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Acts against the Law in the Field of Investment in Indonesia

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Abstract

The world of investment involves several aspects, both financial and non-financial. It is not uncommon for investments between countries to involve government officials who, in certain cases, commit acts of abuse of power. The act in question in this case will be explored in the theory of Economic Analysis of Law and also as regulated in Article 1365 of the Civil Code. The research metode involves literature research conducted through a literature review. This study finds that the implementation of Legal Quality Audit in the field of investment is an appropriate strategy because it can be carried out at the pre-investment stage, investment execution stage, and investment accountability stage. With Legal Quality Audit, the potential for unlawful acts in investment can be detected, from the pre-investment phase to the conclusion of the investment agreement. There are also two important aspects of which are Concept (philosophical foundation) and Parameter (quantitative aspect). It leads to the Legal Quality Audit System, which measures multidisciplinary quality parameters. Also, The Legal Quality Audit can be applied at various stages of investment to detect potential unlawful acts, ensuring reliability, customer satisfaction, and adherence to legal obligations.

Keywords: *economic law, government, legal quality audit, investment, legal obligation*

Introduction

The concept of investment involves allocating funds in the present for a specific period to gain benefits (returns or profits) in the future. This means that funds, which could otherwise be utilized immediately, are redirected into investments to generate future gains. Investment can be viewed from three aspects:

1. The financial aspect, where money is allocated with the expectation of future returns, and the concept of money is used to assess the feasibility of the investment.

2. The aspect of present and future time, where the feasibility of an investment is assessed using the concept of time (time value of money).

3. The benefits of investment. From this aspect, the feasibility of an investment must also consider the benefits and costs it generates, applying the principle of cost-benefit analysis (cost-benefit ratio) (Warsita, 2018).

In addition, investment involves expenditures to purchase capital goods and production equipment, primarily aimed at replacing or increasing the economy's capital goods, which will be used to produce goods and services in the future. Investment represents a net positive addition to capital goods. According to the Indonesian Dictionary (Kamus Besar Bahasa Indonesia), investment is defined as the allocation of money in a company or project with the goal of generating profit.

The essence of investment activities refers to the aim of the Indonesian constitution to create public welfare, as well as the mandate of Article 33 (3) regarding natural resources that are contained to be used for the welfare of the Indonesian people (Article 33 paragraph 3. The 1945 Constitution). In Indonesia, foreign investment has existed since 1967, to be precise at the beginning of the new order which is regulated in The Act Number 1 of 1967 concerning Foreign Investment and has been renewed in The Act Number 25 of 2007 concerning

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Investment. Urbanization has led to improved infrastructure in the country, making it more attractive for foreign investors to establish their businesses. However, in the presence of foreign investment, environmental degradation may either increase or decrease (Taduri, 2021; Pujiati, 2023).

To analyze the intricacies of investment, the Economic Analysis of Law theory is employed. It can be said that economic analysis of law began to gain prominence globally when it was introduced by Gary Becker approximately half a century ago. Essentially, Becker based the development of his theory of economic analysis of law on the utilitarian philosophy espoused by Jeremy Bentham (Posner, 1981). Additionally, the analysis incorporates criminological perspectives from Cesare Beccaria.[4] The economic analysis of law aims to introduce a new perspective and analytical method to the field of law, which often leans heavily toward philosophical and metaphysical approaches. Ultimately, such traditional approaches can appear less pragmatic and may even create new issues rather than resolving existing ones (Posner, 1993).

The economic analysis of law also seeks to challenge the perspective of criminal law analysis based on morality, which often determines whether to punish someone based on blameworthy conduct. In many cases, moral-based legal analysis has revealed situations where individuals who should not meet the criteria for blameworthiness are still held accountable. Many argue that law enforcement officers and legislators have historically failed to base their analyses on economic considerations. However, this is not entirely accurate. Both law enforcement officers and legislators often use economic analysis in their policymaking, albeit implicitly (Posner, 1985).

Referring to the formula provided by Hand's Rule, it can be concluded that if the cost of adding preventive measures to avoid losses exceeds the benefits derived from preventing those losses, then society would be better off economically by not incurring such preventive costs (Posner, 1972). There is no strong justification for placing responsibility on someone when a loss occurs under such circumstances. In this case, when the potential loss is lower than the cost of preventing the loss, a rational analysis aimed at maximizing profit would suggest that it is more appropriate for the person to pay the victim's loss rather than incurring even higher costs for prevention.

Furthermore, in general, the economic value would decrease rather than increase if, under such conditions, the cost of preventing losses is added simply to avoid a lower potential loss. On the other hand, if the benefits of avoiding the incurred losses exceed the cost of prevention, then society as a whole benefits when the preventive measures are taken and the losses are avoided. In this framework, it is entirely justified to hold someone accountable if they fail to make the appropriate preventive efforts (Posner, 1972).

Legal quality audit is integrating quality science into the legal audit system, where the "quality" of the law itself is audited. Thee philosophical aspects of a legal quality audit are deficiency-free, customer satisfaction and continuous improvement never ending. These three philosophical aspects, which the author terms as "Concepts," are elaborated into legal quality parameters used as benchmarks in the legal quality audit. These parameters are: quality of legal products, low cost, access to legal implementation, legal security, service morality, legal system, and adaptability (Murwadji, 2016).

Law and Economics, or commonly referred to as Economic Analysis of Law, was initially neither recognized nor developed. This is because it emerged as a product of the blending of the intellectual fields of law and economics. Law and economics was not categorized as part of the legal discipline, and therefore, it did not receive academic recognition.

The stagnation in the development of law and economics is partly due to the fact that, at one point, the development of legal science (jurisprudence) was focused primarily on the core principles of legal certainty

[4] Richard Posner, "*An Economic Theory of The Criminal Law*". Columbia Law Review. Vol. 85. No. 6, 1985, pg. 1193

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and justice. Even today, the evolution of law and legal studies still seems to revolve around these two fundamental principles.

Law and economics, according to many experts, is said to have started with the teachings of Bentham (in 1789, 1827, 1830), who proposed a middle ground between legal certainty and justice by introducing the core principle of utility, known as utilitarianism. Bentham's seven writings systematically explore and examine how humans would behave when confronted with the law. In this context, law is categorized as an incentive or motivator, rather than merely being a command, prohibition, or other general principles typically taught in legal studies.

From this perspective, Bentham conducted significant research, which was later expanded to include tort law, criminal law, and law enforcement, along with some property analysis and key concepts in procedural law. His works were not developed further until the 1960s and early 1970s, when the need to examine law through economic science was revived by several legal scholars through their works: Coase (1960) on Externalities and Legal Liability, Becker (1968) on Crime and Law Enforcement, and Posner (1972) on the Economic Analysis of Law. Since then, the demand for and development of law and economics analysis has grown rapidly. Today, the field of law and economics is further developed through works such as those by Cotter and Ulen (1997-2007), Polinsky (1998-2007), D. Friedman (2000), Farnworth (2007), and others.

There are two *characteristic of law and economics*: t*he theoritical analysis focuses on efficiency and is it emphasis on incentives and people's responses to these incentives. It use empirical or statistical methods to measure these responses to incentives.*

The term "Economic Analysis of Law" is more commonly associated with the form of law and economics analysis, which generally involves a detailed examination of the elements or structure of both law and economics. Typically, it is based on the elaboration and interpretation of law and legal science through the process of integrating elements that work synergistically (Sugianto, 2013).

Based on this relationship, Posner argues that economics is the science of rational choice in the face of limited resources desired by humans. The existence of law in society essentially serves as a system of rules or sanctions designed to regulate human behaviors, which are fundamentally driven by the desire to increase satisfaction, as this is a key component of economics. Law is created and used with the purpose of promoting the greatest public interest (Sugianto, 2013).

Law and economics scholars build their analyses using different economic concepts depending on the subject under scrutiny. As a result, the outcomes may differ, but the differences are not significant, and they still follow a similar trajectory, consistently referring to fundamental economic concepts. For example:

a. Posner places greater emphasis on the concepts of value, utility, and efficiency.

b. Cooter and Ulen delve more into microeconomic theories such as supply and demand, market equilibrium, game theory, competitive strategy, and others.

c. Pejovich's explanation is built upon concepts such as game theory, scarcity, transaction costs, resources, and trade (Sugianto, 2013).

