



## **Corruption in Electricity Stealing According to Article 2 Paragraph (1) of Law Number 31 of 1999 on Corruption Crime Eradication**

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**Abstract.** This paper entitled Corruption in Electricity Stealing was intended to answer questions on whether an electricity stealing can be qualified as a corruption crime and to the extent of which electricity stealing crimes may bring about losses in the state's finance. This paper was prepared by a juridical-normative writing method, that is, by studying legislations contained both in the law itself and in legal literatures/books, particularly those related to stealing and corruption. The result in a juridical aspect form was then written down in a descriptive-analytical way. The conclusion of this paper was the answer to the problems abovementioned as follows: that electricity stealing can be qualified as a corruption crime and that any electricity stealing brings about losses in the state's finance.

**Keywords:** stealing, electricity, corruption, loss, finance.

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## A. INTRODUCTION

Corruption, collusion, and nepotism are one of the reasons for the fall of Soeharto's *new order* regime. The collapse of the *new order* regime gave a way to *reformation order*. In the *reformation order* the rulers have been pursuing a political will of eradicating corruption. Given that corruption is a crime hard to eradicate, it is called as an extraordinary crime, and thus it needs extra measures in eradicating it.

Corruption crime is a legacy of both *old order* and *new order*, and even long before them, i.e., during VOC (*Verrenige Ost Indische Company*) era. The underlying causes were tributes and ceremonies. These are the classic reasons for the proliferation of corruption in Indonesia. However, after the independence, especially since the New Order era, there have been some contemporary reasons of corruption crimes worth emphasizing, among them: *Legislation, law enforcer, citizens' legal awareness/compliance, and role model aspects*. The four aspects are perceived as having weak points and consequently the eradication of corruption till now has not achieved a significant result yet.

Diverse ways of corruption crimes have been practiced by corruptors, such as manipulations in National/Regional General Revenue and Expenditure Budget, marks up, reductions of working volume either in quality or in quantity, actual implementation of construction deviating from the specifications, payment of bribes to public authorities, and stealing of the state's wealth. The corruptions by stealing state's wealth were committed among others by electricity stealing.

Electricity stealing has currently been a phenomenon with an increasingly higher frequency. In 2013, Indonesia's State Electricity Enterprise (PLN) has suffered a financial loss of Rp12.2 trillion.<sup>1</sup> Electricity stealing is a crime hard to eradicate, as indicated by a fact that year by year the losses PLN suffered were steadily increasing. This is because the phenomenon of electricity stealing involves

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<sup>1</sup> ICW, Didi Widayadi, *Consequence of Mismanagement of State's finance, the State Suffers a Damage of Rp12.2 trillion*, [www.antikorupsi.org](http://www.antikorupsi.org), February 20, 2012.

diverse aspects, not only legal aspect but also political, economic, social and cultural ones.

From the description above, two problems could be formulated: *Can electricity stealing be qualified as a corruption crime and to the extent of which electricity stealing can brings about losses in state's finance?*

The research method used in this writing was a juridical-normative approach method, i.e., by studying legislations related to corruption and electricity stealing. Then, the result in a form of juridical and sociological aspects was then written down in a descriptive-analytical way.

## **B. DISCUSSION**

This paper was based on a thought that Indonesia is a state that upholds a rule of law as explicitly contained in Article 1 paragraph (3) of Indonesia's 1945 Constitution. As a consequence, anything related to the implementation of statehood and social affairs, including on breaches of laws, has to be based on law rather than on force. This is intended to realize the goal of law, that is, the existence of legal certainty, in addition to realize justice.

### **1. The Qualification of Electricity Stealing**

The scope of the norms of criminal law is limited in consideration of *nullum delictum nulla poena sine praevia lege poenali* principle and the adherence of *legality principle* in the application of criminal law. Thus, criminal law can not be applied to every act occurring in community.

*Nullum delictum nulla poena sine praevia lege poenali* principle causes criminal law can not be imposed as such. That is, an act not provided for in the criminal law before its occurrence can not be criminalized and punished.

The rationale of *nullum delictum nulla poena sine praevia lege poenali* principle is that if criminal law were applied without a limitation on which acts may be punished and which ones not, it will lead to legal uncertainty. People would be worried, being unable to recognize which acts may be criminally punished and

which ones not. Therefore, for the sake of legal certainty, criminal law must explicitly stipulate and contain in its written provisions the acts prohibited and punished.

