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Implementation of the Corporate Criminal Responsibility System as the Subject of Criminal Acts in the Law on the Eradication of Criminal Acts of Corruption

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Abstract

Accentuation of the development of science and technology today provides changes about subject of follow-up only involved natural people (naturlijke persoon), but at the present, legal entity (rechts persoon) became the subject of judicial actions. Purpose of this research is to determine the corporate criminal liability system as subjects of criminal acts in the Corruption Eradication Act. This research is descriptive research with normative juridical research type, uses statute and conceptual approaches. Data was collected through literature study, then analyzed qualitatively. This research shows that the corporate criminal liability system in Corruption Eradication Act adheres to a mixed corporate criminal liability system, thereby that criminal liability is applied to the corporation and/or its management.

Keywords
Corporate; Corruption; Criminal Liability.

I. Introduction

Many problems of corruption in Indonesia have been conveyed to the public, either through discussions, seminars, survey results, and the mass media. One of the regular studies and surveys on corruption is carried out by an independent institution, namely Transparency International (hereinafter referred to as TI). The results of a survey conducted by TI in 2019 gave Indonesia a score of 40.

Despite an increase in the score from 38 to 40 in the 2018-2019 period, the level of corruption in Indonesia is still high. This should be used as a lesson for the authorities to change the orientation of handling corruption that leads to recovery of state losses. The need for another legal approach because the crime of corruption committed by the company is not only a violation of criminal law, but is often in contact with aspects of administrative law and civil law.

It must be realized that the increase in uncontrolled corruption will have an impact that is not only limited to state losses and the national economy, but also to the life of the nation and state. Corruption is a violation of social rights and economic rights of the community, so that corruption can no longer be classified as an ordinary crime, but becomes an extraordinary crime. Therefore, in an effort to eradicate it, it can no longer be carried out "in the usual way," but requires extraordinary methods (extraordinary measures).

Acts against the law and Abuse of authority in criminal acts of corruption are regulated in Article 2 and Article 3 of Law Number 31 of 1999 as amended to Law Number 20 of 2001 concerning Eradication of Corruption (UUPTPK). There is a fundamental difference between the two acts, even though the two acts are elements that determine whether or not an action can be declared a criminal act, furthermore the two acts

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are also important to determine whether someone can be blamed for corruption or not. (Purba, I. et al. 2019)

The normative basis that is often used for corruption is Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Non-Criminal Corruption (hereinafter referred to as the PTPK Law). The two formulations of this article formally regulate the existence of state financial losses as an element of corruption.

Based on the normative basis above, it can be distinguished between the elements of a criminal act of corruption in Article 2 paragraph (1) and Article 3 of the PTPK Law, namely the element of enriching oneself, or another person, or a corporation, and an element that is against the law in Article 2 paragraph (1) of the PTPK Law, is compared with the element of benefiting oneself, another person, or a corporation, and the element of abusing the authority, opportunity, or means available to him because of his position or position in Article 3 of the PTPK Law.

Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

The argument above is related to the accentuation of the development of science and technology today which gives changes to the development of society and the development of the subject of criminal acts. At first, the subject of criminal acts only referred to natural humans (naturlijke persoon), but in fact, now legal entities (rechts persoon) are the subject of criminal acts.

Legal entity is a term commonly used by experts in criminal law and criminology in other fields of law, especially in the field of civil law as a legal entity or in Dutch it is called rechts persoom or in English it is called a legal person or legal body.

Relevance to the subject of criminal law, according to the Criminal Code (hereinafter referred to as the Criminal Code), those who can be held criminally responsible are individuals (naturlijke persoon), not legal entities such as corporations. This is regulated in Article 59 of the Criminal Code, which states:

"In cases where a criminal offense is determined against the board members of the management board or commissioners, then the management, board members or commissioners who apparently do not interfere in committing the offense are not punished.

Historically, the concept was influenced by the doctrine of “societas delinguere non potes”, namely that corporations cannot perform actus Reus. If it is related to Von Savigny's thinking, then humans are the only legal subjects, whereas in fact there are none, but people who create legal actors (legal entities) as legal subjects. This principle explains why in the Criminal Code no corporation is found as a subject of criminal law.

The logical consequence of a corporation being recognized as a subject of criminal law, there are several exceptions, namely:

1 In cases which by nature cannot be carried out by corporations, such as rape, bigamy, and perjury.
2 In cases where the only punishment that can be imposed cannot be imposed on corporations, for example imprisonment or capital punishment.