Posner further reminds legal scholars of the importance of the concept of value. According to Posner, value can be understood as something that holds significance, desirability, or importance, whether monetary or non-monetary. The inherent characteristic of value is tied to human self-interest, driven by the desire to achieve satisfaction. Essentially, an economic value can be seen in terms of a person's desire for something, determined by how far an individual is willing to go to obtain it, whether through money, action, or other contributions they can make.

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A value can be identified by the characteristics attached to it, such as the expectation of gain (expected return) or loss. For example, the expected loss or gain of money can be multiplied by the probability of it occurring: "*..... an expected cost or benefit, i.e., the cost and benefit in dollars, multiplied by the probability that it will actualy materialize*".

Human considerations in determining a value ultimately aim at the relevance of wealth maximization. Wealth, in general, can be understood as riches or prosperity, often referring to an abundance. In economic terms, prosperity represents the net value of all assets owned by an individual, including the value of one's abilities. According to Posner, prosperity in the context of wealth maximization is directed toward the total sum of goods (both tangible and intangible) and services, measured by two types of value: the value of supply (what people are willing to pay to acquire goods they do not yet own) and the value of demand (what people are willing to give up in exchange for the goods they own).

Investment programs do not always run smoothly because, in practice, they are often disrupted by unlawful actions, whether committed by individual business partners, between companies, or even between state-owned enterprises. The root cause of investment problems resulting from unlawful acts is typically the bad faith of the perpetrators, who engage in illegal activities that lead to losses for their partners. These unlawful acts can also be committed by government officials who abuse their authority to gain personal or group benefits in an "illegal" manner.

In the past, the concept of unlawful acts was understood in a simple and rigid manner, merely as violating or disregarding regulations. Over time, however, unlawful acts have come to be defined more broadly as actions that violate the rights of others, fail to meet legal obligations, deviate from Standard Operating Procedures (SOP), or even fail to uphold principles of caution, all of which are now considered unlawful acts.

Unlawful acts essentially disrupt or even destroy investments. The party that suffers the most is the investor, as they have invested capital into a program or project. However, in this paper, the author will also highlight that investors themselves may engage in unlawful acts, either intentionally or as part of a premeditated plan to harm the managing party. This often occurs when investors, typically powerful and from superpower countries, impose burdensome conditions or employ deceptive tactics such as entrapment of investments. Once the partner faces difficulties in meeting these conditions, the bad-faith investor will take over the program or project for the benefit of their company or country.

A weakness of investment in Indonesia is that investment agreements are often analyzed in a monodisciplinary manner, meaning they are examined solely from the legal perspective. Therefore, the author will analyze the issues based on the Economic Analysis of Law. This approach is necessary because the goal of investment is to maximize profits while adhering to the legal guidelines.

As a final solution, the author proposes the application of the Theory of Legal Quality Science, with its output being the Legal Quality Audit System, to prevent potential bad faith from either party in an investment agreement. This legal quality audit can be applied during the pre-project phase or project planning and should continue throughout the duration of the investment agreement until its completion.

Global business demands that countries compete professionally so that certain nations can succeed in the competition. Quality science is the key to success in this competition, which is why many countries strive to integrate quality science into their national business management, one of which is through the instrument of Good Governance. Indonesia integrates Good Governance into investment regulation with the aim of advancing the national economy. Investments can come from both domestic and foreign sources.

Methodology

This research conducted by the author is classified as normative research. Therefore, the writing is divided into

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two stages. The research begins with a literature review, as every research must always start with the use of document or literature studies.[5] A literature review is the study of written information about law from various sources that are widely published and essential for normative legal research (Soekanto, 2006). In this writing, the literature review focuses on data related to the legality of trials in civil cases.

The second stage is field writing, which is conducted using the interview method. According to Pauline V. Young (1979) in her book *Scientific Social Surveys and Research*, as cited by Soerjono Soekanto (2006). There are several types of interviews based on the role of the interviewer and the interviewee, namely: non-directive interview, directive interview, focused interview, repeated interview, and depth interview. The type of interview used in this research is the directive interview, with the aim of obtaining results that are relevant to the discussion in this study.

Literature Review

a. Unlawful acts in civil law

In the context of civil law, unlawful acts in Dutch law are known as *onrechtmatige daad*. As regulated in Article 1365 of the Civil Code, an unlawful act is:

> *Any act that violates the law and causes harm to another person obliges the person responsible for the harm, due to their fault, to compensate for the loss.*

According to Rosa Agustina, in her book *Perbuatan Melawan Hukum*, it is explained that in determining whether an act can be classified as unlawful, four conditions must be met: it must be contrary to the legal obligations of the actor; or the subjective rights of others; or morality; and/or the principles of compliance, diligence, and caution. Mariam Darus Badrulzaman, in his book *KUH Perdata Buku III Hukum Perikatan Dengan Penjelasan*, as quoted by Rosa Agustina, outlines the elements of an unlawful act that must be fulfilled, including (Agustina, 2003):

a. There must be an act (positive or negative);

b. The act must be unlawful;

c. There must be harm or loss;

d. There must be a causal relationship between the unlawful act and the harm;

e. There must be fault.

b. Unlawful Acts in Criminal Law

Unlike the term *onrechtmatige daad*, which is used to refer to unlawful acts in civil law, in criminal law, unlawful acts are known as *wederrechtelijk*.

According to Satochid Kartanegara, "unlawful" *(wederrechtelijk)* in criminal law is divided into (Amin, 2020):

1. Formal *Wederrechtelijk*: This occurs when an act is prohibited and punishable by law.

[5] Soerjono Soekanto, *Op.Cit.*, pg. 66.

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2. Material *Wederrechtelijk*: This refers to an act that may be considered unlawful, even though it is not explicitly prohibited or punishable by law. Instead, it is determined based on general principles found within the field of law (*algemen beginsel*).

In this context, Schaffmeister argues that "unlawfulness" mentioned in the formulation of an offense as part of its core elements is referred to as "specific unlawfulness" (e.g., Article 372 of the Indonesian Criminal Code). Meanwhile, "unlawfulness" that is not explicitly stated in the offense formulation but serves as the basis for imposing punishment is called "general unlawfulness" (e.g., Article 351 of the Indonesian Criminal Code). Schaffmeister's view is fully applied in Indonesia's positive law, as demonstrated in Articles 2 and 3 of the Corruption Eradication Act (*UU Tipikor*). Article 2 of the UU Tipikor includes the element of "unlawfulness," while Article 3 does not explicitly mention the element of "unlawfulness" (Hamzah, 2010).

c. Differences Between Unlawful Acts in Criminal Law and Civil Law

The difference between unlawful acts in the context of criminal law and those in the context of civil law primarily lies in the nature of the law itself: criminal law is public in nature, while civil law is private. As a reference, we will cite the opinion of Munir Fuady along with his question (Fuady, 2002):

"The key distinction between criminal unlawful acts and civil unlawful acts lies in their respective natures. As criminal law is public in nature, a criminal act infringes upon public interests (in addition to potentially violating individual interests). In contrast, a civil unlawful act solely violates private interests."

According to Munir Fuady, the distinction between civil unlawful acts and criminal unlawful acts lies within their respective fields: civil unlawful acts fall under civil law, while criminal unlawful acts fall under criminal law. However, this division creates issues, especially when considering state revenue derived from foreign sources, which involves both criminal and civil aspects. From the perspective of state revenue, it is indeed a matter of public law, as it pertains to state finances. However, when examining the origin of the state's financial revenue, it falls under the realm of civil law. Therefore, the author believes that unlawful acts should not be separated into civil and criminal categories.

The science of legal quality focuses on how to increase state revenue from foreign sectors while minimizing existing violations. Legal quality science seeks to audit both regulations (normative audit) and the actions of stakeholders, including public servants and law enforcement officials, foreign businesses and companies, and micro, small, and medium enterprises (implementational audit). The results of these two audits can identify violations and promptly address them.

c. Unlawful Acts by Authorities (*Onrechtmatige Overheidsdaad*)

1. The Distinction of the terms *Onrechtmatige Daad* and *Onrechtmatige Overheidsdaad.*

Onrechtmatige daad refers to an unlawful act in the field of civil law. However, when the unlawful act is committed by an authority or public official, it is referred to as *onrechtmatige overheidsdaad* (unlawful act by the government). An unlawful act, in general, means an action that is inconsistent with or contrary to the law, whether it pertains to criminal law, administrative law, or civil law. In the case of *onrechtmatige overheidsdaad*, the unlawful act is specifically attributed to an act of the government or public authority that violates legal norms or regulations in a public law context, potentially infringing upon citizens' rights or the public interest (Ridwan, 2014).

