

# Legal Certainty in the Criminalization of Directors Misusing Corporate Social Responsibility (CSR) Funds

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Article	Abstract
<p><b>How to cite:</b> Ade Irma Suryani, et al., 'Legal Certainty in the Criminalization of Directors Misusing Corporate Social Responsibility (CSR) Funds' (2025) Vol. 6 No. 3 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p><b>DOI:</b> 10.35719/rch.v6i3.374</p> <p><b>Article History:</b> Submitted: 20/11/2025 Reviewed: 01/21/2025 Revised: 06/12/2025 Accepted: 19/12/2025</p> <p><b>ISSN:</b> 2723-0406 (printed) <b>E-ISSN:</b> 2775-5304 (online)</p>	<p>Corporate Social Responsibility (CSR) is a legal obligation for companies as regulated in Article 74 of Law No. 40 of 2007 concerning Limited Liability Companies (PT Law). However, in practice, misuse of CSR funds remains common in both private companies and State-Owned Enterprises (BUMN), creating adverse impacts on society and the government. This study aims to examine the legal framework governing the criminal liability of directors for the misuse of CSR funds within the Indonesian criminal law system and to analyze the application of the principle of legal certainty. Using a normative juridical method with statutory, conceptual, and case approaches, the study finds that directors may be held criminally liable under Article 488 of the Criminal Code when CSR funds are misused in private companies, while similar acts in BUMN may be categorized as corruption under Articles 2 and 3 of the Corruption Law. Nonetheless, ambiguity within Article 74 of the PT Law continues to generate multiple interpretations, potentially hindering legal enforcement and conflicting with the principles of legality and legal certainty. Therefore, a specific regulation (<i>lex specialis</i>) addressing directors' criminal liability in CSR fund management is required to enhance legal certainty and strengthen accountable and transparent corporate governance.</p> <p><b>Keywords:</b> <i>Legal Certainty, Criminal Liability, Corporate Social Responsibility.</i></p> <p><b>Abstrak</b> <i>Corporate Social Responsibility (CSR)</i> merupakan kewajiban hukum bagi perusahaan sebagaimana diatur dalam Pasal 74 Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Namun, dalam praktiknya, penyalahgunaan dana CSR masih sering terjadi pada perusahaan swasta maupun Badan Usaha Milik Negara (BUMN), sehingga merugikan masyarakat dan pemerintah. Penelitian ini bertujuan untuk menganalisis kerangka hukum mengenai pertanggungjawaban pidana direksi atas penyalahgunaan dana CSR dalam sistem hukum pidana Indonesia serta mengkaji penerapan asas kepastian hukum. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Hasil penelitian menunjukkan bahwa direksi dapat dimintai pertanggungjawaban pidana berdasarkan Pasal 488 KUHP pada perusahaan swasta, sedangkan pada BUMN, tindakan serupa dapat dikualifikasikan sebagai tindak pidana korupsi sesuai Pasal 2 dan 3 Undang-Undang Pemberantasan Tindak Pidana Korupsi. Namun, ketidakjelasan norma dalam Pasal 74 Undang-Undang Perseroan Terbatas masih menimbulkan multitafsir dan berpotensi menghambat penegakan hukum. Oleh karena itu, diperlukan pengaturan khusus (<i>lex specialis</i>) untuk memperkuat kepastian hukum dan meningkatkan akuntabilitas tata kelola perusahaan.</p>

## Introduction

*Corporate Social Responsibility (CSR)*, hereinafter abbreviated as CSR, is a company's social obligation and this CSR obligation is regulated in Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies, hereinafter abbreviated as the PT Law. This article emphasizes that companies engaged in fields that require natural resources must carry out their responsibilities in the social and environmental company. This responsibility is carried out based on the company's budget and if the company does not carry out its responsibilities, it will be punished based on the provisions of laws and regulations.<sup>1</sup> Article 74 of the PT Law explains that companies are not only to seek profit, but must still contribute to society.<sup>2</sup>

