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A Critical Examination of the Absence of Intent in Establishing Criminal Liability in the Central Jakarta District Court Decision No. 12/Pid.Sus-TPK/2024/PN.Jkt.Pst

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Original Article

Abstract

This study conducts a critical analysis of Court Decision No. 12/Pid.Sus-TPK/2024/PN.Jkt.Pst, which is deemed to create confusion regarding the role of mens rea (malicious intent) in criminal liability for corruption. Using a normative juridical method and a case study approach, this research examines the case of Karen Agustiawan, the former CEO of Pertamina, who was convicted in an LNG procurement case. The main findings indicate that the Defendant was proven to have no malicious intent to cause state financial loss and did not gain personal profit. Furthermore, the state losses that occurred were attributed more to external factors, such as force majeure and global market changes. The verdict is criticized for disregarding fundamental principles of criminal law, namely *actus non facit reum nisi mens sit rea* (an act does not make one guilty unless the intent is guilty) and *geen straf zonder schuld* (no punishment without fault). In conclusion, this research emphasizes that mens rea is a fundamental requirement, and therefore, the absence of malicious intent on the Defendant's part should have been a central consideration in the judgment.

Keyword: *Intent, Corruption, LNG*

Abstrak

Kajian ini melakukan analisis kritis terhadap Putusan Pengadilan Nomor 12/Pid.Sus-TPK/2024/PN.Jkt.Pst, yang dinilai menciptakan kebingungan terkait peran mens rea (niat jahat) dalam pertanggungjawaban pidana korupsi. Menggunakan metode penelitian yuridis normatif dan pendekatan studi kasus, penelitian ini mendalami perkara Karen Agustiawan, mantan Direktur Utama Pertamina, yang dinyatakan bersalah dalam kasus pengadaan LNG. Hasil data menunjukkan bahwa Terdakwa terbukti tidak memiliki intensi jahat untuk merugikan keuangan negara dan tidak memperoleh keuntungan pribadi. Kerugian negara yang terjadi pun lebih diatribusikan pada faktor eksternal, seperti force majeure dan perubahan pasar global. Putusan tersebut dikritik karena mengabaikan prinsip dasar hukum pidana, yakni *actus non facit reum nisi mens sit rea* (perbuatan tidak membuat seseorang bersalah tanpa niat jahat) dan *geen straf zonder schuld* (tiada pidana tanpa kesalahan). Kesimpulannya, penelitian ini menekankan bahwa mens rea adalah syarat fundamental, sehingga ketiadaan niat jahat pada Terdakwa semestinya menjadi pertimbangan sentral dalam putusan tersebut.

Kata Kunci: *Niat, Korupsi, LNG*

1. INTRODUCTION

Law serves as a fundamental instrument for realizing a just state order. The hierarchy of statutory norms is firmly established in Article 7(1) of Law No. 12 of 2011 on the Establishment of Legislation, which provides a clear ranking of legal sources.¹ This hierarchical structure underscores the expectation that legislation must be drafted in an ideal and precise manner, leaving no interpretive ambiguity beyond the text itself and preventing legal gaps that might otherwise be filled by subordinate regulations. Legislation is never formulated without a normative foundation, one of which is the use of legal principles. Indonesian criminal law, for instance, is built upon a number of foundational principles, including the maxim *geen straf zonder schuld*—there is no punishment without fault. This principle is expressly codified in Part II on Criminal Responsibility, Article 36(1) of the 2023 Criminal Code, which states that “A person may only be held liable for acts committed intentionally or through negligence.” Negligence, in this context, constitutes a form of culpability arising when an individual fails to meet the behavioral standards required by law, and such failure stems from the person’s own conduct.²

Wirjono Prodjodikoro identifies several essential elements of a criminal act, namely:³ (1) the existence of a subject or perpetrator; (2) the presence of culpability; (3) the commission of an unlawful act; (4) conduct that is either prohibited or required by law and sanctioned by criminal penalties when violated; and (5) its occurrence within a specific time, place, and context. Similarly, Sudarto outlines several conditions that must be fulfilled before criminal responsibility can be imposed: ⁴ (1) a criminal act must have been committed by the offender; (2) the act must contain an element of fault, whether intentional or negligent; (3) the offender must possess the capacity for criminal responsibility; and (4) there must be no grounds for excuse. Taken together, these doctrinal views demonstrate that the element of fault constitutes a central component in establishing an individual’s criminal liability.

