Legal Annotation of the Corruption Case

on the Granting of Export Facilitation Permit of CPO Commodity and Its Derivatives

GREENPEACE

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Introduction

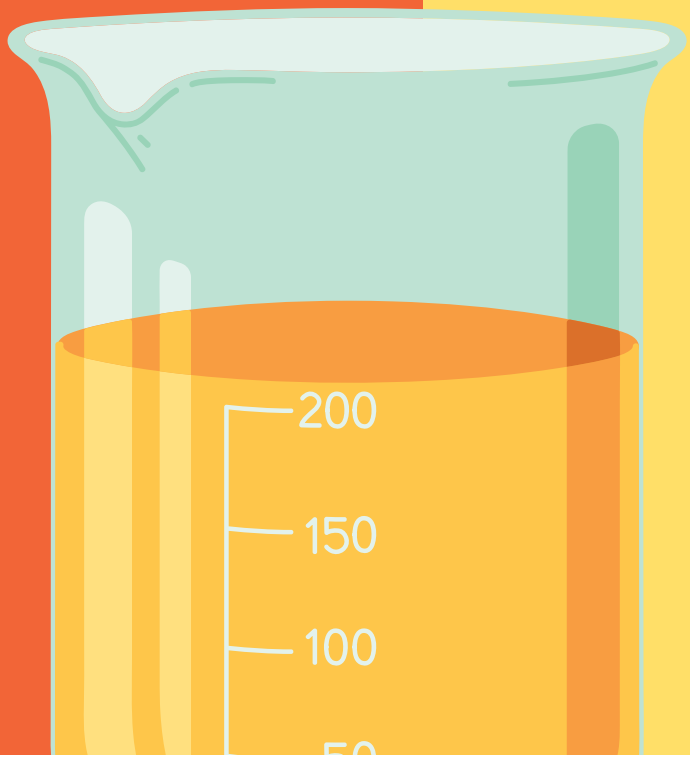
The Attorney General's Office made a breakthrough by pursuing a corruption case involving crude palm oil export permits. This is seen as a boost in law enforcement, especially in the natural resources sectors and related corporate actors. The prosecutors' indictment includes the nation's economic loss, which is even broader than the financial loss. Nevertheless, there are still critical notes regarding this case's ruling and indictment, among others, that it hasn't fully addressed groups that are responsible for corporate crimes, is narrow in terms of the case scale, fund replacement is not optimized, has not explored the government motives, as well as not reaching other responsible actors.

Accordingly, Satya Bumi together with Greenpeace Indonesia prepared this legal review or examination of the mentioned court decisions and prosecutors' indictments, aimed at strengthening the ongoing law enforcement efforts and providing lessons for future cases. Every case of corruption should be investigated thoroughly. Anyone involved in this case must be held accountable for their actions before the law. The Attorney General's Office must embrace the momentum and speed up the case process. Moreover, as a result of the pursuance of this case, an official from the Ministry of Trade, a consultant, and three high-ranking personnel from the palm oil company have been found guilty. The minister's policy in granting crude oil export permits is important to highlight because it has caused shortages and an increase in the price of palm oil for cooking in this nation.

We would like to thank the entire team who helped prepare this legal annotation. We would also like to express our thanks to the network of civil society organizations for their input in improving this document, including Sawit Watch, SPKS, National Executive Walhi, Yayasan Madani Berkelanjutan, Traction Energy Asia, as well as our colleagues from Koalisi Transisi Bersih (Clean Transition Coalition). We hope that this study will provide benefits and input for the government in pursuing natural resource legal cases, especially those related to palm oil and its derivative products.

The Writers -

1. Background



Cooking oil scarcity that occurred in 2022 was an anomaly. As the biggest Crude Palm Oil (CPO) producer in the world, that has 59% share of the global CPO market,[1] this case of national scarcity was something that could not be rationalized. We suspect that there is something wrong with the management of the CPO industry in Indonesia.

That issue has been in the spotlight for some time. For instance, based on the 2016 study conducted by the Corruption Eradication Commission (KPK) on the CPO management system in Indonesia, there had been several issues with the administration of oil palm tree plantations. One of them was the potential corruption in the process of land allocation, permits for oil palm plantation businesses, and in the palm oil commerce.[2]

1 Rizki Dewi, "11 Negara Penghasil Sawit Terbesar Dunia, Indonesia Nomor 1", https://koran.tempo.co/read/ekonomi-dan-bisnis/482145/11-negara-penghasil-sawit-terbesar-di-dunia-2023-indonesia-nomor-1#:~:text=Indonesia%20memproduksi%2059%20persen%20dari,sebesar%2025%2C62%20juta%20ton.

2 Komisi Pemberantasan Korupsi (2016). *Kajian Sistem Pengelolaan Komoditas Kelapa Sawit di Indonesia. Laporan Kajian. Direktorat Penelitian dan Pengembangan Komisi Pemberantasan Korupsi.*

Even before that, the Supervising Commission for Business Competition (KPPU) passed a decree on the monopoly practices done by palm oil enterprises in 2009, which resulted in the scarcity of cooking oil. KPPU declared that 8 businesses were proven to have conducted monopoly practices. Unfortunately, this decree was later annulled by the Supreme Court's Judgment No. 582 K/Pdt.Sus/2011, which said that there had been no monopoly in the case of cooking oil scarcity.[3]

After more than a decade, the case of scarcity has reoccurred. When the COVID-19 Pandemic hit Indonesia, especially when the viral infection cases peaked for the third time, cooking oil became scarce. When it became rare, the price escalated. According to the National Strategic Food Price Information Center (PIHPS), the average cooking bulk oil price in 2021 was Rp 11,900/liter and Rp 12,600/liter for the packaged ones. In March 2022, the price peaked at Rp 16,600/liter and Rp 20.800/liter for the bulk and packaged ones respectively.[4] This condition sparked a panic attack in the market. Long queues were formed in order to get their hands on some cooking oil, which happened all across Indonesia.

Government was also in chaos, too. In the middle of mitigating the viral spread of COVID-19, the Government was later faced by the issue of cooking oil scarcity. Pressure from the public forced the Government to move rapidly in order to form a policy to set a Maximum Retail Price (MRP/HET)[5], to meet the Domestic Market Obligation (DMO) for 20%[6], and prohibit exports for CPO commodities and their derivatives.[7]

Export prohibition itself has become the key in opening a Pandora's Box that reveals the palm oil management issues that have been under some parties' radar. The increase in CPO price from USD 767/Metric Ton (MT) in October 2020, to a staggering 1,533/MT in April 2022[8] caused some palm oil enterprises to export CPO and its derivatives. Because of that, the local CPO stock became scarce.

The Government promulgated the prohibition on the exports of CPO and its derivatives, which later motivated some corporations to lobby the Ministry of Trade in order to gain an Export Approval (PE) to fulfill the 20% DMO. By manipulating those documents, despite them not fulfilling the DMO as obligated, companies were able to get export permission facilitation approvals.

These corruption cases of granting approval for export facilitation permissions were unraveled by the Attorney General. These decisions have been declared as legally binding. Justices have decided that five defendants were found guilty for corruption. Each of them is now serving jail time and paying fines, as indicated in Table 1 below.

3 Wintansari YH (2020). Analisis Pertimbangan Hukum Kasus Kartel Minyak Goreng di Indonesia. Lex Renaissance 4(5); 895-911.
4 PIHPS Nasional. (2022). *Informasi Harga Pangan Antar Daerah*. Accessible at: https://hargapangan.id/
5 Minister of Trade Regulation No. 11/2022 on the Determination of the Highest Retail Price of Bulk Cooking Oil.
6 Minister of Trade Regulation (Permendag) No. 49/2022 on the Management of the People's Cooking Oil Program
7 Minister of Trade Regulation No. 22 of 2022 on the Temporary Ban on the Export of Crude Palm Oil, Refined, Bleached And Deodorized Palm Oil, Refined, Bleached And Deodorized Palm Olein, and Used Cooking Oil.
8 MPOB. (2022). Monthly Export Prices of Processed Palm Oil. Available from: https://bepi.mpob.gov.my/index.php/en/?option=com_content&view=article&id=1033&Itemid=136

Table 1. **Court's Decisions on the Corruption of Granting Facilitation for Export permissions of CPO Commodities and Their Derivatives, 2022**

Defendants	Charges	District Court's Decisions	Supreme Court's Decisions
Stanley Ma (Senior Manager Corporate Affairs, Permata Hijau Grup)	● 10 years in prison; ● IDR 1 million of fine or a subsidiary charge of 6 months of detention; ● Additional charges of IDR 869,7 billion of restitution or a confiscation of Permata Hijau Group subsidiaries' assets.	● 1 year in prison; ● IDR 100 million of fine with the condition where Stanley Ma fails to pay, will be replaced by a 2-month detention.	***Aggravated:*** ● 5 years in prison; ● IDR 200 million fine or a subsidiary punishment of 6-month detention.
Indra Sari Wisnu (Directorate General of International Trade, Ministry of Trade)	● 7 years in prison; ● IDR 1 million fine or a subsidiary charge of 6-month detention.	● 3 years in prison; and ● IDR 100 million fine with the addition of a 2-month detention if it fails to be paid.	***Aggravated:*** ● 8 years in prison; ● IDR 100 million fine or a subsidiary 2-month detention
Weibinanto Halimdjati alias **Lin Che Wei** (Director of PT. Independent Research & Advisory Indonesia and assistance team member of the Coordinating Ministry of Economics)	● 8 years in prison; ● IDR 1 million fine or a subsidiary charge of 6-month detention	● 1 year in prison; and ● IDR 100 million fine with the addition of a 2-month detention if it fails to be paid.	***Aggravated:*** ● 7 years in prison; ● IDR 250 million fine or a subsidiary 6-month detention
Master Parulian Tumanggor (Commissioner of PT Wilmar Nabati Indonesia)	● 12 years in prison; ● Pidana denda Rp 1 miliar subsider 6 bulan kurungan; ● IDR 1 billion fine or a subsidiary charge of 6-month detention; ● Additional charge of paying IDR 10,898 trillion of restitution, or a subsidiary charge of confiscation of PT Wilmar Nabati's subsidiary's assets.	● 1 year and 6 months in prison; ● IDR 100 million with the addition of a 2-month detention if it fails to be paid.	***Aggravated:*** ● 6 years in prison; ● IDR 200 million fine or a subsidiary 6-month detention.
Pierre Togar Sitanggang (General Affairs PT Musim Mas)	● 11 years in prison; ● IDR 1 million fine or a subsidiary charge of 6-month detention; ● restitution charge for IDR 4,544 trillion or a subsidiary confiscation of PT Musim Mas' subsidiary's assets.	● 1 year in prison; and ● IDR 100 million fine with the addition of a 2-month detention if it fails to be paid.	***Aggravated:*** ● 6 years in prison; ● IDR 200 million fine and a subsidiary 6-month detention

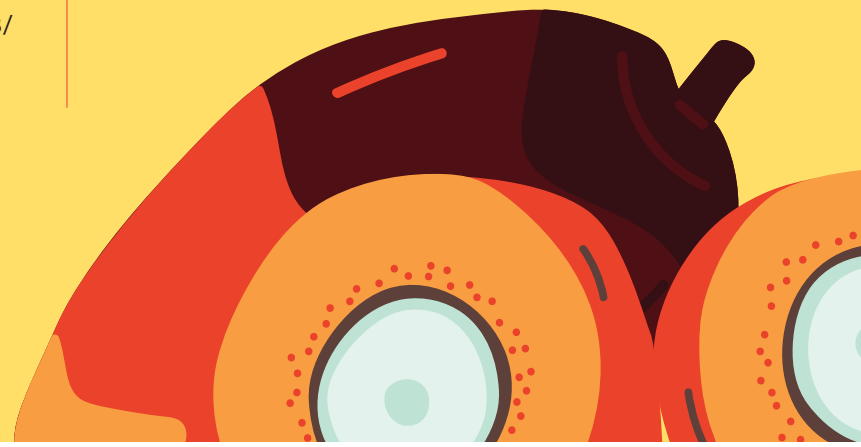
Alas, courts did not convict the defendants to pay the restitutions. In the considerations of the judgment, the judges noted that "the restitution could not be demanded from each individual, but to their respective enterprises. This is due to the illegal revenue not being enjoyed by the individuals, but by the companies". Responding to that *ratio decidendi*, on 15 June 2023, the Attorney General declared that there had been 17 corporations suspected to have been involved in an CPO export permit corruption cases, which were under three groups, the Wilmar Group, Permata Hijau Group, and Musim Mas Group.

The dynamics in this case involving corporations are interesting to be analyzed. Moreover, with the judgment that declared there had been corruptions but none of the defendants caused damage to the economics of the state. This is a phenomenal decision if we refer to the Constitutional Court's Decision No. 25/PUU-XIV/2016, that the state's economic loss is a prerequisite in proving corruption cases.

Furthermore, the Constitutional Court's Decision No. 25/PUU-XIV/2016 declared that both the state's financial and economic loss have to be based on an 'actual loss', not on a 'potential loss'. Despite that, this Decision received critics since the beginning, but the judges in the corruption case had a different view, that the state economic loss is not an element for something to be proven as corruption. This is reflected in the *ratio decidendi* of Master Parulian's case, No. 58/Pid.Sus-TPK/2022/PN.JKT.Pus.[9]

On the other hand, criminalizing corporations separately could be said as something new in Indonesia. If we track back, permit corruption cases in the Riau Province also mandated the exact same thing. However, there was no continuity to the case. Just on this occasion, the prosecutors asked for a separate corporations' criminal responsibility. The model for the responsibility is still a question mark, especially when the case is still being tried. Despite that, with the judgment being legally binding to all those convicted in the corruption case which represent their businesses, it is easy for the public to question whether their positions were not as the representatives of each corporation.

With that being said, in order to further study this case, how did the construction of the case form, the verification of evidence, including the calculation model or economic valuation that was used in proving this case, we have decided to write this legal annotation on the judgment of the CPO export permit corruption. This is an interesting and important thing to analyze, as future references for any parties.



9 The panel of judges considered that the element of causing state economical losses was not fulfilled in the actions of the Defendant, however, the element of causing state financial losses was fulfilled in the actions of the Defendant, see: Decision No. 58/Pid.Sus-TPK/2022/PN.JKT.Pus, pp. 1129.

2. Objectives

Here are the objectives of this legal annotation:

A. A.To objectively analyze the coherence between the allegations and the arguments of the Judgment on the CPO export permit corruption case with legal principles;
B. To understand the construction of the case and the modus behind the corruption of granting the export permission.
C. To analyze the cohesion between the considerations on the individuals with the process of suspecting the corporations;
D. To map the potential weaknesses of the legal process of suspecting the corporations;
E. To produce a reference material for further understanding the model to prove the state's economic loss in this case and for a future reference.

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Drone image shows Greenpeace activists unfurling a banner reading "Drop Dirty Palm Oil Now" on the side of a silo at the Wilmar International refinery in Bitung, North Sulawesi. 1°26'21"N, 125°9'35"E. 25 September 2018.