Another consideration is *legality principle*, particularly on the prohibition to apply analogy in interpreting the formulation of provisions in criminal law. This is because an interpretation analogically presents a metaphor of the words of criminal stipulations, so that the actual occurrence that really can not be deemed as a crime becomes deemed as a crime in accordance to the words of the criminal stipulations. Such interpretation leads to legal uncertainty.

More worse is if the criminal law allows its application retroactively. That is, if an act were initially not prohibited and not threatened with a criminal sentence and afterwards it becomes prohibited and threatened by a criminal sentence, then if such a new provision is applied to an act in the past when the criminal law has not yet provided for and prohibited it formally, it will lead to community worry and legal uncertainty.

Concerning the consumption of electricity without using an official electricity meter from State Electricity Enterprise, qualified as a stealing in Article 362 of KUHP (Indonesia's Criminal Code), it is an extension of the definition of the whole Article 362 KUHP.<sup>2</sup>

Basically, the provisions of KUHP, particularly those of Article 362, is applied in cases of consuming electricity without using an official electricity meter from State Electricity Enterprise, before the enactment of Law Number 15 of 1998 on Electricity Power Affairs, was applied by an extensive interpretation.

Therefore, Law Number 15 of 1998 on Electricity Power Affairs can not be applied to electricity stealing cases. Particularly, Article 18 of Law Number 15 of 1998 doesn't regulate explicitly criminal sanctions against electricity stealing.

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<sup>2</sup> Bambang Poernomo, *Basic Model of the General Theories-Principles of Criminal Procedural Code and Criminal Law Enforcement*, Ed. II, Liberty, Yogyakarta, 1993, p. 213.

Moreover, in Article 362 of KUHP there has been an official comment declaring that consuming electricity invalidly or illegally is also stealing.<sup>3</sup>

Thus, the relation between KUHP and enactment of Law Number 15 of 1998 is not a special and general relation in nature. This is because, in one hand, Law Number 15 of 1998 doesn't separately provide for provisions on electricity stealing and, in the other hand, KUHP itself has explicitly determine that Article 362 of KUHP is also applicable to electricity stealing. Accordingly, the adage *lex specialis derogat legitimasi generalie* is not proportional to apply in electricity stealing with respect to the two legal rules contained in KUHP and Law Number 15 of 1998.

In the time of the codification of KUHP, electricity was not invented and acknowledged, so that it was not formulated in the KUHP articles.

Nowadays, electricity has been valued as a goods on a basis of jurisprudence, and so anyone who intentionally connects electricity without an approval from the authority is included as committing an illegal act, i.e., stealing crime.

If A taps B's electricity illegally, such a concrete occurrence must be interpreted in a legal language, that is, must be qualified, so that it becomes a legal occurrence by seeking its legal provisions. In this case, its legal provisions are contained in Article 362 of KUHP. The qualification contained in the Article 362 of KUHP us stealing. So, such a concrete occurrence where A taps B's electricity must be interpreted in a legal language to be a legal occurrence of stealing.

## **2. Corruption as a Crime**

Word 'corruption' is derived from Latin 'corruptio', or 'corruption' in English and French, 'korruptie' in Dutch, and 'korupsi' in Indonesian language.

Corruption crime is one of the types of crime that may relate to human rights, ideology, state, economy, state's finance, national morality, etc., which is immoral and hard to overcome. The difficulty in overcoming corruption crime is indicated by the many defendants in corruption cases acquitted or punished by a minimum of

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<sup>3</sup> *Ibid.*

sentence which is disproportional to what they have committed. It is very damaging to the state and hampers national development<sup>4</sup>.

If this takes place continuously in a long time period, it may erode the sense of justice and sense of trust of people on laws and legislations. Barda Nawawi Arief in his book *Criminal Law Selection* suggests that:<sup>5</sup>

“Corruption problems are related to some complex problems, such as moral/mental attitude, life style and socio-cultural environment, economic needs/demands, socio-economic prosperity, economic structure/system, political system/culture, developmental mechanism, and weakness in administrative bureaucracy and procedure (including supervisory system) in financial and public service areas”.

