subject to articles in the UUPTPK because they relate to the handling of criminal acts of corruption. Here are the classifications:

Table 2. Classification of Other Related Crimes With Corruption Crime

No.	Other Crimes Related to Corruption Crimes	Article Used In the UUPTPK
1.	Obstruct the process of examining corruption cases.	Article 21
2.	Not giving information and giving information that is not true.	Article 22 jo. Article 28
3.	Banks that do not provide the suspect's account information.	Article 22 jo. Article 29
4.	Witnesses or experts who do not provide information or give false information.	Article 22 jo. Art 35
5.	The person holding the secret of the position did not give any information or give false information.	Article 22 jo. Art 36
6.	Witness who discloses the identity of the Reporting Party.	Article 24 jo. Article 31

Source: Indonesia Corruption Watch 2014

Based on the classification of corruption crimes mentioned above, of the many provisions regulating corruption in the UUPTPK, the provisions governing criminal acts of corruption that are purely detrimental to state finances (directly), are only found in articles, namely Article 2 paragraph (1) of the UUPTPK and 3 UUPTPK. Furthermore, criminal acts categorized as corruption do not require calculating the state's financial losses.

There are several articles that do not link corruption with state finances, for example bribery, gratuities and extortion. An official who accepts a bribe from someone cannot be said to be detrimental to state finances. Although there are only two articles that regulate the criminal act of corruption which is purely detrimental to state finances, these articles are often used by law enforcement officials to ensnare the perpetrators of corruption who are suspected of causing losses to the state or the country's economy.

In principle, the criminal act of bribery in the UUPTPK does not have a direct result in the loss of state finances or the state economy. An amount of money or goods received by a civil servant or state administrator in connection with his position or position does not come from state money or state assets but from the assets or money of the person who bribed.

The criminal act of bribery corruption can be charged or charged with Article 5 Article 5, Article 11, Article 12 letter a, Article 12 letter b, Article 12 letter c, Article 12 letter d, Article 12A, and Article 17 UUPTPK. Employees, managers, directors, commissioners at BUMN / BUMD Banks can be charged with these articles if they are proven to have received bribes from debtor customers who give money or goods in connection with the purpose of expediting applications for credit disbursement that do not meet the requirements.

The criminal act of extortion in the UUPTPK which plays an active role is that civil servants or state officials ask that it can even lead to extortion of people who need services or service assistance from civil servants or state officials. Perpetrators of extortion corruption can be charged or charged with Article 12 letter e, Article 12 letter f, Article 12 letter g, Article 12A, and Article 17 UUPTPK. Employees, managers, directors, commissioners of BUMN / BUMD Banks can also be charged with extortion articles if they are proven to have committed extortion during the credit granting process to expedite the application for credit disbursement.

The criminal act of gratification in the UUPTPK is different from the criminal act of bribery and extortion. There is no agreement (deal) regarding the value of money or goods, there is no agreement regarding the value of money or goods, a delivery is made without prior agreement on when the money or goods are delivered and what kind, but in the criminal act of bribery corruption there is an agreement regarding the amount or amount of the value of money or goods and where the money or goods are delivered and who and when the money or goods are delivered.

The crime of gratification corruption is also different from extortion. The criminal act of extortion of corruption, even though there was the delivery of a sum of money or goods from the victim to civil servants or state officials, was not based on an agreement but because of compulsion. There are actions that compel someone to hand over money or goods requested by the civil servants or state officials. The crime of gratification is threatened in Article 12B juncto Article 12C, Article 13, and Article 17 UUPTPK.

This provision is regulated in Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter d, Article 8, Article 10 letter b, Article 10 letter c, Article 15, Article 16, and Article 17 UUPTPK. These articles may also be imposed on employees, managers, directors, commissioners of BUMN / BUMD Banks if proven to have conducted experiments, assistance in the process of providing credit to expedite applications for credit disbursement that do not meet the requirements or violate laws or Bank SOPs.

There are other forms of corruption in the UUPTPK, namely events or actions related to criminal acts of corruption, such as acts that intentionally prevent, obstruct or thwart indirectly during the investigation, prosecution and examination of suspects and / or defendants or witnesses.

Perpetrators of this other form of corruption may be subject to the provisions of Article 21, Article 22, Article 23, and Article 24 of the UUPTPK. These provisions can also be imposed on unscrupulous employees, managers, directors, commissioners of BUMN / BUMD Banks who deliberately prevent, obstruct or indirectly thwart the process of investigation, prosecution and examination of everything related to suspected or

suspected violations of the precautionary principle. in the granting of credit which expedites the application for improper credit disbursement.

According to Barda Nawawi Arief, gratification in Article 12B UUPTPK is defined as an act in a broad sense. Barda sees that the formulation of gratuities is neither a type nor qualification of offense. The provisions of Article 12B paragraph (2) UUPTPK which are made offenses (actions that can be convicted or criminal acts) are not gratification but an act that receives gratification. Article 12 paragraph (1) UUPTPK does not formulate the criteria for accepting bribes and givers of bribes as well as the types of gratuities.