3. Palm Oil Industry Snapshot and its Corruption Models

Despite being the world's largest producer of palm oil, the Indonesian palm oil industry is actually controlled by only a few business groups. They control the industry from upstream all the way to downstream. Of course, the consequences of this structure make the palm oil industry vulnerable to oligopoly and cartel practices.[10]

There are four business groups that control 74.8% of the palm oil seed market share in Indonesia.[11] This is the most upstream business in the palm oil industry. In palm oil plantations, ten business groups control 2.53 million hectares of palm oil plantations, or on average one group can control 253 thousand hectares.[12] The control of such large-scale plantations by a small number of business actors poses a risk of unfair business competition. Although it is known that the Minister of Agriculture Regulation No. 98/2013 on Plantation Business Guidelines has limited the control of oil palm plantations by one business group to 100,000 hectares, except in Papua and West Papua Provinces, this regulation is ineffective because it still allows companies that have gone public to control more than 100,000 hectares. Thus, the practice of controlling more than 100,000 hectares of land is still very much available for palm oil companies.

10 Sari R., Mangeswuri D.R. (2019). *Upaya Mengatasi Praktik Kartel di Indonesia*. Kajian 24(4); 223-236.

11 Komisi Pemberantasan Korupsi (2016). *Kajian Sistem Pengelolaan Komoditas Kelapa Sawit di Indonesia*. Laporan Kajian. Direktorat Penelitian dan Pengembangan Komisi Pemberantasan Korupsi.

12 Komisi Pemberantasan Korupsi (2019). *Nota Sintesa: Gerakan Nasional Penyelamatan Sumber Daya Alam (GNPSDA)*. Direktorat Penelitian dan Pengembangan Komisi Pemberantasan Korupsi.

Furthermore, in the CPO processing sector, of the approximately 1,200 palm oil mills (PKS) operating across Indonesia, 80% are controlled by ten business groups. In the downstream sector of the industry, market control is also controlled by a few companies. In the biodiesel industry, for example, four business groups control 71.1% of the domestic biodiesel market.[13] Meanwhile, in the cooking oil industry, four business groups control 88% of the market share of packaged cooking oil in Indonesia.[14] Inevitably, they are able to influence the market, both in terms of price and distribution.

The same applies to exports of palm oil and its derivative products. There are 4 business groups that control 74.3% of exports of palm oil and its derivative products.[15] So in conclusion, the more the sector goes downstream, the more dominant the market is controlled by 5 business groups, namely Wilmar Group, Musim Mas Group, Sinar Mas Group, Salim Group and Asian Agri Group (see Picture 1).

Source: Expert Testimony at the Trial of Corruption Case of Granting Export Approval for CPO and Its Derivative Products, 2022

Figure 1. **Upstream to Downstream Palm Oil Industry Market Share in Indonesia**

13 Komisi Pemberantasan Korupsi (2022). *Kajian Sistem Pengadaan Biodiesel dalam Program B30 di Indonesia*. Direktorat Monitoring Komisi Pemberantasan Korupsi.

14 BPDPKS. (2022). *Upaya Pemerintah Menstabilisasi Harga Minyak Goreng di Pasar*. Buletin Triwulan BPDPKS, Nomor 5.

15 Komisi Pemberantasan Korupsi (2016). *Kajian Sistem Pengelolaan Komoditas Kelapa Sawit di Indonesia*. Laporan Kajian. Direktorat Penelitian dan Pengembangan Komisi Pemberantasan Korupsi.

The structure of this industry is certainly prone to illegal practices, including corrupt practices. It is proven that many corruption cases have occurred in the palm oil sector, such as the corruption case of Plantation Business License and Cultivation Rights Title that occurred in Buol District. The Regent of Buol at the time, Amran Batalipu, received a sum of money to facilitate the issuance of permits requested by Hartati Murdaya's business group.[16] The same thing happened in the case of the Regent of Kutai Kartanegara, Rita Widyasari, who was proven to have received bribes from palm oil entrepreneurs to issue oil palm plantation licenses. In these networks, many corruption cases that occur in the palm oil sector involve layered networks including elite groups.[17]

The number of actors involved in corruption cases in the palm oil sector means that law enforcement must have the right strategy to prosecute the main actors. In her latest publication, China's Gilded Age, Yuen Yuen Ang underlines the importance of sorting out the actors between the elite and the lower bureaucracy in observing corruption crimes. This disaggregation can lead us to different forms of corruption that must be seen and dealt with in different ways because they have different damaging effects.[18]

When corruption is committed by the elite, it takes the form of transactional corruption. Although the impact is not immediately visible, the accumulation of these impacts in the long run can cause significant losses. The exchange of access (access money) by this elite group utilizes policies and regulations as well as other state instruments, to determine who will be given access to profit. Or in other words, business actors get excessive profits as a result of favors provided by government officials or politicians. Just as the side effects of steroids slowly damage the body, corruption by elites in the form of access money also has long-term side effects in the form of inequality. The inequality referred to here is not only between economic groups, but also between businesses that are connected to politicians and those that are not.[19]

Figure 2. **Corruption Cases in the Indonesian Palm Oil Sector**

16 Eryan A. (2020). Dari Inpres Moratorium Hingga Kebijakan Tata Kelola Industri Sawit Presiden Jokowi: Studi Kasus Penerbitan SK Pelepasan Kawasan Hutan PT Hardaya Inti Plantation di Buol, Sulawesi Tengah. Jurnal Hukum Lingkungan Indonesia 6(1); pp. 1-18.

17 Capri W., Cahyati D.H., Hasanah M. et al (2021). Kajian Korupsi sebagai Proses Sosial: Melacak Korupsi di Sektor Sumber Daya Alam di Indonesia. Integritas: Jurnal Antikorupsi 7(1); pp. 121-142.

18 Ang Y.Y. (2020). China's Gilded Age: The Paradox of Economic Boom and Vast Corruption. Cambridge, United Kingdom ; New York, NY: Cambridge University Press.

19 Ang Y.Y. (2020). China's Gilded Age: The Paradox of Economic Boom and Vast Corruption. Cambridge, United Kingdom ; New York, NY: Cambridge University Press.

This classification of types basically tries to see corruption in a more specific perspective, so as not to generalize all forms of corruption, which has the potential to obscure the impact and response to specific types. Following Ang's framework, existing palm oil corruption cases are more of an "exchange" nature, usually characterized by transactions for a certain amount of money. These exchanges can be given as kickbacks, speeding up previously bottlenecked red tape, or opening up access to opportunities that would not have been possible without the involvement of government actors. The government official-businessperson relationship and the nature of the object of exchange will determine the form of corruption that occurs. This model occurs in corruption in the granting of export approval facilities for CPO commodities and their derivative products.

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Greenpeace activists unfurl a giant banner at the concession owned by PT Multi Persada Gatramegah (PT MPG), a subsidiary of Musim Mas company, a palm oil supplier to Procter & Gamble in Muara Teweh, North Barito, Central Kalimantan. 0°46'34"S, 114°42'13"E. 10 March 2014.

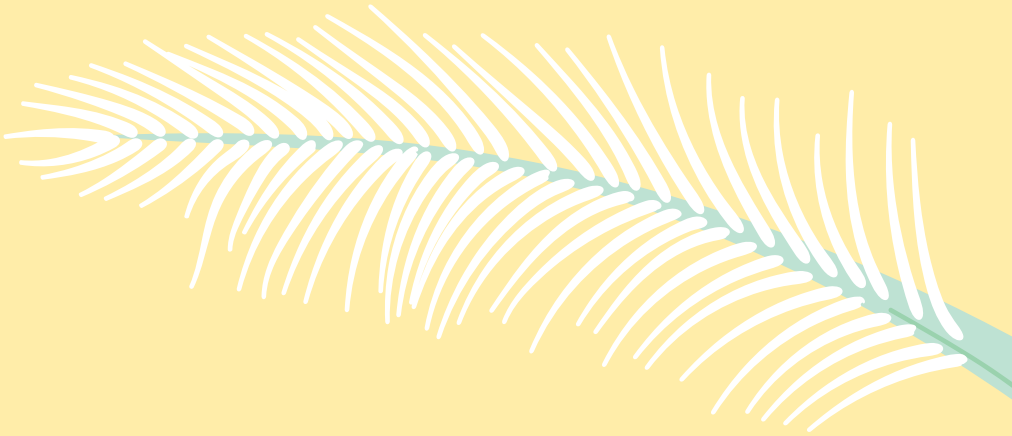
4. Case Summary

This case originated from the scarcity and price hike of cooking oil in the market in the period January – March 2022. The price of cooking oil increased significantly to Rp. 16,600/liter for bulk types and Rp. 20,800/liter for packaged types. Whereas previously, the price was only at Rp. 11,900/liter for bulk type and Rp 12,600/liter for packaged type.[20] Apart from being expensive, cooking oil is also hard to find in the market.[21] Sawit Watch even filed a lawsuit against the scarcity and high price of cooking oil in September 2022. In the lawsuit against the government, the plaintiffs requested that the government maintain the stability of domestic cooking oil supply and prices.[22]

20 PIHPS Nasional. (2022). Informasi Harga Pangan Antar Daerah. Accessible at: https://hargapangan.id/

21 Respati, AR. (2022). Minyak Goreng Curah Mulai Langka, Pedagang Pasar Ungkap Penyebabnya. Available from: https://money.kompas.com/read/2022/03/25/174552426/minyak-goreng-curah-mulai-langka-pedagang-pasar-ungkap-penyebabnya?page=all

22 Hukum Online. (2022). Masyarakat sipil layangkan gugatan PMH presiden dan mendag terkait minyak goreng. Accessible at: https://www.hukumonline.com/berita/a/masyarakat-sipil-layangkan-gugatan-pmh-presiden-dan-mendag-terkait-minyak-goreng-lt62985b82e5c1b/

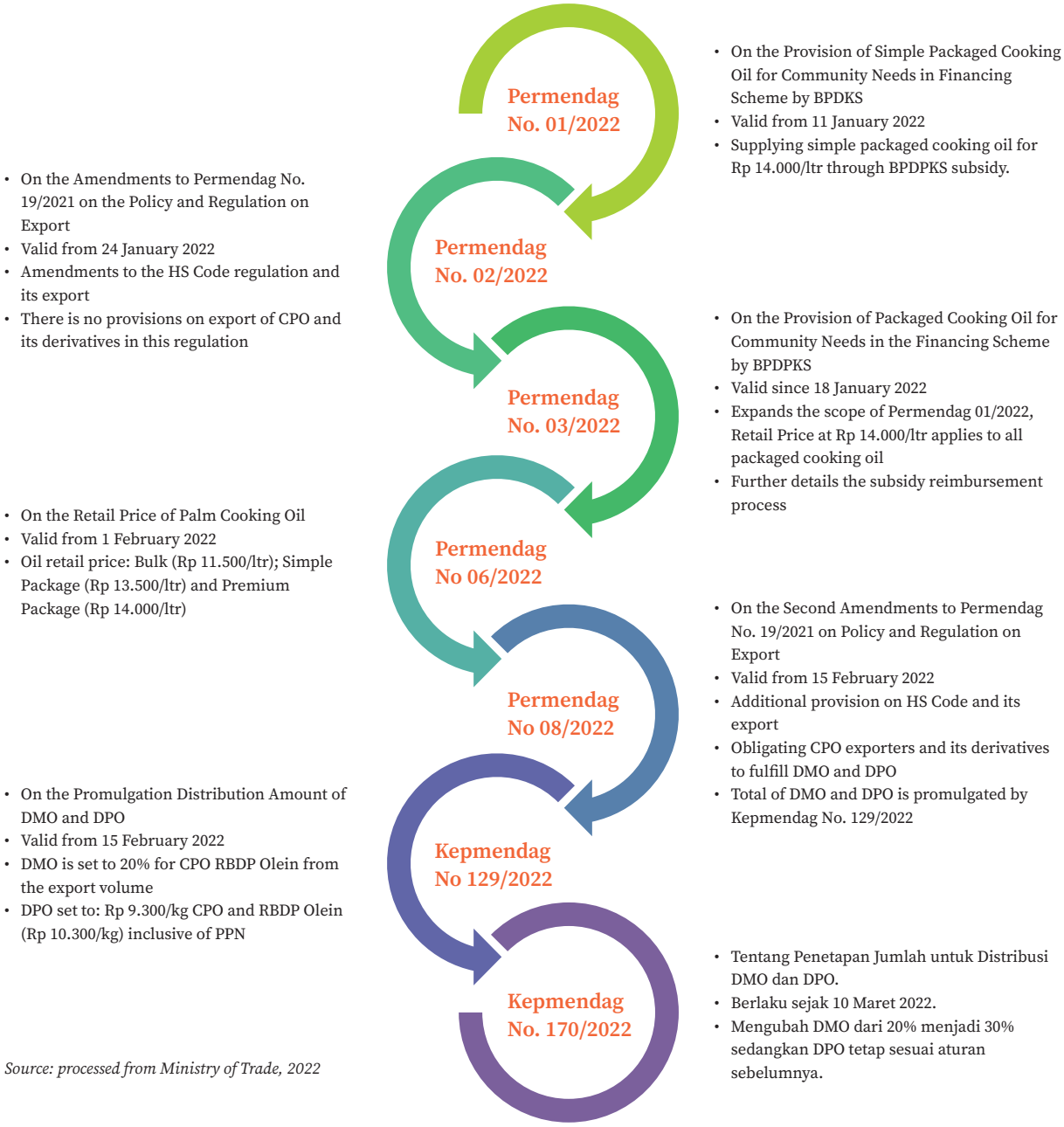


As a result of the scarcity and price increase, the government is trying to address this issue. Since January 2022, the government has implemented policies to respond to the scarcity and rising prices of cooking oil. *First*, it issued Minister of Trade Regulation (Permendag) No. 01/2022 on the Provision of Simple Packaged Cooking Oil for Community Needs in Scarcity Financing by BPDPKS, which regulates the price ceiling for simple packaged cooking oil at Rp. 14,000/liter and provides a price subsidy equal to the difference between the economic price (HAK) and the price ceiling. This subsidy is taken from palm oil funds managed by BPDPKS. However, this regulation has failed to address the problem of scarcity and rising cooking oil prices. Evidently, prices continued to rise, reaching Rp. 18,900/liter for branded packaging and Rp. 16,900/liter for bulk, following the regulation.[23]

Secondly, the issuance of Minister of Trade Regulation No. 03/2022 on the Provision of Packaged Cooking Oil for Community Needs within the Financing Framework by BPDPKS, which expands the scope of the HET, i.e. it applies to all packaged cooking oil. In addition, Minister of Trade Regulation No. 03/2022 details the reimbursement mechanism for subsidies, which was not previously detailed in Minister of Trade Regulation No. 01/2022. Similar to the previous regulation, this regulation also failed to reduce the price of cooking oil and increase its availability in the market.

Third, the issuance of Minister of Trade Regulation No. 06/2022 on the Determination of the Retail Price of Palm Cooking Oil, which changes the provisions regarding the retail price. In this regulation, the government sets the price ceiling for bulk cooking oil at Rp. 11,500/liter, simple packaging at Rp. 13,500/liter and premium packaging at Rp. 14,000/liter.[24] This new regulation has also failed to intervene in the scarcity and price of cooking oil in the market.

23 PIHPS Nasional. (2022). Informasi Harga Pangan Antar Daerah. Accessible at: https://hargapangan.id/
24 PIHPS Nasional. (2022). Informasi Harga Pangan Antar Daerah. Accessible at: https://hargapangan.id/



Source: processed from Ministry of Trade, 2022

Figure 3. **Ministry of Trade Regulations on Solving the Cooking Oil Crisis and Inflation in 2022**

A newly cut tree inside the forest near the palm oil concession owned by PT Megasurya Mas (PT MSM) and PT Siringo-Ringo (PT SRR) a subsidiary to Musim Mas group, a palm oil supplier to Procter and Gamble in Kaureh sub-district, Jayapura district, Papua province. 3°4'36"S, 139°56'53"E. 11 March 2014.