Meanwhile, Sudarto delineates the elements of corruption crime, namely:<sup>6</sup>

- a. Committing an act of enriching himself or herself, others, or any corporation. “Act of enriching” means committing whatever, e.g., appropriating, book transferring, contract signing, etc., so that the doer becomes enriched.
- b. The act is unlawful in nature. “Unlawful” is meant here as formal and material. This element needs to be proved because it is stipulated explicitly in the delict formulation.
- c. The act is either directly or indirectly damaging state’s finance and or national economy, or it is known or reasonably suspected by the doer that it is damaging state’s finance or national economy.

The existence of an act that is directly or indirectly damaging state’s finance or national economy should be proved objectively. In this case, the judges, if necessary, may hear the opinions of expert witness or the testimony of more than one person to ascertain when the “damaging” condition is present. From the formulation it seems that the delict is a material one.

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<sup>4</sup> Evi Hartanti, *Corruption Crime*, Sinar Grafika, Jakarta, 2006, p. 2.

<sup>5</sup> Barda nawawi Arief, *Digest of Criminal Law*, Alumni, Bandung, 2003, p. 85-86.

<sup>6</sup> Evi Hartanti, *op.cit.* page 18.

More overtly, it can also be said that one of the elements of corruption crime is the existence of an act damaging to state's finance and or national economy. It is also stipulated in Article 2 paragraph (1) of Law Number 31 of 1999 on Corruption Crime Eradication that:<sup>7</sup>

“Anyone who unlawfully commits an act of enriching himself or herself, others, or any corporation that may be damaging state's finance or national economy shall be punished by a life sentence or imprisonment for no less than 4 (four) year and a fine of no more than Rp1,000,000,000,- (one billion rupiah)”.

Furthermore, Law Number 20 of 2001 on Amendment of Law Number 31 of 1999 on Corruption Crime Eradication in its consideration letter states:<sup>8</sup>

“That the currently widespread corruption crimes are not only damaging to state's finance, but also have been a violation of social and economic rights of broad community, so that they should be classified as a crime the eradication of which has to be conducted in an extraordinary way”.

As described above corruption presents multiple, complex problems due to diverse, multidimensional factors. Therefore, the handling of corruption problems, including the punishment of anyone who has allegedly committed a corruption crime should, if possible, be targeted not only in the interest of legally justice enforcement but also from economic aspect, including state's finance.

### **3. Corruption Delict in Positive (Applicable) Law**

The definition of corruption according to Law Number 3 of 1971 includes all the infringements that violate Articles 2-16 of Law Number 31 of 1999 and Articles 5-12b of Law Number 20 of 2001.

Therefore, the cases that violate the elements of the articles' above are ones that are corruption crimes.

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<sup>7</sup> Law Number 31 of 2001 on *Amendment of Law Number 31 of 1999 on Corruption Crime Eradication*.

<sup>8</sup> *Ibid*.

The formulations of corruption delict may be divided into two sources, namely:

- a. Sourced from the makers of Law of Corruption Crime, that is, Articles 2-16 of Law Number 31 of 1999 and Articles 5-12b of Law Number 20 of 2001.
- b. Articles of KUHP drawn into Law of Corruption Crime as contained in Article 1 paragraph (1) sub c and Article 32 of Law of Corruption Crime.

The articles of KUHP drawn and included into the articles of Law of Corruption Crime are articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420, 423, 425, and 435 of KUHP.

Law Number 31 of 1999 stipulates in Article 2(1) that:

“Anyone who unlawfully commits an act of enriching himself or herself, others, or any corporation that may be damaging state’s finance or national economy is criminally punished by a life sentence or imprisonment for no less than 4 (four) year and no more than 20 (twenty) year and a fine of no less than Rp200,000,000.00 (two hundred million rupiah) and no more than Rp1,000,000,000,- (one billion rupiah)”

This article is a corruption delict that is damaging state’s finance. The subject of the corruption delict is anyone, regardless whether he or she is a civil servant, public officer, authority, or one with a political position. That is, private persons are also included as the subject of the crime.

Furthermore, in Article 3 it is stipulated that:

“Anyone who, in favor of himself or herself or any other or corporation, abuses his or her authority, chance, or position that may be damaging state’s finance or national economy shall be criminally punished by a life sentence or imprisonment for no less than 1 (one) year and no more than 20 (twenty) year and a fine of no less than Rp50,000,000.00 (fifty million rupiah) and no more than Rp1,000,000,000,- (one billion rupiah)”.

