

## Criminal Liability for Corruption and Constitutional Responsibility of the State in the Whoosh High-Speed Rail Megaproject Case: Analysis of Mark-ups, Debt, and Restructuring

Eka Farman<sup>1</sup>, Syahrul<sup>2</sup>, Damianus Wanda Ndapa<sup>3</sup>, Hazairin<sup>4</sup>, Musmuliadin<sup>5</sup>, Syamsuddin<sup>6</sup>

<sup>1-6</sup> Universitas Muhammadiyah Bima, Indonesia

Corresponding Author: [ekabima777s@gmail.com](mailto:ekabima777s@gmail.com)

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### ABSTRACT

*This study examines criminal liability for corruption and the constitutional responsibility of the state regarding the Jakarta-Bandung High-Speed Railway Project (Whoosh), analyzing budget mark-ups, state-owned enterprise debt, and financial restructuring. The Whoosh project, classified as a National Strategic Project, has experienced significant cost overruns that raised serious governance concerns. Construction costs reached approximately USD 52 million per kilometer, three times higher than comparable projects in China (USD 17-18 million per kilometer), suggesting potential criminal corruption through budget inflation in the Estimated Price (HPS) determination. Concurrently, the financial crisis at PT Kereta Cepat Indonesia China (KCIC) and its parent company, PT Kereta Api Indonesia (KAI), necessitated State Capital Participation (PMN) injections from the national budget, creating constitutional burden on state finances. This research employs a normative-empirical legal methodology, integrating doctrinal analysis of Indonesian constitutional law, anti-corruption legislation, and state finance laws with empirical examination of KPK investigations and fiscal impacts. The study proposes a Dual Accountability model that integrates criminal and constitutional dimensions, linking alleged budget mark-ups causally to state losses and subsequent constitutional obligations. Findings indicate that corporate accountability through anti-corruption enforcement must operate simultaneously with constitutional oversight of state-owned enterprises, consistent with Constitutional Court Decision No. 14/PUU-XVI/2018. This integrated approach ensures comprehensive resolution requiring both penal recovery channels and constitutional safeguards before financial bailouts are approved. The research contributes to understanding how infrastructure megaproject failures implicate dual accountability mechanisms and informs governance reforms necessary for managing National Strategic Projects effectively.*

## 1. Introduction

The Jakarta-Bandung High-Speed Railway Project (Whoosh) represents the country's ambition to develop large-scale infrastructure and is classified as a National Strategic Project (PSN). This project should be a model of efficiency; however, its development has highlighted serious governance issues, particularly related to cost overruns that have a direct impact on state finances. A legal analysis of the Whoosh case is important because this project presents a critical synthesis between failure at the micro level, namely alleged corruption in the form of budget mark-ups, and failure at the macro level, namely the implications of state-owned enterprise (BUMN) debt on the state's fiscal and constitutional responsibilities.<sup>1</sup>

The urgency of this research is supported by indications of structured budget inflation. There have been public disclosures of alleged mark-ups, with the cost of high-speed rail construction in Indonesia reaching US\$52 million per kilometer, a figure that is three times higher than the estimated construction cost in China, which ranges from US\$17-18 million per kilometer.<sup>2</sup> This disproportionate increase in costs not only indicates business inefficiency, but is also a strong indication of illegal elements in budget and contract setting, which could potentially qualify as criminal corruption.<sup>3</sup> This failure to control costs ultimately triggered a liquidity crisis at PT Kereta Cepat Indonesia China (KCIC) and its parent company, PT Kereta Api Indonesia (KAI), which required intervention through State Capital Participation (PMN) from the State Revenue and Expenditure Budget (APBN).

The assessment of the Whoosh case requires a doctrinal basis that covers criminal law and constitutional law. In the criminal dimension, the construction of alleged budget mark-ups must be reviewed based on the precedent of the Corruption Court's decision in infrastructure projects. Existing rulings provide a doctrinal framework on how budget inflation during the determination of the Estimated Price (HPS) can be construed as an unlawful act that causes damage to state finances, even if the perpetrator does not obtain direct benefits, as long as the state suffers losses.<sup>4</sup> The Supreme Court ruling, for example, has confirmed the criminal liability of parties involved in bribery in infrastructure projects.<sup>5</sup>

In constitutional terms, analysis of massive state-owned enterprise debt and the use of PMN must refer to Constitutional Court (MK) Decision Number 14/PUU-XVI/2018. This ruling is crucial because it confirms that PMN injected into SOEs, including to cover Whoosh project debt, must obtain approval from the Indonesian House of Representatives and must be included in the State

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<sup>1</sup> Amelia Sandyrani and Eli Jamilah Mihadja, "Analisis Pada Perusahaan PT Kereta Cepat Indonesia China (WHOOSH)," *Da'watuna: Journal of Communication and Islamic Broadcasting* 5, no. 4 (July 16, 2025): 446–61, <https://doi.org/10.47467/dawatuna.v5i4.8480>.