In this regard, there is a regulation in the form of the Supreme Court Regulation Number 2 of 2019 concerning the Guidelines for the Settlement of Disputes over Unlawful Acts by Government Bodies and/or Officials and the Authority to Adjudicate Unlawful Acts by Government Bodies and/or Officials (Onrechtmatige Overheidsdaad) (hereinafter referred to as Perma 2/2019). Article 1, Number 4 of Perma 2/2019 defines a

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dispute involving unlawful acts by government bodies and/or officials *(onrechtmatige overheidsdaad)* as a dispute containing a demand to declare the actions of government officials to be unlawful and/or null and void, or without legal binding force, along with compensation in accordance with applicable laws and regulations.

Government actions that can lead *to onrechtmatige overheidsdaad* can include legal actions *(rechtshandeling)* and factual actions *(feitelijke handeling)*. Factual actions are actions that are not aimed at a legal consequence, but can still result in legal consequences (Ridwan, 2014).[6] In the Administrative Law Act, administrative actions are defined as acts by government officials or other state organizers to carry out and/or refrain from carrying out specific actions in the context of government administration. Government actions in the context of administering the government, whether legal actions or factual actions, if they violate the law and cause harm, can be categorized as *onrechtmatige overheidsdaad* and may result in an obligation to pay compensation to the harmed party.

The legal basis for *onrechtmatige daad* and *onrechtmatige overheidsdaad* is Article 1365 of the Civil Code, which states: *Every unlawful act that causes harm to another person obligates the person who, through their fault, caused the damage to compensate for the loss.*

Based on the article above, there are at least five elements that must be fulfilled;

1. the existence of an act;
2. the act is unlawful; the existence of a loss;
3. the existence of fault; and
4. the existence of a causal relationship between the unlawful act and the resulting consequences.

The five elements above are cumulative, meaning that if even one element is not fulfilled, a person cannot be charged under the article for unlawful acts.

2. **Subject** *Onrechtmatige Daad* **and** *Onrechtmatige Overheidsdaad*

The subject of *onrechtmatige daad* involves individuals (natural persons) and/or legal entities under civil law. Meanwhile, in *onrechtmatige overheidsdaad*, the subject is the authority. The subject of disputes in *onrechtmatige overheidsdaad* is a government official. Furthermore, according to Article 1 point 2 of Supreme Court Regulation (Perma) No. 2 of 2019, a government official refers to elements that carry out governmental functions, whether within the government structure or other state administrators.

Furthermore, under Article 1 point 7 and Article 1 points 6 in conjunction with point 5 of Supreme Court Regulation (Perma) No. 2 of 2019, in disputes involving unlawful acts by the authorities, the defendant is the government official. Meanwhile, the plaintiff is an individual citizen or a legal entity under civil law that suffers harm due to governmental actions.

The major errors related to state revenue include:

a. Legal scholars and law enforcement officers often assume that when an unlawful act occurs, it must immediately be categorized as either a civil or criminal offense. The author considers this a significant error because a single unlawful act can involve multiple legal aspects, including civil law, criminal law, administrative law, and economic law. Each aspect should coexist and not negate the others.

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However, in practice, law enforcement officers, particularly courts, often focus solely on imposing criminal penalties, leaving other legal aspects unprocessed.

b. State revenue, including revenue sourced from abroad, falls within the scope of state finances and is therefore categorized under Public Law, making it subject to criminal law. Given its inclusion in the realm of public law, any unlawful act related to state revenue is resolved through criminal proceedings, such as corruption, money laundering, or other criminal offenses.

c. In the business world, which serves as a source of state revenue, it is impossible to always generate profits. In fact, economic conditions often significantly affect revenue, making financial losses a normal occurrence. However, in practice, every financial loss is often treated as an act of corruption. This perspective forces business actors related to State-Owned Enterprises (SOEs) to exercise extreme caution in their operations, prioritizing "safety first" over "taking risks." Such a mindset makes it difficult to achieve substantial profits.

d. Every business activity that serves as a source of state revenue and involves the state whether it pertains to government programs, state finances, or partnerships with the government is inevitably subject to state financial regulations, such as state financial oversight.

e. Every business activity that serves as a source of state finances is inevitably associated with disputes, whether legal or economic. In addressing such disputes, the perspectives of economists and law enforcement officers often diverge. Economists view problems in business as opportunities for analysis and improvement, considering them essential for the advancement of the business. In contrast, law enforcement officers often react with panic when issues arise, quickly categorizing them as civil or criminal violations. This differing paradigm highlights the need for a shift in the approach of law enforcement officers to better align with the dynamics of business.

The Court with Jurisdiction to Adjudicate *Onrechtmatige Overheidsdaad*

There is a legal dynamic regarding lawsuits against government policies. Similar to cases of civil unlawful acts, the court with jurisdiction to adjudicate is the general judiciary. Meanwhile, in cases of *onrechtmatige overheidsdaad* or unlawful acts by authorities/government, it falls under the absolute competence of the administrative court.

It is important to note that before the provisions in the Government Administration Law and Supreme Court Regulation (Perma) No. 2 of 2019, unlawful acts committed by the government fell under the absolute competence of the district court/general judiciary. Examples of this can be seen in Putusan MA No. 69K/Pdt/2006 Regarding the lawsuit for the seizure and auction of the plaintiff's personal assets to settle the plaintiff's debt to the Mataram State Receivables and Auction Service Office in 1969, which was considered *onrechtmatige overheidsdaad*, the case was adjudicated by the Mataram District Court and, on appeal, was heard by the Mataram High Court. Currently, based on the General Explanation of the Government Administration Law, paragraph five, it is stated that citizens can file objections and appeals against decisions and/or actions to the relevant governmental body/official or the superior of the concerned official. Citizens who wish to file a lawsuit against a government body/official's decision or action can submit it to the administrative court.

This is then regulated in Article 2 paragraph (1) of Supreme Court Regulation (Perma) No. 2 of 2019, which states that cases of unlawful acts by government bodies and/or officials fall under the jurisdiction of the administrative court. The administrative court has the authority to adjudicate disputes over government actions after administrative efforts have been exhausted. This is outlined in Article 2 paragraph (2) of Perma 2/2019. Since this regulation took effect, cases of *onrechtmatige overheidsdaad* that were previously submitted to the District Court but had not been examined must be transferred to the Administrative Court. For cases that are currently

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being heard in the District Court, the court must declare that it lacks jurisdiction. This is stipulated in Article 10 and Article 11 of Perma 2/2019.

Discussion

Analysis of Cases of Unlawful Acts in the Field of Investment

1. Tax Manipulation by Certain Tax Officials

One of the programs initiated by Indonesia's Ministry of Finance to improve tax payment compliance is the Tax Amnesty Program. The tax amnesty is implemented by disclosing the total amount of assets and paying a specified nominal amount as regulated in Law No. 11 of 2016 on Tax Amnesty.

The Mario Dandy case unexpectedly opened Pandora's box regarding tax mafias that had long remained hidden from the public eye. Initially, the public was shocked by the lavish lifestyle and wealth of Rafael Alun's family. Now, it has come to light that many other tax officials also possess similarly excessive wealth. Ade Armando, on one of his social media accounts, mentioned being contacted by several colleagues who claimed to be well aware of the behavior of tax officials like Rafael. It was also stated that the tax mafia is deeply entrenched within the tax department (Faizal, 2023).

Ade clarified that he did not intend to accuse all employees of the Tax Office of engaging in similar misconduct. Such individuals are likely a minority within the institution. However, their actions clearly constitute corruption, harming the public and eroding trust in the tax authority. These rogue tax officials significantly disadvantage and oppress entrepreneurs in Indonesia, and their actions directly impact the country's investment climate. Entrepreneurs have stated that they have remained silent despite their suffering, fearing retaliation from corrupt tax officials if they speak out.

In essence, tax officials have been extorting taxpayers. These officials act like deities armed with a powerful weapon called the "Tax Audit Threat." This threat can overnight transform a company from being financially healthy to a "sick" business, unable to sustain operations, let alone grow. Many of these "victims" choose to remain silent rather than risk being financially devastated by tax penalties. Generally, all tax offices have annual targets set by the Directorate General of Taxes. They must meet these targets to receive incentives. These incentives, determined by the Minister of Finance, aim to motivate tax officials to perform better and earn a sufficient income by fulfilling their duties responsibly.

This approach was taken in the hope that if tax officials earned a substantial income, they would not be tempted to engage in corrupt practices. However, this expectation has been deemed overly optimistic. In practice, many rogue officials not only chase incentives but also extort taxpayers. It can be said that these individuals amass significant wealth through such extortion practices.