This article is a corruption delict that is damaging state’s finance. The subjects of the corruption delict are only those who are civil servant, public officer, authority, or one with a position of practical politic (such as the memberships of



central and regional parliaments. That is, private persons are also excluded as the subject of the crime.

Corruption delict Law Number 20 of 2001 is formulated in Article 5 paragraphs (1) and (2), Article 6 paragraphs (1) and (2), Article 6 paragraphs (1) and (2), Article 7 paragraphs (1) and (2), Article 9, Article 10, Article 12, and Article 12B.

#### 4. Electricity Stealing Delict As A Corruption Delict

Stealing delicts in general have been provided for as contained in Article 362 of KUHP:

“Anyone who appropriates any goods that is wholly or partially owned by other, intended to possess it unlawfully shall be punished due to stealing, by an imprisonment of no more than five year or a fine of no more than Rp.900”.

This (ordinary) stealing delict contains the following elements: *anyone*, *appropriates*, *a goods*, *wholly or partially owned by other*, *intended to possess*, and *unlawfully*.

The meanings of each element are as follows:

*Anyone*: Meant by ‘anyone’ in the delict is the legal subject. We know that legal subjects may be legal entities (Ltd., CV, Foundation) and human individuals. For the purpose of the delict, meant by ‘anyone’ is a human individual who is liable for his or her act.

*Appropriates*: For the purpose of the delict, ‘appropriates’ is meant to take something to be possessed unlawfully. Moreover, in the time of the appropriation, the goods is not under the control or being possessed by the wrongdoer; otherwise, it is not called stealing, but rather embellishment. The meaning of appropriates in the delict is a transfer of any goods from one original place to another by an effort of the wrongdoer. Thus, the element of appropriates is said as complete if the goods has been displaced. Just holding the goods cannot be said as a stealing, but instead it may be conceived as a trial of stealing.

*Any goods*: For the purpose of the delict, meant by ‘any goods’ is anything tangible, with or without economic value, including animals (excluding human

being). Meant by ‘without economic value’ is any object that can not be valued nominally with an exchange medium (currency), and accordingly a woman’s one or two strings of hairs may be considered as an object. Also included as object are *electricity* and *gas*. They are an exception from the requirement of a tangible object and based on jurisprudence.

*Wholly or partially owned by others:* an example of “Partially owned by others” is as follows: A and B bought a bicycle, and thus the bicycle is jointly owned by both A and B. Afterwards, it is stored in A’s house, but then stolen by B. Other example is: A and B together received a heritage from C. The heritage was subsequently stored in A’s house, but then stolen by B. Moreover, an object owned by nobody can not be said as stolen, e.g., wild animals in nature and those objects that have been “thrown away” by their owner.

The “appropriation” should be intentional and intended to be possessed. Taking “erroneously” other’s goods is not a stealing. If someone “found” a goods on road and then he or she took it, it is a stealing if he has had an intention “to possess” the goods when he took it. Contrarily, if in the time of taking the goods he has had an intention to deliver it to police but then after arriving at home he or she appropriates it (not delivered to police), he or she is wrong of embezzlement (Article 372), because he or she has held the goods before appropriating it.

*Unlawfully:* it can also be meant as illegally. That is, an act of appropriating in violation of norms. Such appropriation should be made without a prior approval by the owner; otherwise, there is no norm/right infringed.

Can an electricity delict (where the object is electricity) be qualified as a stealing delict? Can electricity be considered as goods? As described above, the inclusion of electricity into a category of goods is based on jurisprudence, i.e., a decision of Dutch Supreme Court date of May 23, 1921 on electricity stealing in relation to the application of Article 30 of Dutch Criminal Code (N.S.W) that is also provided for in Article 362 of Indonesia’s KUHP. In the decision, the Hoge Raad (Supreme Court) extends the meaning of “goed” in the articles to include both tangible goods and intangible goods (power/energy). The decision was contained in

Weebblad van Recht (w) Number 10728 and in *Netherlandsche Jurisprudence* (N.J) of 1921 Number 564, and also based on interpretation of electricity as a goods.

**Extensive Interpretation.** An extensive interpretation method is an interpretation by extending the meaning of the words contained in a law so that an occurrence can be included within it. For example, a Jurisprudence in the Dutch: “connecting” or “tapping” electric current can be threatened by Article 362 KUHP so that the jurisprudence extends the meaning of element of goods (object) in the article.