A person who commits a criminal act is deemed blameworthy because, from a societal standpoint, the individual retains the capacity to choose alternative conduct if they do not wish to engage in the prohibited act.⁵ Nevertheless, the mere commission of a criminal offense does not automatically imply that the perpetrator possesses the capacity to be held legally accountable. To impose criminal liability, it must first be

¹ Indonesia, “Undang-Undang Republik Indonesia Nomor 12 Tahun Tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Lembaran Negara Nomor 5234)” (2011), n. Lihat Pasal 7.

² Fitri Wahyuni, *Dasar-Dasar Hukum Pidana Di Indonesia* (Tangerang: PT Nusantara Persada Utama, 2017).

³ Kanter and Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya* (Jakarta: Stora Grafika, 2002), hlm. 208.

⁴ Hanafi Amrani and Mahrus Ali, *Sistem Pertanggungjawaban Pidana Perkembangan Dan Penerapan* (Jakarta: Sinar Grafika, 2015), hlm. 22.

⁵ Amrani and Ali, *Sistem Pertanggungjawaban Pidana Perkembangan Dan Penerapan*.

established that the individual is capable of responsibility (*toerekeningsvatbaarheid*).⁶ This requirement concerns the psychological condition of the offender, emphasizing both the existence of psychological culpability and the relationship between the offender's mental state and the act committed. Such an assessment determines whether the individual can be held accountable for their conduct.⁷

Sudarto further explains that the second component of “fault” in the context of criminal responsibility lies in the emotional or volitional connection between the perpetrator and the act attributed to them. This connection may manifest either as intent (*dolus*) or negligence (*culpa*).⁸ Accordingly, an individual may be held criminally liable only when the following conditions are met:⁹ 1) The person is aware that their conduct violates the law; and 2) The person possesses the conscious ability to form and control their own will.

Once an individual is found to have committed a criminal act and is deemed capable of bearing criminal responsibility, the next step in establishing culpability is to determine the presence of intent. For this reason, the concept of “guilt” cannot be separated from the element of intent, whether the conduct was carried out deliberately (*opzett* or *dolus*) or through negligence (*culpa*).

Intent is commonly understood as a “vicious will” or “guilty mind,” which in Indonesian refers to an “evil desire” or “malicious intent.” The presence of intent is fundamental in classifying conduct as criminal.¹⁰ Thus, the imposition of criminal sanctions requires not only that the act contravene the law but also that criminal responsibility—particularly the element of intent (*mens rea*)—be established. Punishment cannot be imposed in the absence of this intentional element.

A relevant example of criminal liability imposed despite the absence of clearly established intent can be observed in Decision No. 12/Pid.Sus-TPK/2024/PN.Jkt.Pst involving Karen Agustiawan. As the former President Director of Pertamina, she was found guilty of corruption under Article 2(1) of Law No. 31 of 1999 on the Eradication of Corruption in connection with the procurement agreement for Liquefied Natural Gas (LNG) with Corpus Christi Liquefaction (CCL), LLC, a United States-based company. The agreement originated from a presidential directive intended to avert a projected national gas deficit. However, following a global crisis—namely the Covid-19 pandemic—the worldwide gas supply experienced a surplus, forcing Pertamina to resell the contracted LNG at a significantly reduced price due to the pandemic's economic impact.

⁶ Teguh; Prasetyo, *Hukum Pidana*, 2017th ed. (Jakarta: Rajawali Pers, 2017), hal. 149.

⁷ Marus Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2011).

⁸ Sudarto, *Hukum Pidana I* (Semarang: Yayasan Sudarto Fakultas Hukum Undip, 1990).

⁹ Sudarto.

¹⁰ Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, 4th ed. (Jakarta: Kencana Prenada Media Group, 2011), hal. 5.