Fourth, after failing to intervene in the market, the Government shifted their approach from MRP to intervention on the supplies in the market by setting obligations for exporting corporations to fulfill the DMO and *Domestic Price Obligation* (DPO). This provision is stipulated in the Ministry of Trade Regulation No. 08/2022 on the Second Amendment to the Ministry of Trade Regulation No. 19/2021 on the Policy and Regulation on Exports, along with the Ministry of Trade Regulation No. 129/2022 on the Promulgation of DMO and DPO Distribution Amount, and Ministry of Trade Decree No. 170/2022 that amends previous provisions from the past regulations. These regulations mandated exporters to have at least 20% of DMO (which is later increased to 30% through the MoT Regulation No. 170/2022). Meanwhile, DPO is set to be Rp 9,300/kg for CPO and Rp 10,300/kg for RBDP Olein, which is inclusive of additional value tax (PPN). Even those regulations have failed to bring solutions to scarcity and inflation to cooking oil prices in the market.

In reality, the Government's effort to decrease prices and increase supplies of cooking oil in the market got hindered by corporations that disobeyed the DMO and DPO. Three cooking oil corporations, which were Wilmar Group, Musim Mas Group, and Permata Hijau Group, were granted the permission to export oil by the MoT without having to fulfill the DMO and DPO as instructed by the MoT Regulation No. 08/2022 and MoT Decree No. 170/2022.

Wilmar Group only submitted 92,9 million kg from the mandated DMO of 240,8 million kg, which only achieved 38,6% of the total obligation. Similar cases happened with Musim Mas Group that only fulfilled 52,2% of the DMO and 42,3% by Permata Hijau Group (as shown in the Table 2).

Table 2. **DMO & DPO and the Realisations by the Three Groups, January-February 2022**

Corporation Group	DMO Amount (kg)	Unfulfilled DMO (kg)	DMO Submitted	
			Kg	%
Wilmar	240,890.000	147,943,301	92,946,699	38.6
Musim Mas	160,947,425	78,882,449	84,064,976	52.2
Permata Hijau	27,083.275	15,616,428	11,466,846	42.3
Total	428,920,700	240,442,178	188,478,522	43.9

Source: Expert Testimony in the Corruption of Granting Export Permission of CPO and Its Derivatives, 2022

Illegal actions had been done by those corporations and MoT in the granting of the export permissions. The Attorney General had declared five suspects in this case, which were Indra Sari Wisnu (Directorate General of International Trade, MoT), Weibinanto Halimdjati alias Lin Che Wei (Director of PT Independent Research & Advisory Indonesia and Assistance Team of the Coordinating Minister of Economics), Master Parulian Tumanggor (Commissioner of PT Wilmar Nabati Indonesia), Pierre Togar Sitanggang (General Affairs of PT Musim Mas), and Stanley Ma (Senior Manager Corporate Affairs, Permata Hijau Group).

In this case, the Attorney General charged the suspects with Articles 2 and 3 Law No. 31/1999 jo. Law No. 20/2001:

"Any person violating the law to enrich themselves or other people or a corporation which can inflict state financial or economic loss, shall be criminalized with a lifetime imprisonment or at least a 4 (four)-year imprisonment and at most a 20 (twenty)-year imprisonment and at least Rp 200.000.000,oo (two hundred million rupiahs) fine and at most a Rp 1.000.000.000,oo (one billion rupiahs) fine" (Article 2(1) Law No. 31/1999).

"Any person with the intention to benefit themselves or other people or a corporation, abusing their power, opportunity or any means exist due to their position or level in which they inflict state financial or economic loss, shall be criminalized with a lifetime imprisonment or at least a 1 (one)-year imprisonment and at most a 20 (twenty)-year imprisonment and at least Rp 50.000.000,00 (fifty million rupiahs) and at most Rp 1.000.000.000,00 (one billion rupiahs)" (Article 3 Law No. 31/1999)).

In their charges, the Attorney General found that there are some state financial losses inflicted by the export permit granted to the three groups. The losses in total was Rp 6.047.645.700.000,00. The construction of these state financial losses was counted from the total of noncompliance to the DMO that the three groups had done, so the scarcity and inflation of cooking oil prices happened. Because of the inflation, the Government was forced to distribute *Bantuan Langsung Tunai* (Direct Cash Assistance/BLT) for Cooking Oil to 20,5 million underprivileged households. The financing for this was sourced from the 2022 State Budgets for Rp 6.047.645.700.000,00.

Table 3. **Calculation of State Financial Losses in the Corruption Case on the Granting of Export Facilitation permit to CPO Commodity and Its Derivatives, January – March 2023**

CORPORATIONS	DMO RECOMMENDATIONS (METRIC TONNE)	SHARES (%)	ALLOCATION OF STATE FINANCIAL LOSS
MUSIM MAS GROUP			
• Agro Makmur Raya	3,818.167	0.43%	Rp 26,282,808,949.58
• Intibenua Perkasatama	69,821.981	7.95%	Rp 480,627,952,392.97
• Megasurya Mas	1,310.300	0.15%	Rp 9,019,606,676.88
• Mikie Oleo Nabati Industri	755.578	0.09%	Rp 5,201,108,727.67
• Musim Mas	78,601.398	8.95%	Rp 541,062,118,761.21
• Musim Mas-Fuji	400.002	0.05%	Rp 2,753,460,204.57
• Wira Inno Mas	6,240.000	0.71%	Rp 42,953,785,899.20
SUBTOTAL	**160,947.425**	**18.32%**	**Rp 1,107,900,841,612.08**
PERMATA HIJAU GROUP			
• Nagamas Palmoil Lestari	7,710.658	0.88%	Rp 53,077,236,037.50
• Nubika Jaya	2,000.000	0.23%	Rp 13,767,239,070.26
• Pelita Agung Agrindustri	5,039.168	0.57%	Rp 34,687,715,285.59
• Permata Hijau Palm Oleo	11,098.976	1.26%	Rp 76,401,128,013.52
• Permata Hijau Sawit	1,234.473	0.14%	Rp 8,497,642,458.39
SUBTOTAL	**27,083.275**	**3.08%**	**Rp 186,430,960,865.26**
WILMAR GROUP			
• Multi Nabati Sulawesi	1,080.000	0.12%	Rp 7,434,309,097.94
• Multimas Nabati Asahan	87,029.600	9.91%	Rp 599,078,654,694.42
• Sinar Alam Permai	10,286.000	1.17%	Rp 70,804,910,538.33
• Wilmar Bioenergi Indonesia	1,100.000	0.13%	Rp 7,571,981,488.64
• Wilmar Nabati Indonesia	141,394.400	16.09%	Rp 973,305,253,997.78
SUBTOTAL	**240,890.000**	**27.42%**	**Rp 1,658,195,109,817.11**
3-GROUP TOTAL	**428,920.700**	**48.82%**	**Rp 2,952,526,912,294.45**
OTHER	**449,635.366**	**51.18%**	**Rp 3,095,118,787,705.55**
TOTAL	**878,556.066**	**100%**	**Rp 6,047,645,700,000.00**

Source: Expert's Testimony in the Corruption Case on the Granting of Export Facilitation Permit to Export CPO Commodity and Its Derivatives, 2022.

Apart from state financial losses, the Attorney General's Office also found state economic losses from this case. State economic losses use two calculation approaches. First, social costs calculated from corruption cases of granting export approvals for CPO commodity and its derivative products. This analysis was carried out to measure the impact of corruption on the country's economy with a focus on the business sector and the household sector. Second, the calculation of the illegal profits obtained by the corporation from the corruption case. Because there are illegal profits obtained by corporations from criminal cases of corruption, these profits must be seized by the state.

Input - Output Analysis was used by the Attorney General's Office to calculate the social costs of corruption. The analysis was chosen because it is quite simple to explain, yet provides inter-sector linkages in its analysis. The calculation of lost consumer surplus, which is based on partial equilibrium, is used to better understand household behavior in the face of rising prices or scarcity of palm oil used in cooking. Based on these calculations, it was found that the economic impact due to corruption, a burden on the household sector, reaching IDR 1,351,911,734,784.00 and the economic impact due to corruption, which was a burden on the business sector, reaching IDR 10,960,141,564,141.00, leading to a total of IDR 12,312,053,298,925.00. Furthermore, these losses are spread across the three areas, as can be seen in Table 4.

Table 4. **The Nation Economic Loss from the Social Cost born by Households and Businesses due to Corruption Crime involving Export Permit for Commodities of CPO and its Derivatives, January – March 2023**

Corporation/ Grup	Differences between realization and DMO Recommendation (Lt)	Proportion against the Total of DMO Deficit	Economic Loss borne by Households and Businesses
WILMAR GROUP			
• PT Wilmar Nabati Indonesia	-145,327,062	42.89%	-5,280,636,827,054
• PT Multimas Nabati Asahan	-78,024,566	23.03%	-2,835,118,200,238
• PT Sinar Alam Permai	-9,486,953	2.80%	-344,720,069,673
• PT Multimas Nabati Sulawesi	-742,185	0.22%	-26,968,215,686
• PT Wilmar Bio Energi Indonesia	-1.141,932	0.34%	-41,493,498,087
Sub Total Wilmar Group	**-234,722,699**	**69.27%**	**-8,528,936,810,738**
PERMATA HIJAU GROUP			
• PT Permata Hijau Palm Oleo	-5,717,591	1.69%	-207,755,673,034
• PT Nagamas Palmoil Lestari	-7,551,555	2.23%	-274,395,001,580
• PT Nubika Jaya	0	0.00%	0
• PT Permata Hijau Sawit	-11,761	0.00%	-427,357,609
• PT Pelita Agung Agrindustri	-3,966,589	1.17%	-144,130,870,387
Sub Total Permata Hijau Grup	**-17,247,496**	**5.09%**	**-626,708,902,610**
MUSIM MAS GROUP			
• PT Musim Mas	-20,433,285	6.03%	-742,468,455,784
• PT Musim Mas - Fuji	-273,293	0.08%	-9,930,452,654
• PT Intibenua Perkasatama	-62,322,212	18.39%	-2,264,553,903,195
• PT Mikie Oleo Nabati Industri	0	0.00%	0
• PT Agro Makmur Raya	-23,890	0.01%	-868,065,148
• PT Megasurya Mas	-515,493	0.15%	-18,731,069,634
• PT Wira Inno Mas	-3.298,516	0.97%	-119,855,623,176
Sub Total Musim Mas Group	**-86,866,690**	**25.64%**	**-3,156,407,585,578**
TOTAL	**-338,836,885**	**100.00%**	**-12,312,053,298,925**

Source : Expert testimony at the Court on the Corruption Crime Case related to Export Permit of CPO and its Derivative products, 2022

Furthermore, the calculation of illegal gains is calculated based on the total realized DMO deficit that should have been distributed by the company to the retailer level, the difference between the average price in the international market and the domestic market. The difference in DMO deficit is 338,836,885 liters. The average international price of cooking oil (Feb-Mar 2022) is US$1,628,243/ton or Rp. 23,609,523 (exchange rate US$1 = Rp. 14,500). The price per liter at the international level is (Rp. 23,609,523/1100) = Rp. 11,463.203/liter. Meanwhile, the average price of cooking oil in the domestic market (Feb-Mar 2022) is Rp. 14,250.500/liter. Thus, the difference between the international price and the domestic price is Rp. 7,213.703/liter. This price difference is multiplied by the total DMO deficit of each relevant company. The total illegal profits obtained by the three business groups amounted to Rp. 2,444,268,716,885. Details can be seen in Table 5.

Tabel 5. **Calculation of State Economic Losses from Illegal Profits obtained by Three Business Groups in the Corruption Case of Granting Export Approval for CPO Commodities and Their Derivative Products, January – March 2023**

Company/Group	Difference in Realization Compared to DMO Recommendation (Lt)	Proportion to Total DMO Deficit	Illegal Gain Value (Rp)
WILMAR GROUP			
• PT Wilmar Nabati Indonesia	-145,327,062	42.89%	-1,048,346,290,275
• PT Multimas Nabati Asahan	-78,024,566	23.03%	-562,846,062,900
• PT Sinar Alam Permai	-9,486,953	2.80%	-68,436,065,206
• PT Multimas Nabati Sulawesi	-742,185	0.22%	-5,353,905,181
• PT Wilmar Bio Energi Indonesia	-1,141,932	0.34%	-8,237,558,502
Sub Total Wilmar Group	**-234,722,699**	69.27%	-1,693,219,882,064
PERMATA HIJAU GROUP			
• PT Permata Hijau Palm Oleo	-5,717,591	1.69%	-41,245,004,389
• PT Nagamas Palmoil Lestari	-7,551,555	2.23%	-54,474,676,331
• PT Nubika Jaya	0	0.00%	0
• PT Permata Hijau Sawit	-11,761	0.00%	-84,841,806
• PT Pelita Agung Agrindustri	-3,966,589	1.17%	-28,613,795,690
Sub Total Permata Hijau Group	**-17,247,496**	5.09%	-124,418,318,216
MUSIM MAS GROUP			
• PT Musim Mas	-20,433,285	6.03%	-147,399,655,905
• PT Musim Mas - Fuji	-273,293	0.08%	-1,971,457,902
• PT Intibenua Perkasatama	-62,322,212	18.39%	-449,573,936,117
• PT Mikie Oleo Nabati Industri	0	0.00%	0
• PT Agro Makmur Raya	-23,890	0.01%	-172,333,926
• PT Megasurya Mas	-515,493	0.15%	-3,718,613,494
• PT Wira Inno Mas	-3,298,516	0.97%	-23,794,516,086
Sub Total Musim Mas Group	**-86,866,690**	25.64%	-626,630,516,604
TOTAL	**-338,836,885**	**100.00%**	**-2,444,268,716,885**

Source: Expert Testimony at the Trial of Corruption Case of Granting Export Approval for CPO and Its Derivative Products, 2022

5. Case Analysis of the Crime Construction

In this case on the granting of export facilitation permit to the CPO commodity and its derivatives, it can be seen that there is an access exchange from how the policy on the export threshold due to cooking oil scarcity, which was initiated by the President, was neglected by the MoT in its execution.

This negligence was conducted in subtle ways, which: 1) they positioned the control to meet the cooking oil supply not as an obligation, but as a form of commitment (pledge); 2) they did not implement the obligation to inform the realization of the cooking oil distribution; 3) they constructed misleading information on the realization of cooking oil distribution; and 4) they did not conduct any verification on the granting of export permit. Because of these accumulated actions, the incentives for business players became very little to meet the domestic needs in order to combat cooking oil scarcity.

After the promulgation of the MoT Regulation No. 8/2022, it is indirectly implied that cooking oil exports can only be done based on a requirement, which is to meet the distribution obligations to domestic needs. As indicated on Picture 4 below, the promulgation of MoT Regulation No. 8/2022 on the 8th of February 2022 was to become effective a week after that. Cooking oil export permit policy is no longer based on negotiation and voluntary, but on the basis of administrative requirements and the challenge of trading outgoing goods.