Decision of Hoge Raad on “electricity stealing”: Hoge Raad used an analogy in defining an object relating to an electricity stealing.

In the history of legal practice, a well-known, widely published application of analogy is made in *arrest HR* date of May 23, 1921 where electric current/power is analog as that of in Article 362 KUHP. The meaning of object in the crime, according to the remark in MvT concerning the construction of Dutch’s Article 310 WvS (article 362 of KUHP) is limited to movable, tangible objects. Appropriating, that is, doing something by transferring a control over an object into one’s possession can only usually be made on a tangible, movable object.

Electricity is, from such a viewpoint, not an object. However, so as to realize justice, HR used an analogy by define a new meaning of object, i.e., “in a form of something of human wealth”. By the definition, energy/electricity can be made as an object of stealing. Energy/electricity is part of the wealth with economic value.

From the description above we can draw a conclusion that clearly electricity, in spite of being an abstract, invisible object, may be conceived as a goods/object, that is, a goods/object with economic value, and even it may be of strategic value.

Electricity stealing delict is a corruption delict. This can be applied among others based on Article 2 paragraph (1) of Law Number 31 of 1999 on Corruption Crime Eradication that reads:

“Anyone who unlawfully commits an act of enriching himself or herself, others, or any corporation that may be damaging state’s finance or national economy is criminally punished by a life sentence or imprisonment for no less

that 4 (four) year and no more than 20 (twenty) year and a fine of no less than Rp200,000,000.00 (two hundred million rupiah) and no more than Rp1,000,000,000,- (one billion rupiah)”

The preceding article contains the elements as follows:

- Anyone.
- Unlawfully.
- Enriching himself or herself, others, or any corporation.
- May be damaging state’s finance or national economy.

The meanings of each element are as follows:

- **Anyone:**

The meaning of ‘anyone’ in the delict is nearly the same as that of ‘anyone’ in a stealing delict. Meant by “anyone” is any legal subject. We know that legal subjects may be legal entities (Ltd., CV, Foundation) and human individuals. For the purpose of the delict, meant by ‘anyone’ is a human individual who is liable for his or her act

- **Unlawfully**

What really the meaning of term “unlawfully” according of doctrines or scholars’ opinions is? Mr. Drs. H. J. van Schravendijk and J.B. Wolters suggest 3 different meanings of the term ‘unlawfully’, namely:

- 1) Unrightfully: with no one’s right.
- 2) Unrightfully: in contradiction to others’ right.
- 3) Unrightfully: in contradiction to laws in general.<sup>9</sup>

The majority of scholars prefer the 3<sup>rd</sup> meaning and therefore Schravendijk restated that term “unlawfully” is more appropriate than “unrightfully”. The term “unlawfully” is wider in meaning than term ‘committing with no one’s right’ or “in contradiction to others’ right”. Every act that is conducted “with no one’s right” or “in contradiction to others’ right” is an “unlawful” act. Conversely, not

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<sup>9</sup> Van Schravendijk H.J. in J.B. Wolters, *Lesson on Indonesia’s Criminal Law*, Groningen, Jakarta, p. 127.

all “unlawful” acts are conducted ‘with no one’s right” or “in contradiction to others’ right. An example is provisions on prohibition of gambling (Article 303 of KUHP). Therefore, in the remaining discussion the author will use only term “unlawfully”, except for quotes that use term “unrightfully”.

For the purpose of this delict, the element of “unlawfully” can be explained, that is, materially and formally unlawful.

Material unlawful according to this doctrine is one of the absolute elements of a crime. According to *Memorie van Toelichting*, the character of “unlawfully” is one of the elements of crime. In some Articles, term “unlawfully” is explicitly included in the formulation, because without the inclusion of the term, it is may well that someone who actually simply uses his or her right but punished, just because of fulfilling the formulation of the Article.

According to the doctrine of “materially unlawful”:

- 1) Although the character of “unlawfully” is one of the absolute elements in a crime, it is not required to prove it. It should not be proved if it is not included.
- 2) If the character of “unlawfully” is not formulated, being tacitly assumed, except the suspected proves otherwise.

The doctrine of “materially unlawful” itself may be divided into two:

- 1) Negative

The act meets the elements of the delict, but its character of “unlawfully” is disproved and so the suspected can be acquitted. There are some jurisprudences that uphold the doctrine of negative “material unlawful”.