Despite the CSR Obligation Although expressly regulated by law, many still embezzle CSR funds. For example, the CSR corruption case of PT PLN from the 2021 to 2023 fiscal year resulted in state losses of Rp. 403,000,000, with the defendant Agung Yudha Prawira, Advisor to the Griya Nusantara Foundation, who is also the Advisor and Chair of the State-Owned Enterprises Creative House (BUMN) of Kepahiang Regency.<sup>3</sup> There is also the PT Timah Corruption Case, which committed corruption in the tin trade system, resulting in state losses of up to Rp. 300 trillion, and this case also involved the directors of PT Timah Tbk. The embezzlement of these funds also involved CSR funds carried out by Harvey Moeis and his colleagues.<sup>4</sup> Several of these cases show that CSR funds that should have been for the community were instead used as a means of corruption to enrich themselves or groups.

CSR is a program that uses company funds. Therefore, the Board of Directors is responsible for managing CSR funds because the Board of Directors is responsible for the company's social and environmental aspects, which are regulated in the company's annual work plan based on the company's articles of association, after obtaining approval from the Board of Commissioners or the General Meeting of Stakeholders.<sup>5</sup> Obligations in the social and environmental sphere are reported in the company's annual report and explained before the general meeting of shareholders.<sup>6</sup>

Article 92 of the Limited Liability Company Law stipulates that the Board of Directors manages the company in the best interests of the company, in accordance with the company's aims and objectives. Article 97 of the Limited Liability Company Law also stipulates that the Board of Directors is fully responsible for any errors or negligence that result in losses for the company. Therefore, if the Board of Directors misuses CSR funds and results in losses for the company, they can be held criminally liable under Article 488 of the Criminal Code concerning embezzlement.

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<sup>1</sup> Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, Article 74.

<sup>2</sup> Nisa Masitho & Agustine Rossa Diah Utari, "Analisis Kebijakan *Corporate Social Responsibility* PT Telkom Indonesia dalam Upaya Peningkatan Ekonomi Nasional" *Rechtenstudent Journal*, Vol. 4 No. 2, 2023. DOI: <https://doi.org/10.35719/rch.v4i2.270>.

<sup>3</sup> Antara News Bengkulu, "Losses in PLN CSR Fund Corruption Case in Kepahiang Rp. 403 million", March 11, 2025.

<sup>4</sup> Sah News, "Accountability of Directors and Commissioners in PT Timah Corruption", April 19, 2025.

<sup>5</sup> Government Regulation of the Republic of Indonesia Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies, Article 5.

<sup>6</sup> Government Regulation of the Republic of Indonesia Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies, Article 6.

In addition to being subject to embezzlement, misuse of CSR funds that harms the State can be classified as a criminal act of corruption. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, hereinafter abbreviated as the Corruption Law, in Articles 2 and 3, emphasizes that anyone who violates the law and carries out actions that benefit themselves, others, or a business entity that harms state finances or the state economy can be subject to punishment.<sup>7</sup>

The principle of legal certainty in addressing misuse of CSR funds is crucial. According to Gustav Radbruch, legal certainty is one of the goals of law, along with justice and expediency. Utrecht also emphasized that the law must provide clear guidelines so that the public knows which actions are permitted and which are prohibited. Legal certainty also provides protection to those seeking justice from actions that violate the law.<sup>8</sup> Therefore, law enforcement against directors in misuse of CSR funds must adhere to the principle of legal certainty to create harmony between normative law and practice.

Based on the description above, it is necessary to examine how the principle of legal certainty applies to the criminal liability of directors who embezzle CSR funds, as well as related normative regulations regarding the criminal liability of directors as legal subjects in the embezzlement. This study is expected to provide theoretical and practical contributions in strengthening the legal position of directors, strengthening the application of the principle of legal certainty, and encouraging the creation of more accountable and transparent corporate governance in CSR management. Thus, this research is not only academically relevant, but also practically useful for law enforcement efforts and protecting public interests. However, although CSR obligations are stipulated in Article 74 of the Limited Liability Company Law and violations are subject to sanctions under the Criminal Code and the Corruption Law, there is still no specific regulation (*lex specialis*) that clearly and specifically regulates the criminal liability of directors for misuse of CSR funds. Existing regulations are still general in nature and cannot address the complexities and specific characteristics of managing CSR funds, which originate from the company budget but serve the public interest.