In fact, as revealed in the court case even after the regulation was effectively applied, a 'commitment-based' policy was still being supported. For instance, when they were faced with Malaysian business groups, on the 15th of February 2022. In a similar timeframe, the granting of export permit practices without verification, by Indra Sari Wardhana, was still being exercised for the three business groups like Wilmar, Musim Mas, and Permata Hijau. Moreover, there was also a permit granted for a business despite never submitting the supporting documents, such as in the cases PT Industri Nabati Lestari and PT Energi Unggul Persada.

Figure 4. **The Changes in the Cooking Oil Export Policy through the MoT Regulations 8/2022 and 12/2022**

During the trial, though it was not explained in detail, the promulgation process of the MoT Regulation No. 12/2022, which revises the MoT Regulation No. 8/2022, that specifically removes Article 8A, including the required obligation to meet the DMO. Should the form corruption be identified as a corruption on access exchange, every amendment to the policy must have been a concern to the law enforcement.

Business players and the formal economy's dependence on policies which causes them to amend it has made private interest as the main priority, is not something new in the corrupt practices.[25] Moreover, if the change comes from a particular transaction involving those with interests. Despite the policy alone is an open norm, the analysis on the parties involved, and the ones benefitted from the policy will help the law enforcement to fully uncover the corruption on the granting of the export permit to the CPO commodity and its derivatives.

With that perspective, the basic issue of this corruptive action is not on the business groups that illegally export cooking oil, but on the failure of the Government to prioritize the public's interest in the policymaking. The momentum to protect the public's aspiration, such as making urgent needs to be available, was seen as a loophole to conduct transactions. As a consequence, the access exchange was actually initiated - or more or less fabricated by the Government itself, concealing it through complicated laws, in order to take its cut from the cooking oil inflation, while ignoring the condition and social burden that the society had to bear due to the scarcity of that essential needs.

Then, who are the main actors in the case? The trial of the Weibinantno Halimdjati as a defendant in the Case No. 59/Pid.Sus.TPK/2022/PN.Jkt.Pst revealed various actors involved in the illegal cooking oil export corruption case during the national cooking oil rarity. Weibinanto was positioned as the participatory party (*medepleger*) in this case, although in the trial was described inconsistently, on one part he was seen as the party that managed and ordered the execution of the policy, but on the other he was only following orders from the Ministry of Trade, Muhammad Luthfi.

Meanwhile, if we look at the Case No. 57/Pid. Sus-TPK/2022/PN Jkt.Pst, Indra Sari Wardhana (the General Director of International Trade, MoT), who granted the illegal export permit was positioned as an actor. However, the judges in their considerations felt that Indra Sari Wardhana could not be fully blamed, as they stated:

> *"Making the decision to grant CPO and Cooking Oil Export Permits cannot be separated from the policy of the leadership or the superordinate of the Defendant, which is Muhammad Luthfi as the Minister of Trade of the Republic of Indonesia during that time. Because that can become a consideration to lessen the criminal punishment for the Defendant as stated in the dictum of this Decision."*

25 Boehm FND. Regulatory Capture Revisited – Lessons from Economics of Corruption, pp. 31.

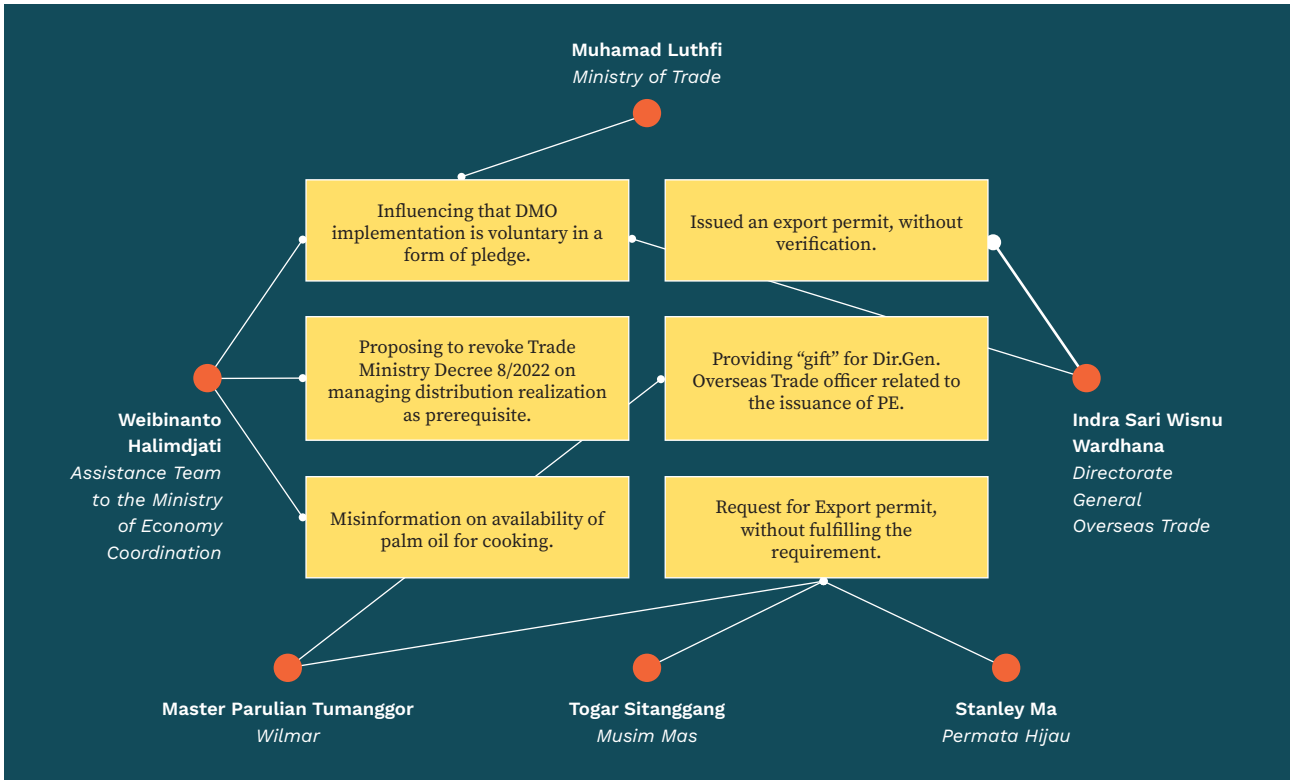


Figure 5. **Role of The Actors in the Corruption Case related to Export Permit on CPO Commodity and its Derivatives**

Muhammad Luthfi's name surfaced several times during the trial in the court as an actor that contacted Weibinanto Halimdjati, gave orders to Indra Sari Wardhana, and discussed plenty of policies on managing the cooking oil scarcity with the cabinet, as well as coordinated with the Coordinating Ministry of Economics. However, up until this annotation is written, there has been no legal process yet for Muhammad Luthfi as the MoT at the time the policy was in place. The Attorney General still has not called Luthfi to be investigated.

How proper are the charges with the criminal actions? For both Weibinanto and Indra Sari, the charges stated by the Public Prosecutor were constructed in the form of a subsidiary charges, using the article on the corruption that inflicts state loss as stipulated in the Articles 2 and 3 Law No. 31/1999 jo. Law No. 20/2001.

The judges in both of the cases rejected the idea of using Article 2 which has an element of illegality, and tended to qualify Weibinanto as well as Indra Sari with Article 3 that has an element of 'abuse of authority'. Indra Sari, as the General Director of International Trade for the MoT, had many roles, ranging from suggesting the relieve for the domestic supply obligations, granting the export permit despite not meeting the requirements, ordering the verification team to process the export agreement that did not meet the requirements, knowing and agreeing to receive money from Tumanggor to the verification team, and not conducting checks to the DMO.

Other things that include the roles that were proven during the trial indirectly described the liability of Indra Sari. However, in this case, there was no investigation to unveil the flow of the transaction or the changes in wealth from the actors involved at all. Not only to add onto the liability of Indra Sari, but also to reveal other actors that might be involved in this case.

How was the scale of the impact? Although some past decisions have explained the matter qualification of abuse of authority, it is important to note that the implementation of Articles 2 and 3 is not that many in corruption cases - including cases involving natural resources, especially more to the cases that were the results of direct arrests and wiretapping. Compared to the cases of bribery, the articles on state loss offer a wider perspective to view corruption cases. Outside of the debates and their resonance with the United Nations Convention on Anti-Corruption or the material nature of the provision, the element of loss and state economy in the formulation of those provisions give us the chance to change the way we position corruption as a crime with victims.

As crime with victims (though indirectly), to the extent that the loss is concrete, it shall be a consideration for legal thinkers to ensure to burden the corruptor. Not only to satisfy the will to avenge, but to make sure the loss suffered by the victims of this crime is remedied. This case indicates the scarcity of cooking oil as a structural issue, in which if the government actors exercised their functions properly in a good governance (*benevolent government*), this could have been handled effectively and with as minimal damage as possible.

Figure 6. **Chronology of Policies and Events related to Corruption Case of Granting Export Approval for CPO Commodity and its Derivative Products**

In this context, it is easy to see the causality proportionally between the action of the actors and the crime as a whole with the losses suffered by the society in the form of cooking oil inflation. Rimawan Pradiptyo also argued about this in his testimony, that the retail price will be shaped according to the people's ability to afford it if the cooking oil scarcity as an essential need does not occur.

Besides that, during the trial, Rimawan Pradiptyo as an expert gave an example of how the impacts and the burdens can be received by the direct business actors, as well as other economic players, including in the context of the public. Therefore, the state financial loss does not always intersect with the state economic loss, but the state economic loss will consequently cause state financial loss if the state itself believes in the welfare losses.[26]

On the expert's testimony, Rimawan Pradiptyo had actually explained that corruption, specifically the serious ones, will go against the effort to distribute prosperity to the people. However, that opinion was derogated by the judges, saying that the occurred state economic loss was not an actual loss.

The way the judges saw the loss was solely as one of the elements that was separated from the whole context of the corruption is odd. Even the judges in the considerations also did not view the distribution of BLT for Rp 6 trillion in April 2022 as social funds that had to be borne by the Government due to the scarcity, with the assumption that those expenses were a part of a policy routine. If, for instance, the judges did not consider the burden of that routine, was actually caused by the same crime that repeats?

However, on the other side, this point of view is normal and logical should corruption be seen as a transactional action between one or two persons. The handling of the corruption case has a systematic implication, but despite that it cannot be done without seeing and positioning the crime in a wider political-economic ecosystem, mapping the network of actors relevant to the case, and how each actor interacts with one another in the form of various powers and structures. We, more or less, suspect that this view was formed due to the construction of the case that was built on the issue of illegal cooking oil export more than the corruption of the trade policies.

26 Lambsdorff, J.G. n.d. "The Institutional Economics of Corruption and Reform: Theory, Evidence, and Policy.

5.1. Analysis of the Examination of Crimes in Court

A. Analysis of Corruption Charges

To provide a note on the law enforcement process of corruption decisions in the granting of export approval facilities for CPO commodities and their derivatives, it is necessary to understand the approach taken by the Public Prosecutor, so that we can provide input on the approach applied. For this reason, this decision analysis will elaborate on important points that illustrate the approach used by the Public Prosecutor in this case.

First point, the Public Prosecutor used the approach of enriching a party by unlawful means or abuse of authority which caused state losses financially or economically. This approach uses the primary charge in the form of Article 2 paragraph (1) of the Anti-Corruption Law as follows:

"Any person who unlawfully commits an act of enriching themselves or another person or a corporation that may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."[27]

Meanwhile, the subsidiary charges using Article 3 of Anti-Corruption Law are as follows:

""Any person who with the aim of benefiting themselves or another person or a corporation, abuses the authority, opportunity or means available to them by virtue of their position or rank which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."[28]

Both articles are not bribery offenses, hence the substantiation method uses a different approach from the globally recognized corruption provisions.[29] The Public Prosecutor used an evidentiary approach based on the fulfillment of the elements of the article, which can be summarized as follows.

27 Article 2 paragraph (1) of the Anti-Corruption Law; Indra Sari Wisnu Wardhana Case Decision.
28 Article 3 of the Anti-Corruption Law; Indra Sari Wisnu Wardhana Case Decision.
29 T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019)

Table 6. **The Fulfillment of the Elements of Article 2 and Article 3 of Law Number 31/1999 jo. Law Number 20/2001 on the Eradication of Corruption**

ELEMENT	ARTICLE 2	ARTICLE 3
SUBJECT	Any person	Any person (typically Public Servant)
MAIN ELEMENT I	Unlawfully Enriching Certain Parties	Abuses the Authority, Opportunity or means to enrich certain parties
MAIN ELEMENT II	Causing State Finances and/or Economical Losses	Causing State Finances and/or Economical Losses

The distinction between Article 2 and 3 is on the Subject and Main Element I. Under Article 2, the subject may be a person in its broadest form, including corporations[30] without requiring the offender to be a public servant. Whereas Article 3 needs to be interpreted in conjunction with Main Element I related to a person who has the authority, opportunity or means in their position, which is usually related to public servants in the process of evidencing even though formally they may not be public servants as long as the Public Prosecutor (JPU) can prove that the person has the authority or position.

However, with the broad definition of Public Servant in the Anti-Corruption Law, it is quite difficult to find the meaning of "any person" outside the Public Servant in the capacity of position and authority. Considering that the broadly defined Public Servant refers to the Law on Civil Servants; civil servants in the Criminal Code; people who receive salaries or wages from state or regional finances; people who receive salaries or wages from a corporation that receives assistance from state or regional finances; or people who receive salaries or wages from other corporations that use capital or facilities from the state or the public.[31]

The explanation of the Subject has an impact on Main Element I. In Article 2, where the subject is a person in a broad sense, the Main Element I is read "unlawfully" in a broad sense. Meanwhile, in Article 3, it relates to abuse of authority, opportunity or means to enrich certain parties. Both alternative actions must be read in one breath as a means to enrich oneself, others or corporations.

Meanwhile, Main Element II relates to alternative substantiation regarding losses to state finances or the state economy. The two approaches differ in terms of calculation methods and relationships with the losses incurred. State economic losses have a broader impact.

30 See Article 1 point 3 of the Anti-Corruption Law
31 Article 1 point 2 of the Anti-Corruption Law
32 Dr. Master Parulian Tumanggor Case Decision, Stanley Ma Case Decision, Pierre Togar Sitanggang and Weibinanto Halimdjati Alias Lin Che Wei Case Decision.

Second, the Public Prosecutor also used the approach of Article 55 paragraph (1) of 1 Criminal Code in the form of involvement of other suspects and even private entities.[32] This means that the main indictment was charged to Indra Sari Wisnu Wardhana by contextualizing the actions of other defendants acting together according to their respective roles, namely Weibinanto Halimdjati Alias Lin Che Wei, Stanley Ma, Pierre Togar Sitanggang and Master Parulian Tumanggor.

Third, the imposition of restitution in accordance with the provisions in Article 18 of the Anti-Corruption Law. Restitution is the result of property valued in money with an amount 'as much as the same as the property obtained from the corruption crime'.[33] This means that it is adjusted to the amount obtained from each suspect.

B. Element Fulfillment

B.1. Subject

As previously described, the distinction between Article 2 and Article 3 is in the Main Element 1 related to the element "unlawfully" in general or abuse of authority or opportunity or means which will determine element 1 related to the definition of the subject of the offender.