One of them is Decision of Supreme Court No. 42K/Kr/1965, date of January 8, 1966. In the case, ME, a public servant, misused his authority and position to commit a violation. Initially, ME had been found guilty. However, Supreme Court annulled the court decision. According to Supreme Court, in general, the character of “unlawfully” of an act may be ignored not only by any provisions of laws, but also on a basis of justice or unwritten legal principles

such as: (1) state is not damaged; (2) public interests are served; and (3) the suspected himself or herself received no favor.

## 2) Positive

Acts not meeting the elements of a delict, but unlawfully, may be punished. Though many don't agree on this creed, because it is in contrary to legality principle (Article 1 paragraph (1) of KUHP), there are some jurisprudences that uphold a positive "material unlawful" creed, such as a decision of District Court of Mataram date of October 29, 1987 in the case of incest between a father and his adult daughter. According to KUHP, the act can not be punished, because KUHP recognizes only incest between a father and his under-age (minor) daughter. However, the judges decided to apply a customary delict "*gamia gamana*" and the suspected accepted it.

*Formal Unlawful:* According to this creed, unlawful acts are only ones that breach law. The character of "unlawfully" is not always an element of crime, but only if an Article includes it. Therefore, the element of "unlawfully" in a delict should be meant in a formal way, i.e., breach of law. Any exception of the character of "unlawfully" should also be provided for by law. Some decisions of corruption cases that Supreme Court made recently used an approach of formal "unlawful".

- **Enriching himself or herself, others, or any corporation:**

Regarding an element of "enriching himself or herself, others, or any corporation", the Explanation of Law Number 3 of 1971 states that terms "enriching himself or herself", "others", or "any corporation" in this paragraph may be connected to article 18 paragraph (2), where the suspected is obliged to reveal the sources of his or her wealth such that a wealth disproportional with his or her income or addition of the wealth may be used to substantiate other witness that the suspected or defendant has enrich himself or herself (by corruption crime).

Accordingly, Andi Hamzah in his book suggests as follows:

“..... that where it is evident that the defendant is proved to has appropriated or embezzled some moneys so that state’s finance is damaged, then there is no a need to connect it with Article 18 of UUPTPK (Law Number 3 of 1971) on whether his or her wealth is proportional to his or her income or revenue. Second, whether the money appropriated is used to buy property or not, according to the author’s opinion, does not matter in this element. Thus, an act of corruption for self-enrichment needs not be meant that the doer has actually become rich in a sense that he or she owns a lot of properties”.<sup>10</sup>

Disagreeing on Andi Hamzah’s opinion on the element of “self-enrichment”, Oemar Seno Adji wrote as follows:

The interpretation of self regarding the meaning of an act of “self-enrichment”, often seen in some legal cases by disconnecting it from Article 18 of Law Number 3 of 1971, is essentially beyond the context of legislation and its official explanation”.<sup>11</sup>

Prof. Oemar Seno Adji questioned whether a defendant/suspected may be said as having enrich himself or herself without connecting it to Article 18 of Law Number 3 of 1971 as can be seen in some legal cases that had been decided, including Natalegawa case.

In relation between an element of “enriching himself or herself, others, or any corporation” with Article 18 of Law Number 3 of 1971, the Explanation of the Law itself uses a term of ‘may be connected”, meaning that such connection is not a must. Thus, where there is a sufficient evidence that the defendant/suspected, or others, or any corporation “has get” some fortune (money/goods) as a result of the suspected/defendant’s unlawful act then the proofing of the element has been sufficient. Quotation mark is attached to term “has get” because the yields of corruption as intended in Article 1 paragraph (1) *a* are not limited to the results of

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<sup>10</sup> Andi Hamzah, *Corruption in Indonesia, Problems and Their Solusitons*, Gramedia, Jakarta, 1986, p. 100.

<sup>11</sup> Oemar Seno Adji, *New KUHAP*, Erlangga, Jakarta, 1985, p.195-196.

an act of “appropriating/embezzling” but also from other sources such as “receiving some yields of a fictive responsibility other committed”. Likewise, where a fortune can not be longer traced but the crime has been completed, the existence of the element can also be proved.

