

Criminal Responsibility of Corporations in Criminal Acts of Corruption

Nani Widya Sari

Pamulang University South Tangerang

Dosen02124@unpam.ac.id

Oksidelfa Yanto

Pamulang University South Tangerang

dosen00240@unpam.ac.id

Suhendar

Pamulang University South Tangerang

Hendar.tzu@gmail.com

Samuel Soewita

Pamulang University South Tangerang

sam.soewita@gmail.com

Henny Nuraeny

Djuanda University Bogor

hennynuraeny032@gmail.com

Abstract

At this time, the existence of corporations is felt to be increasingly important and strategic, in addition to being able to help turn the wheels of the economy, corporations have also reached almost all spheres of life. Corporations do not only carry out activities that aim to achieve their goals based on the provisions of the laws and regulations that govern them but in certain cases, many corporations commit criminal acts of corruption. Corruption is developing in various sectors, including state-owned companies. The purpose of this study is to determine the criminal liability of corporations in the crime of corruption. The research method used is normative juridical, where this research was conducted by examining library materials in the form of secondary data obtained from various legal materials. The research results show the law must be interpreted as a regulation that is real and applies to all humans without exception. All acts of corruption committed by corporations must be subject to sanctions if they are contrary to applicable legal regulations. So that the law will function in order to achieve the objectives of the law, namely certainty, justice and benefit. That that corporations are responsible as legal subjects in criminal acts of corruption. Legal subjects are not only individuals or individuals but legal entities such as corporations that can be held accountable. The existence of an error is an absolute element that can result in a corporation being held criminally responsible.

Keywords: Corporations; Corruption; Criminal Liability

INTRODUCTION

Corruption is no longer a new problem in the socio-economic life of a nation and state. Corruption has existed since the civilization of society thousands of years ago, both in developed countries and in

developing countries (Samiilenko et al, 2021).

Corruption around the world, countries in the world agreed to form The United Nations Convention Against Corruption (UNCAC). The institution was formed

because of the seriousness of the problems and threats posed by criminal acts of corruption that damage government institutions, democratic values, ethical values and justice and interfere with sustainable development and law enforcement (Kristian & Gunawan, 2015). In Indonesia, corruption cases have reached a low point that is very dangerous for development in various fields of life, such as legal, social, political, economic, which ultimately hampers prosperity in achieving the level of public welfare.

Many countries are starting to seriously consider the dangers of corruption to the economy by establishing institutions or departments that are able to prevent and control corruption (Lutfi, 2020). However, it appears that existing institutions or departments have not been able to stem corrupt practices. Instead, the perpetrators of corruption emerge from existing institutions or governments.

Corruption that develops within government institutions has been known by most of the public. Corruption occurs in the legislative, judicial and executive institutions. The corruption case surrounding the triad of political institutions is a form of how unsterile government institutions are from corrupt behavior (Haboddin & Rozuli, 2017). In the end, corruption causes inefficiency of employees and administrative costs in employees (Setiadi, 2018).

It's ironic, the struggle to eradicate corruption in Indonesia has been going on for a long time, but the phenomenon of corruption continues to spread massively in everyday life. (Husin & Tegnan, 2017). Actually, corruption is the most phenomenal crimes in Indonesia. (Amrullah, 2021).

Various regulations on corruption were issued, but they were always unsuccessful in eradicating corruption to its roots. The law seems to be powerless against the attacks of corruption. The goal of law enforcement in cases of corruption, namely the

disappearance or reduction of corruption, has not been achieved. Even though the law has a goal to be achieved (Siregar, 2019). The crime of corruption that continues to occur, makes the crime of corruption an extraordinary crime. Because corruption has been classified as an extraordinary crime, efforts to eradicate it can no longer be carried out normally but must be carried out in astonishing ways. One of the efforts to handle corruption cases in an extraordinary manner can be seen with the establishment of independent institutions in law enforcement of corruption cases. Indonesia also has a special law in eradicating corruption which is one of its articles that emphasizes the threat of the death penalty. And last but not least, Indonesia also has a corruption eradication commission that has extraordinary powers.

These extraordinary methods are important because the perpetrators are no longer ashamed to take people's money, which can be used for poverty alleviation, education and health for the community. The crime of corruption can also damage democratic values and national morality.