Although the financial losses incurred by the state in this case resulted from a force majeure event—an unforeseeable and unavoidable circumstance—and despite the fact that Karen Agustiawan neither obtained any personal benefit nor possessed any intention to harm state finances, the court nevertheless classified her conduct as an act of corruption. This discrepancy between the factual findings established at trial and the court's evaluation of the element of culpability raises fundamental questions regarding the proper role and boundaries of intent within the framework of criminal liability. In light of this issue, the present study addresses two central inquiries: first, the conceptual position of intent as a prerequisite for imposing criminal sanctions in determining the culpability of corruption offenders; and second, a critical examination of the absence of intent in the imposition of criminal liability as reflected in the Central Jakarta District Court Decision Number 12/Pid.Sus-TPK/2024/PN.Jkt.Pst.

2. RESEARCH METHODOLOGY

This study employs a normative (doctrinal) legal research method designed to identify relevant legal principles and regulatory frameworks in addressing the issue of intent (*mens rea*) within the context of criminal liability for corruption. The research adopts a descriptive character, providing a systematic account of the legal circumstances under examination without altering or manipulating variables, consistent with the definition provided by Soerjono Soekanto.¹¹ All data utilized in this study consist of secondary sources collected through an extensive literature review.¹² The legal materials analyzed include: (1) primary legal materials, namely the Criminal Code, Law No. 31 of 1999 as amended by Law No. 20 of 2001, and pertinent judicial decisions; (2) secondary legal materials such as scholarly literature, academic journals, and other scientific publications concerning criminal responsibility and the concept of intent; and (3) tertiary legal materials including dictionaries and encyclopedias to support the clarification of legal terminology and concepts. This research adopts two principal approaches: the statute approach, focusing on the legal provisions governing corruption offenses, and the case approach, using the Central Jakarta District Court Decision No. 12/Pid.Sus-TPK/2024/PN.Jkt.Pst as the primary case study. The collected data are analyzed qualitatively by interpreting applicable norms and doctrinal views, thereby generating legal arguments that directly address the research questions.

¹¹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2015).

¹² Rayhan Fiqi Fansuri and Juan Matheus, "Enforcement of Human Rights through Criminal Law Against Environmental Destruction Due to Batik Industry Activities," *Indonesian Journal of Criminal Law Studies* 7, no. 2 (2022): 291–316, <https://doi.org/https://doi.org/10.15294/ijcls.v7i2>.

3. RESULT AND DISCUSSION

3.1. The Position of Intent in The Criminal Requirements for Imposing Criminal Sanctions on Corruption Perpetrators

Within the Indonesian criminal law system, a person cannot be convicted merely for committing an act prohibited by law. Criminal liability requires more than proof of a physical act; it necessitates establishing a connection between the external conduct and the perpetrator's mental state. This framework is rooted in the principle of dualism in criminal responsibility, which mandates the cumulative presence of two essential elements: *actus reus* and *mens rea*.¹³ These components—*actus reus* as the guilty act and *mens rea* as the guilty mind—constitute the core requirements for attributing criminal liability.¹⁴ *Actus reus*, the objective element, refers to “a manifest external act arising from the perpetrator's will.” It encompasses conduct explicitly defined as unlawful within criminal statutes. In this sense, *actus reus* represents the legally prohibited act itself. In contrast, *mens rea*, the subjective element, concerns “the mental state or culpable intent underlying the act.” It reflects the perpetrator's psychological condition at the time the offense was committed. As Sudarto explains, *mens rea* involves assessing the perpetrator's mental disposition and underlying reasons for engaging in the criminal behavior, thereby forming the basis of subjective criminal responsibility.¹⁵

The doctrines advanced by these scholars rest upon fundamental legal maxims, one of which is the principle *actus non facit reum nisi mens sit rea*, meaning “an act does not render a person guilty unless the mind is also guilty.”¹⁶ This maxim underscores that criminal punishment cannot be imposed solely on the basis of a prohibited act (*actus reus*); it must also be shown that the conduct was accompanied by a culpable or morally blameworthy mental state (*mens rea*). A similar concept is reflected in the principle *geen straf zonder schuld*, or “no punishment without fault.”¹⁷ In essence, this principle affirms the necessity of personal culpability, stipulating that sanctions may only be imposed on individuals who are mentally and morally accountable for their actions. This principle establishes that a person may be convicted only if the element of culpability is first proven in connection with their conduct. Zainal Abidin identifies several components encompassed within *mens rea*, namely: 1) Capacity for Responsibility (*toerekeningsvatbaarheid*): This constitutes a fundamental requirement.¹⁸ An individual can

¹³ Regy Trihardianto, “Pertanggungjawaban Pidana Korporasi Terhadap Hak Penyandang Disabilitas Di Bidang Ketenagakerjaan Dalam Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas,” *Jurnal Ius Kajian Hukum Dan Keadilan* 6, no. 1 (2018): 48–61, <https://doi.org/10.29303/ius.v6i1.537>.