- **May be damaging state’s finance or and national economy**

Regarding the element of “directly or indirectly may be damaging state’s finance and or national economy, or it is reasonably suspected by the doer that it is damaging state’s finance or national economy”, some examples are as follows: an example of “directly” is when one without an intermediary corrupts public moneys. Whereas an example of “indirectly” is when one corrupts some moneys of a corporation that received subsidy/facility/exemption from the government, and thus the state is damaged by an intermediary of the private corporation. For this purpose, intended by public moneys (as contained in Explanation of Law Number 3 of 1971) is as follows:

- State’s finance as intended by this Law also includes regional finance or a legal person that uses capital or exemptions from the state or community and the funds gained from the community are expended in the interest of society, humanity, etc. Meanwhile, intended by an act that may be damaging national economy is any infringement against regulations that the government issued as intended in the Declaration of MPRS XXIII/MPRR11966 that essentially “has been considered as damaging national economy if the act may directly or indirectly disturb the smoothness of national development in a broad meaning; for example, disturbing production/distribution, stimulating inflation, etc.
- Regarding the damage of state’s finance, it is evidenced by the many *fatwa* (Guidance) of Supreme Court that may be made as a model. Still rare is what is intended by “damaging national economy”. Therefore, from the case of convicted Tony Gozal, Supreme Court issued a *fatwa* on the acts damaging national economy, as quoted below:



“that the defendant’s act is unlawful because he built above it without a right/permit from the authority and, as a consequence of his act, part of the area of Ujung Pandang waters can no longer used for public interest”. (Decision of Supreme Court No. 1164/K/Pid./1985).

From the Supreme Court’s *fatwa* above it could be concluded that the occurrence of damage to national economy is because the area of waters which once used as a harbor to serve the public interest (navigation activities) can now be used as such for the defendant used it illegally. In determining the amount of damage as normally applied in determining the amount of damage of state’s finance, the determination of total damage of state’s finance needs not be concreted.

From the description of the elements of corruption delict or corruption above, it could be concluded that electricity stealing delict or crime can be qualified as a corruption crime.

##### **5. Electricity stealing may be inducing any damage of state’s finance:**

Electricity stealing commonly occurring in Indonesia certainly induces some damage to State Electricity Enterprise (PLN), *notabene* one of state-owned corporations whose revenues from its electricity marketing should go to state’s finance. Given that the electricity stealers don’t pay to PLN/State for the electricity they consume, it certainly incurs damage to state’s finance. Accordingly, electricity stealing can be qualified as a corruption crime as stipulated in Article 2 paragraph (1) of Law Number 31 of 1999 on Corruption Crime Eradication.

The damage incurred to the state resulting from corruption crimes in 2013 is estimated Rp 12.2 trillion.<sup>12</sup> Jakarta and Tangerang PLNs have suffered Rp14.225 billion due to electricity stealing in 2013. Whereas for Indonesia as a whole the

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<sup>12</sup> ICW, Didi Widayadi, *Consequence of Mismanagement of State’s finance, the State Suffers a Damage of Rp12.2 trillion*, [www.antikorupsi.org](http://www.antikorupsi.org), February 20, 2012.

damage of PLN resulting from electricity stealing was Rp1.4 trillion in 2013.<sup>13</sup> Part of the Rp1.4 trillion worth of corruption was due to corruption in 2013 (based on the result of investigative audit by Financial and Development Inspector Agency (BPKP)).

### C. CONCLUSION

Based on jurisprudence, although an electricity stealing can not be deemed as a concrete object, it may be deemed as an abstract object. Thus, in this case, electricity can be deemed as an *object*.

Therefore, an act of electricity stealing may be qualified as an ordinary stealing, as stipulated in Article 362 of KUHP.

Electricity stealing commonly occurring in Indonesia certainly induces some damage to State Electricity Enterprise (PLN), *notabene* one of state-owned corporations whose revenues from its electricity marketing should go to state's finance. Given that the electricity stealers don't pay to PLN/State for the electricity they consume, it certainly incurs damage to state's finance. Accordingly, electricity stealing can be qualified as a corruption crime as stipulated in Article 2 paragraph (1) of Law Number 31 of 1999 on Corruption Crime Eradication.

Furthermore, because electricity stealing crime can be qualified as a corruption crime, where one of the elements of corruption crime is the existence of any damage of state's finance, it is certain that an electricity stealing may incur a damage of state's finance.

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<sup>13</sup> Fahmi Mohtar, *PLN Suffers a Damage of Billions Rupiah Resulting From Electricity Stealing*, [www.bumn.go.id](http://www.bumn.go.id), February 20, 2012.

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