The Panel of Judges considered that there is specificity to the legal subject in Article 3 of the Anti-Corruption Law compared to Article 2 of the Anti-Corruption Law. In Article 2 with the "unlawful" aspect which is general in nature, the definition of "any person" does not have to be a person who has the authority, opportunity or means. The Panel considers that it is more appropriate to use specificity in this case because in relation to this case, there are positions and authorities of the perpetrators so that the subjects listed in Article 3 of the Anti-Corruption Law are more appropriate. This caused Article 2 to be ruled out in the judge's consideration and the substantiation was carried out under Article 3 of the Anti-Corruption Law.[34]

B.2. Abusing Authority or Opportunity or Means to Enrich Themselves, Others or Corporations

The public prosecutor used the approach of proving abuse of authority or opportunity or means by linking it to violations of applicable regulatory provisions governing the minimum domestic quota.[35] In addition, the public prosecutor also utilized clues to prove mens rea in the offense.

There are at least 7 (seven) violations of regulations through the formal tort approach, namely:

a. Law No. 7/2014 on Trade;
b. Regulation of the Indonesian Minister of Trade (Permendag) No. 19/2021 on Export Policy and Controls;
c. Regulation of the Indonesian Minister of Trade No. 02/2022 on the amendment of Regulation of the Indonesian Minister of Trade (Permendag) No. 19/2021 on Export Policy and Controls;
d. Regulation of the Indonesian Minister of Trade No. 08/2022 on the second amendment of Regulation of the Indonesian Minister of Trade (Permendag) No. 19/2021 on Export Policy and Controls;

33 Article 18 paragraph (1) point a of the Anti-Corruption Law.
34 Page 832 Indra Sari Wisnu Wardhana Case Decision.
35 Pages 846-886 Indra Sari Wisnu Wardhana Case Decision.

e. Minister of Trade Decision No. 129/2022 on the Determination of the Amount for Domestic Market Obligation Distribution and Domestic Sales Price Obligation Sales;
f. Minister of Trade Decision No. 170/2022 on the Determination of the Amount for Domestic Market Obligation Distribution and Domestic Sales Price Obligation Sales;
g. Regulation of the Director General of Foreign Trade Number 02/DAGLU/PER/1/2022 concerning Technical Guidelines for the Implementation of Policies and Export Regulations for Crude Palm Oil, Refined, Bleached and Deodorized (RBD) Palm Olein and Used Cooking Oil.[36]

This fulfillment is done by proving that there is a violation of the existing regulations through the actions taken and the discretion given. Meanwhile, proof related to mens rea instructions is proven through:

a. Lobbying and negotiations conducted by Master Parulian Tumanggor of the Wilmar Group, Stanley Ma of the Permata Hijau Group, and Pierre Togar Sitanggang of the Musim Mas Group.
b. Delivery of the package to the address designated by Indra Sari Wisnu Wardhana.
c. Lin Chie Wei's conflict of interest.
d. Providing money to Farid to be distributed to other staff.

These various reasons were accepted by the judge in consideration so that Main Element I was fulfilled with the benefited companies.

Aktivis Greenpeace menulis "*DIRTY*" di silo kilang Wilmar International di Bitung, Sulawesi Utara. 25 September 2018.

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36 Page 838 Indra Sari Wisnu Wardhana Case Decision.

B.3. State Losses or State Economic Losses

On the issue of state financial and economic losses, the Public Prosecutor used both state financial and state economic calculations. However, the Panel of Judges granted the calculation of state financial losses and refused to grant the calculation of state economic losses. This was due to the fact that the benefits of not fulfilling the quota and profits in exports were not taken into account in the calculation pattern of state economic losses. The state losses calculated and justified by the Panel of Judges are:[37]

Table 7. **Calculation Results of State Financial Losses from Corruption Cases of Granting Export Approval for CPO Commodities and Their Derivative Products, January – March 2023**

COMPANY	DMO RECOMMENDATION (METRIC TON)	WORTH (%)	ALLOCATION OF STATE FINANCIAL LOSSES
MUSIM MAS GROUP			
• Agro Makmur Raya	3,818.167	0.43%	Rp 26,282,808,949.58
• Intibenua Perkasatama	69,821.981	7.95%	Rp 480,627,952,392.97
• Megasurya Mas	1,310.300	0.15%	Rp 9,019,606,676.88
• Mikie Oleo Nabati Industri	755.578	0.09%	Rp 5,201,108,727.67
• Musim Mas	78,601.398	8.95%	Rp 541,062,118,761.21
• Musim Mas-Fuji	400.002	0.05%	Rp 2,753,460,204.57
• Wira Inno Mas	6,240.000	0.71%	Rp 42,953,785,899.20
SUBTOTAL	**160,947.425**	**18.32%**	**Rp 1,107,900,841,612.08**
PERMATA HIJAU GROUP			
• Nagamas Palmoil Lestari	7,710.658	0.88%	Rp 53,077,236,037.50
• Nubika Jaya	2,000.000	0.23%	Rp 13,767,239,070.26
• Pelita Agung Agrindustri	5,039.168	0.57%	Rp 34,687,715,285.59
• Permata Hijau Palm Oleo	11,098.976	1.26%	Rp 76,401,128,013.52
• Permata Hijau Sawit	1,234.473	0.14%	Rp 8,497,642,458.39
SUBTOTAL	**27,083.275**	**3.08%**	**Rp 186,430,960,865.26**
WILMAR GROUP			
• Multi Nabati Sulawesi	1,080.000	0.12%	Rp 7,434,309,097.94
• Multimas Nabati Asahan	87,029.600	9.91%	Rp 599,078,654,694.42
• Sinar Alam Permai	10,286.000	1.17%	Rp 70,804,910,538.33
• Wilmar Bioenergi Indonesia	1,100.000	0.13%	Rp 7,571,981,488.64
• Wilmar Nabati Indonesia	141,394.400	16.09%	Rp 973,305,253,997.78
SUBTOTAL	**240,890.000**	**27.42%**	**Rp 1,658,195,109,817.11**
TOTAL 3 GROUPS	**428,920.700**	**48.82%**	**Rp 2,952,526,912,294.45**
OTHERS	**449,635.366**	**51.18%**	**Rp 3,095,118,787,705.55**
TOTAL	**878,556.066**	**100%**	**Rp 6,047,645,700,000.00**

Source: Pages 886-890 Indra Sari Wisnu Wardhana Case Decision

37 Pages 886-890 Indra Sari Wisnu Wardhana Case Decision.

B.4. Restitution

In addition, the judge also did not grant the matter of restitution in the amount requested by the Public Prosecutor, as it did not match what was obtained by the individual and who benefited from the corporation.[38] For example, the amount of Rp. 2,952,526,912,294.45 (two trillion nine hundred fifty two billion five hundred twenty six million nine hundred twelve thousand two hundred ninety four rupiah forty five cents) charged against Indra Sari Wisnu Wardhana. In addition, the same approach applies to private actors.[39]

C. Notes on the Application of the Articles

Based on that analysis, there have been some notes that can be considered by the Attorney General in the development of this case. Firstly, Article 3 of the Anti-Corruption Law is not a bribery provision. In this case, the Public Prosecutor used the 'abuse of authority' approach for Indra Sari Wisnu Wardhana, which benefited the corporations by being facilitated by Weibinanto Halimdjati a.k.a. Lin Che Wei.

One of the approaches to prove an abuse of authority is through an approach to prove the profits gained by the authority who did the crime. On that criminal act, it could be seen that the Public Prosecutor elaborated the motives in detail, from the perspective of the corporations that benefited from it, which were Wilmar Group, Permata Hijau Group, and Musim Mas Group, by not fulfilling the DMO. However, according to the Government, the motives were not elaborated comprehensively and robustly. The only motive that was tried to be proven was through a clue of the involvement of Weibinanto's corporations in providing consultancy for palm oil companies.

However, Indra Sari's interest was not elaborated. In fact, Weibinanto did not offer himself to facilitate him, but Weibinanto got invited to participate in the process. This explanation on the motive would reveal who was really involved in this process, including some higher ranking officials that participated in the sudden meeting. On the other hand, the process to prove the motive from the Government's side emphasized more on the money transfer to the operational staff. Meanwhile, the profits received by Indra Sari were not revealed in this case. The concealed motive made it more difficult to prove the bigger player in this crime, including for example to what extent did the MoT get involved in this case.

The continuity of this case becomes very important to uncover the motive of the crime comprehensively, as well as the profits received by the Government. Those components are the gateways to reveal the involvements of other parties, along with optimization of law enforcements.

38 Page 892 Indra Sari Wisnu Wardhana Case Decision.
39 Indra Sari Wisnu Wardhana Case Decision, Dr. Master Parulian Tumanggor Case Decision, Stanley Ma Case Decision, Pierre Togar Sitanggang and Weibinanto Halimdjati alias Lin Che Wei Case Decision.

Secondly, the dependence on proving Indra Sari's action. Another issue on the implementation of Article 3 was the dependence on the proving of Indra Sari's actions, due to other Defendants being included as participators based on the Article 55(1) of the Penal Code. Contrasting with Article 2, Article 3 of the Anti-Corruption Law heavily depends on the proving of public officials who have the authority, opportunity, or means to commit such crime. This means that if Indra Sari is not proven guilty, then proving other Defendants will be more difficult. With that said, the dependence on this process during the trial is vulnerable to be broken down, noting that Indra Sari's motive and malicious intent were not revealed comprehensively in the trial.

Thirdly, the approach to give additional criminal punishment was not optimal. In this approach, the Public Prosecutor emphasized on the penalty of restitution money. Subjects that were penalized were limited only to individuals, so the optimum recovery of the asset as a result of the crime could not be done. Referring to the regulations on restitution money, the amount is calculated from the total money that is received in the corruption. This is why the judges could not obligate restitution equal to the profits received by the corporations, because they were the ones who did benefit from this case and not the individuals. Thus, it was difficult to recover the assets of the corporations because they did not belong to the restitution category. The judges' considerations prove that it is important to examine the cash flow of the perpetrators in any shape or form. It is a little difficult to picture that the violation to the law is done without any restitution to the perpetrators. Taking the Perma on Corporate Criminal Liability No. 1/2020 into account, that should the trial in the court be conducted without examining the profit that is gained by the suspects and the state's loss in their entirety, the punishment given is more likely to be far lower than it is as stipulated.

Fourthly, there was no criminal liability on the corporations. In this case, the corporations were not included as Defendants, even as suspects. It is worth considering that the usage of criminal liability of corporations in this case is to optimize the recovery of the assets, whether through imposing restitution or the seizure of property as a result of the crime. This approach can be utilized by considering the approaches to provisions that have been or are going to be used in the case.

The Anti-Corruption Law adopts the *vicarious liability* approach, based on the concept of Article 20 of the Law, with bearing in mind the prerequisite of the approach which is:

> *"Any corruption that is done by a corporation, if the said crime is done the people, either based on a working relation or other forms of relation, act inside the scope of the corporation individually or collectively."*[40]

40 Article 20 paragraph (2) on the Anti-Corruption Law.

In this approach, the basis for the application of a working relation or other forms of relation is referring to the *vicarious liability*. There are three requirements to impose this criminal liability to the corporation:

a. Firstly: the crime is a crime where a criminal liability of corporation can be requested;
b. Secondly: Of a working or other forms of relation;
c. Thirdly: in the scope of the corporation.

On the first issue about the crime where corporation criminal liability can be requested, the prevalent liability approach for crimes committed by corporations can only be applied on selected crimes in which based on the offense can be assumed as the corporation's action. With that said, the subject of the perpetrator is the corporation, that is assumed as a person along with its action.

Based on that explanation, the Anti-Corruption Law, in actuality, is more precise to have been adopting two standards of criminal liability of corporations, both on the grounds of Personal *Mens Rea* standards and the Collective *Mens Rea* standards.

In order to fill the loophole found in the formal criminal law in the context of criminal liability of corporations, law enforcements pass internal regulations as guidelines for them. For instance, the Attorney General promulgated the Attorney General's Regulation No. PER-028/A/JA/10/2014 on the Guidelines for Conducting Criminal Investigation on Corporations as Legal Persons. One of the most essential provisions in the Regulation is the criteria to request the criminal liability of corporations, which includes:

a. Any forms of action that is based on the decision of the Management of the Corporations that commits or is involved in committing the action;
b. Any forms of action, either committed or not committed by a person in the interest of the corporations, either because of their job and/or other related reasons;
c. Any forms of action that uses the human, financial, and/or any forms of resources, supports, or facilities by the corporations;
d. Any forms of action that is committed by a third party as requested or ordered by the corporations and/or the manager of the corporations;
e. Any forms of action committed to exercise corporations' business as usual activities;
f. Any forms of action that benefits the corporations;
g. Any forms of action that is accepted/usually accepted by the corporations;
h. Corporations that are clearly receiving the end results of criminal actions with a corporation as the legal person; and/or
i. Any forms of action that the corporations are requested to provide liability according to the laws.[41]

41 Chapter II Of The Regulation Of The Attorney General Of The Republic Of Indonesia No.: Per-028/A/Ja/10/2014 On Guidelines For Handling Criminal Cases With Corporate Legal Subjects.

The *a quo* Regulation also regulates types of criminal punishment that can be charged towards corporations that have become defendants in a criminal case. The punishments include recovering the state's financial losses, seizure or removal of the profits gained from the crime, revocation of business permits, and seizure of evidence or corporations' assets.[42]

Following the Attorney General, the Supreme Court also passed a Regulation No. 13/2016 on the Measures on Trying Crimes Committed by Corporations. Article 4(1) of the *a quo* Regulation stipulates: "corporations can be requested to provide criminal liability according to the existing criminal provisions on corporations stipulated in the Law on Corporations." Then, Article 4(2) of the Regulation stipulates that "In order to punish corporations for their crimes, judges can prove the corporations' guilt based on:

a. Corporations could gain profits or benefits from the crimes committed or crimes committed in the interest of the corporations;
b. Corporations let the crimes be done; or
c. Corporations did not take any measures necessary to prevent the crimes, bigger impacts of the crimes, and to ensure compliance to the existing law, and to avoid the crimes themselves.[43]

Hence, the debate on whether the request for corporate criminal liability is valid or not in the Indonesian legal system is non-existent. However, the debate is more on how the liability is implemented in real life cases.

Within this context, this annotation is focused on the cooking oil corruption case that has corporations' involvement in that, which are Wilmar Group, Musim Mas Group, and Permata Hijau Group. In this case, three people that were seen as the representatives of each corporation, became the Defendants based on the investigation by the Attorney General, since they were the masterminds from the respective corporations. The Defendants are as follows: Master Parulian Tumanggor (Wilmar Group), Pierre Togar Sitanggang (Musim Mas Group), dan Stanley Ma (Permata Hijau Group). The Public Prosecutor gave them multiple charges, with a primary charge based on Articles 2(1) and 18 of the Law No. 31/1999 on the Eradication of Corruption – as amended through Law No. 20/2001 *juncto* Article 55(1) number 1 of the Penal Code, along with a subsidiary charge of Articles 3 and 18 Law No. 31/1999 on the Eradication of Corruption as amended through Law No. 20/2001 *juncto* Article 55(1) number 1 of the Penal Code.