To detect that a corporation can be criminally responsible, there are several theories that can be used, namely identification theory which essentially recognizes that the actions of certain members of the corporation, as long as the actions are related to the corporation,

are considered as actions of the corporation itself. Another theory is strict liability theory, this theory is liability without fault. The perpetrator of a criminal act can already be punished if he has committed a prohibited act as formulated in the law without looking further at the inner attitude of the perpetrator. In addition, there is also the theory of vicarious liability, which assumes that if an agent or corporate worker commits a crime, his criminal responsibility can be imposed on the company, without the need for a profit or prohibition by the corporation for the act.

Referring to the background above, the problem that can be formulated in this research is how is the implementation of the corporate criminal responsibility system as the subject of criminal acts in the PTPK Law?

From these problems, it can be seen that the PTPK Law is explicitly regulated and in terms of how a criminal act can be categorized as a criminal act of corruption committed by a corporation. However, until now there has been no uniformity of rules for law enforcement regarding corporate criminal liability and if criminal sanctions are substitutes for fines that are not paid by the corporation.

Previous research on the corporate criminal responsibility system as the subject of criminal acts in the PTPK Law was carried out by Rony Saputra regarding corporate criminal responsibility in corruption (a form of corruption that harms state finances related to Article 2 paragraph (1) of the PTPK Law). Abdurrakhman Alhakim and Eko Soponyono regarding the policy of corporate criminal responsibility towards eradicating corruption. ; And Padil regarding the characteristics of corporate criminal liability in corruption.

Based on previous research, although they have the same theme, namely regarding corporate criminal liability, this research focuses more on the application of the corporate criminal responsibility system as the subject of criminal acts in the PTPK Law. This study aims to analyze the corporate criminal liability system as the subject of criminal acts in the PTPK Law.

II. Research Method

This research is descriptive with the type of normative juridical research. The approach used to examine the research problem is a statutory approach and a conceptual approach. The statutory approach is an approach that deduces the legal norms contained in statutory regulations, such as the PTPK Law and other statutory regulations that are related to corporate criminal liability in corruption. Furthermore, the conceptual approach is a fundamental approach to the views and doctrines that develop in legal science. The existence of doctrines or expert views will clarify the understanding, concepts, and legal principles used as the "knife of analysis" of this research. The data used in this study is secondary data using primary legal materials, secondary legal materials, and tertiary legal materials. The data collection technique was carried out using a literature study, then analyzed qualitatively.

III. Results and Discussion

3.1.Corporate Criminal Liability

The precision of corporate criminal liability must of course be rationalized by criminal acts. The foundation of criminal acts is the principle of legality, while the foundation of convicting the perpetrator is the principle of error. This means that the perpetrator will be punished when he has a mistake in committing a crime.

Based on the argument above, regarding criminal liability, Sudarto said, for a person to be convicted, it is not only seen from his actions that are contrary to the law, but that person must have subjective guilt.

The arguments above provide an understanding that the elements of guilt or elements of criminal responsibility in the broadest sense, namely: 1) The ability to be responsible; 2) There is an inner relationship between the perpetrator and his actions which is intentional and negligent, or it can be called a form of error; and 3) There is no excuse for forgiveness.

Seeing the elements of criminal responsibility above, of course, it needs to be analyzed sharply. The first element regarding the ability to be responsible or in Dutch is called toerekeningsvatbaarheid. Regarding these elements, the current Criminal Code which is a translation of Wetboek van Straftrecht (hereinafter referred to as WvS) is not formulated positively, but negatively.

Moreover, Eddy OS Hiariej gave a statement regarding the first element of accountability, namely when referring to Article 44 of the Criminal Code, several conclusions can be drawn:

a. The ability to be responsible is seen from the perspective of the perpetrator who is in a mentally disabled or disturbed condition due to illness;
b. To determine the ability to be responsible in the context of the first carried out by a psychiatrist;
c. There is a causal relationship between the state of the soul and the actions performed;
d. The assessment is carried out by the judge who hears the case regarding the causal relationship between the state of the soul and the act committed;
e. The system used in the Criminal Code is descriptive normative, meaning that it describes the state of the soul by a psychiatrist, but judges also assess normatively the relationship between the state of the soul and the actions taken.