This lack of specific norms creates a legal loophole, which often hinders the process of proving and enforcing the law against corruption in the management of CSR funds. Therefore, it is crucial to create a special regulation (*lex specialis*) that comprehensively regulates the mechanism for criminal liability of directors in CSR management, to create legal certainty and to prevent the recurrence of cases of misuse of CSR funds in the future.

Previous studies generally discuss CSR within the context of corporate ethics, civil law, and corporate management. The main topics are companies' moral obligations to society and legal liability for non-implementation of CSR. However, research specifically examining the criminal liability of directors for embezzlement of CSR funds from a legal certainty perspective is still very limited. This indicates a gap in research that has not been widely explored by legal scholars. Therefore, it is important to analyze the principle of legal certainty regarding the criminal liability of directors for embezzlement of CSR funds. This research is expected to clarify the legal position of directors, strengthen the application of the principle of legal certainty, and

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<sup>7</sup> Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, hereinafter abbreviated as the Corruption Law, Article 2.

<sup>8</sup> Mario Julyano, Aditya Yuli Sulistyawan, "Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning" *Crepido Journal*, Vol 01, No. 01, July 2019, p. 14.

contribute to the development of specific regulations that can resolve issues in the management of CSR funds.

## Research Method

This research is included in normative legal research, namely research that focuses on applicable legal norms and is used as the main basis for analyzing the problems discussed. The approach used are Statute approach, namely by studying the provisions contained in Law Number 40 of 2007 concerning Limited Liability Companies, the Criminal Code (KUHP), and Law Number 31 of 1999 in conjunction with. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The conceptual approach, namely by analyzing legal principles and theories, especially Gustav Radbruch's theory of legal certainty, the principle of legality, and the principle of *lex certa*, which are used to strengthen the theoretical analysis related to the criminal liability of directors in managing Corporate Social Responsibility (CSR) funds.

The analysis technique used is qualitative analysis, namely by interpreting and constructing the meaning of positive legal provisions, then connecting them with relevant legal theories and principles, so that a comprehensive answer to the problem being studied is obtained.

## Results and Discussion

The results of this study are derived from data analysis that focuses on normative regulations and the legal certainty aspect of criminal liability for directors for embezzlement of CSR funds within the Indonesian criminal law system. In drawing conclusions from this study, the Indonesian criminal law system is guided only by general provisions, which are still broadly global in nature. A more detailed explanation will be presented in the following sub-discussions.

### Normative Regulations on Criminal Liability of Directors for Embezzlement of CSR Funds in the Criminal Law System in Indonesia

#### 1. CSR Regulations and Legal Obligations

Corporate social responsibility, or CSR, has evolved from simply an ethically sound action to a legal obligation. <sup>9</sup>Corporate social responsibility must be based on trust within the community. Companies are expected to be more sensitive to the needs of stakeholders involved in their business activities.<sup>10</sup>

CSR is considered a voluntary corporate action aimed at improving social or environmental conditions. Scholarly consensus holds that corporate responsibility initiatives are non-market strategic responses, fundamentally influenced by a mix of competing institutional logics.<sup>11</sup> Stakeholder theory explains how companies can improve their performance by engaging in CSR initiatives. This principle is embodied in organizational practices that carefully consider the rights and interests of a broad spectrum of stakeholders,

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<sup>9</sup>Alexander Johnatan Pardede, Elvira Fitriyani Pakpahan, & Adella Sitanggang, "Legal Analysis of Violations of the Principles of Corporate Social Responsibility (Study of Decision Number 514/Pid.Sus LH/2022/PN Jmb "Al-Zayn: *Journal of Social Sciences & Law* , Vol. 3, No. 3 (2025), p. 2001

<sup>10</sup>Fatnuh Wijaya, Didit Nazar Prianda, & Marwan, Application of the Principle of Corporate Responsibility in Law Enforcement Against Environmental Crimes by Companies", *Jurnal Metrum*, Vol. 2, No. 2 (2024), p. 104.