Even corrupt behavior does not reflect justice in treating humans (Nur & Ningsih, 2019). The perpetrators abuse their position and power to enrich themselves, groups or groups. The perpetrators of corruption undermine the sources of life, which can actually be enjoyed by the community. The rampant and frequent behaviour of corruption occurs, making the public sceptical and cynical about efforts to eradicate corruption. So far, efforts to eradicate corruption tend to fail, especially in prosecuting corruptors with punishments that are in accordance with existing laws. This condition then raises questions. Why have the repressive actions that have been carried out so far have not been able to decrease the crime rate of corruption in Indonesia and create a deterrent effect?

Corruption is developing in various sectors, including state-owned companies.

Because corruption is an abuse of authority and against the law. The perpetrators tend to enrich themselves, groups and groups which can result in misery for the community.

Corruption has elements such as unlawful acts, abuse of authority. The legal subject of corruption is not only a person but also a legal entity or corporation. Thus, the law does not only think of humans as subjects in law. But also the subject is not the person. The law then creates a legal entity (corporation) that has rights and obligations like individuals. A corporation is a legal entity or company that engages in continuous business or trade transactions.

At this time, the existence of corporations is felt to be increasingly important and strategic, in addition to being able to help turn the wheels of the economy, corporations have also reached almost all spheres of life (Satria, 2018). Corporations do not only carry out activities that aim to achieve their goals based on the provisions of the laws and regulations that govern them but in certain cases, many corporations commit criminal acts of corruption.

Corporations as the subject of criminal acts of corruption shall be regulated in the Anti-Corruption Law (Hikmawati, 2017). Corporate crime in some literature generally refers to as a white-collar crime. Sutherland said that white-collar crime is a violation of provisions of criminal law by a person (persoon) who has a socio-economic position in the field of work activities.

Corporate criminal liability has been one of the most debated topics during the 20th century. The debate about criminal liability against corporations began to escalate in the 1990s when the United States and European countries faced legal problems ranging from environmental issues, anti-trust, fraud, food and drug problems, false testimonies, labour deaths, bribery, criminal acts obstructing the judicial process (obstruction of justice), and financial crimes involving corporations.

This article then wants to see to what extent criminal acts committed by corporations can be held accountable and whether corporations can be punished according to existing provisions. Accountability and types of sanctions are also regulated, including in the Criminal Code which new.

METHOD

In this writing, the research method used is normative juridical, where this research was conducted by examining library materials in the form of secondary data obtained from various legal materials, including scientific articles obtained from online journals. After the data is collected, it is processed and analyzed to answer the problems under study.

RESULTS AND DISCUSSION

As it is known that in a criminal act, what is meant by the perpetrator is anyone who commits a crime, including in this case the crime of corruption. If there is a loss suffered by the state, then according to Article 1 point 3 of the Corruption Crime Act, what is meant by every person is an individual or including a corporation. So it can be underlined that the element of whoever is referred to as the perpetrator of corruption is in the form of individuals or corporations that are detrimental to state finances. Then can corporations be held criminally liable?

Before we get into the issue of criminal liability by corporations, it is better to first see what corruption and corporations are as presented by the experts.

View, the first problem in discussing criminal liability against corporations is what is meant by corporations? In the discussion conducted by the scholars developed 2 (two) opinions. The first opinion states that what is meant by a corporation is a trading group that is a legal entity. So it is limited that a corporation that can be held criminally

accountable is a corporation that is already a legal entity. The reason is that by having a legal entity, it is clear the composition of the management and the extent of the rights and obligations in the corporation.

According to Loebby Loqman (the definition of a corporation is narrow and some are broad. A corporation in a narrow sense is a trade group that is already a legal entity. Corporations in the broadest sense are corporations that do not have to be legal entities, every group of people, whether in a trade or other business relationship, can be accounted for.

The criteria for corporate criminal responsibility are: first, tax and economic crimes, corporate profits or losses to society are biggest, not only the manager who punishes; second, there is no certainty that the board of directors will not commit another crime if the corporation is convicted, it is expecting to comply with the applicable regulations.

The company is the perpetrator of a criminal act and must be held accountable. The motivation is that corporations for certain offences, which are responsible for the management alone, are punished, turned out it is not enough. Based on the economic offence for the losses incurred by corporations and harming society compared to the profits obtained by corporations, it is not enough to impose penalties only on the management and corporations must also be punished. Basically, in criminal cases against company directors, there is no sufficient certainty that the company will not commit acts against the law. So it is necessary to convict the corporation and management or administrators only.