¹⁴ Hasbullah F Sjawie, *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi* (Jakarta: Prenada Media Group, 2017).

¹⁵ Rr. Dijan Widijowati, “A Comparative Study Of Principle Of Guilt In The Provision Of Indonesian And English Criminal Law,” *Krtha Bhayangkara* 18, no. 3 (2024): 559–68, <https://doi.org/10.31599/krtha.v18i3.3302>.

¹⁶ Eddy O S Hiariej, *Prinsip-Prinsip Hukum Pidana*, Revisi (Jakarta: Cahaya Atma Pustaka, 2015).

¹⁷ P A F Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Citra Aditya Bakti, 2011).

¹⁸ Agustian Fery Fernando Sitanggang and T. Riza. Zarzani, “Criminal Responsibility For Perpetrators Of Fraud By Means Of Hypnosis,” *Lawyer Jurnal Hukum* 1, no. 2 (2023): 44–58, <https://doi.org/10.58738/lawyer.v1i2.447>.

possess *mens rea* only if they have the mental capacity to comprehend their actions and exercise control over their will. 2) Fault in the Broad Sense (Schuld): Serving as the core of *mens rea*, this concept is further divided into two primary forms: (a) *Dolus* (Intent) — a mental state in which the perpetrator intends the act and/or its consequences; and (b) *Culpa* (Negligence) — a mental state in which the perpetrator does not desire the harmful outcome, but their conduct reflects a failure to exercise the level of care required by law.

Accordingly, *mens rea* may be understood as a general concept referring to a “guilty mind,” which forms the essential basis for establishing subjective criminal responsibility. The statutory formulation of intent is not confined solely to the explicit use of the term “intentionally”; within the Indonesian Criminal Code, the element of “unlawfulness” may also reflect the presence of intent.¹⁹ Moeljatno emphasizes that determining the unlawful nature of an act requires prior understanding of the element of intent. Thus, a perpetrator must be aware that their conduct is unlawful in order for intent to be established.²⁰ Article 2(1) of the Anti-Corruption Law provides:

“Any person who unlawfully commits an act to enrich themselves, another person, or a corporation that may cause losses to state finances or the national economy shall be punished with life imprisonment or a minimum imprisonment of four (4) years and a maximum of twenty (20) years, and a fine of at least Rp. 200,000,000.00 and at most Rp. 1,000,000,000.00.”

From the wording of the provision, the perpetrator’s intent in corruption offenses may be assessed through two key elements: 1) Whether the perpetrator was aware that their conduct constituted an unlawful act; and 2) Whether the unlawful act was carried out for the purpose of enriching themselves, another individual, or a corporation, thereby causing losses to state finances or the national economy. Unlawful conduct carried out with the purpose of enriching oneself, another individual, or a corporation—where such conduct has the potential to harm state finances or the national economy—constitutes an act of corruption.²¹ Intent serves as a central element of this offense, as the presence or absence of culpability is determined by whether the perpetrator possessed a malicious or wrongful intent. Accordingly, to satisfy the requirements for criminal liability in corruption cases, both elements must be established to demonstrate that the perpetrator acted with deliberate unlawful intent. When the perpetrator is aware of the unlawful nature of their conduct and intends to

¹⁹ Elstonsius Banjo, Surastini Fitriasih, and Eva Achjany Zulfa, “Maladministration and Intentionality on The Criminal Corruption Court in Indonesia,” *Jurnal Kajian Ilmu Hukum Dan Syariah* 7, no. 2 (2022): 64–72, <https://doi.org/10.22373/petita.v7i2.147>.

²⁰ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2008).