<sup>11</sup>Immanuel Sembiring et al., "Criminal Liability of Limited Liability Companies and Criminal Liability of Directors in Environmental Crimes", *Locus Journal of Academic Literature Review*, Vol. 2, Issue 5, May 2023, pp. 371-372.



including employees, shareholders, creditors, consumers, and the natural environment. This theory advocates for companies to cultivate shared value, thereby promoting sustainable development and shared prosperity.<sup>12</sup>

CSR obligations are regulated in Article 74 of the Limited Liability Company Law. This article states that companies engaged in natural resource-related businesses are required to fulfill their social and environmental responsibilities. These obligations are outlined in the company's budget and must be implemented fairly and in accordance with regulations. Companies that fail to fulfill these obligations will be subject to sanctions in accordance with applicable regulations<sup>13</sup> This law makes CSR no longer merely a voluntary activity but a legal obligation for companies. Therefore, companies are required to allocate CSR funds within their budgets and implement related programs fairly and in accordance with applicable regulations.<sup>14</sup>

In addition, Article 92 Paragraph 1 of the Limited Liability Company Law also states that the board of directors is fully responsible for the interests of the company in accordance with the goals and objectives of the company.<sup>15</sup> This means that the directors are managerially and legally responsible for ensuring that all company activities, including CSR programs, are carried out in accordance with applicable regulations and are not manipulated in a way that could cause losses to the company or the state. Thus, the board of directors can be held accountable for misuse of CSR funds due to violations and neglect of their responsibilities.

In criminal law, if a Director embezzles CSR funds, this action can be considered a criminal act of embezzlement of office as described in Article 488 of the Criminal Code. This occurs when someone embezzles assets under their responsibility due to employment relationships or their position. If the CSR funds originate from a State-Owned Enterprise (BUMN) or originate from state funds, this action can also be considered a criminal act of corruption. This is because there is an element of abuse of authority that can harm state finances or the national economy, as regulated in Articles 2 and 3 of the Corruption Law.<sup>16</sup>

## 2. The relevance of embezzlement of CSR funds based on the Criminal Code

The Criminal Code (KUHP) contains the crime of embezzlement. The essence of this crime is contained in Article 486 of the Criminal Code. Any person who unlawfully possesses goods that are partially or wholly owned by another person, and the goods are in his control not due to a criminal act, will be punished for embezzlement. The penalty is a maximum of 4 (four) years imprisonment or a maximum fine of category IV.<sup>17</sup> This provision explains that the essence of embezzlement is having legal rights to goods or money, then using them improperly, causing loss to the rightful owner.

Furthermore, the act of embezzlement committed by a person who obtains goods or money due to a position, job, or special work relationship is regulated in Article 488 of the Criminal Code. This article emphasizes that in cases of actions as referred to in Article 486

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<sup>12</sup>Zhengyi Li, Cuidan Wu, "Corporate social responsibility, market business environment and stock price crash Risk: An analysis from the perspective of stakeholders", *International Review of Economics and Finance* 103, 2025, p. 2.

<sup>13</sup> Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, Article 74.

<sup>14</sup> Miftahurrozi Qiyah, "Corporate Social Responsibility dalam Pelestarian Lingkungan Perspektif UU PT dan Fikih Lingkungan di PTPN XI Pabrik Gula Djatiroto Kabupaten Lumajang" *Rechtenstudent Journal*, Vol. 3 No. 1, 2022.

<sup>15</sup> Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, Article 92 paragraph 1.

<sup>16</sup>Ferdy Saputra, Yusrizal, & Budi Bahreisy, "Accountability of Company Directors Suspected of Embezzling Company Money in Their Position", *Locus Journal of Academic Literature Review*, Volume 2, Issue 9, September 2023, p. 738.

<sup>17</sup> Criminal Code, Article 486.

committed by a person who controls the goods due to an employment relationship, because of his profession, or because he receives wages for controlling the goods, the person is threatened with a maximum prison sentence of 5 years or a fine with a maximum category V.<sup>18</sup>

Under these regulations, if a company director or official conceals CSR funds, their actions legally meet the elements of Article 488 of the Criminal Code. Directors have the authority to manage CSR funds because of their position as part of the company organization, not as a personal right, as stipulated in Article 74 of the Limited Liability Company Law.