According to Eliot and Quinn, the importance of corporate responsibility rather than individual responsibility are: *First*, corporate criminal liability cannot avoid criminal regulations and not its employees who are prosecuting because of that company's mistakes. *Second*, it is easier to

sue a corporation than its employees/managers. *Third*, the corporation can pay the penalty imposed by the employee. *Fourth*, the threat of criminal prosecution against the company can encourage shareholders to monitor the company's activities. *Fifth*, companies that bear sanctions for criminal acts that are not employees of the company. *Sixth*, corporate responsibility must prevent its employees from conducting illegal business activities. *Seventh*, the penalty of a criminal fine on the company (corporation) can serve as a deterrent for companies to carry out illegal activities.

Corporate crime has long been a concern in the development of criminal law. This cannot be separated because the perpetrators of corporate crimes are people. At least this can be seen with the emergence of various theories of corporate criminal responsibility that were born to stop or punish corporations that commit crimes (Shanty, 2017). Criminal liability is the word *toerekenbaarheid* (Dutch), criminal responsibility/criminal liability (English). Criminal liability has to determine someone to be a suspect/accused and responsible for a crime (crime) that occurred or not.

Regarding corporate criminal liability, three models of liability can be found (Hiariej, 2016) namely:

- 1) The Board of Directors of the corporation is the policymaker and responsible. The management will always be considered the perpetrators of the offence.
- 2) Corporations as responsible producers and administrators. The corporation may be the decision-maker, but the responsibility is lifting to the management. Corporate crime is a crime committed by the Director of the legal entity. It is the corporate leadership that must be held accountable.
- 3) Corporations are decision-makers and are responsible. Do not determine the

management as the perpetrator of a criminal act because the corporation is the beneficiary of the crime, so criminal sanctions against the Director cannot guarantee that the company will not commit a crime.

Corporations are decision-makers, responsible if criminal perpetrators, only directors as people who can be convicting who turns out that it is not enough. (Pangaribuan, 2016). Although corporations in civil law, if a crime is committing by its directors, this will turn to criminal law. Then there is criminal responsibility to the perpetrators of the corporate crime as stipulated in the rule that governs it.

Initially, corporate liability is base on the respondent superior doctrine, that corporations themselves cannot commit crimes and are guilty of wrongdoing. Three-component for corporate responsibility, (1) the Directors commit a criminal act; (2) within the scope of his work; and (3) for benefits. According to Sjahdeni, there may be 4 (four) corporate criminal liability systems that enforce, namely: *First*, the director of the corporation is the perpetrator of the crime and therefore director is responsible. *Second*, the corporation is the perpetrator of the crime and the responsible director. *Third*, the perpetrator of a crime and an accountable corporation. *Fourth*, the director and the corporation as perpetrators of criminal acts and both have to be held responsible.

One form of corporate that has become a concern due to its increasing development is the form of corporate crime in the field of natural resources. Corporate crimes in the field of natural resources can have many complex impacts and victims that not only deplete natural resources, human resources, social capital, and even sustainable institutional capital.

Therefore, what everyone is responsible for is the crime he has committed. However, not everyone who commits a crime can punish because to fulfil the requirements that

everyone can be held accountable for the injury must be an element of error as a form of a sense of justice. It is unfair if everyone is sentenced to a crime even though they are not guilty. The existence of an element of error from criminal responsibility is what in criminal law is the principle of error, no crime without error.

Basically, corporations can be held criminally responsible for their corruption crimes. Criminal liability is everyone's responsibility for the crime he has committed. Criminal responsibility is the main core in criminal law which is aimed at finding criminal acts. That corporations are responsible as legal subjects in criminal acts of corruption. Legal subjects are not only individuals or individuals but legal entities such as corporations that can be held accountable. The element error is related to criminal acts committed by natural humans as subjects of criminal law. Then criminal responsibility is to determine and place the perpetrator of a criminal act as a subject of criminal law.

If you look at this responsibility in Supreme Court Regulation Number 13 of 2016, Article 3, it can be explained that "Corporate criminal acts are criminal acts for which the corporation can be held criminally responsible in accordance with the law governing corporations. These corporate criminal acts are criminal acts committed by people based on employment relationships, or other relationships, either individually or together acting for and on behalf of the corporation within or outside the corporate environment.