Uncovering these corrupt practices is not an easy task. Exposing corruption in tax collection is far more challenging than, for example, revealing corruption in procurement processes.

Similar to corruption in procurement, the reference purchase price can be easily obtained. If an official purchases goods at an unreasonable price, it can be quickly identified. However, this is not the case with taxes. Each company's tax payments vary, and these amounts can only be verified through in-depth examinations. This creates fertile ground for covert extortion practices. To meet their annual tax collection

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targets, each tax office must collect as much tax as possible from taxpayers. This pressure often provides an opportunity for unscrupulous officials to exploit the system for personal gain.

In addition, tax offices must ensure that they minimize the amount they have to pay in restitution, which is the refund of overpaid taxes. Honest tax officials would already be content if companies simply fulfilled their obligations as required. The problem lies with the many tax officials who are overly eager to get rich quickly by exploiting their authority over taxpayers. This misuse of power creates significant barriers to fostering a fair and transparent tax system.

The primary tactic of rogue tax officials is to deliberately find faults in taxpayers' filings, forcing them to pay more. Additionally, they strive to minimize restitution payouts as much as possible. In some cases, they even impose tax penalties on taxpayers who request restitution to discourage them from filing such claims. It is during this process that these officials present "peace offers" to taxpayers. However, these offers are not made directly by the tax officials themselves. Instead, they typically involve intermediaries or indirect methods to conceal the illicit nature of the arrangement.

In this scenario, tax consultants play a key role, as they are paid to assist in preparing the tax filings of individuals or companies. These consultants often have strong connections with the tax department, and some tax officials, like Rafael Alun, even own tax consulting firms. These officials and consultants work together to manipulate the system, ensuring that taxpayers do not pay the full amount originally required. This creates a network of collusion that undermines the integrity of the tax system.

Even honest taxpayers typically maintain well-organized financial reports to pass tax audits. As a result, rogue tax officials make significant efforts to extort wealth from these honest taxpayers. They often fabricate accusations, claiming that taxpayers are involved in potential tax violations, which are entirely imagined by these corrupt officials. These officials then use threats of tax audits, criminal charges, imprisonment, and even confiscation of personal assets from business owners to pressure the taxpayers into compliance with their demands.

For instance, if a company reports a 5% profit, the tax officials will question the reasoning behind it, deeming it unreasonable, and accusing the company of engaging in transfer pricing. Ultimately, the company is threatened with audits of previous years' taxes, accompanied by warnings that if any tax evasion is discovered, the business owner could face imprisonment and personal asset confiscation. Under such pressure, it's not surprising that these honest entrepreneurs eventually give in and either negotiate or pay more than they should. The tax mafia thrives in Indonesia because of the country's highly complex tax system. There are many types of taxes to be paid and numerous reports to be submitted. Every month, entrepreneurs must submit reports on VAT, income tax (PPh 21, PPh 22, PPh 23), installment payments of PPh 25, and more. With such a complicated system, it's very easy for corporate taxpayers to make mistakes, and extremely difficult for them to calculate and prepare tax reports without error.

This situation creates a fertile ground for cooperation between corrupt tax inspectors and dishonest tax consultants to extort taxpayers. Our tax system requires early payments at the beginning of the year for several types of taxes, before they can be refunded at the end of the tax year. Examples include VAT (PPN), income tax (PPh 22, PPh 23), which are calculated as part of PPh 25 at the end of the tax year. Therefore, in practice, the state already collects the taxpayers' money at the start of the year. This advance payment system further increases the opportunity for tax officials and consultants to exploit taxpayers, knowing that the money is already in their hands before the final calculation is made.

The state is indeed obligated to refund any overpayments, but this refund process is often manipulated by corrupt tax inspectors to ensure that it is not returned in full. This allows them to either create opportunities for negotiation or cover up the holes they have previously created. The legal facts that I

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have described here are based on information I received from honest entrepreneurs who are deeply committed to this country. They hope that the exposure of Rafael's case will serve as the first step toward a genuine tax reform in Indonesia. The actions of these tax mafias have made doing business in Indonesia extremely costly. In the author's view, this is one of the key factors that contributes to the low interest of entrepreneurs in investing in Indonesia.

The case is one of unlawful acts committed by "rogue tax officials" who protect "black market investors" seeking to evade tax obligations. As a legal consequence, state revenue will decrease, and a culture of concealed corruption will continue to thrive.

Transfer Pricing

The legal issue related to state revenue from foreign sources concerns the development of trade through electronic systems, which impacts taxation. Another issue is transfer pricing, which is a company policy for determining the transfer price of a transaction, whether it involves goods, services, intangible assets, or financial transactions conducted by the company. There are two types of transactions in transfer pricing: intra-company and inter-company transfer pricing. Intra-company transfer pricing refers to transactions between divisions within the same company, while inter-company transfer pricing involves transactions between two companies with a special relationship. These transactions can occur within the same country (domestic transfer pricing) or between different countries (international transfer pricing) (Meita, 2015).

The definition above is a neutral one, although the term transfer pricing is often associated with something negative (often referred to as abuse of transfer pricing), which involves shifting income from a company in a country with a higher tax rate to another company within the same group in a country with a lower tax rate, thereby reducing the total tax burden of the company group.

Transfer pricing manipulation is the act of increasing expenses or lowering revenues with the aim of reducing the amount of tax owed. Price manipulation that can occur through transfer pricing includes manipulation of:

a. Sale price;

b. Purchase price;

c. Allocation of administrative and general expenses or overhead costs;

d. Interest charges on loans provided by shareholders (shareholder loans);

e. Payments for commissions, licenses, franchises, rent, royalties, management fees, technical services fees, and other service fees;

f. Purchase of company assets by shareholders (owners) or related parties at prices lower than market value;

g. Sales to foreign parties through third parties with insufficient or no substance;

h. Having business substance (such as dummy companies, letterbox companies, or reinvoicing centers).[12]

Another common example of transfer pricing is when X Corp does not transact directly with its subsidiary in Indonesia but first sells to its subsidiary in the Philippines. Then, the goods are sold from the Philippines to the company in Malaysia, and only after that does the Malaysian company transact with the Indonesian

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company. As a result, by the time the goods reach Indonesia, the price has been inflated multiple times. This means that PT. ABC, based in Indonesia, will suffer losses because it has to pay for raw materials at a price much higher than the market value. Consequently, the potential tax that PT. ABC should have paid to the country is lost because PT. ABC reports losses or its profits are reduced due to the transfer pricing practice.

It can be concluded that transfer pricing is an unlawful act committed by several companies within a "Single Economic Entity" that collaborate with companies in Indonesia to reduce or even eliminate their tax liabilities.

The application of the Single Economic Entity

One of the goals of the Republic of Indonesia, as stated in the preamble of the 1945 Constitution of the Republic of Indonesia, is to promote the general welfare of all Indonesian citizens. This goal is implemented through economic development activities, which are detailed in Article 33 of the Constitution. This article states that the economy is organized as a joint effort based on the principle of kinship. To ensure a climate of healthy business competition among business actors, Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (the Competition Law) is enacted.

In Article 1, number 5 of the Competition Law, the term "business actor" refers to any individual or business entity, whether a legal entity or not, that is established and domiciled or conducts activities within the legal territory of the Republic of Indonesia. This can be done either independently or together through agreements to carry out various business activities in the economic sector.

The Single Economic Entity Doctrine in competition law in Indonesia has sparked much controversy. On one hand, Indonesia has not recognized the existence of this doctrine, as stated in the Competition Law, where Law No. 40 of 2007 on Limited Liability Companies (UUPT) only adheres to the principle of independent legal entities and does not mention business groups within it. Additionally, the lack of extraterritorial application in the Competition Law has led to the belief that this doctrine is less suitable for use in proving cases under competition law in Indonesia.

On the other hand, the Single Economic Entity Doctrine plays an important role in determining the guilt or innocence of business actors who have collectively engaged in actions prohibited by competition law in Indonesia. This doctrine helps establish whether companies within a group should be considered as a single entity for the purpose of evaluating anticompetitive behavior and holding them accountable under the law.

The Single Economic Entity Doctrine is a doctrine that examines the relationship between a parent company and its subsidiaries, which are interconnected through a unified economic entity. This doctrine plays a crucial role in determining the guilt or innocence of business actors who have collectively engaged in actions prohibited by competition law, such as mergers, abuse of dominant position, prohibited agreements, and discriminatory practices. It helps establish whether these entities should be treated as one for the purposes of evaluating and prosecuting anticompetitive behavior.