If entrusted funds are used for personal gain, diverted, or misappropriated, then the elements of embezzlement as referred to in Article 488 of the Criminal Code are fulfilled. This is also supported in legal journals that the crime of embezzlement is an act carried out intentionally and in violation of the law. A person claims that certain goods, either in whole or in part, belong to another person under his control. The goods were obtained without means that are contrary to the law.<sup>19</sup> Thus, directors or company officials can be called to criminal responsibility for violating legal regulations and harming parties entitled to receive benefits from CSR funds.

### 3. Embezzlement of CSR funds under the Corruption Eradication Law

The regulations regarding corruption are expressly written in the Corruption Law . Article 2 paragraph 1 of Article 2 explains that anyone who commits an unlawful act with the intention of enriching or benefiting themselves, others, or a company, and causing losses to the state economy, will be subject to punishment in the form of life imprisonment or a minimum of four years to a maximum of 20 years, and a fine of at least Rp200 million to a maximum of Rp1 billion.<sup>20</sup>

Article 3 of the Corruption Eradication Law also explains that individuals who seek to gain benefits for themselves, others, or companies by exploiting the power acquired through a particular position can harm the national economy. Such individuals will be subject to penalties of imprisonment for a minimum of one year and a maximum of 20 years and/or a fine of at least Rp 50 million and a maximum of Rp 1 billion.<sup>21</sup>

According to Article 74 of the Limited Liability Company Law, CSR is an obligation of companies operating in the natural resources sector. This means that CSR is the company's assets, not the assets of individuals or company officials. Therefore, it can be concluded that CSR funds are the company's assets and must be used appropriately as part of its social responsibility. If CSR funds are misused, for example, for the benefit of directors or company officials themselves or used inconsistently, then this action falls within the realm of criminal corruption in accordance with the regulations stipulated in the Corruption Law.<sup>22</sup> This is because such actions have fulfilled the elements of violating the law, benefiting oneself/another person/corporation, and can result in losses to the state budget or the state economy as regulated

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<sup>18</sup> Criminal Code, Article 488.

<sup>19</sup>Christian Daniel Pitoy, Ruddy Watulingas, & Harly Stanly Muaya, "The Role of Investigations in Resolutions of Criminal Acts of Corporate Asset Embezzlement", *Lex Administratum*, Vol. 2, No. 2 (2022), p. 2.

<sup>20</sup> Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption, Article 2 paragraph (1).

<sup>21</sup> Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption, Article 3.

<sup>22</sup>Muhajir, "Corporate Criminal Liability in Corruption Crimes Committed by Directors of Limited Liability Companies (Case Study of Decision Number: 19/Pid.Sus/TPK/2013/PN.Jkt.Pst)" *Journal of Legal Development Partners*, Vol. 2, No. 1 , April 2017, p. 157.

in Articles 2 and 3 of the Corruption Law. Therefore, misuse of CSR funds is not only a violation of company norms, but can also be entangled in criminal acts of corruption.<sup>23</sup>

It is emphasized that corruption is a social problem that negatively impacts society as a whole and undermines the foundations of justice. Therefore, the existence of firm regulations provides a strong legal basis for enforcing justice and creates a deterrent effect for those who have the potential to engage in corruption. Severe sanctions can serve as an effective deterrent, reducing the desire of individuals or groups to engage in corruption.<sup>24</sup>

## **Legal Certainty Regarding Criminal Liability of Directors for Embezzlement of CSR Funds**

### **1. The Concept of Criminal Responsibility**

Besides the act itself, the element of fault is indisputable, as it is the basis for holding someone criminally responsible. The element of fault is closely related to the perpetrator's mental state, which in *common law* is called *mens rea*. This element of fault must be present concurrently with a person's actions in committing the crime, known as *actus reus*.<sup>25</sup>

In criminal law, the principle of fault is a key principle. This means that if an act is prohibited, the person committing it does not necessarily have to be punished. This is because a criminal act only refers to the prohibited act, whether it is actively committed or the result of something passively prohibited, and the person committing the act has the potential to be punished. However, whether punishment is given depends on whether the person is truly guilty or not. The principle of no punishment without fault means that a person is only punished if proven guilty of committing an act prohibited by law. The fault can be intentional or negligent.<sup>26</sup>