The second element of criminal responsibility is the existence of an inner relationship between the perpetrator and his actions which are intentional and negligent. Deliberate diction (dolus or opzet) is a form of error. The current Criminal Code which is still translated from WvS does not provide a definition of intentional or intentional. However, when referring to Memorie van Toelichting (hereinafter referred to as MvT), what is meant by intentionality is "wanting" and "knowing".

In the knowledge of criminal law, there are 2 (two) theories regarding the inner state of people who act intentionally, which contain will and know. First, the will theory (wils-theorie) which provides an understanding of intentional, meaning that the will makes an action and the will has an impact on the result of that action. Second, the theory of knowledge/imagining (voorstellings-theorie) which provides an understanding of intentionally being the result of an action that cannot be desired by the perpetrator, but can only be imagined, what is desired is only the act.

Based on the premise above, in the science of criminal law there are forms of intentionality which are formed by approximately 18 (eighteen) forms of intentionalism, but are usually divided into 3 (three) forms. First, intentional based on intent (opzet als oogmerk), which is defined as an act committed by a person that is indeed the goal. In other words, that a person's motivation to do actions, actions, and the consequences are actually realized.

Second, intentionally based on certainty or necessity (opzet bij zekerheids of noodzakelijkheidsbewustzijn). In contrast to the first form, this intentional form has 2 (two) consequences. The first effect is desired by the perpetrator and the second effect is not desired by the perpetrator, but it must happen. Third, intentional based on probability (opzet bij mogelijkheidsbwusttzijnvoorwaardelijk opzet of dolus eventualis), is interpreted

as intentional if an action is carried out or the occurrence of an intended result, then it is realized that there is a possibility that other consequences will arise.

In this type of crime because of its light nature, when viewed from Book III of the Criminal Code, it can be seen his culpa Levis. Second, the perspective of the actor's consciousness which consists of conscious and unconscious omissions. A conscious omission (bewuste schuld) will occur if the perpetrator can estimate the possibility of a consequence that accompanies his actions, even though the perpetrators have tried to take precautions so that there are no consequences. Meanwhile, unconscious omission (onbewuste schuld) will occur if the perpetrator does not estimate the possibility of a consequence that accompanies his action, but the perpetrator should be able to estimate the possibility of such an effect.

The third element of criminal liability is the element of the absence of forgiving reasons. The reason for forgiveness is simply defined as negating the guilt of the perpetrator of a crime. His actions are still against the law, but the perpetrator cannot be convicted because there is no mistake in him. When detailed, the reasons for forgiveness can be divided into 2 (two) reasons. First, the reasons for general forgiveness are contained in Article 44, Article 48, Article 49 paragraph (2), and Article 51 paragraph (2) of the Criminal Code. Second, the reasons for special forgiveness are contained in Article 110 paragraph (4), Article 163 bis paragraph (2), Article 367 paragraph (1), and Article 464 paragraph (3).

Based on the description above, it can be understood in depth that the juridical construction of criminal responsibility is human-oriented. This is understandable because the construction of criminal liability is based on the provisions in the Criminal Code. The current KUHP only recognizes humans who are the subject of criminal acts, not corporations.

In addition to intentionality, there is another form of error, namely negligence. Impertia culpae annumeratur which means negligence is a mistake. This result arises because someone is negligent, reckless, careless, negligent, or careless. The Criminal Code does not provide an explanation of terms relevant to negligence (culpa). However, MvT provides an explanation that negligence is the opposite of intentionality, and on the other hand is the opposite of coincidence. When viewed from its nature in the criminal law system, negligence is a mild form of error, while intentional is a serious form of error.

In errors in the form of omission, there are forms of omission that can be viewed from two angles. First, the light weight angle is negligent. If the negligence is severe (culpa lata) or in Dutch it is called grove schuld. Experts state that culpa lata is tied to crimes due to negligence, as stated in Article 188, Article 359, and Article 360 of the Criminal Code. Meanwhile, mild negligence (culpa levis) or in Dutch is called lichte schuld. Experts stated that he was not found

The above can be understood why humans are made the subject of criminal acts because human accentuation in the fields of science, knowledge, information, and views is very broad and high. In addition, humans are also very ambitious and idealistic, have high ideals, and have extraordinary thoughts, so it is not surprising that an action taken by humans can have a good or bad impact, because humans are currently living in the midst of a very high material life. The measure of people referred to as rich or successful is when humans have a certain amount of wealth that is seen in everyday life.