²¹ Ade Adhari, Anis Widyawati, and Indah Siti, “Peran Perbandingan Hukum Pidana Terhadap Kebijakan Formulasi Delik Memperdagangkan Pengaruh (Trading In Influence) Sebagai Tindak Pidana Korupsi,” *Jurnal Hukum & Pembangunan* 53, no. 2 (2024): 331–46, <https://doi.org/10.21143/jhp.vol53.no2.1562>.

commit the act, the resulting corruption offense may be subject to punishment proportional to the gravity of the wrongdoing.

3.2. A Critical Examination of the Absence of Intent in Determining Criminal Liability in the Central Jakarta District Court Decision No. 12/Pid.Sus-TPK/2024/PN.Jkt.Pst

Intention constitutes a fundamental element in criminal law. It reflects the psychological state of the offender at the time the criminal act is committed, and this mental condition plays a decisive role in determining whether criminal punishment may be imposed. Indonesian law does not explicitly define the concept of intention; however, within criminal law, intention is generally understood as the malicious or culpable state of mind underlying the commission of an offense.²² This understanding is consistent with Article 18 of the Swiss Criminal Code, which provides that “whoever commits an act knowingly and willingly commits the act with intent.” In other words, a person is deemed to have acted intentionally when they both desire and are aware of the nature of their conduct, thereby demonstrating conscious will and awareness in performing the act.

Simons asserts that intention—viewed through the lens of social ethics—constitutes the foundation of criminal responsibility. *Mens rea* is understood as the psychological condition of the perpetrator at the time the offense is committed, and this mental state forms the basis upon which criminal sanctions are justified.²³ With respect to the offender’s psychological condition, theories of intent are generally divided into two principal categories:²⁴

1) Will Theory (*wilstheorie*)

Under the will theory, the essence of intent lies in the perpetrator’s deliberate will to perform an act that satisfies the statutory elements of a criminal offense. The focus is on the existence of a purposeful volition to bring about the prohibited conduct.

2) Knowledge or Imagination Theory (*voorstellings-theorie*)

In the knowledge or imagination theory, intent is characterized by the perpetrator’s ability to foresee or imagine the consequences of their conduct. This approach emphasizes what the offender knew—or reasonably could have anticipated—at the moment the act was carried out.

²² Edo Bintang Joshua and Ade Adhari, “Analisis Ketiadaan Niat (*Mens Rea*) Dalam Pemidanaan Pada Putusan Pengadilan Negeri Jakarta Pusat Nomor 844/Pid.B/2019/PN.JKT.PST,” *Jurnal Hukum Adigama* 4, no. 2 (2021): 3930–52, <https://doi.org/10.24912/adigama.v4i2.17975>.

²³ Hiariej, *Prinsip-Prinsip Hukum Pidana*.

²⁴ Sudarto, *Kapita Selekta Hukum Pidana* (Bandung: Alumni, 1993), hal. 132.

A person's intention may be identified through three forms of intentionality or mental states that reflect different degrees of culpable awareness:²⁵

- 1) Intention as Purpose (*opzet als oogmerk or dolus directus*)
This represents the most straightforward form of intent. Here, the perpetrator acts with the explicit aim of bringing about a prohibited consequence; the act would not have been committed had the intended outcome not been desired.
- 2) Intention with Conscious Certainty (*opzet met zekerheidsbewustzijn or noodzakelijkheidbewustzijn*)
Under this form, the perpetrator's conduct entails two types of consequences:
 - a. one that is directly intended by the perpetrator, whether or not it constitutes a separate offense; and
 - b. another that is not intended but is understood to be a necessary and inevitable result of achieving the primary objective.
- 3) Intention with Conscious Possibility (*voornwaardelijke opzet or dolus eventualis*)
This form arises when the perpetrator consciously foresees the possibility that their actions may produce certain harmful consequences, yet proceeds regardless, and the anticipated consequence subsequently materializes.