In this doctrine, subsidiaries do not have independence from the parent company in determining the direction of the company's policy as part of a single economic entity. The Single Economic Entity Doctrine can make competition law extraterritorial because business actors can be held accountable for actions taken by other business actors within the same economic entity, even if the first business actor is outside the jurisdiction of the competition law of a particular country. Cases and rulings in competition law that adopt the Single Economic Entity Doctrine demonstrate its application in holding entities within a group responsible for

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anticompetitive behavior, regardless of their geographical location (Amirudin, 2003).

In the case of the Single Economic Entity Doctrine (hereafter referred to as SEED), the author holds a differing opinion from the law enforcement authorities, presenting the *Persona Standi in Judicio* (PSJ) Doctrine. According to SEED, the structure within a holding company (group of companies) is based on the theory of the organ, where the parent company is the sole controller of the group, making the subsidiary companies impotent. Further, according to the PSJ doctrine, all legal entities are considered PSJ, meaning the highest authority lies within the organ of that legal entity.

It can be concluded that the Single Economic Entity (SEE) constitutes an unlawful act in civil law carried out by companies within a corporate group to obscure responsibility, particularly by the parent company located in another country, which is sometimes difficult to trace in terms of domicile and existence. The legal issue is that these "mysterious companies" often exert economic control over the companies that are part of the group. Often, the member companies of the group become victims of this system because, when there is accountability for unlawful acts, they must bear the responsibility on their own.

Monodisciplinary Paradigm versus Multidisciplinary Paradigm

As an example, field research data reveals that an increasing number of Indonesians, particularly those from North Sumatra Province and Riau Province, are seeking medical treatment at hospitals in Penang, Malaysia. Based on this field data, the author investigates the following data:

a. The population of Penang Island, Malaysia, is 2 million, whereas the population of Medan is 2.5 million.

b. Penang has only one mall.

c. There are 11 hospitals, but no movie theaters. All hospitals are filled with Indonesian patients seeking treatment in Penang.

d. There are 4 five-star hotels, 6 four-star hotels, and dozens of three-star and budget hotels.

e. The flight to Penang takes 20 minutes, with seven daily flights from Medan to Penang.

f. In reality, medical treatment is more affordable in Penang, and the majority of patients recover without requiring hospitalization, even after surgery, except for major surgeries or those requiring Manulife insurance claims.

g. In Indonesia, even for minor conditions like boils, patients are often hospitalized, given IV drips, and prescribed multiple medications, which are sometimes sold in limited quantities. For serious illnesses requiring medication, patients often need to purchase a full box or more. In Malaysia, doctors typically suggest buying medication outside the hospital for lower prices. In Penang, the We Ling Pharmacy is the most renowned for its affordability compared to hospital pharmacies.

h. In Malaysia, taxes on medical equipment, medications, and raw materials for medicines are nearly 0%, making healthcare more affordable. In Indonesia, however, medical equipment is taxed as luxury goods, forcing hospitals to account for depreciation costs, which significantly raises the selling price.

From the field research in Malaysia, the author identifies an antinomy between law and economics. This antinomy represents two different paradigms that require harmonization between them. The field research data reveals that the Malaysian government has successfully harmonized law and economics by reducing taxes on medical equipment and hospitals. As a result, the government has achieved higher total foreign revenue

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compared to maintaining high taxes on these sectors.

On the other hand, the Indonesian government applies the law rigidly, focusing solely on the economic perspective without considering harmonization with economic principles. The author observes that human resources across various ministries and state institutions predominantly consist of individuals with legal education, resulting in a lack of a multidisciplinary paradigm. For example, taxes on medical equipment, medication costs, and healthcare services in Indonesia are higher despite their lower quality compared to Malaysia. According to the author, the Indonesian government's rigid application of the law constitutes an unlawful act by the government, as it ultimately harms the country.

De-dollarization Due to Trade War Practices

An old issue that has found its momentum to resurface. Amid an economy transitioning toward recovery while still shrouded in uncertainty, the topic of de-dollarization has become highly intriguing for economic players and the industrial world, particularly in efforts to mitigate exchange rate risks. One of the greatest sources of risk in the movement of the rupiah's exchange rate remains its heavy reliance on the value of the United States (US) dollar (Sumarto, 2023).

The movement of the rupiah's exchange rate has always been influenced by the dynamics of the US dollar's movement. Changes in the US dollar's exchange rate directly impact the rupiah's value in the global financial markets. It is no surprise, therefore, that the volatility of the rupiah's exchange rate against the US dollar has been very high. In fact, throughout 2022, the rupiah's exchange rate against the US dollar experienced a change of more than 9.2%.

The high exchange rate volatility certainly has a negative effect on the business climate. The higher the volatility, the greater the level of risk and uncertainty faced, and the more difficult it becomes to predict future conditions. This increased uncertainty makes it harder for business actors to make decisions regarding the development of their enterprises. As a result, for most business players, economic stability is much more preferable than high economic growth.

The emergence of the de-dollarization issue is also reinforced by the declining economic hegemony of the United States (US) and, at the same time, the rise of countries with new economic power. These emerging economies are attempting to replace the US hegemony, as the current US government is struggling to address the economic crisis facing the superpower.

The government's move to pursue de-dollarization is happening at the right moment. Amid an economy that has not yet fully recovered and an environment full of challenges, the burden of rupiah volatility is heavily felt. This is further exacerbated by the still-high and increasing use of the US dollar in Indonesia's economy.

Imports of goods and services, as well as debt payments, remain economic activities that heavily rely on the US dollar. It is no surprise that when Indonesia faces these two moments, the movement of the US dollar becomes very difficult to control. In fact, several market operations conducted by Bank Indonesia (BI) have often appeared to have minimal impact and have been less effective in curbing the erratic movements of the rupiah exchange rate.

This dependence on the US dollar will continue to rise as Indonesia's demand for oil and gas imports and foreign debt repayments increases. If there are no strategic steps taken by the government and monetary authorities, this dependency will become stronger and more difficult to reduce. In such a situation, the level of risk faced by economic players will become much greater.

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The de-dollarization steps taken by the government at the bilateral level are a highly realistic and strategic move that should receive support from all economic players and the business world. In fact, bilateral trade agreements that avoid using the US dollar should be expanded and deepened.

This de-dollarization move is not without risks. Even though de-dollarization is carried out at the bilateral level between two countries, it seems to signal the raising of a war flag. The government appears to be directly challenging the hegemony of the United States, which has long been the dominant power behind the world's currency. It is not unlikely that this will provoke a reaction from the US and countries that have been loyal to it. Efforts to mitigate the potential risks from the responses that may be launched by the US and its allies need to be taken by the government.

The pieces have been played, the war flag has been raised, the drums of war have been sounded, and there is no turning back. The government must realize that de-dollarization is not just a financial risk management step, but has become a global geopolitical move that touches upon political, economic, legal, and international relations aspects.

As a country with an open economic system, Indonesia must be aware that its economic performance will be heavily influenced by policies made by other countries, both directly and indirectly. It is still fresh in our memory how the "America First" policy, proclaimed once again by Donald Trump, triggered a trade war between the US and China, which affected the global economy, including Indonesia.

Indonesia must also be prepared if its products are once again blocked from entering global markets under various pretexts, which sometimes seem unreasonable, such as environmental issues, anti-dumping policies, labor practices, and even gender-related issues that are not directly linked to production and trade activities.

It is not impossible that some countries will impose various barriers, both in the form of tariffs (tariff barriers) and non-tariff barriers, against products from Indonesia. Business actors hope that all the challenges and risks faced post-de-dollarization will be effectively mitigated, both by the government and Bank Indonesia (BI) as the authority on monetary policy in Indonesia. Business players hope that this de-dollarization step is not a gamble that risks uncertain rewards. We all hope that the government, together with BI, has thoroughly assessed the challenges and devised strategies in case the battle against US hegemony truly unfolds.

The use of local currencies in transactions (local currency transactions/LCT) for bilateral trade to replace the US dollar has been steadily increasing. However, this "de-dollarization" effort still faces several challenges and obstacles. From 2018 to May 2023, Bank Indonesia established LCT cooperation with the central banks of five countries: China, Malaysia, Thailand, Japan, and South Korea. Within ASEAN, Indonesia has been at the forefront of regional payment connectivity (RPC) and LCT. Out of the 10 ASEAN member countries, five have already signed the memorandum of understanding: Indonesia, the Philippines, Thailand, Singapore, and Malaysia (Widi, 2023).