The Criminal Code also states that a person can be punished if they intentionally commit a crime without a valid reason, or if they commit a crime because of a guilty conscience. This means that a person cannot be punished simply for committing a crime; they must have malicious intent or a guilty conscience as grounds for prosecution.<sup>27</sup>

Criminal law has two types, namely *mens rea* or guilty conscience, namely intentional (*dolus*) and negligence (*culpa*). *Dolus* means if the perpetrator commits a crime intentionally or with full awareness, while *culpa* means if the perpetrator commits a crime unintentionally or due to negligence.<sup>28</sup>

### **2. Criminal Liability of Directors as Perpetrators of Embezzlement of CSR Funds**

Directors are individual legal entities who can be held accountable for embezzlement of CSR funds, as stipulated in Article 74 of the Limited Liability Company Law. This article states that companies engaged in natural resource-related businesses are required to fulfill their social and environmental responsibilities. This obligation is stipulated in the company's budget and

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<sup>23</sup>Fariz Oktan, Artha Febriansyah, & Ishandi Saputera, "Corruption and Criminal Liability by Corporations" *Simbur Cahaya: Scientific Journal of Legal Science*, Vol. 3, No. 1, June 2023, p. 102.

<sup>24</sup>Rudy Alfianda, Merta Risardi, Kamisan, Muslihun Amin, Sarioda, Rahmi Maulida, & Amalia Zahra Albayani, "Corruption Crimes and Corporate Accountability" *WATHAN: Journal of Social Sciences and Humanities*, Vol. 1, No. 1 (2024), pp. 67-68.

<sup>25</sup>Hasbullah F. Sjawie, *Corporate Criminal Responsibility in Corruption Crimes* (Jakarta: Kencana, 2015), p. 10.

<sup>26</sup>Herlina Manullang & Riki Yanto Pasaribu *Corporate Criminal Liability*, (Medan: LPPMUHN Press HKBP Nommensen University, 2020), p. 20.

<sup>27</sup>Suran Remy Sjahdeini, *The Doctrine of Criminalization: Corporate Crime & Its Intricacies*, March 2017, pp. 42-43.

<sup>28</sup>Suran Remy Sjahdeini, *The Doctrine of Criminalization: Corporate Crimes & Their Intricacies*, pp. 488-49.

must be carried out fairly and in accordance with regulations. If the company fails to fulfill its obligations, it will be subject to sanctions in accordance with applicable regulations.<sup>29</sup> Therefore, CSR funds are not the personal rights of the directors, but rather a legal obligation of the company that must be managed transparently and responsibly.

Furthermore, Article 92 Paragraph 1 of the Limited Liability Company Law also states that directors are fully responsible for the interests of the company in accordance with the company's objectives and values.<sup>30</sup> This norm indicates that every decision taken by directors, including those regarding the management of CSR funds, must always be aimed at the interests of the company and not personal interests. If CSR funds are used improperly, then the directors have violated their legal obligations stipulated in the law.

The concept of criminal liability requires the existence of legal subject elements in the form of directors, unlawful actions in the form of embezzlement of CSR funds, malicious intent, namely directors are aware that CSR funds are not used for personal interests but are still misused and negligence if there are company officials who embezzle CSR funds under their supervision, as well as losses experienced by the company, the community receiving CSR funds, or the state. Embezzlement of CSR funds by directors can be considered a criminal offense and is punishable under Article 488 of the Criminal Code, as the directors committed the act in their official capacity or work. Consequently, directors can be punished with a maximum of five years in prison. The inherent role of directors further confirms that their actions meet the requirements of this article.

Furthermore, if the CSR originates from a state-owned enterprise, it potentially falls under the category of corruption. This qualifies as Article 3 of the Corruption Eradication Law, as it violates the duties and authority of the position and has the potential to harm the state economy. It carries a prison sentence of between one and 20 years and/or a fine of at least IDR 50 million and up to IDR 1 billion. Therefore, the act of hiding CSR funds by directors can have serious consequences, namely if it is done by directors in a private company, it can be punished according to the Criminal Code and if it involves CSR funds from BUMN or comes from state assets, it can be punished under the Corruption Law.