Decision No. 12/Pid.Sus-TPK/2024/PN.Jkt.Pst. represents a significant example of the ambiguity surrounding the boundaries of criminal liability in corruption cases. The case involves the following defendant:

Table 1.
Identity of the Defendant

Full Name	: Galaila Karen Kardinah (commonly known as Karen Agustiawan)
Place of Birth	: Bandung
Age/Date of Birth	: 65 years/October 19, 1958
Gender	: Female
Nationality	: Indonesian
Address	: Galaila Karen Kardinah (commonly known as Karen Agustiawan)
Religion	: Islam
Occupation	: Private-sector professional

The defendant is the former President Director of PT Pertamina (Persero) from 2009 to 2014. In 2012, government projections regarding a potential national gas deficit (2009-2040) prompted PT Pertamina to plan to procure Liquefied Natural Gas (LNG) from the international market. This policy, implemented by then-President Director Karen Agustiawan, aimed to meet domestic energy needs, particularly for PT PLN (State Electricity Company) and the fertilizer and petrochemical industries. One of the suppliers selected for the collaboration was Corpus Christi Liquefaction (CCL), LLC of

²⁵ Sudarto, *Kapita Selekta Hukum Pidana*.

the United States. However, the KPK Public Prosecutor (JPU) alleged that Karen unilaterally made the decision to enter into a long-term contract with CCL, without adequate review and analysis, and without the approval of PT Pertamina's Board of Commissioners.

Fluctuations in the global and domestic gas markets following the purchase contract agreement triggered the problem. When the LNG cargo from CCL arrived in 2019, the domestic market experienced an oversupply and was unable to absorb it. Consequently, PT Pertamina had to resell the LNG on the international market at a lower price than the purchase price. This action resulted in state losses estimated by the Supreme Audit Agency (BPK) through an investigative audit at USD 113.84 million (Rp 1.77 trillion). Based on these findings and a lengthy investigation, Karen Agustiawan was finally named a suspect by the Corruption Eradication Commission (KPK) on September 19, 2023. The evidentiary process at trial yielded crucial legal facts through the testimony of witnesses, experts, and the presence of a de charge witness, a former vice president. Briefly, the legal facts can be outlined as follows:

1. The defendant consistently asserted that the policy was a "corporate action" that had gone through a collective, collegial discussion and approval mechanism at the board of directors level.
2. The defendant consistently stated that the LNG procurement policy was the implementation of an "official order" based on a clear regulatory framework. The primary basis for this policy is Presidential Regulation (Perpres) Number 5 of 2006 concerning National Energy Policy, which targets increasing the share of natural gas in the national primary energy mix to 30% by 2025.
3. This mandate is further strengthened by Presidential Instruction (Inpres) Number 1 of 2010 concerning the Acceleration of the Implementation of National Development Priorities and Presidential Instruction Number 14 of 2011 concerning the Acceleration of the Implementation of National Development Priorities in 2011. This series of regulations explicitly directs state-owned enterprises in the energy sector, particularly Pertamina, to proactively seek gas supply sources to anticipate the projected future domestic gas balance deficit. Thus, the initiative to procure LNG from the international market is rooted in a national strategic policy, not the Defendant's unjustified personal initiative.
4. Former Vice President of the Republic of Indonesia, Jusuf Kalla, as a defense witness (a de charge), openly expressed his confusion as to why the Defendant could be prosecuted for actions he considered part of "carrying out his duties" for the country. He emphasized the fundamental differences between business entities such as state-owned enterprises (BUMN) and government agencies, where risk-taking and the potential for loss are inevitable. Kalla warned that criminalizing every business loss experienced by a BUMN would set a dangerous precedent that

could “destroy the system” of the national economy, as it would stifle the directors’ courage to innovate and make strategic decisions. This testimony provided the legal argument regarding the Business Judgment Rule with macro-level business policy and practice context.

5. The Defendant was not proven to have enjoyed or personally benefited from the proceeds of corruption. The Public Prosecutor previously alleged that the Defendant had enriched himself to the tune of IDR 1.09 billion and USD 104,016. However, evidence at trial successfully demonstrated that the funds were the Defendant’s official salary as a senior advisor at Blackstone, a professional position he held after resigning as President Director of PT Pertamina (Persero). Furthermore, it was revealed that this income had been reported and withheld income tax (PPh) in accordance with applicable regulations.
6. Pertamina’s losses were not caused directly by the signing of the contract alone, but rather by a combination of external factors beyond the board of directors’ control. It was revealed that when LNG cargoes from CCL began arriving in 2019, there was a drastic market shift, resulting in an oversupply of gas in both the international and domestic markets. As a result, no domestic buyers were able to absorb the cargoes as initially projected. Furthermore, the Defendant also stated that the plummeting global energy commodity prices due to the COVID-19 pandemic in 2020-2021 exacerbated the losses when Pertamina was forced to sell the cargoes on the international spot market.