Based on the trial process in the court, the Judges of the District Court of Central Jakarta delivered verdicts that rejected the primary charges. Despite this, the three Defendants were proven guilty of corruption based on the subsidiary charge, which was the Articles 3 and 18 Law No. 31/1999 on the Eradication of Corruption as amended through Law No. 20/2001[44] *juncto* Article 55(1) number 1 of the Penal Code. The verdicts are as follows:

42 Chapter IV of the Regulation of the Attorney General of the Republic of Indonesia No.: PER-028/A/JA/10/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects.

43 Article 4 paragraph (2) Perma on Corporate Criminal Liability

44 Article 3 of the Anti-Corruption Law reads: "Article 3 of the Anti-Corruption Law reads: "Any person who with the aim of benefiting themselves or another party or a corporation, abuses the authority, opportunity or means available to them because of their position or rank which may cause state financial or the state economical losses, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

a. District Court of Central Jakarta Decision No. 58/Pid.Sus-TPK/2022/PN.Jkt.Pst, with Master Parulian Tumanggor (Commissioner of PT Wilmar Nabati Indonesia) as the Defendant. Convicted with 1 (one) year and 6 (six) months in prison, as well as Rp 100 million fine, with a subsidiary of 2 (two) months in detention. District Court Judges: (1) Dr Liliek Prisbawono, S.H., M.H., (2) Saifuddin Zuhri, S.H., M.Hum.; (3) Dr. Mochammad Agus Salim, S.H., M.H. (4th of January 2023).
b. District Court of Central Jakarta Decision No. 60/Pid.Sus-TPK/2022/PN.Jkt.Pst, with Pierre Togar Sitanggang (General Manager on General Affairs of PT Musim Mas) as the Defendant. Convicted with 1 (one) year in prison, as well as Rp 100 million fine, with a subsidiary of 2 (two) months of detention. District Court Judges: (1) Dr Liliek Prisbawono, S.H., M.H., (2) Saifuddin Zuhri, S.H., M.Hum.; (3) Dr. Mochammad Agus Salim, S.H., M.H. (4th of January 2023).
c. District Court of Central Jakarta Decision No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst, with Stanley Ma (Senior Manager of Corporate Affairs for PT Victorindo Alam Lestari/Permata Hijau Group) as the Defendant. Convicted with 1 (one) year in prison, as well as Rp 100 million fine, with a subsidiary of 2 (two) months of detention. District Court Judges: (1) Dr Liliek Prisbawono, S.H., M.H., (2) Suparman Nyompa, S.H., M.H..; (3) Jaini Basir, S.H., M.H. (4th of January 2023).

Based on those District Court Decisions, the lenient convictions given to the Defendants were caused by several considerations. Firstly, based on the legal fact that the Defendants did not receive the money from the corruption that was done, so that the additional charge which was the restitution was not obligated to the Defendants. Secondly, specifically in the case of Stanley Ma (Permata Hijau Group), judges believed that the export exercised by the corporation actually gave some profits to the state.[45] On the contrary, at the final appellate level in the Supreme Court, the punishments to the Defendants were further added to 5 (five) to 6 (six) years in prison and Rp 200 million fine with a subsidiary of 6 (six) months in detention.

Even though the final appellate decisions look more just for the society, those decisions still have not unraveled the issue of the illegal gains that the three corporate groups receive. This means that despite the convictions that have been given, the fact that the illegal gains still exist in the respective corporations' assets and they can still operate their businesses as usual cannot be disputed. Those illegal gains gathered by each corporation are as follows:

a. Wilmar Group, which consists of: (1) PT. Sari Agrotama Persada; (2) PT. Multimas Nabati Sulawesi; (3) PT. Multimas Nabati Asahan; (4) PT. Wilmar Bioenergi; (5) PT. Wilmar Nabati Indonesia; and (6) PT. Sinar Alam Permai. The planned export total was 1,2 billion kg with a DMO of 240 million kg, but the fulfillment of the DMO was only 27,5 million kg, so the DMO deficit is 234,7 million kg. This gave Wilmar Group some illegal gains of around RP 1,04 trillion.

45 The Panel of Judges in their consideration stated: "The Panel of Judges considers that it is inappropriate and unfair for the Public Prosecutor's criminal charge (requisitoir) against the Defendant Stanley MA to be imprisoned for 10 (ten) years because on the other hand the Defendant (Permata Hijau Group Company) has provided many benefits to the state in the form of Export Tax on CPO and cooking oil commodities and so that state foreign exchange has also increased a lot. All exports of CPO and cooking oil carried out by the Permata Hijau Group Company were not smuggled but all exports were equipped with valid documents so that all exports of CPO and cooking oil were subject to export duty tax (export tax). This tax went into state revenue, Therefore, it would be unfair if the Defendant, who has provided income for the state's foreign exchange earnings, is then sentenced to imprisonment for 10 (ten) years". See Decision of the Central Jakarta District Court No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 986.

b. Musim Mas Group, which consists of: (1) PT. Agro Makmur Raya; (2) PT. Intibenua Perkasatama; (3) PT. Megasurya Mas; (4) PT. Mikie Oleo Nabati Industri; (5) PT. Musim Mas, (6) PT. Musim Mas-Fuji; and (7) PT. Wira Inno Mas. The planned export was around 775 million kg, with a DMO of 160 million kg. However, the fulfillment of the DMO was only 81 million kg, thus the deficit is 78 million kg. From that difference, Musim Mas Group gained Rp. 626 billion illegally.[46]
c. Permata Hijau Group which consists of: (1) PT. Permata Hijau Palm Oleo; (2) PT. Nagamas Palmoil Lestari; (3) PT. Permata Hijau Sawit; (4) PT. Pelita Agung Agrindustri; (5) PT. Nubika Jaya; and (6) PT. Victorindo Alam Lestari. They entirely hold 32 export permits and the illegal gains received was Rp. 146 billion.[47]

In those cases, the Public Prosecutor constructed their *ratio legis* based on the *Mens Rea* Standard of a single actor. As a result, the decision only led to the conviction of the individuals who represented their respective companies. However, as expressed by Suhariyanto, that "in plotting a manager as the subject to criminal law, it is not yet adequate to only recover the losses inflicted by the multi-dimensional crime committed by corporations."[48]

He continues, that "in many occasions, despite the management having been convicted of causing state financial loss, even after the judgment has become valid, the corporations are never going to get prosecuted and convicted. Meanwhile, the result of the crime has become one with their assets."[49] Hence, the criminal liability of corporations should have not stopped at the point where the directing minds are, but they have to continue to be liable as the parties that gained profits from corruption.

With that objective, the Public Prosecutor can follow the prosecution strategy from the PT GJW case.[50] Before actually prosecuting the corporation as a collective entity, the Public Prosecutor charged the management beforehand, up until the Court delivers the valid verdicts for the Defendants. Then, the Public Prosecutor charged the corporation that received the illegal gains from the crime. In their considerations, the Judges at the Court of Appeal that strengthened the District Court's Decision, expressed that the corporations have a criminal liability, one of them being when the crime benefitted the said corporations.[51] Despite needing longer time to construct the prosecution compared to the simultan prosecutions for both the managers and the corporations, this strategy is far safer. This is due to a higher predictability that the prosecution can be granted, since the managers have been proven guilty by the previous decision.

46 Decision of the Central Jakarta District Court No. 60/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp.734.
47 Decision of the Central Jakarta District Court No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 987.
48 Budi Suhariyanto, 2018, "Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi," Negara Hukum 9 (1), pp. 106.
49 *Ibid*., pp. 108.
50 See Decision No. 908/Pid.B/2008/PN.Bjm, Decision No. 02/PID/SUS/2009/PT.BJM, and Decision No. 936 K/Pid.Sus/2009.
51 Banjarmasin High Court Decision No. 04, pp. 180-181; See Budi Suhariyanto, 2016, "Progresivitas Putusan Pemidanaan Terhadap Korporasi Pelaku Tindak Pidana Korupsi," De Jure: Jurnal Penelitian Hukum 16 (1).

5.2. Corporate Criminal Liability Analysis

A. Corporate Criminal Liability

Corporate criminal liability is one of the most pivotal developments in criminal law.[52] Prior to its mainstream reception in the legal lexicon, the concept of criminal liability for corporations was the subject of much debate. This departs from the classical conception of criminal liability which requires two elements, namely the act (actus reus) and the guilty mind (mens rea).

The question is whether a corporation has a conscience that renders it culpable. The answer to this question offers three dominant standards in viewing corporate criminal liability. The first one is that, unlike humans, corporations as fictitious entities do not have a mind. However, given its operations that can cause social and environmental harm, corporations can still be prosecuted through liability without fault elements, especially strict liability.

The second is the Single Actor Mens Rea Standard which sees that corporations are the embodiment of the will of the individuals who run them.[53] In this case, corporate criminal liability is addressed to the individual fault (individual mens rea) who acts as the management of the corporation.

Departing from this view, then developed at least two models in demanding corporate criminal liability, namely: Vicarious Liability and Identification Theory. These two models both consider that the mental state of an individual in a corporation represents the mental state of the corporation. The difference is that the Vicarious Liability Model views that the corporation is responsible in the event of a criminal act committed by any employee or agent of the corporation who carries out business operations with the aim of benefiting the corporation.[54] Whereas the Identification Theory, also called the Nominalist Model, sees that the corporation is responsible only for crimes by individuals who are identified as the directing or controlling mind and will of the corporation, or persons who at least have organizational authority to carry out transactions on behalf of the corporation.[55]

The third is the Collective Mens Rea Standard, which assumes that a corporation as a collective entity has a state of mind which is shaped through the common will of the subjects who form and run it. In the context of corporate criminal liability, Khana calls it "corporate mens rea" (the conscience of the corporation) where corporate actions are seen as the embodiment of the collective will of the corporate body so that criminal liability is stressed on the institutional dimension (rather than the individual) of the corporation committing the offense.[56]

52 Susanne Beck, "Corporate Criminal Liability", in: M. Dubber & T. Hörnle (eds.), The Oxford Handbook of Criminal La (Oxford University Press, 2014), pp. 582.
53 V.S. Khana, "Is the Notion of Corporate Fault a Faulty Notion: The Case of Corporate Mens Rea" (1999) Boston University Law Review 79 (2), pp. 360.
54 James Gobert, "Squaring the Circle: The Relationship Between Individual and Organizational Fault", in: J. Gobert & A. Pascal (eds.), European Developments in Corporate Criminal Liability (Routledge, 2011), pp. 141.
55 *Ibid.*, pp. 141; Mark Pieth & Radha Ivory, "Emergence and Convergence: Corporate Criminal Liability Principles in Overview", in: M. Pieth & R. Ivory (eds.), Corporate Criminal Liability: Emergence, Convergence, and Risk (Springer, 2011), p. 6.

Based on this view, criminal liability for corporate action can adopt two forms, namely: Aggregation Theory and Corporate Culture Model. These two models both depart from the proposition that corporations are entities that can be the main perpetrators of a crime, however, they have different perspectives in assessing the source of corporate culpability.

Aggregation Theory views that corporate criminal liability arises as a result of corporate fault originating from the collective mind or will of the agents and/or organs within a corporation.[57] On the other hand, the Corporate Culture Model, also known as the Holistic Model, views that corporations commit offenses as a result of their internal features, such as the policies, practices, and institutional structures of said corporations.[58] In addition to these internal aspects, offenses may also arise as a result of the nature of competition in the industry in which the corporation operates, i.e. the existence of an oligopoly.

In Indonesia, Law No. 31/1999 on the Eradication of Corruption as amended by Law No. 20/2001 (Anti-Corruption Law) normatively regulates corporate criminal liability in the context of corruption offenses. Article 20 paragraph (1) of the Anti-Corruption Law stipulates that "[i]n the event that a criminal act of corruption is committed by or on behalf of a corporation, the prosecution and sentencing shall be carried out against the corporation and/or its executives."

Furthermore, paragraph (2) stipulates that "[t]he criminal offense of corruption is committed by a corporation if the criminal offense is committed by persons either by virtue of employment relationship or by other relationships, acting within the corporation either individually or collectively". Satria noted that Article 20 paragraph (2) of the Anti-Corruption Law "explicitly adopts 2 important theories in corporate criminal liability, namely the Identification Theory, in the sentence "if the criminal act is committed by persons, either based on employment or based on other relationships" [and] the Aggregation Theory, in the sentence "if the act is committed either individually or jointly."[59] Hence, it is more precise to say that the Anti-Corruption Law recognizes two standards of corporate criminal liability, both the Single Actor Mens Rea Standard and the Collective Mens Rea Standard.

To remedy the shortcomings of the procedural law in the context of corporate criminal liability, law enforcement agencies issue their legal instruments internally. The Attorney General, for example, issued Regulation of the Attorney General No. PER-028/A/JA/10/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects. One of the important provisions stipulated in the regulation is the criteria for prosecuting corporate criminal liability, namely:

a. All forms of activities based on the decision of the Corporate Management who performs or participates in performing;
b. All forms of activities, whether actions or inactions, carried out by a person for the benefit of the corporation either because of his work and/or other relationships;

56 V.S. Khana, note 2.
57 Mark Pieth & Radha Ivory, note 4, p. 7.
58 *Ibid*, pp. 6-7.
59 Herman Satria, "Pembuktian Kesalahan Korporasi Dalam Tindak Pidana Korupsi," (2018) Integritas 4 (2), pp. 41.

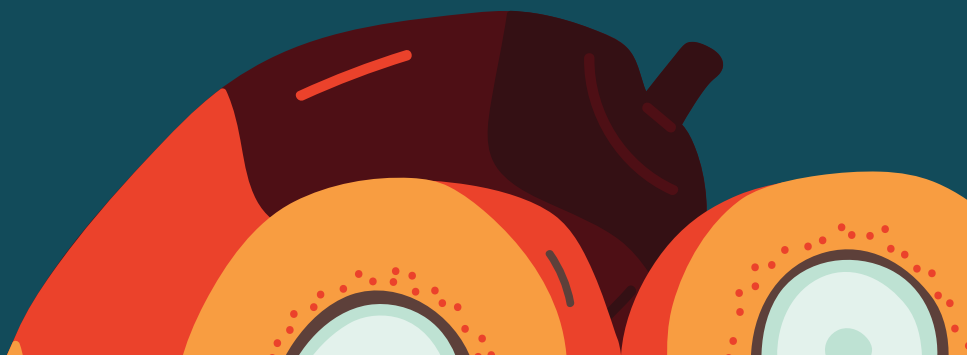
c. All forms of activities that use human resources, funds and/or all forms of support or other facilities from the corporation;
d. All forms of activities carried out by third parties at the request or order of the corporation and/or corporate board;
e. All forms of activities in the context of carrying out the daily business affairs of the corporation;
f. All forms of activities that benefit the corporation;
g. All forms of activities that are accepted/usually accepted by the corporation;
h. Corporations that visibly accommodates the proceeds of a criminal offense with the legal subject of the corporation, and/or
i. All other forms of activities that can be held liable to the corporation according to the law.[60]

The regulation also regulates the types of punishment that can be charged to corporations who are defendants in a criminal offense. This type of punishment includes additional penalties in the form of compensation payments for state financial losses, confiscation or elimination of profits obtained from criminal offenses, revocation of business licenses, and confiscation of evidence or corporate property/assets.[61]

Joining the Attorney General, the Supreme Court also issued Supreme Court Regulation (PERMA) No. 13/2016 on the Procedure for Handling Criminal Cases by Corporations. Article 4 paragraph (1) of the PERMA stipulates that "[c]orporations may be held criminally liable in accordance with the criminal provisions for corporations in the law regulating corporations." Furthermore, Article 4 paragraph (2) of PERMA 13/2016 stipulates that "In imposing punishment on a corporation, the judge may assess the fault of the corporation ... among others:

a. The corporation may benefit from the criminal offense or the criminal offense was committed for the corporation's benefit;
b. The corporation allows the criminal offense to occur; or
c. The corporation does not take the necessary steps to take precautions, prevent greater impact and ensure compliance with applicable legal provisions to avoid the occurrence of criminal offenses."[62]

As such, there is actually no longer any doubt as to whether corporations could be held criminally liable under the Indonesian legal system. However, what is often disputed is how this corporate criminal liability is implemented in concrete cases.