Perma Number thirteen of 2016 is one of the efforts to widen the scope of the application of criminal sanctions. So far, many laws regulate criminal sanctions against corporations but are not supported by a clear legal procedure for taking action. It is in this context that Perma Number thirteen of 2016. The presence of this regulation facilitates the handling of corruption cases,

especially in the natural resources sector. Moreover, corruption in this sector is multi-complex, not easy to uncover, and has a large impact not only on the surrounding community but also on the state.

“In view Nur Aripkaha, supreme Court Regulation (Perma) No. 13 of 2016 explicitly states that corporations as legal subjects can be held criminally responsible. Based on Article 4 paragraph (2) of Perma No. 13 of 2016, the corporation can be blamed if the corporation (a) obtains profits or benefits from certain criminal acts or a criminal act is committed for the benefit of the corporation, (b) allows a criminal act to occur, or (c) does not take the necessary steps to commit the crime. prevention, preventing a greater impact, and ensuring compliance with applicable legal provisions in order to avoid the occurrence of criminal acts (Aripkaha, 2020).”

The presence of Perma Number thirteen of 2016 can be appreciated as a way to provide wider sanctions in terms of corruption crimes committed by corporations that harm Indonesia's natural resource wealth.

To legally process a corporation that has been designated as a suspect, through this Perma, guidelines and procedures for processing corporate law are set as suspects. So far, many laws regulate criminal sanctions against corporations but are not supported by a clear legal procedure for taking action. It is in this context that Perma Number thirteen of 2016 is here. Indeed, this regulation will make it easier to handle corruption cases, especially in the natural resources sector. Moreover, corruption in this sector is multi-complex, not easy to uncover, and has a large impact not only on the surrounding community but also on the state. With the birth of Perma Number thirteen of 2016, then there is a breakthrough that is related to the reform of the criminal accountability system for corruption.

In the end, we all believe that Perma Number thirteen of 2016 is a very good

breakthrough produced by the authorities in law enforcement efforts in Indonesia so that the regulations governing the mechanism of corporate criminal liability can be applied. Thus, it can be explained that in the application of criminal law it is very clear that legal subjects categorized as criminal acts are not only individuals or individuals but also include legal entities. The legal entity in question is a corporation. Thus, the corporation can be held accountable for what has been done by its management, where the actions taken by the management must be within the scope of its power as part of its duties and responsibilities.

In Criminal Law, there is a famous adage adopted from Article 44 of the Criminal Code (“KUHP”), namely the principle of “No Crime (Criminalization) Without Errors” or called as “Geen Straf Zonder Schuld” in European concepts. Continental and “Actus Non-Facit Reum Nisi Mens Sit Rea” in the Anglo Saxon concept (“An act does not constitute itself guilt unless the mind is guilty”). Regarding the principle of error, although it is not explicitly stated, in the Criminal Code, if one examines the articles in it, the formulation of these articles requires a component of mistake either in the kind of intentional or carelessness, we can conclude that the Criminal Code adheres to the principle of error.

According to Moeljatno, as quoted by (Atmasasmita, 2018) in his book *Reconstruction of the Principle of No Crime Without Errors: Geen Straf Zonder Schuld*, this principle means that people cannot be held accountable (convicted of criminals) if they do not commit criminal acts.

In (Supanto, 2016), view the principle of no crime without guilt (Geen Straf Zonder Schuld), difficult if applied to corporations, because generally, the known fault lies in people. Therefore, to anticipate a new dimension of crime by looking at its nature and form, it is necessary to use another principle of responsibility, based on the facts

of the suffering caused to the victim, known as the principle of *res ipsa loquitur* (facts speak otherwise). In this case, the doctrine applied to corporate liability is Strict Liability (criminal liability without fault), and Vicarious Liability (criminal charges on someone for the steps of others). The underlying consideration for this is because there is a new dimension of crime that can damage the interests of the wider community, attack the safety of many people, pollute the environment.

Concerning the corporation as a party that can be held accountable for an error in a legal act, this can be charged to the management of the corporation. Indeed, at first, people refused to hold corporations accountable in criminal cases. The reason is that corporations don't have feelings like humans, so they can't make mistakes. Besides that, it is impossible to apply imprisonment to corporations. However, considering the negative impact caused by corporate activities, the idea arises to account for the corporation in criminal cases. Thus, the application of errors in accountability in the corporation can be held criminally responsible by the provisions of corporate crime in the law governing the corporation, for example, the law on corruption or environmental law. Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Corporate Criminal Offenses (Corporate Supreme Court Regulation) can be used to fill the gap in corporate accountability.