The formulation of Article 12B of the UUPTPK is still being debated in terms of whether or not the principle of reversing the burden of proof can be applied. Proof of gratification is not a bribe made by the recipient of a gratification, because gratification with the editor "is considered to have accepted a bribe" must be based on two elements, namely those relating to his position and carrying out work that is contrary to his obligations, so that the proof of Article 12B UUPTPK relatively does not adhere to the principle of reversing the burden of proof.

Gratification is similar to bribery and extortion, but there are differences. The criminal act of corruption in bribery does not have a direct result in the loss of state finances or the state economy because the amount of money received by civil servants or state administrators in connection with their position or position does not originate from state money or state assets but originates from the money or assets of the bribe. The object of the bribe does not originate from state money or state assets but comes from money or assets of people (other than civil servants or other than state officials) who bribe. But it does not rule out that the bribe also has the status of a civil servant or state administrator. Likewise, the object of gratification does not originate from state money or state assets but originates from money or assets of people (other than civil servants or other than state officials) who carry out gratification so that it does not have a direct impact on state financial losses.

It can be concluded that the source of money or goods in bribes and gratuities both comes from the bribe giver or the giver of the gratification. Furthermore, the similarity between bribery and gratification is regarding the source of the idea or ideas. The idea of bribery and gratification both originates from the idea of the bribe giver (bribe) and the gratification giver.

The difference between bribery and gratuity lies in the agreement. In corruption, bribery always involves an active role between the person who commits the bribe (bribe giver) and civil servants or state officials as receiving the bribe, and is accompanied by an agreement between them regarding the amount or value to be transacted and including the methods of delivery. Whereas in gratification there is no prior agreement, but it is purely an idea from the giver of the gratification.

The equation of bribery and gratification is that the source of the object (money or goods or in other forms) comes from the bribe giver and the gratification (can be a public person or civil servant or state administrator). This is where it is necessary to distinguish which types of corruption fall into the category of bribery or gratification or extortion so that the public prosecutor can prepare charges and demands whether alternative, cumulative, or subsidiar, this is intended so that the charges do not miss the legal provisions in the UUPTPK.

Bribery and gratification are also different from the criminal act of extortion corruption because in extortion the active role is civil servants or state officials asking and forcing (extortion) people who need services or assistance from civil servants or state

officials. While the one who plays an active role in bribery is the bribe giver, Thus, the one who plays an active role in gratification is the giver of gratification.

There are two alternatives included in extortion, namely first, that ideas / ideas originate from civil servants or state officials asking gently but seem to be coercive for the victim because the request is closely related to a position or power of a civil servant or state administrator, so that people like it or not those who are asked must give something, if not given it will result in obstruction of any affairs with the civil servant or state officials. The second alternative is that the ideas / ideas come from civil servants or state officials who openly force people who are asked to give something to them. If it is not given, it may result in the obstruction of any affairs with the civil servant or state officials.

The criminal acts of corruption, bribery and extortion are even more different from gratification because in gratuities, civil servants or state administrators do not know that they will be given an amount of money or goods or objects in other forms, there is no prior agreement between civil servants or state administrators with the public who will give the gratification, but the act is carried out unilaterally by the gratification giver (namely a public person and can also be a civil servant or state administrator) and unexpectedly by the civil servant or state official who receives the gratification.

IV. Conclusion

1. The elements of a criminal act in Article 2 paragraph (1) UUPTPK: (1) any person, (2) against the law, (3) enrich himself or another person or a corporation, (4) can harm the state finances or the country's economy. The elements of a criminal offense in Article 3 UUPTPK: (1) every person, (2) the purpose of benefiting himself or another person or corporation, (3) abusing the authority, opportunity or means available to him because of his position or position, (4) can detrimental to state finances or the country's economy. The element "may be detrimental to the country's finances or economy" shows that the criminal act of corruption is a formal offense, that is, the existence of a criminal act of corruption is sufficient by the fulfillment of the elements of the act that have been formulated in law, not with the consequence.
The material offense is sufficient to fulfill the formula "detrimental to state finances or the country's economy" or the occurrence of a financial loss at a BUMN / BUMD Bank is considered a material loss to state finance or the state economy so that it can be subject to criminal acts of corruption. The word "can" before the phrase "detrimental to state finances or the country's economy" in Article 2 paragraph (1) UUPTPK and Article 3 UUPTPK based on the Decision of the Constitutional Court Number 003 / PUU-IV / 2006 dated 24 July 2006, is still recognized and does not contradict the constitution. .
2. The category of criminal acts of corruption that is purely detrimental to state finances or the country's economy is the direct reduction in state finances due to the occurrence of criminal acts of corruption. Employees, managers, directors, commissioners or anyone who works at a BUMN / BUMD Bank may be subject to provisions on corruption that are purely detrimental to state finances. Harming state finances purely is a criminal act that directly results in state financial losses at BUMN / BUMD Banks. Credit Lending Risk is the responsibility of the official credit provider, the mechanism for providing credit at BUMN / BUMd Banks which can measure how the accountability for the risk of misappropriation of credit in BUMN / BUMD banks is carried out.

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