### 3. Legal Certainty: Are the Rules Clear or Still Vague?

In creating legal regulations, there is a main principle that helps make legal regulations clear, namely the principle of legal certainty. The idea of this principle was first introduced by Gustav Radbruch in his book entitled "einführung in die rechtswissenschaften". Radbruch explains that in law there are three basic values, namely: (1) Justice, (2) Benefit, and (3) Legal Certainty.<sup>31</sup>

Article 74 of the Limited Liability Company Law (PT Law) creates legal problems because it only states that companies that do not fulfill their corporate social responsibility (CSR) obligations will be subject to sanctions in accordance with statutory regulations, without specifically mentioning which laws are meant.

The phrase "statutory regulations" makes the norm ambiguous, as it provides legal consequences, but on the other hand, it's unclear what sanctions, who is responsible, and what criminal law instruments apply. This situation clearly contradicts the principle of legality,

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<sup>29</sup> Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, Article 74.

<sup>30</sup> Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, Article 92 paragraph 1.

<sup>31</sup> Mario Julyano, Aditya Yuli Sulistyawan, "Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning" *Crepido Journal*, Vol 01, No. 01, July 2019, p. 14.



particularly when it comes to clear and definite legal provisions (*lex certa*). The principle of legality is an important principle in criminal law that serves as the basis for enforcing the law. This principle states that an act cannot be punished if there is no clear, pre-established legal rule, as stated in the Latin adage "nullum crimen, nulla poena sine lege."<sup>32</sup> The principle of *lex certa*, which demands clarity and certainty in legal norms, is highly relevant in addressing this issue. In criminal law, *lex certa* ensures that individuals clearly understand which actions are prohibited and their legal consequences.<sup>33</sup>

In practice, the ambiguity in Article 74 of the Limited Liability Company Law can lead to overlap between the Criminal Code and the Corruption Law. For private companies, the misuse of CSR funds by directors is more appropriately subject to criminal embezzlement under Article 488 of the Criminal Code, as it relates to the act of misusing funds in that position. However, for State-Owned Enterprises (BUMN), the use of CSR funds can be categorized as a criminal act of corruption, because the funds are related to state finances and have the potential to cause state losses, so they can be subject to Article 3 of the Corruption Law. Here, the principle of *lex specialis derogat legi generali* must be applied, namely the Corruption Law as a special law must be applied before the Criminal Code as general law when the case is related to state finances.

## Conclusion

Currently, in the Indonesian criminal justice system, the rules regarding criminal liability for directors involved in embezzlement of CSR funds still use general provisions. In private companies, directors can be charged under Article 488 of the Criminal Code, which regulates embezzlement of office. Meanwhile, in state-owned enterprises, the improper use of CSR funds can be considered a criminal act of corruption under Articles 2 and 3 of the Corruption Eradication Law.

However, clear legal provisions regarding the criminal liability of directors for embezzlement of CSR funds are not yet fully guaranteed. Article 74 of the Limited Liability Company Law does not explicitly specify the applicable sanctions or criminal provisions. This has led to differing interpretations and overlapping legal applications between the Criminal Code and the Corruption Law, thus contradicting the principles of legality and *lex certa*, which require legal norms to remain clear.

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<sup>32</sup>Dedi Iskandar, Zulbaidah WN, Angga Almada, Iswandi Abdinur, Devi Yanda Putra, Cut Yessi Andriani, & Zulhazrul, "Development of Theory and Application of the Principle of Legality in Indonesian Criminal Law," *JIMMI: Multidisciplinary Student Scientific Journal*, Vol. 1, No. 3, October 2024, pp. 293–305.

<sup>33</sup>Budi Haritjahjono & Sodikin, "Implementation of the Lex Certa Principle towards the Ambiguity of Digital Law's in Indonesia" *Amnesty: Jurnal Hukum*, Vol. 7, No. 1 (2025), pp. 1–14

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