The legal findings demonstrate that the state losses were not the result of negligence on the part of Karen Agustiawan, but were instead caused by external factors that transformed what was intended to be a beneficial procurement contract into one that ultimately produced financial losses for the state. In its reasoning, the court asserted that the Defendant’s “unlawful” conduct stemmed from her failure to apply the principle of prudence, particularly by not implementing a back-to-back contractual scheme and by inadequately assessing LNG storage capacity—factors the court concluded contributed to an oversupply situation. The panel of judges determined that these actions were not protected under the Business Judgment Rule (BJR), as referenced in the *Amicus Curiae* submission.

In contrast, defense witness Muhammad Jusuf Kalla, former Vice President of the Republic of Indonesia, disagreed with the court’s conclusion. He emphasized that “no one would be willing to serve as a director of a state-owned enterprise if every business decision that results in a loss could lead to criminal prosecution,” highlighting the inherent risks in corporate decision-making and cautioning against the criminalization of ordinary business judgment. In its decision, the panel of judges outlined both the aggravating and mitigating factors relevant to the Defendant’s sentence:

- 1) Aggravating Circumstances:
 - a) The Defendant's actions were considered incompatible with the government's ongoing anti-corruption agenda.
 - b) Her conduct was deemed to have resulted in a waste of state financial resources.
- 2) Mitigating Circumstances:
 - a) The Defendant demonstrated respectful behavior throughout the trial proceedings.
 - b) She did not receive any financial gain from the alleged act of corruption.
 - c) She has family responsibilities.
 - d) She had significantly contributed to PT Pertamina (Persero) during her tenure.

Based on these considerations, the Panel of Judges rendered the following verdict:

- 1) The Defendant, Galaila Karen Kardinah alias Karen Agustiawan, was found legally and convincingly guilty of committing "joint and continuous corruption," as charged in the first alternative indictment, in violation of Article 2(1) of Law No. 31 of 1999 on the Eradication of Corruption as amended by Law No. 20 of 2001, in conjunction with Article 55(1)(1) and Article 64(1) of the Indonesian Criminal Code.
- 2) The Defendant was sentenced to nine (9) years of imprisonment and fined IDR 500,000,000, with a subsidiary sentence of three (3) months' imprisonment.
- 3) The period of arrest and detention already undergone by the Defendant shall be fully credited toward the imposed sentence.
- 4) The Defendant shall remain in custody.
- 5) The court issued a ruling concerning the submitted evidence.

To assess an individual's intent, the preceding discussion indicates that several indicators may be used to identify intentionality in the commission of a crime, namely the presence of a malicious or culpable mental state (guilty mind); evidence of a deliberate pattern of behavior; and an awareness of, or desire for, the consequences arising from the act.

Based on Decision No. 12/Pid.Sus-TPK/2024/PN.Jkt.Pst., the following facts concerning the Defendant can be established:

- 1) Galaila Karen Kardinah, known as Karen Agustiawan, previously served as the President Director of PT Pertamina (Persero).
- 2) The Panel of Judges found as legal fact that the Defendant approved the development of gas business initiatives at several prospective LNG facilities in the United States without sufficiently clear or comprehensive procurement guidelines.

The decision to advance a project of such magnitude was based solely on a principle permit, which the court deemed inadequate for a commitment of this scale. From the Defendant's standpoint, however, the measure constituted a proactive and strategic effort to secure Indonesia's long-term energy needs. Her actions were aligned with national strategic interests and, as supported by Jusuf Kalla's testimony referencing Presidential Instruction No. 1 of 2010, could reasonably be interpreted as the implementation of governmental directives. The absence of detailed technical guidelines may be viewed as necessitating managerial agility within the highly competitive global energy market.