From 2018 to March 2023, the total transactions and business actors utilizing Local Currency Transactions (LCT) have continued to increase. The number of LCT users grew from 141 businesses in 2018 to 1,249 businesses in 2022. By the first quarter of 2023, 2,405 business actors had already used LCT. The transaction value of LCT increased from 348 million USD in 2018 to 4.1 billion USD in 2022. In the first quarter of 2023, the total transactions reached 16 billion USD. However, this transaction value is still far from Indonesia's total export value. Indonesia's total exports in 2022 amounted to 291.98 billion USD, while in January-March 2023, the value was 67.2 billion USD. The Chairman of the Indonesian Exporters Association (GPEI), Benny Soetrisno, stated on Tuesday (May 16, 2023) that many exporters and importers have taken advantage of LCT. One of the benefits of LCT is that businesses do not need to incur additional costs or fees for brokers in the New York financial market, United States. However, there are still some challenges and obstacles in utilizing LCT.

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First, exporters and importers are still accustomed to conducting trade transactions in US dollars. This habit has made the transition from the US dollar to local currencies proceed slowly.

Second, it is not guaranteed that trade partners from countries that have established LCT agreements with Indonesia will be willing to conduct transactions using this mechanism. Since LCT is voluntary, Indonesian business actors have to comply with the requests of their trade partners.

Third, many businesses both domestically and internationally still rely on imported raw materials. These raw materials are purchased in US dollars from countries that have not established LCT agreements with Indonesia. "If raw materials are bought with US dollars and produced with costs using local currency, the final products are still often sold in US dollars. If these products are traded using local currency, the business calculation may not be accurate due to exchange rate differences," he explained when contacted from Jakarta.

De-dollarization is considered an act of unlawful conduct in the civil (trade) field, carried out by a superpower against another country through the use of its currency. The consequences of de-dollarization result in weaker countries becoming victims. For example, the trade war between China and Russia against the United States, related to the use of the US dollar, has led to a reduction in US investment in Indonesia.

Bad faith foreign investment

Investment is a complex issue because it cannot be viewed from just one perspective. This is especially true for investments between Indonesia and China, such as the Indonesia-China High-Speed Rail (KCIC) project, established in October 2015. An economist named Faizal Basri also spoke on this matter. China's economic growth ranks as the second largest in the world, while the United States is experiencing a decline in influence. For example, more countries are now transacting oil in Yuan or non-US Dollars. ASEAN is also increasingly reducing its dependence on the US Dollar. Western countries, including France (with the French President recently visiting China) and previously Germany's Chancellor, have made similar moves. Clearly, they need each other and benefit mutually, as China is the largest exporter in the world. China can produce goods and services that any country may need, at competitive prices.

The United States is experiencing a decline because many countries are now reducing their foreign exchange reserves in US Dollars, with more diversification taking place. In terms of technology, China is making remarkable advancements, having already developed 5G, and its military capabilities are extraordinary. Furthermore, in the realm of high-speed trains, no one can compete with China. It was estimated that by the end of 2022, China would add another 1,400 km of high-speed rail, bringing the total to over 50,000 km. If we combine all the high-speed rail networks outside of China, they would still fall short of China's total length. Whatever technology they aim to develop, China can achieve it. Even when responding to Saudi Arabia's needs, everything was executed smoothly no delays, no controversies. Millions of pilgrims were transported via high-speed trains from Jeddah and/or Mecca to Medina, which traditionally took six hours by bus, but now only takes two hours (Faizal, 2023).

Furthermore, Faizal also revealed that, in fact, the United States is envious of China's dominance. The US can no longer borrow as freely as before, printing money may no longer be effective, and what's concerning is that in the last five months, China has been selling the US debt securities it holds. At one point, China held up to 1.3 trillion USD in US debt securities, making it the largest holder. Now, as of February, that amount has decreased to around 800 billion USD.

China is facing an issue with rising unemployment. In response, they have been offering solutions, such as reaching out to steel factories and cement factories as part of their soft lending efforts. They have also brought the Patent Cooperation Treaty (PCT) to international markets. China's cement investments are widespread, and their high-speed rail projects are filled with steel and other materials. This reflects a characteristic of Chinese

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investment: bringing as many of their workers as possible to overseas projects. This approach helps reduce unemployment within China while simultaneously supporting global infrastructure development.

Related to this, in the case of foreign workers coming to Indonesia, the sovereignty remains 100% with Indonesia. Foreign workers with expertise may come to Indonesia, but they are required to pay 100 USD per month for each person. Unfortunately, this policy is not being implemented. As is widely known, to become a superpower, a country must have economic certainty. China's industry is extraordinary, and no other large country has such a high level of industrial output within its economy. China's exports are made up of 94% manufactured goods. The manufacturing industry requires raw materials, which China has, but not in sufficient quantities. This is addressed through the One Belt One Road (OBOR) project, which has now been renamed the Belt and Road Initiative (BRI). The project aims to facilitate the flow of raw materials from various countries into China. Furthermore, China is seeking to collaborate with Thailand on the Kra Canal project, which would allow oil tankers from the Middle East to bypass the Malacca Strait and instead pass through Thailand. This would save two days, or possibly one day, depending on the route. At the very least, this is part of an effort to create efficiency in China, reduce transportation costs, and ensure a smoother flow of raw materials. Additionally, if China can control the raw materials, they aim to not just purchase but also own the mines. This behavior is considered normal, as the United States also followed similar practices during its rise to power.

In practice, the concession for the KCIC (Indonesia-China High-Speed Rail) project, which was initially set for 50 years, was extended to 80 years. It is unlikely that there are no issues surrounding this decision. While China conducts business in its own way, Indonesia, on the other hand, must also take a clear stance. Rene further questioned whether Bappenas (National Development Planning Agency) has a comprehensive report that analyzes all the potential outcomes and scenarios concerning this high-speed rail project.

Regarding the party most responsible, Faizal Basri stated that following the release from the presidential palace and a press conference by the Minister of Economics, Dr. Darmin Nasution, the project was canceled because the distance was too short, and all the costs were deemed too high. The government requested that the train's speed, originally designed for a maximum of 350 km/h, be reduced to 150-200 km/h in order to lower costs. The initial cost of IDR 5.9 billion was considered expensive, and the government had initially hoped to save 30%. However, suddenly President Jokowi decided to reactivate the project and shifted the responsibility for the project from the relevant technical ministry, which was supposed to oversee the railway, to Rini Soemarno as the Minister of State-Owned Enterprises (BUMN). Faizal firmly believed that the ultimate responsibility lies with Indonesia's President Joko Widodo.

Rene then added that the high-speed rail project is actually a bilateral agreement between Indonesia and China. On the other hand, it is unilaterally stated as part of the OBOR project (now the BRI), with the assumption that if Indonesia is a member of the BRI, it should also be included in one of the banks established by China. This would imply that there should have been funding from that bank, but in reality, everything is fully financed by China. Therefore, it seems that China truly understands the behavior and mindset of the Indonesian people.

Faizal also expressed the difficulty of discussing this matter with the Indonesian government. One of the key issues highlighted is the Presidential Regulation of the Republic of Indonesia No. 93 of 2021 concerning Amendments to Presidential Regulation No. 107 of 2015 on the Acceleration of the Implementation of Infrastructure and Facilities for the Jakarta-Bandung High-Speed Rail (hereinafter referred to as Perpres No. 93 of 2021). This regulation states that the state budget *(APBN)* serves as a guarantee for this project. If not managed well, this language could pose very significant risks. In essence, this is not unusual in fact, Japan also requested a similar arrangement, as it is psychologically safer for a country to have its national budget *(APBN)* as a guarantee for debt. The problem arises when there is insufficient clarification from the government.

Faizal also explained that he had spoken with government officials, including Pak Luhut, his deputy, and the Deputy Minister of State-Owned Enterprises (BUMN) responsible for railway affairs. Sadly, it can be said that

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this project is a case of "cleaning up after others," as described by a government official who is still in a central position. "Cleaning up after others" refers to the improper process involved. Minister Jonan, at that time, rejected the project, did not agree, and did not grant permission for the groundbreaking, as there was no permit at that stage for the high-speed rail project.