The argument above provides an analysis of the position of the corporation that can be criminally accounted for or not, of course, it can be seen from the criminal liability model. First, the administrator who acts, the manager who is responsible. The construction of this first model of thinking still recognizes the principle of societas delinquere non potest which has been described previously. On the basis of the influence of the doctrine, if a corporate management is charged with certain obligations which are of course the obligations of the corporation and it turns out that the management does not fulfill these obligations, he is threatened with criminality. Second, the corporation that acts, the manager who is responsible. The construction of this model of thinking, in general, states that the corporation may be the maker and the administrator is appointed as the responsible person. This clearly needs to be observed regarding what is done by a corporation is an act carried out by corporate equipment according to the duties and authorities in its articles of association/by-laws. Third, corporations that act, corporations that are responsible. The construction of thinking in this model is to pay attention to the development of the corporation itself, namely by stipulating only the management as liable to be punished, in reality it is not enough or does not get a deterrent effect and the corporation is a functional actor and receives benefits from various activities, including criminal ones.

In principle, the provisions regarding corporate criminal liability are contained in Article 20 of the PTPK Law. Article 20 paragraph (1) regulates the responsibilities that can be requested from the corporation and/or its management. Meanwhile, Article 20 paragraph (1) regulates the responsibilities that can be requested from the corporation and/or its management. Meanwhile, Article 20 paragraph (2) is affiliated with criminal acts of corruption committed by corporations, namely if the crime is committed by people, either based on work relationships or based on other relationships acting within the corporate environment, either alone or together.

Elucidation of Article 20 paragraph (1) explains that what is meant by management is the organ that carries out the management of the corporation affiliated with the articles of association of the corporation concerned, including people who have the authority to decide on a corporate action that can be qualified as a criminal act of corruption. More than that, Article 20 paragraph (1) provides hope for a corporation and its management to be brought before the court as a result of a criminal act committed. This paragraph gives preference for the public prosecutor to only indict or sue the management only, or the corporation only, or the management and corporation. In addition, Article 20 paragraph (1) expands the meaning of "management".

3.2. Implementation of the Corporate Criminal Responsibility System as the Subject of Criminal Acts in the PTPK Law

From a normative point of view, the forms of criminal acts that can be committed by corporations refer to Article 2 paragraph (1), Article 3, Article 5, Article 6, Article 7, Article 9, Article 10, Article 12a, Article 12b, Article 13, Article 15, Article 16, Article 21, and Article 22 of the PTPK Law. In principle, these provisions can be carried out by a corporation through its management. However, when a corporation wants to be categorized as committing a crime, it must meet certain conditions. In addition, when the corporation gains or benefits from the crime, so that for its actions, the corporation can be held accountable criminal.

When examined in depth regarding Article 2 paragraph (1) of the PTPK Law, when a corporation commits a criminal act of corruption by committing acts of enriching oneself that can harm the state's finances or the state's economy, the act in question is the act of a

human being as an organ or management of the corporation. , who unlawfully commits acts of enriching corporations that can harm state finances.

Moreover, the normative analysis in Article 3 of the PTPK Law is contained in the phrase "abusing the authority, opportunity, or facilities available to him because of his position or position." If the phrase is related to criminal acts of corruption committed by corporations, then only public corporations can be held accountable, such as State-Owned Enterprises (BUMN), the part of which is part of state equity participation in corporations that are not public. Furthermore, there is the phrase "can" in the elements of Article 2 paragraph (1) and Article 3 of the PTPK Law as a form of potential state loss which in fact has caused a lot of counterproductiveness in the context of people's welfare goals. Determination of corruption that is detrimental to state finances cannot be based on the nature of the formal formulation which explicitly states “against the law taking action to enrich oneself or another person or company”, but the most important thing is the material formulation that is detrimental to state finances.

Based on the above arguments, a criminal act of corruption committed by a corporation has occurred if it fulfills at least 2 (two) requirements, namely that the corporation unlawfully commits an act of enriching itself, or another person, or a corporation that can harm state finances or the state economy, and acts of natural humans as organs of corporations unlawfully commit acts of enriching corporations that can harm state finances or the state economy.