- 3) The Defendant proceeded to execute the LNG Sales and Purchase Agreements (SPA) for CCL Train 1 and Train 2 without sufficient justification and before a complete technical and economic feasibility study had been conducted and validated. This decision was taken amid volatile market conditions, where delays inherent in longer procedures would have impeded execution.
- 4) The Defendant maintained that all actions were undertaken in the best interests of both the company and the state, particularly to safeguard national energy security. The resulting losses, in her view, reflected unforeseen market volatility and constituted a realized business risk rather than bad faith. The court, however, asserted that good faith must be demonstrated not only through intent but also through adherence to transparent and prudent corporate processes.
- 5) The Defendant did not receive any personal benefit or illicit enrichment from the alleged acts. The court confirmed that the financial gains attributed to her constituted legitimate compensation from her role as a senior advisor.
- 6) The alleged corruption stemmed primarily from procedural shortcomings influenced by time constraints, rather than deliberate wrongdoing.
- 7) The oversupply resulting from the failure of PT PLN to absorb LNG—caused by delays in the construction of FSRU infrastructure—was beyond the Defendant's control. Under the Business Judgment Rule (BJR), she could not be held accountable for consequences arising from operational circumstances outside her authority. Accordingly, she resold the LNG to mitigate further losses associated with storage costs.
- 8) Witness Muhammad Jusuf Kalla emphasized that no individual would be willing to serve on the board of a state-owned enterprise if business risks resulting in financial losses could expose directors to criminal prosecution, highlighting the systemic dangers of criminalizing business decisions.

Based on the foregoing, it can be concluded that the Defendant's conduct did not reflect malicious intent or a purpose to harm state finances. Rather, her actions were shaped by procedural delays and the mandate contained in the Presidential Instruction

to expand LNG procurement. Accordingly, the central issue in this case lies in procedural shortcomings, not in any deliberate intention to commit corruption.

Although the Defendant's actions were deemed "unlawful," the impropriety was procedural in nature. The state losses resulted primarily from the inability of state-owned enterprises (SOEs) to absorb the imported LNG in a timely manner, compounded by the global market disruptions caused by the COVID-19 pandemic. The Defendant's decision to resell the LNG was therefore not an attempt to cause financial harm to the state, but an effort to mitigate further losses arising from storage constraints. Moreover, the Defendant did not derive any personal gain, indicating that while the *actus reus* may have been satisfied, the *mens rea* required for corruption was not present.

The Defendant's decision to enter into the agreements cannot reasonably be characterized as malicious, even though her actions may formally satisfy the criteria of *dolus eventualis*—the conscious acceptance of possible consequences. Under the theory of knowledge or foresight, she could arguably have anticipated certain risks. However, these risks fall within the realm of ordinary business judgment, where both compliant and imperfect procedures may produce similar potential for loss.

From a legal standpoint, Karen Agustiawan's conduct may fulfill the textual elements of Article 2(1) of the Anti-Corruption Law, including "unlawfully," "benefiting a corporation," and "harming state finances." Nevertheless, the absence of malicious intent should materially influence the assessment of her criminal liability, as intent remains a fundamental component of culpability in corruption offenses.

4. CONCLUSION

Intent constitutes a decisive element in determining criminal sanctions for corruption. Malicious intent (guilty mind) reflects the offender's true moral blameworthiness, and the absence of such malice should significantly influence the severity of the sanctions imposed. Intent is embedded in the culpability associated with the act and is assessed not merely by the occurrence of the offense but by the perpetrator's state of mind at the time the act was committed. Thus, the determining factor is whether the conduct was carried out with malicious intent, not simply whether harm ultimately occurred. The absence of intent in criminal liability, as reflected in this decision, must be evaluated through three indicators: 1) the presence of malicious intent (guilty mind); 2) a deliberate pattern of conduct; and 3) an awareness of, or willingness to accept, the consequences of the act. In Decision No. 12/Pid.Sus-TPK/2024/PN.Jkt.Pst., intent cannot be inferred solely from deliberate actions or knowledge of potential outcomes, as business decisions inherently involve the possibility of loss. Consequently, determining intent in corruption cases cannot rely exclusively on *dolus eventualis*. Malicious intent remains the central criterion for establishing culpability. The absence of such intent should therefore meaningfully reduce the Defendant's burden of criminal

responsibility. Although the Defendant was ultimately found guilty, she did not derive any personal benefit, demonstrating the lack of malicious intent behind her actions. Accordingly, this absence of malice should operate as a mitigating factor in determining the appropriate sentence.

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