Perma No. 13 of 2016 is actually an effort to expand the scope of criminal sanctions. So far, the legal subject of a person (*natuurlijk persoon*) has been the main target of law enforcement even though many proceeds of corruption are stored in corporations, or corporations enjoy the benefits of corruption. Through this Perma, guidelines and procedures for processing corporate law that is named a suspect are regulated. So far, many laws regulate

criminal sanctions against corporations but are not supported by clear procedural law. It is in this context that Perma No. 13 of 2016 is present. Thus, according to the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 on Procedures for Handling Criminal Cases by Corporations, corporate criminal acts are criminal acts for which corporations can be held criminally accountable in accordance with the laws governing corporations. Where corporate crime is a corporate act represented by a person representing the corporation as long as it is carried out acting on behalf of and for the benefit of the corporation, where the act is an act that violates the law and can be held criminally responsible.

Article 4 of Supreme Court Regulation Number 13 of 2016 explains that in imposing criminal penalties on Corporations, Judges can assess the Corporation's mistakes as in paragraph (1) including: *First*, the Corporation can obtain benefits or advantages from the crime or the crime is carried out for the benefit of the Corporation; *Second*, the Corporation allows the crime to occur; or *Third*, the Corporation does not take the necessary steps to prevent, prevent greater impacts and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts.

In the Supreme Court Regulation, the legal subjects are corporations and corporate administrators. Then what are the levels of punishment? The Perma provides several levels of punishment, namely: *First*, fines to corporations. *Second*, if the corporation does not pay the fine, its assets can be confiscated and seized. *Third*, fines to corporate administrators. *Four*, if corporate administrators do not pay the fine, it will be replaced with proportional imprisonment.

Corporations can be held criminally responsible in accordance with the criminal provisions of Corporations in the laws governing Corporations. In imposing criminal penalties on Corporations, the Judge can

assess the Corporation's fault, including the Corporation obtaining profits or benefits from the criminal act or the criminal act being carried out for the benefit of the Corporation. In the case of a criminal act being committed by a Corporation involving the parent Corporation and/or subsidiary Corporations and/or Corporations that have a relationship, they can be held criminally responsible in accordance with their respective roles. In this case, the judge can impose criminal penalties on the Corporation or the Management, or the Corporation and the Management based on each law that regulates criminal threats against Corporations and/or Management. The imposition of criminal penalties on the Corporation and/or Management does not preclude the possibility of imposing criminal penalties on other perpetrators who, based on the provisions of the law, are proven to be involved in the criminal act.

The provisions of the law in question include those regulated in Law Number 1 of 2023 concerning the Criminal Code. This means that when compared to the old Criminal Code, now in Law No. 1/2023 there are provisions regarding criminalization of corporations. As is known, previously corporations were already criminal subjects. However, the mechanism for criminalizing corporations is not regulated at the level of the law, it is still regulated at the level of Supreme Court Regulation No. 16/2016 concerning Procedures for Handling Corporate Crimes ("Perma No. 16/2016"). With the enactment of Law No. 1/2023, criminalization of corporations has now been regulated at the "law" level, as explained in Article 45 Paragraph (1) of Law No. 1/2023, corporations are the subject of criminal acts.

Then, Article 46 of Law No. 1/2023 defines corporate crimes as crimes committed by managers who have a functional position in the structure corporate organization. Corporate crimes can also be committed by people who, based on employment

relationships, based on other relationships, act for and on behalf of the corporation, act in the interests of the corporation and within the scope of the Corporation's business or activities, either individually or together. In addition to the provisions as referred to in Article 46, Article 47 of Law No. 1/2023 states that criminal acts by corporations can be committed by the person giving the order, the person holding the control, or the beneficial owner of the corporation who is outside the organizational structure, but can control the Corporation.

CONCLUSION

The research results show the law must be interpreted as a regulation that is real and applies to all humans without exception. All acts of corruption committed by corporations must be subject to sanctions if they are contrary to applicable legal regulations. So that the law will function in order to achieve the objectives of the law, namely certainty, justice and benefit. That that corporations are responsible as legal subjects in criminal acts of corruption. Legal subjects are not only individuals or individuals but legal entities such as corporations that can be held accountable. The existence of an error is an absolute element that can result in a corporation being held criminally responsible.

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