If reviewed in more depth, the term that can be categorized as intentional in Article 2 paragraph (1) is the diction to enrich oneself, or another person, or a corporation and harm state finances or the state economy. The diction "enriching and harming" must be interpreted as intentional, even though the diction in the provisions of Article 2 paragraph (1) does not expressly state using one of the forms intentionally, but intentional by itself has been concluded in the act of enriching and harming. In other words, the terms enriching and harming are intentional ways that are formed, which are planned in advance in a calm state of mind.

With regard to the above argument, the relevant punishment for corporations is a fine. In relation to this principal criminal offense for corporations, Article 20 paragraph (7) of the PTPK Law has stated explicitly that the main punishment that can be imposed on corporations is only in the form of fines with the maximum penalty being added to 1/3 (one third of the maximum penalty). Furthermore, the author examines the criminal acts of corruption committed by corporations in Indonesia. In addition to additional criminal provisions as regulated in Article 10 letter b of the Criminal Code, Article 18 paragraph (1) of the PTPK Law regulates additional criminal offenses other than the additional penalties stipulated by the Criminal Code, namely confiscation of movable or immovable property, payment of replacement money, closure of all or part of the company, and the revocation of all or part of certain rights.

The additional penalty is "yam non est principalis, non potest esse accwsories" meaning that if there are no main things, then there cannot be additional things. The postulate means that additional penalties may not be imposed without the main punishment, but not vice versa, the main punishment may be imposed without additional punishment. Furthermore, in the criminal act of corruption, additional punishment is in the form of replacement money, the maximum value is equivalent to the property obtained from the criminal act of corruption.

Although the penalty for paying compensation is similar to a fine, namely in the case of money charged by the perpetrator or convict, the substance is different. The amount of money in the criminal fine does not need to be related to the consequences or losses

suffered in casu which are intended as state losses. However, in the case of compensation for money, it must be related to the consequences or losses arising from the existence of corruption committed by the perpetrator. The purpose of the criminal payment of replacement money is to recover losses due to corruption, but the criminal penalty is solely intended for the entry of money into the state treasury.

In relation to the arguments above, in the provisions of Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, Article 1 number 8 stipulates that criminal acts by corporations are criminal acts that can be held criminally accountable to corporations in accordance with the law. laws governing corporations. In other words, criminal acts of corruption committed by corporations refer to Article 20 paragraphs (1) and (2) of the PTPK Law.

Regardless of the regulation above, to fill the legal vacuum in handling corporate criminal cases, it should be remembered that when applying a criminal offense against corporations for corruption, the criminal law system in WvS still focuses on criminal responsibility with natural human characteristics.

The PTPK Law adopts a mixed corporate criminal liability system, so that criminal liability is applied to corporations and/or their management. This is enshrined in Article 20 paragraph (1) of the PTPK Law, which states that in the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and punishments can be made against the corporation and or its management.

Observing the above, it can be concluded that the corporate criminal liability system can be imposed on the corporation, the management, or the corporation and its management. Each of the three models of the criminal liability system can be called a corporate criminal liability system. Thus, it is necessary to pay close attention if the punishment is only imposed on the management, it is said to be a corporate criminal liability.

The three models cannot be separated, because they may result in ne bis in idem. For example, in one corporate crime case (the management) has been legally and convincingly declared to have committed a corporate crime and has been decided by a judge and has permanent legal force. However, for the same case, the corporation is later re-submitted as a suspect or defendant, so it becomes ne bis in idem. Moreover, if you want to ensnare a corporation and its management, this must be done together or at least the first case filed has not yet had permanent legal force or the case is different. If the case submitted for the first time has permanent legal force, then the second case submitted again becomes a ne bis in idem case.

IV. Conclusion

Based on the explanation that has been conveyed above, it can be inferred matters regarding the application of the corporate criminal responsibility system as the subject of criminal acts in the PTPK Law. The forms of criminal acts that can be committed by corporations refer to Article 2 paragraph (1), Article 3, Article 5, Article 6, Article 7, Article 9, Article 10, Article 12a, Article 12b, Article 13, Article 15, Article 16, Article 21, and Article 22 UUPTPK. The corporate criminal responsibility system in the PTPK Law adheres to a mixed corporate criminal liability system, with criminal liability being applied to the corporation and/or its management. It is statedin Article 20 paragraph (1) of the PTPK Law which states clearly that in the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties can be made against the corporation and or its management. The corporate criminal liability system can

be imposed on corporations, management, or corporations and management. The three models of the criminal liability system, each of which can be called a corporate criminal liability system.

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