Rene added that it is important to remember that Indonesia views China as technologically advanced, financially powerful, and very strong in terms of soft power. For example, China has successfully mediated between Iran and Saudi Arabia. He emphasized that it seems Indonesia is somewhat hesitant, asking if the country is genuinely committed to cooperating with China. Over the past 21 years, from 2000 to 2021, China's investment in 22 countries has totaled 240 billion USD, which has attracted many countries to seek cooperation with China.

Regarding the increasing project budget, everyone is waiting. Not only observers but also the public, because they wonder why the burden keeps increasing and why the payback period has been extended from 50 years to 80 years. The next question is whether it should continue. Why not delay the project for now? Going back to the starting point, it needs to be stated that this delay will not burden the country's foreign exchange reserves.

Solutions for Preventing Illegal Acts through *Due Diligence*

It can be concluded that to avoid illegal acts, the application of due diligence instruments is necessary to understand the potential losses of one party as a result of the actions of another party. Due diligence can be carried out by all parties, including individuals, companies, and even the government, to assess the profile of potential partners and analyze the various risks involved.

Although due diligence and audits overlap, there are several key differences between them. The differences between due diligence and audit are as follows.

Objective

The objective of an audit is more focused on examining and adjusting whether a company's financial statements truly reflect the actual situation. In contrast, the goal of due diligence goes beyond that. Due diligence aims to inform potential investors about various aspects of a company's condition before making investment or business decisions.

Scope

From the objectives, it is clear that audit and due diligence have different scopes. An audit includes an examination of the financial condition of the company. While this is also part of due diligence, due diligence covers a broader scope, including other business areas as outlined in the types of due diligence discussed above.

Involved Parties

Audits are usually carried out by professional auditors or accountants. Due diligence can also be conducted by them, but typically, the due diligence process involves a larger organization, such as consulting firms, representatives from investment companies, and others.

Cost

Due to the differences in scope, the costs associated with completing an audit and due diligence are also different. Audit costs are usually more fixed, while due diligence costs tend to be more variable. This is because the scope or areas being investigated in due diligence are broader.

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In efforts to detect legal actions and potential losses as a result, the first step is Legal Due Diligence, particularly concerning authority, internal legal standing, and external and internal accountability. Legal Due Diligence (LDD) is an examination carried out by legal consultants on a company. Companies planning mergers, consolidations, or acquisitions require a Legal Due Diligence process. The findings from this process can significantly influence the decisions that the company will make.

Legal Due Diligence, or LDD, is a thorough examination performed by a legal consultant on a company or transaction object to obtain material information or facts to assess the condition of the company or transaction object. According to Rio Christiawan in "Legal Due Diligence," due diligence audit is an activity aimed at assessing legal risks that might arise, particularly those associated with the transaction to be undertaken by the parties involved.

In simple terms, the process of integrity due diligence ideally focuses on identifying risks that are often not disclosed. This process can help reduce risks, assist in decision-making based on available information, identify more opportunities, and manage situations more effectively. Due diligence processes are not limited to legal matters but can also involve or encompass other aspects that need to be evaluated. Some examples of variations include financial, tax, environmental, and customer due diligence.

Financial Due Diligence refers to an in-depth examination conducted by accountants or financial consultants on a company's financial condition. Tax Due Diligence involves a review of a company's tax record and history. Environmental Due Diligence entails a thorough examination or assessment of potential risks related to the environment, including potential losses or environmental remediation obligations. Customer Due Diligence includes identification, verification, and monitoring carried out by financial service providers to ensure that transactions align with the customer's profile, characteristics, and transaction patterns.

Broadly, there are two types of LDD: Full Due Diligence and Limited Due Diligence. As the name suggests, Full Due Diligence involves auditing all legal aspects of a company, including its articles of association, capital structure and shares, shareholder and management structure, licensing and approvals, company assets, insurance, labor or employees, agreements with third parties, and any existing legal disputes. This type of LDD is typically conducted by companies that intend to go public. It is also frequently used by companies planning mergers, acquisitions, and consolidations.

Limited Due Diligence (LDD) is an audit conducted on individuals rather than companies. This type of due diligence is typically applied in matters such as loans, licensing, and the acquisition of assets or specific transactions.

The objectives of due diligence can be summarized in four key aspects. First, it aims to determine the legal status of the documents being audited. Second, it examines the legality of the legal entity. Third, it assesses the level of compliance of the legal entity. Fourth, it provides legal insight on a particular policy. In practice, Legal Due Diligence (LDD) offers numerous benefits. During a seminar hosted by Hukumonline, SSEK Indonesia Legal Consultants highlighted that LDD provides numerous advantages in the process of buying and selling companies. The benefits extend not only to the seller but also to the buyer.

The step of reflecting the current condition of the company, whether the company complies with all regulations or not.

Regarding the stages, there are four stages in LDD, namely the signing of the confidentiality agreement (in case of acquisition), team formation, preparation of the Due diligence request list, and document review. At least eight documents need to be reviewed in the LDD process. The documents are as follows:

a. Company's Articles of Association documents, including the deed of incorporation, minutes of the

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shareholders' meeting, shareholders' list, company structure, and proof of company capital deposit.

b. Company's assets documents, including land certificates, vehicle ownership certificates, shareholding documents in other companies, and other assets.

c. Third-party agreement documents, including loan agreements, cooperation agreements, agreements with shareholders, and other agreements.

d. Company's licensing and approvals documents, including the company's domicile certificate, company registration certificate, government-issued licenses, and other documents.

e. Documents related to the company's employment issues, including company regulations, employee social security, foreign worker permits, wages, work agreements, and other documents.

f. Company's insurance documents, including building insurance policies (building), vehicle insurance policies, cooperative insurance policies, savings insurance policies, and other insurance policies.

g. Company's tax documents, including company tax ID (NPWP), land and building tax, taxes owed, and other tax documents.

h. Documents relating to the company's involvement in lawsuits and disputes, both inside and outside the court.

Due diligence itself refers to a procedure in the business and investment world. This procedure focuses on the inspection process aimed at ensuring that potential investors do not make wrong investment decisions (Aini, 2023).

Due diligence is an investigation, audit, or review carried out to confirm facts or information. In other words, due diligence is a systematic mechanism to anticipate risks from bussiness or investment decision. In the financial world, this procedure is conducted to examine the financial history of a party before proceeding with a transaction. Due diligence is typically carried out by research firms, fund managers, investors, risk & compliance analysts, and brokers. In addition to financial purposes, due diligence is also commonly performed during background checks in recruitment processes or product review evaluations.

Based on its purpose, the types of due diligence include the following.

1. Commercial Due diligence

The purpose of this type of due diligence is to analyze all aspects related to the growth potential of a business, including:

a. market share

b. positioning

c. business prospects

d. business opportunities

In addition, the examiner or investigator will also assess the company's supply chain, market analysis, sales pipeline, and R&D pipeline. Human resources and management will not escape scrutiny either. Commercial

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due diligence is typically conducted by investors before they invest in a company.

Legal Due diligence

As the name suggests, this type of due diligence focuses on examining all legal and administrative components of a company. As an investor one certainly would not want to discover later that the invested company has legal issues or engages in illegal practices. The purpose of legal due diligence is to ensure that the company has resolved matters related to licensing and legality, such as:

a. Asset ownership

b. Data protection & privacy

c. Intellectual Property Rights (IPR)

In addition, the investigator will also examine whether the company is involved in any ongoing legal proceedings.

Financial Due diligence

Financial due diligence is the most well-known type of due diligence. This type of due diligence focuses more on auditing the financial condition of the company. All financial statements will be reviewed and analyzed to assess whether the company's finances are healthy or if there are potential risks in the future that need to be anticipated.

Tax Due diligence

The next type of due diligence is related to taxation. Tax due diligence is usually conducted separately from financial due diligence. One of the main aspects to be examined is the company's tax compliance to date. In addition, the examiner will also analyze whether there are potential tax burdens in the future that can actually be optimized.

Environmental Due diligence

As the name suggests, environmental due diligence focuses more on the social responsibilities that the company has fulfilled. According to Sum Up, this type of due diligence will include an investigation into (Up, 2023):

a. The company's carbon footprint history

b. The company's emission history

c. The company's compliance with environmental standards

Due diligence on environmental aspects is particularly relevant for industrial companies that have the potential to impact the environment.

6. **Operational Due diligence**

When assessing the growth potential of a business, financial statements alone may not be sufficient as a basis for evaluation. Prospective investors need to examine the company's operational activities to identify risks that might be difficult to detect through a financial audit alone.