60 Chapter II of the Regulation of the Attorney General of the Republic of Indonesia No.: PER-028/A/JA/10/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects.
61 Chapter IV of the Regulation of the Attorney General of the Republic of Indonesia No.: PER-028/A/JA/10/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects.
62 Article 4 paragraph (2) Perma on Corporate Criminal Liability.

Within such context, this annotation focuses on the cooking oil corruption case involving corporations, namely the Wilmar Group, Musim Mas Group, and Permata Hijau Group. In this case, three people who were considered to be representatives of these corporations were charged by the Attorney General's Office for being the directing minds of the respective corporations they represented. They are: Master Parulian Tumanggor (Wilmar Group), Pierre Togar Sitanggang (Musim Mas Group), and Stanley Ma (Permata Hijau Group). The public prosecutor charged the defendants with multiple counts of the primary charge of Article 2 paragraph (1) jo. Article 18 of Law No. 31 Year 1999 on the Eradication of Corruption as amended by Law No. 20 Year 2001 jo. Article 55 paragraph (1) of 1 Criminal Code and a subsidiary charge of Article 3 Jo. Article 18 of Law No. 31 of 1999 on the Eradication of Corruption as amended by Law No. 20 of 2001 jo. Article 55 paragraph (1) of 1 Criminal Code.

Based on the examination before the court, the Central Jakarta District Court Judges decided that the primary charges were not proven. However, the three of them were legally and convincingly proven to have committed the crimes of corruption as charged in the subsidiary charges, namely Article 3 jo. Article 18 of Law No. 31 Year 1999 on the Eradication of Corruption as amended by Law No. 20 Year 2001[63] jo. Article 55 paragraph (1) of 1 Criminal Code. The verdict reads as follows:

a. Central Jakarta District Court Decision No. 58/Pid.Sus-TPK/2022/PN.Jkt.Pst on behalf of the Defendant Master Parulian Tumanggor as Commissioner of PT Wilmar Nabati Indonesia. Sentenced to 1 (one) year and 6 (six) months imprisonment and a fine of Rp. 100 million with a subsidiary of 2 (two) months imprisonment. District Court Judges: (1) Dr. Liliek Prisbawono, S.H., M.H., (2) Saifuddin Zuhri, S.H., M.Hum.; (3) Dr. Mochammad Agus Salim, S.H., M.H. (dated January 4, 2023).

b. Central Jakarta District Court Decision No. 60/Pid.Sus-TPK/2022/PN.Jkt.Pst on behalf of the Defendant Pierre Togar Sitanggang as General Manager of the General Affairs Section of PT Musim Mas. Sentenced to 1 year imprisonment with a fine of Rp. 100 million with a subsidiary of 2 (two) months imprisonment. District Court Judges: (1) Dr. Liliek Prisbawono, S.H., M.H., (2) Saifuddin Zuhri, S.H., M.Hum.; (3) Dr. Mochammad Agus Salim, S.H., M.H. (dated 4 January 2023).

c. Central Jakarta District Court Decision No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst on behalf of the Defendant Stanley Ma as Senior Manager Corporate Affairs of PT Victorindo Alam Lestari (Permata Hijau Group). Sentenced to 1 year imprisonment with a fine of Rp. 100 million with a subsidiary of 2 (two) months imprisonment. District Court Judges: (1) Dr. Liliek Prisbawono Adi, S.H., M.H., (2) Suparman Nyompa, S.H., M.H.; (3) Jaini Basir, S.H., M.H. (dated January 4, 2023).

63 Article 3 of the Anti-Corruption Law reads: "Any person with the intention to benefit themselves or other people or a corporation, abusing their power, opportunity or any means exist due to their position or level in which they inflict state financial or economic loss, shall be criminalized with a lifetime imprisonment or at least a 1 (one)-year imprisonment and at most a 20 (twenty)-year imprisonment and at least Rp 50.000.000,00 (fifty million rupiahs) and at most Rp 1.000.000.000,00 (one billion rupiahs)."

Based on the court's decision at first instance, the light sentence imposed was due to several considerations. First, there are legal facts that the defendants did not receive money from the proceeds of corruption, so that additional punishment in the form of restitution cannot be imposed on the defendants. Second, specifically in the case with the defendant Stanley Ma (Permata Hijau Group), the judge was of the opinion that the exports carried out by the corporation actually provided income for the country.[64] In contrast, at the Supreme Court level, the defendants' sentences were compounded from 5 (five) to 6 (six) years and a fine of Rp. 200 million with a subsidiary of 6 (six) months.

Although these final decisions are more reflective of the public's sense of justice, they still leave issues regarding the illegal gains made by the Wilmar Group, Musim Mas Group, and Permata Hijau Group. This means that although the defendants, who are the management of these corporations, have been sentenced, this sentence was not able to prevent the fact that the illicit gains have become corporate assets and the corporations are still able to operate as usual. The amount of the illicit profits from each of these corporations is as follows:

a. Wilmar Group consists of: (1) PT Sari Agrotama Persada; (2) PT Multimas Nabati Sulawesi; (3) PT Multimas Nabati Asahan; (4) PT Wilmar Bioenergi; (5) PT Wilmar Nabati Indonesia; and (6) PT Sinar Alam Permai. With a total export plan of 1.2 billion kg and a DMO obligation of 240 million kg, but the realization of the DMO is only 27.5 million kg, resulting in a difference in DMO obligations of 234.7 million kg. This gave the Wilmar Group an illicit profit of Rp. 1.04 trillion.

b. Musim Mas Group consists of: (1) PT Agro Makmur Raya; (2) PT Intibenua Perkasatama; (3) PT Megasurya Mas; (4) PT Mikie Oleo Nabati Industri; (5) PT Musim Mas; (6) PT Musim Mas-Fuji; and (7) PT Wira Inno Mas. This group of companies has a total export plan of 775 million kg, and the DMO obligation is 160 million kg, but the realized amount is 81 million kg, resulting in a difference of 78 million kg. From this difference, Musim Mas Group earned an illicit gain of Rp. 626 billion.

c. Permata Hijau Group consists of: (1) PT Permata Hijau Palm Oleo; (2) PT Nagamas Palmoil Lestari; (3) PT Permata Hijau Sawit; (4) PT Pelita Agung Agrindustri; (5) PT Nubika Jaya; and (6) PT Victorindo Alam Lestari. In total, 32 export approval licenses were obtained and the illicit profits amounted to Rp. 146 billion.[65]

64 The Panel of Judges in their consideration stated: "The Panel of Judges considers that it is inappropriate and unfair for the Public Prosecutor's criminal charge (requisitoir) against the Defendant Stanley MA to be imprisoned for 10 (ten) years because on the other hand the Defendant (Permata Hijau Group Company) has provided many benefits to the state in the form of Export Tax on CPO and cooking oil commodities and so that state foreign exchange has also increased a lot. All exports of CPO and cooking oil carried out by the Permata Hijau Group Company were not smuggled but all exports were equipped with valid documents so that all exports of CPO and cooking oil were subject to export duty tax (export tax). This tax went into state revenue, Therefore, it would be unfair if the Defendant, who has provided income for the state's foreign exchange earnings, is then sentenced to imprisonment for 10 (ten) years". See Decision of the Central Jakarta District Court No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 986.

65 Decision of the Central Jakarta District Court No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 987.

In all three cases, the prosecutor's legal construction was built upon the Single Perpetrator Mens Rea Standard. As a result, the court decisions only lead to the conviction of individuals who are considered as representatives of each corporation. However, as Suhariyanto stated that "[d]etermining the management as a person who can be convicted (legal subject) is apparently not sufficient in recovering losses caused by multi-dimensional corporate crimes".[66]

He continued, "[w]hat happens a lot is that even though the punishment has been decided against the administrators who have been proven to have committed acts detrimental to state finances and even until the decision is legally binding, the prosecution and punishment of the corporation has never been carried out. Even though the proceeds of the criminal offense have been included as corporate assets."[67] Therefore, criminal liability for corruption crimes should not stop at the individual who is the directing mind, but must continue to hold the corporation accountable as a party that receives benefits from the corruption.

For this purpose, the public prosecutor could follow the prosecution strategy of the PT GJW case.[68] Before prosecuting the corporation as a collective entity, the public prosecutor first prosecutes the management until the court decision that imposes a sentence on the defendant is legally binding. Then, the prosecutor prosecuted the corporation that benefited from the criminal offense. In its consideration, the judges at the appellate level who upheld the decision at the first level, stated that corporations are criminally responsible, one of which is if the criminal act is committed with the intention of benefiting the corporation.[69] Although it requires more time compared to the strategy of filing simultaneous charges between the board and the corporation, this strategy is much safer. This is due to the higher degree of predictability that the prosecutor's charges will be granted because the board has been found guilty by a previous court decision.

66 Budi Suhariyanto, 2018, "Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi," Negara Hukum 9 (1), pp. 106.

67 *Ibid*., pp. 108.

68 See Decision Number 908/Pid.B/2008/PN.Bjm, Decision Number 02/PID/SUS/2009/PT.BJM, and Decision Number 936 K/Pid.Sus/2009.

69 Banjarmasin High Court Decision No. 04, pp. 180-181; See Budi Suhariyanto, 2016, "Progresivitas Putusan Pemidanaan Terhadap Korporasi Pelaku Tindak Pidana Korupsi," De Jure: Jurnal Penelitian Hukum 16 (1).

Recent clearing of orangutan habitat inside the PT Globalindo Alam Perkasa Estate II palm oil concession in Kotawaringin Timur, Central Kalimantan. PT GAP II is a subsidiary of Musim Mas. 1°6'53"S, 113°54'40"E. 24 February 2014.

B. Prosecution of Benefited Corporations

As stated above, the three defendants who were the "directing minds" were not proven to have obtained money or benefited themselves. The court's decision only stated that their actions benefited the corporation they represented so the defendants could not be ordered to pay restitution. This is in line with the judge's reasoning in the case of the defendant Master Parulian Tumanggor who stated that:

"Considering, that as the legal facts obtained from the examination of this case, the Defendant Master Parulian Tumanggor was not proven to have benefited himself, but was proven to have benefited companies incorporated in the Wilmar Group amounting to Rp. 1,693,219,882,064.00 (one trillion six hundred ninety-three billion two hundred nineteen million eight hundred eighty thousand sixty-four rupiah).
That since the Defendant is not proven to have received money from the criminal act of corruption in this case, then in accordance with the provisions of Article 18 of the Anti-Corruption Law above, the Defendant is not subject to additional punishment in the form of payment of restitution."[70]

70 Decision of the Central Jakarta District Court No. 58/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 1133.

The same reasoning was also conveyed by the judges in the case of the accused Pierre Togar Sitanggang. In their reasoning, the judges explained that:

"Considering that as the legal facts obtained from the examination of this case, the Defendant Pierre Togar Sitanggang was not proven to have obtained money from the crime of corruption in this case or did not benefit himself, but was proven to benefit companies incorporated in the Musim Mas Group in the amount of Rp. 626,630,516,604.00."[71]

"That since the Defendant is not proven to have received money from the crime of corruption in the case a quo, then in accordance with the provisions of Article 18 of the Anti-Corruption Law above, the Defendant is not subject to additional punishment in the form of payment of restitution."[72]

Interestingly, in the Central Jakarta District Court Decision No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst on behalf of Stanley Ma, the Panel of Judges gave the following legal considerations (ratio decidendi):

"That further to the demands of the Public Prosecutor regarding the imposition of additional punishment against the Defendant in the form of paying restitution in the amount of Rp. 868,729,484,376.26 ... the Panel of Judges is of the opinion that according to the facts in the trial, the Defendant did not enjoy or benefit from the value of the restitution, as the indictment of the Public Prosecutor at issue is the export of CPO and cooking oil but did not fulfill the DMO obligation of 20%, namely:

1. *Wilmar Group lacked DMO of 234,722,699 liters worth Rp. 1,997,281,789,749 ...*
2. *Permata Hijau Group (Defendant) DMO deficit of 17,247,496 liters worth Rp. 146,760,879,887...*
3. *Musim Mas DMO deficit of 86,866,690 liters worth Rp.. 739,158,417,970...*

That those who enjoy the benefits of the DMO % difference of 17,247,496 liters or Rp. 147,760,879,887, - (one hundred forty-six billion seven hundred sixty million eight hundred seventy-nine thousand eight hundred eighty-seven rupiah) are corporations, namely: PT Permata Hijau Oleo (34.86%), PT Nagamas Palmoil Lestari (40.51%), PT Permata Hijau Sawit (0.987%), PT Pelita Agung Agrindustri (22.04%), and PT Nublika Jaya (1.51%), therefore it is appropriate if the restitution."[73]

This ratio decidendi became the entry point for the Public Prosecutor to prosecute Permata Hijau Group as a corporation that obtained illegal gains from corruption. However, the directive to prosecute restitution was not mentioned in the consideration of the case with the defendants Master Parulian Tumanggor (Wilmar Group) and Pierre Togar Sitanggang (Musim Mas Group). This is relatively troubling given that the three cases are interrelated and the fact that all three were decided at first instance by the same Chief Justice, namely: Dr. Liliek Prisbawono, S.H., M.H.,. Even Case No. 58/Pid.Sus-TPK/2022/PN.Jkt.Pst on behalf of Defendant Master Parulian Tumanggor and Case No. 60/Pid.Sus-TPK/2022/PN.Jkt.Pst on behalf of Defendant Pierre Togar Sitanggang were decided by the same panel of judges, namely: (1) Dr. Liliek Prisbawono, S.H., M.H., (2) Saifuddin Zuhri, S.H., M.Hum.; (3) Dr. Mochammad Agus Salim, S.H., M.H.

71 Decision of the Central Jakarta District Court No. 60/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp.790.
72 Decision of the Central Jakarta District Court No. 60/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 790.
73 Decision of the Central Jakarta District Court No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 987.

Furthermore, the substantial question that needs to be raised is whether the ratio decidendi to demand restitution in the case with the defendant Stanley Ma (Permata Hijau Group) can also be applied to the Wilmar Group and Musim Mas Group. To answer this question, it is necessary to first explain the position and function of ratio decidendi in court decisions.