<sup>2</sup> Haryanti Puspa Sari and Jessi Carina, "KPK Selidiki Dugaan Mark Up Proyek Kereta Cepat Whoosh," *kompas.com*, 2025, <https://nasional.kompas.com/read/2025/10/27/17143011/kpk-selidiki-dugaan-mark-up-proyek-kereta-cepat-whoosh>.

<sup>3</sup> Ari Dody Wijaya, "Kebijakan Formulasi Pengembalian Kerugian Keuangan Negara Pada Perkara Tindak Pidana Korupsi," *Lex LATI* 3, no. 1 (April 27, 2022): 47–67, <https://doi.org/10.28946/lexl.v3i1.685>.

<sup>4</sup> Dody Wijaya.

<sup>5</sup> Ferdy Safriadi and Guntur Rambey, "Pertanggungjawaban Pidana Pemberi Dan Penerima Suap Dalam Proyek Pengerjaan Pembangunan Infrastruktur: Studi Putusan Nomor 438 K/Pid.Sus/2021," *As-Syar i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 3 (October 31, 2024): 974–85, <https://doi.org/10.47467/as.v6i3.5514>.

Budget Law.<sup>6</sup> This ruling serves as the basis for measuring the extent to which the state carries out its constitutional responsibility in managing separated assets and ensuring public fiscal accountability.

Theoretically, this study integrates two pillars. First, Corporate Crime and Accountability Theory is used to analyze the potential accountability of KCIC/KAI corporations for alleged mark-ups and governance failures. Second, Constitutional Justice Theory is applied to assess whether the use of the state budget (PMN) to cover the debts of state-owned enterprises/public service agencies, caused by alleged corruption, has fulfilled the principles of public prosperity (Article 33 of the 1945 Constitution) and public accountability. This analysis shows that failures at the criminal level (corruption) causally shift the financial burden to the constitutional level (state budget burden), requiring a double resolution.<sup>7</sup>

Previous research by Amelia Sandyrani and Eli Jamilah Mihardja on Whoosh focused more on technical aspects or general criticism of law enforcement. Criminal law studies generally focus on broad analysis of infrastructure corruption or the general impact of state losses. There has been no study that comprehensively integrates the chain of causality: Alleged mark-ups → Consequences of SOE Debt → Constitutional Obligation of Restructuring/PMN as a single legal issue.

The novelty of this research lies in its proposal of a Dual Accountability model (Criminal-Constitutional). This analysis logically links alleged budget mark-ups (as a direct antecedent to state losses) with the state's constitutional obligations (as a consequence of the failure of PSN governance and PMN utilization). This synthesis is important to show that the enforcement of anti-corruption laws must run simultaneously with the strengthening of constitutional oversight, ensuring that losses are recovered through penal channels before constitutional bailouts are granted.

The KPK's investigation into alleged mark-ups in the Whoosh project found strong evidence of unlawful elements in the determination of the HPS, which resulted in losses to the state. However, criminal liability alone is not enough, as the massive debt of KCIC/KAI has triggered a constitutional burden in the form of PMN injections from the state budget. The failure to mitigate debt risks and restructure finances reflects a fundamental weakness in constitutional oversight of separate state assets, as stipulated in Constitutional Court Decision No. 14/PUU-XVI/2018. Therefore, reform of the governance of state-owned enterprises (BUMN) is needed to integrate penal and non-penal oversight simultaneously.

The problem formulation that guides the discussion in this study is: (1) How can criminal liability for corruption be applied to allegations of budget markups in the Whoosh High-Speed Rail project, and what are the challenges in proving financial losses to the state amid the state-owned enterprise funding structure. (2) How is the state's constitutional responsibility tested in the context of KCIC/KAI's massive debt and the need for restructuring/State Capital Participation (PMN) based on the Constitutional Court's ruling on State Finances and SOEs. (3) What are the implications of

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<sup>6</sup> “Putusan MK Nomor 14/PUU-XVI/2018” (2018).

<sup>7</sup> Achmad Hariri and Samsul Arifin, “Analysis And Challenges Of Unimplemented Constitutional Court Decisions By Legislators,” *Indonesia Law Reform Journal* 5, no. 1 (February 26, 2025): 1–24, <https://doi.org/10.22219/ilrei.v5i1.38332>.

this criminal liability and constitutional responsibility for the reform of the governance of National Strategic Projects (PSN) in the future?