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Examples of analysis in this type of due diligence include:

a. Assessment of top-level and management-level performance

b. Insurance policies and employee compensation

c. Human resource development

C. Investment Implementation Solution for Resolving Property Rights Disputes Through Supervision

According to the analysis, unlawful acts are characterized by two factors: bad faith from one party and the lack of application of the principle of caution by both parties. The solution is to conduct supervision both before the contract and during its execution. Essentially, due diligence is a form of pre-contract supervision, and its results are crucial for the success and sustainability of investment ventures. According to the World Health Organization (WHO, 2013), the functions of supervision are as follows:

a. Improve order, savings, efficiency, and effectiveness in the use of organizational resources.

b. Provide programs and services that align with the organization's mission.

c. Protect existing resources from waste, misuse, mismanagement, errors, and fraud.

d. Enhance compliance with laws and regulations, policies and procedures, and ethical values.

e. Identify risks and develop effective strategies and procedures to control or manage the organization.

f. Develop and maintain reliable financial and non-financial data, as well as timely financial and non-financial reports.

According to Aberham Yohannes and Desta G/Michael, the objectives of government oversight are as follows:

a. Improve the quality, efficiency, and effectiveness of government decision-making.

b. Allow citizens to challenge the validity of a government decision that applies to them.

c. Provide a mechanism to ensure that government actions within its authority are in accordance with the law.

d. Provide a mechanism to achieve justice in individual cases.

e. Develop an accountability system for government decision-making (Yohannes, 2009).

2. Types of Supervision

Prajudi Atmosudirdjo (1994) divides supervision into two categories: preventive supervision and repressive supervision; as well as internal supervision and external supervision. Based on its nature, supervision can be differentiated as follows:

a. Political, when the focus is on effectiveness and/or legitimacy.

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b. Juridical (legal), when the goal is to uphold juridicality and/or legality.

c. Economic, when the target is efficiency and technology.

d. Moral and ethical, when the goal is to assess the state of morality.

Thomas P. DiNapoli (2010) divides supervision/control into four types:

a. Directive controls: Supervision/control designed as guidelines for employees to help them achieve the goals set by the department.

b. Preventive controls: Supervision/control designed to prevent errors or undesirable events. Examples of preventive controls include task separation, which is specifically designed to prevent fraudulent actions and unmonitored activities by distributing financial tasks among two or more people.

c. Detective controls: Supervision/control designed to identify the underlying cause of an error or other undesirable events in a timely manner. Examples of detective controls include reconciliations or inspections of task performance.

d. Corrective controls: Supervision/control designed to identify deficiencies and determine the actions to be taken to address them. Examples of corrective controls include providing additional training for employees and reviewing current procedures (DiNapoli, 2010).

In general, preventive controls are stronger than detective controls because their goal is to prevent errors and other undesirable events before they happen. However, this does not mean that detective controls are not important. Detective controls are still essential, but they often identify errors or undesirable events after they have already occurred, making corrective action more difficult. Therefore, more emphasis should be placed on preventive controls, as their purpose is to prevent mistakes and unwanted events from occurring. According to G. Feltoe, supervision can be categorized into parliamentary controls and court controls. Parliamentary oversight is carried out by a parliamentary body, while court supervision is conducted by the judiciary.

Conclusion

Rosa Agustina's views on unlawful acts are profound and moderate. The author will elaborate on how the classification of unlawful acts, according to Rosa Agustina, contributes to the concept of legal quality audit. Legal quality audit is a product of the Theory of Legal Quality Science, discovered by Tarsisius Murwadji (2017), a professor of Economic Law at Universitas Padjadjaran. The structure of the Theory of Legal Quality Science consists of two main parts, which are:

First, **Concept** serves as the philosophical foundation of the Theory of Legal Quality Science, which consists of **flawlessness**, **customer satisfaction**, and **continuous improvement without end**. This concept is a qualitative thought that is **nomenom**, meaning it is not visible but can be felt. Second, **Parameter** refers to the quantitative aspect, which results from measurements or evaluations derived from the **concept**. These parameters include: Reliability of the product (quality of product), Minimal cost (cost), Ease of access (delivery), Safety, Good service (moral or hospitality, Systematic, Adaptation to development (environmental)

The output of the Theory of Legal Quality Science is the Legal Quality Audit System, which measures based on multidisciplinary quality parameters, namely: Reliability of the product (quality of product): This is the technical aspect; Minimal cost (cost): This represents the economic aspect; Ease of access (delivery): This is the communication and transportation aspect; Safety: This pertains to the resilience aspect; Good service (moral or hospitality):This is related to the moral or hospitality aspect; Systematic: This represents the strategic aspect;

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Adaptation to development (environmental): This refers to the aspect of change and lifestyle in the business field.

The author believes that the implementation of Legal Quality Audit in the field of investment is an appropriate strategy because it can be carried out at the pre-investment stage, investment execution stage, and investment accountability stage. With Legal Quality Audit, the potential for unlawful acts in investment can be detected, from the pre-investment phase to the conclusion of the investment agreement.

The concept of unlawful acts according to Rosa Agustina, when linked to the Theory of Legal Quality Science, can be explained as follows:

a. Contrary to the legal obligations of the actor: this relates to a concept in legal quality audit, namely "flawlessness," and the parameter of legal quality audit, which is the reliability of the product. If an employee in the Ministry of Finance performs a task that contradicts their obligation, it means that what they are doing constitutes a breach of duty. In quality science, what the Ministry of Finance employee does should not only be in accordance with their duties but should also exceed or be better than their legal obligations. In relation to the audit quality parameters, including the reliability of the product (quality of product), it means that the performance of tasks that do not align with their obligations is clearly an unreliable action because it would harm the state.

b. Contrary to the subjective rights of others: the concept of quality audit that is not in line is "customer satisfaction," while the parameter that is violated is safety. In quality science, one of the main concepts or pillars is customer satisfaction, meaning that foreign investors or entrepreneurs should be satisfied by the Ministry of Finance employees due to their professional work. Therefore, it should not contradict the rights of foreign investors, which are clearly regulated and protected by laws and regulations. From the perspective of the parameter, related to safety, in this case, if a foreign investor does not fulfill their obligations, such as failing to pay taxes or paying taxes incorrectly, the tax officer should reprimand, impose sanctions, and direct them to pay taxes properly. In many cases, however, certain tax officers engage in wrongdoing by encouraging the foreign investor to commit a crime that benefits both parties.

c. Contrary to decency: in relation to foreign investment, this can be carried out both by foreign entrepreneurs and Ministry of Finance officers. Foreign entrepreneurs often discriminate against the rights of employees from their own country compared to domestic employees. This decency issue contributes to legal quality science, particularly the "moral" parameter, which is understood not only as professionalism in carrying out duties but also "courtesy in service," so that foreign business players feel as if they are in their own country. "Courtesy in service," when continuously applied, will reduce the negative impression regarding legal matters. In quality science, if the service is friendly, it will develop into a quality culture.

d. Contrary to decency, accuracy, and caution: The author appreciates Rosa Agustina for classifying unlawful acts as contrary to decency, accuracy, and caution, as these terms are often used in quality science. Accuracy and caution contribute to the concept of legal quality science, namely "deficiency-free." Decency contributes to the formulation of the concept of "customer satisfaction." "Patut" is a term in Javanese that carries a deep meaning to convey something deserving or appropriate, as it pertains to an inner feeling.

Suggestion

Based on the above analysis, the Legal Quality Audit System is highly effective in predicting, detecting, and monitoring the implementation of investments in Indonesia. Therefore, it can be applied from simple to

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complex levels, such as legal quality audit certification. Consequently, the government needs to regulate the legal quality audit system, covering aspects such as its structure, processes, certification, and the agencies responsible for its implementation.

The author proposes two methods for implementing the Legal Quality Audit:

First, Contractual Implementation: This involves the certification process, meaning that both foreign and local investors are required to obtain certification to invest in government or large-scale private projects involving foreign investors. The certification is issued by a certification body authorized or approved by the government.

Second, Non-Contractual Implementation: This involves applying the legal quality audit system without certification. The audit process is conducted by an internal team, such as a Quality Control Unit or a team formed by the Quality Management Unit under the supervision of the President Director of the Limited Liability Company.

Considering that the Theory of Quality Science and the Quality Assurance Audit System, as discovered by Tarsisius Murwadji, has only recently been studied and deepened academically through doctoral dissertations, particularly at the Faculty of Law, Universitas Padjadjaran, it is advisable to conduct broader socialization among government officials, lawmakers, as well as foreign and domestic entrepreneurs and investors.

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