Conceptually, ratio decidendi refers to the consideration given by the judge to arrive at a conclusion or verdict. Unlike obiter dicta, which is a judge's legal opinion that is not binding, ratio decidendi is binding. This is due to its philosophical character that allows for generalization or abstraction in similar cases. As expressed by Mcload, "[t]he more general, or abstract, the statement of the facts is, the greater the number of subsequent cases which will fall within the principle which is being formulated, and therefore the wider the ratio will be".[74] This means that to assess a ratio decidendi, an important step is to identify the principle behind the judge's consideration that can be transferred in similar cases. There are two types of ratio decidendi, namely descriptive ratio decidendi and prescriptive ratio decidendi. If the descriptive ratio decidendi provides a philosophical description for the judge to arrive at their decision, the prescriptive ratio decidendi provides instructions on how the judge can further use the philosophical view in their decision.[75]

In fact, without this certainty and predictability, the goal of criminal law to prevent crime through behavior change will be difficult to realize. This is because behavior change could only occur if people as rational actors can predict and calculate the impact and risk of their actions. In short, through the doctrine of precedence, ratio decidendi plays an instrumental role in building a consistent and predictable legal system. This condition is a fundamental characteristic of what Max Weber calls modern law that is formally rational.[76]

In addition to the formal reasons in the form of the prescriptive ratio decidendi of the court decision above, there are material reasons as to why prosecution of corporations must be carried out by public prosecutors. The material reason relates to the fact that the illegal gains obtained by the three corporations have become corporate assets that must be disbursed through restitution payments.

74 Ian Mcload, 1996, Legal Method (London: Red Globe Press), hlm. 141.
75 *Ibid.*, pp. 139.
76 Max Weber, 1978, *Economy and Society: An Outline of Interpretative Sociology*, disunting oleh Guanther Roth & Claus Wittich, University of California Press, Barkely & London.

As stated in Article 18 paragraph (1) of the Anti-Corruption Law, the nature of restitution is "property obtained from corruption crimes." Damanik argues that restitution is "intended to recover the benefits obtained" from corruption.[77] If this is not done, then corporate assets derived from criminal activities will have a negative impact not only on the corporation concerned but also on the economy and society. The acquisition of assets from criminal activities might undermine fair competition in the business world where corporations that obtain assets through legal means must compete with corporations that obtain assets through illegal means. This omission of assets from the criminal proceeds will cause impunity for corporations which in turn provides incentives for other corporations to do the same in order to reduce transaction costs.

As a result, the social and environmental impacts caused by corporations in their business operations can be easily externalized as a result of the widening opportunities for corruption. This condition is certainly counterintuitive to the Indonesian Government's efforts to build good corporate governance.

C. The Group's Corporate Criminal Liability

A question appears when it comes to charging corporations, whether the corporations are seen as business groups or as individual entities separated from those groups. Of course, every choice has its own practical consequences that are related to the legal construct and its limitations. If we take a look at the Law on Limited Enterprises, Indonesia adopts the "separate legal entity" doctrine, where legal corporations, especially those categorized as Limited Enterprises (PT), are independent legal entities. This can be seen in the definition of a limited enterprise as stipulated in Article 1 number 1 of the Law, which says "a legal entity that consists of capital partnerships, that was founded based on a contract, exercising business with a capital base that is divided into stakes and has fulfilled the requirements promulgated in this Law as well as its implementing regulations."

However, in the reality of business, limited enterprises can only become a group company which consists of a holding company, the subsidiaries, and affiliates.[78] With that said, the reality of business demands us to not only position a limited enterprise as an independent legal person, but also as a single economic entity. This can be seen in the relation between the holding company and its subsidiaries that was founded on the grounds of control or influence, such as through the majority stakeholder, naming or dismissing directors and commissioners, and through strategic corporate policy. The Single Economic Entity, normatively, accommodates Article 6 of the Perma on Corporate Criminal Liability No. 13/2016, that regulates "in case of a crime committed by corporations that involve a holding company and/or subsidiary companies and/or any corporation that has a relation thereof, they can be held liable for the crime according to their respective roles."

77 Kristwan G. Damanik, 2016, "Antara Uang Pengganti dan Kerugian Negara Dalam Tindak Pidana Korupsi," Masalah-Masalah Hukum 45 (1), p. 9.
78 See, Sulistiowati, Aspek Hukum dan Realitas Bisnis Perusahaan Grup di Indonesia (Erlangga, 2010).

Should the Public Prosecutor intend to charge the corporations in this cooking oil corruption case using the legal construction based on the separate legal entity doctrine, then there will be some weaknesses in it. Firstly, the Defendants that have been proven guilty can only be assumed to have represented the enterprises where they only become the formal managers. This is making things difficult for the Prosecutor in constructing the relation between the Defendants' actions and the other enterprises, despite the other enterprises being in the same business group.

Secondly, there is a probability that the enterprises that were about to be charged to dissolve or merge or separate from the holding company, so that further complicates the attempt to ask for the corporations' criminal liability. This means that according to the Article 16 of the Perma on Corporate Criminal Liability No. 13/2016,[79] The Prosecutor shall lodge an application to the District Court on the decision to prevent every enterprise that is about to be charged from dissolving itself, which can cause the criminal legal subject to be non-existent. Thirdly, which is the most important one, is the legal construction in this case had the tendency to make the holding companies seem untouchable from submitting their criminal liability, so it did not give any deterrent effect to them as one of the parties responsible for gaining illegal profits from the crime that was committed by their subsidiaries.

Therefore, it is hoped that the Public Prosecutor uses the single economic entity doctrine. This is referring to Article 6 of the Perma on Corporate Criminal Liability No. 13/2016, in which the holding company can also be seen as the one liable for the crime that is committed by its subsidiary, not only because of receiving gains as a result of the crime, but also bearing the responsibility which it lets the crime to ensue and not making an effort to prevent it.

In that Court's Decision, legal facts have been revealed that the steps of the crime committed by the Defendants are not only representing the actions of their corporation from a particular enterprise where they are the manager for, but also representing the action from the holding enterprise itself. For example, Master Parulian Tumanggor that became the Commissioner for PT Wilmar Nabati Indonesia forwarded the application of export permits for six enterprises under Wilmar Group, and even Tony Muksim, the Director of PT Sari Agrotama Persada, signed the letters of independent confirmation and DMO distribution realization to those six companies.[80]

In the *a quo* case, Lie Tjui Tjien, Head of Export-Import Division of PT Wilmar Nabati Indonesia, in his testimony as a Witness, stated: "Witness testified that he signed 11 documents of domestic distribution realization letters that were used for the export permit application requirement. The Witness did not know the content of the letters, because the one who wrote them was the Wilmar Group in Medan."[81] These legal facts describe that the action committed by the Defendants and other managers is a corporate action that represents the interest of the holding company.

79 Article 16 Perma on Corporate Criminal Liability states that: (1) In the event that there are concerns that the corporation is dissolving itself with the aim of avoiding criminal liability, whether carried out after or before the investigation, the District Court Chief at the request of the investigator or public prosecutor through a stipulation can postpone all efforts or processes to dissolve the corporation that is in legal proceedings until the decision is legally binding."

80 Decision of the Central Jakarta District Court No. 58/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 971.

81 Decision of the Central Jakarta District Court No. 58/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 986.

On the other hand, the action was collectively committed by the Defendants with other managers in the same business group. This was revealed during Stanley Ma's trial, in which he and David Virgo at the time were handling 22 permit applications for 7 enterprises under the Permata Hijau Group.[82] The same facts can be seen in Pierre Togar Sitanggang's case, where he coordinated the actions through a WhatsApp (WA) group administered by Musim Mas as the company's forum.

In the Verdict, the Court described:

"That on the 16th of January 2022, the Defendant (Pierre Togar Sitanggang) who was assigned to handle the CPO export and its derivatives… in the name of the Musim Mas Group… sent a message to the 'Grup Migor MM for Modern Trade', by requesting the group members to complete the PO, DO, or the contracts as many as possible."[83]

Next, it was also described that:

"The Defendant had been managing CPO Export Permits and Its Derivatives from the Musim Groups so that it could be granted, although the required documents in the PE application was still using the manipulated documents and were not compliant to the distribution realization for domestic demands as required, so that there was some unfulfilled DMO obligations from the corporations in the Musim Mas Group."[84]

This implies that Musim Mas as the business group knew full well about the actions committed by Pierre, and the group did not prevent them, even went on to get illegal gains from the corruption by the Defendant.

In summary, it is a safer strategy to make a holding company to be charged along with its subsidiaries, because every actor from the corporation involved in the crime can be held liable. Meanwhile, by doing so, the probability of dissolvement of subsidiaries is reduced – even when it happens, the business group is still the benefitting entity from the crime committed by its former subsidiaries. This is essential in order to give a deterrent effect to the holding company, so that they will conduct further checks on the subsidiary's business operations and no gains can be received from the crimes as the corporations' assets.

In theory, the legal construction for capturing the business group can be done by the Corporate Culture Model, in order to delve into the internal culture, policies, and practices that facilitate the corporation's crime. Noting that this was not the first time that Wilmar Group and Musim Mas Group had been suspected of committing crimes. In 2015, the Monitoring and Evaluation of Forestry and Land Permits Task Force that was formed by Riau's Provincial Legislature (DPRD Riau), found that "PT Musim Mas and Wilmar Group have been committing organized crimes for a long time and resulted in state losses in the forms of buying palm oil from the forest."[85]

82 Decision of the Central Jakarta District Court No. 61/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 966.
83 Decision of the Central Jakarta District Court No. 60/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp.742
84 Decision of the Central Jakarta District Court No. 60/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 772.
85 Raya Desmawanto, "Jikalahari: Kejagung Harus Usut Dugaan Pembelian Kelapa Sawit Ilegal Wilmar Grup dan Musim Mas dari Kawasan Hutan di Riau!" (SabangMerauke News, 26 April 2022) https://www.sabangmeraukenews.com/berita/2730/jikalahari-kejagung-harus-usut-dugaan-pembelian-kelapa-sawit-ilegal-wilmar-grup-dan-musim-mas-dari-k.html?page=2 accessed 21 Agustus 2023; See also Greenpeace, *Hitung Mundur Terakhir: Sekarang atau Tidak Sama Sekali Untuk Mereformasi Industri Kelapa Sawit* (Greenpeace International, 2018).

Besides that, through this Corporate Culture Model, law enforcements can understand the external context that facilitated the corruption that involved corporations. In this context, a pattern of oligopoly in the palm and cooking oil industries in Indonesia, as revealed in the Decision on Master Parulian Tumanggor's case:

"The oligopoly structure of the market and a vertical integration eased the business actors to implement cartel practices. Market control by a number of business players (including Wilmar, Musim Mas, and Permata Hijau) paved the way for them to control prices and distribution of cooking oil to the market. With the addition of a vertically integrated industrial structure both in the upstream and downstream will make it easy for business actors that control the industries to meddle with the price and control the supply of the goods in the market."[86]

Hence, the use of Corporate Culture Model can become a gateway to improve the pattern of industrial competition that is open to many opportunities for corrupt actions by palm and cooking oil corporations. Without any change to the competition and management of the palm industry in Indonesia, corruption committed by corporations in this sector will always be a threat to the state economy and the prosperity of the people. With that said, law enforcements shall not only be a 'firefighter' when the fire of corruption blazes, but also proactively preventing and closing any loophole for crimes of corporation to occur in the future.

86 See Decision of the Central Jakarta District Court No. 58/Pid.Sus-TPK/2022/PN.Jkt.Pst, pp. 995.

6. Conclusion

According to the annotation above, there are some points worth noting in this case, which are:

a. Simplification of the corruption policy of DMO in the illegal export of palm oil, despite easing the qualification of elements and the trial in the court, it has the consequences of narrowing the facts, the magnitude, and the impacts of the corruption itself. Narrowing of the impacts can be an obstacle in deciding which logical causality between the weakening of the policies and the impacts of high social burden due to the inflation of cooking oil prices, as well as the BLT policy that the Government exercised. In fact, the application of Articles 2 and 3 of the Anti-Corruption Law, historically, is much more relevant to the nature of malicious conspiracy in the case, which can be seen from the leniency of the DMO policies when cooking oil prices rose.

b. The strategy in using Article 3 of the Anti-Corruption Law with participatory actors and restitution that was done by the Attorney General still has its own critics, which include the unrevealed motives from the Government's side, the restitution that was less than optimum, the dependence on proving an offense of a defendant to convict the other defendants, and the corporate criminal liability that has not been used.

c. The construction of the charges for the perpetrators relating to the corporation was vulnerable, if it was going to be moved forward to hold corporations liable. In those three cases with the Defendants coming from their respective companies, which were Master Parulian Tumanggor (Wilmar Group), Pierre Togar Sitanggang (Musim Mas Group), and Stanley Ma (Permata Hijau Group), the charges were constructed using the *Mens Rea* Standards

for a single perpetrator. In fact, Article 20 of the Anti-Corruption Law has the Vicarious Liability Theory that should have been the provision to criminalize both the individual managers who committed the crimes and the corporate actors themselves. Separating the roles of each corporate actor as an individual and as a part of a corporation made the trial process take longer, an under optimized restitution attempt, and had the potential to become *ne bis in idem*. However, with the valid decisions for the persons that have working relations and/or other relations with the corporations, the crime as stipulated in Article 3 of the Anti-Corruption Law that was paired with Article 55(1) number 1 of the Penal Code could become an opportunity to deem the corporations to have a participatory role in the crime, since the actions were done in the interest of the corporations which the three convicts belong to, so that the charges against corporations can be pursued based on those evidences.

d. Corporate's liability as a business group can be requested on the grounds of Collective *Mens Rea* Standards. The way to this has been laid out through the Judges' Considerations in the case of Stanley Ma (Permata Hijau Group), where judges gave the Prescriptive Ratio Decidendi to continue the prosecution against corporations that receive illegal gains. On the other hand, the Corporate Culture Model as a theoretical basis enables law enforcement to view different internal and external dimensions of the corporations that facilitate the crime of corporations, so that it can be an effective prevention strategy in the future.

7. Recommendations

Based on those explanations, we would like to recommend:

a. Simplifying corruption policies on DMO in the construction of illegal palm oil export does not solve the issue. Despite easing the qualification of elements and the trial in court, it has the consequences of narrowing facts, magnitude, and impacts of the crime. Narrowing of the impacts can become an obstacle when scheming the logical causality between weakening of the policies with the effects to the social burden inflicted by the cooking oil inflation, as well as the BLT policy run by the Government.

b. The strategy to approach Article 3 of the Anti-Corruption Law with participatory actors and restitution that was done by the Attorney General still has its own critics, which include the unrevealed motives from the Government's side, the restitution that was less than optimum, the dependence on proving an offense of a defendant to convict the other defendants, and the corporate criminal liability that has not been used.

c. In the three cases of the Defendants, which are Master's (Wilmar Group), Pierre's (Musim Mas Group), and Stanley Ma's (Permata Hijau Group) cases, the Public Prosecutor used the Single Perpetrator *Mens Rea* Standards, thus the corporations represented by the Defendants had not yet been touched upon to be held liable, although they were the parties who received illegal gains from the crimes of the Defendants.

d. Corporate criminal liability as a business group can be held using the Vicarious Liability, based on proving the Defendants guilty, as well as the fulfillment of the three standards that are already legally valid according to the previous decisions. The way to do it has been paved through the Judges' Considerations in the Stanley Ma's case, where judges gave a Prescriptive Ratio Decidendi to continue the charges against corporations that receive illegal gains.

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A Greenpeace activist climbs on the anchor chain of the tanker Gran Couva and displays a banner reading "No more forests, peatland for palm oil" during an action where crew members from the Greenpeace ship MV Esperanza occupied the tanker for 24 hours. 10 November 2008.


GREENPEACE

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BUMI

SAWIT WATCH

SPKS
Serikat Petani Kelapa Sawit

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