## 2. Research Methods

This study uses the Normative-Empirical Legal Research method with a focus on doctrinal studies. The doctrinal approach is applied to analyze positive legal norms, including the 1945 Constitution, the Anti-Corruption Law, the State Finance Law, and court decisions and Constitutional Court decisions related to State-Owned Enterprises (SOEs). The empirical approach is used to test the relevance of legal norms to published case facts, such as the progress of KPK investigations and the fiscal impact of SOE debt.<sup>8</sup>

Data collection was conducted through library research, covering primary legal materials (regulations and court decisions) and secondary legal materials (scientific journals, industry reports, and relevant publications on corruption in infrastructure, state-owned enterprises, and debt risk).<sup>9</sup>

The data was analyzed using Descriptive Qualitative Analysis, followed by Doctrinal Interpretation and Syllogistic Analysis. This technique applies criminal law doctrine (particularly the elements of unlawfulness and state losses) and constitutional/fiscal law doctrine to the facts of the Whoosh case. Syllogistic analysis was used to establish causality between the alleged mark-up (fact) and criminal/constitutional sanctions (norm). In addition, the Law and Economics Approach was used to assess the financial losses caused by the mark-up practice and the complexity of debt restructuring.<sup>10</sup>

## 3. Result and Discussion

### 3.1. Construction of Criminal Liability for Alleged Mark-up Corruption in the Whoosh Project

#### 3.1.1. Modus Operandi of Mark-up and Elements of State Financial Loss

The alleged mark-up of Whoosh's budget must be construed as a corruption offense in the form of an unlawful act that causes financial loss to the state (Article 2 of the Anti-Corruption Law). The modus operandi that is strongly indicated is the inflation of the budget value when determining the Estimated Price (HPS) by the Commitment Making Officer (PPK) or related parties.<sup>11</sup> The deliberate inflation of the HPS is an act that demonstrates mens rea (malicious intent) because the high bid price resulting from the mark-up appears reasonable and does not conflict with the maximum price limit set in the Presidential Regulation on Procurement of Goods/Services.<sup>12</sup>

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<sup>8</sup> Ronny Hanitijo Soemitro, *Metode Penelitian Hukum, Metodologi Penelitian Ilmu Sosial, (Dengan Orientasi Penelitian Bidang Hukum)* (Pelatihan Metodologi Ilmu Sosial, Bagian Hukum dan Masyarakat FH Undip, 1999).

<sup>9</sup> Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *FLAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 1 (November 5, 2015): 15–35, <https://doi.org/10.25041/fiatjustisia.v8no1.283>.

<sup>10</sup> Ahamad Rosidi, M Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Journal Law and Government* 2, no. 1 (February 27, 2024): 46, <https://doi.org/10.31764/jlag.v2i1.21606>.

<sup>11</sup> Dody Wijaya, "Kebijakan Formulasi Pengembalian Kerugian Keuangan Negara Pada Perkara Tindak Pidana Korupsi."

<sup>12</sup> Dody Wijaya.

The significant cost difference, which is three times the international standard, is strong preliminary evidence of alleged state losses. The amount of these losses must be confirmed through an audit conducted by an authorized institution, such as the Supreme Audit Agency (BPK) or the Financial and Development Supervisory Agency (BPKP), which is a prerequisite for proving state financial losses in corruption cases.<sup>13</sup> Given that PSN projects are often fertile ground for corrupt practices, with an estimated 36.67% of PSN funds flowing to civil servants and politicians, the Whoosh case must be handled with consideration of potential corporate criminal liability in addition to individual liability.<sup>14</sup>

### **3.1.2. Challenges in Proving and Recovering Assets**

The main challenge in the Whoosh case is proving the state's losses amid the status of state-owned enterprises as separate state assets. However, the losses caused by mark-ups and covered by PMN show that these losses are substantively borne by the State Treasury. These losses are not only in the form of cash, but also include the fiscal risk burden that has been transferred to the state budget.<sup>15</sup> Therefore, the success of the Corruption Eradication Commission (KPK) in its investigation is a prerequisite for recovering state assets.

The Anti-Corruption Law also provides a means of recovering state losses through civil lawsuits filed by prosecutors (Articles 32 to 34). In the context of Whoosh, criminal asset recovery should be positioned as the primary legal measure, rather than merely a complement to criminal punishment, in order to minimize the burden on the state budget resulting from alleged corruption.

## **3.2. The Dimension of State Constitutional Responsibility: State-Owned Enterprise Debt and PMN Management**

### **3.2.1. SOE Debt as a Fiscal Risk and Constitutionality Test**

The Whoosh project shows that state-owned enterprise debt, although technically separate from government debt, carries systemic risks that could threaten national fiscal health, potentially becoming a "time bomb" if not managed on par with government debt. This failure in debt risk management, exacerbated by alleged mark-ups, has forced state intervention through the state budget, which automatically returns this issue to the constitutional domain.

The state's constitutional responsibility rests on Article 33 of the 1945 Constitution, which requires the management of state assets for the prosperity of the people. State budget intervention to cover debts arising from governance failures and alleged corruption indicates a failure of constitutional oversight of separated state assets.

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<sup>13</sup> Sari and Carina, "KPK Selidiki Dugaan Mark Up Proyek Kereta Cepat Whoosh."

<sup>14</sup> Atik Amalia Khusnawati, Sami'an Sami'an, and Sarwono Hardjomuljadi, "Kompleksitas Aspek Hukum Pada Proyek Strategis Nasional: Studi Kasus LRT Jabodebek," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 3 (February 21, 2025): 2293–2306, <https://doi.org/10.38035/jihhp.v5i3.4108>.

<sup>15</sup> Layla Hanisa, Anggun Pratiwi, and Tries Ellia Sandari, "Dampak Kerugian Negara Akibat Korupsi : Analisis Studi Kasus Di Negara Indonesia," *Jurnal Kendali Akuntansi* 3, no. 3 (June 30, 2025): 124–41, <https://doi.org/10.59581/jka-widyakarya.v3i3.5278>.

### **3.2.2. Constitutional Compliance in PMN Injections and Restructuring**

PMN intervention to resolve Whoosh's debt must comply with Constitutional Court Decision Number 14/PUU-XVI/2018. This decision requires PMN to obtain approval from the House of Representatives and be explicitly stated in the State Budget Law. Compliance with this decision is essential to maintain political and fiscal accountability. If PMN is provided without strict supervision, this could indicate a failure of political oversight and potentially legitimize moral hazard among SOE/PSN management.

Another issue complicating the resolution is debt restructuring. Bank debts transferred to the State Debt Committee (PUPN) have rigid legal restrictions, leaving no room for haircuts or flexible debt restructuring, unlike practices at non-state-owned banks. This rigidity forces the state to choose PMN as a rescue solution, which essentially transfers corporate risk to taxpayers. Thus, PMN serves as a cover for fiscal holes triggered by alleged mark-ups and inefficiencies.

### **3.3. Dual Accountability Model and Implications for PSN Governance Reform**

#### **3.3.1. Causality: Corruption as a Trigger for Constitutional Burdens**

The analysis shows a direct causal relationship: alleged mark-up crimes (failure to pay penalties) causally exacerbate state losses and debt burdens, which in turn force the state to intervene fiscally through PMN (constitutional responsibility). The Whoosh case clarifies the blurred line between corporate business risk and state losses in PSN projects.

Therefore, a dual accountability model is needed. The state must ensure the recovery of losses through criminal channels (asset recovery and punishment) first, as a key prerequisite before providing constitutional bailout funds (PMN). If corruption is proven, PMN serves as legitimization of the burden caused by criminal acts, unless asset recovery has been maximized.

#### **3.3.2. Recommendations for Strengthening PSN Oversight and Transparency**

The Whoosh experience calls for comprehensive PSN governance reform. In terms of criminal law, the KPK must be supported in following up on mark-up investigations to corporate accountability, followed by optimal asset recovery efforts through civil lawsuits.

Non-penally/constitutionally, the House of Representatives must strengthen its oversight of the use of KAI PMN and demand total transparency in the determination of HPS/PSN contracts. The strengthening of the corruption prevention system must be improved, including budget transparency and the use of a whistleblower system. In addition, legal reforms are needed to create a more rigorous fiscal oversight framework for state-guaranteed SOE/PSN debt, ensuring that debt does not pose a systemic threat to the state budget.

## **4. Conclusion**

Enforcing criminal liability for corruption in *the* Whoosh project *mark-up* is crucial to recovering state losses through criminal proceedings, as indicated by the significant difference in project costs. However, the constitutional responsibility of the state requires greater measures, namely ensuring fiscal accountability for the massive debt of KCIC/KAI through strict supervision by the House of Representatives of every PMN grant, in accordance with the mandate of Constitutional Court

Decision No. 14/PUU-XVI/2018. The failure to mitigate massive debt risks and the need for complex restructuring reflect fundamental weaknesses in the governance of state-owned enterprises that require legal reform. Therefore, the resolution of Whoosh must adopt a dual accountability model, namely criminal sanctions and strengthened constitutional oversight to prevent the recurrence of fiscal burdens in the future.

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