

Corporate Criminal Liability in the Indonesian Criminal Law System

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Abstract

The issue of corporate responsibility is still a matter of debate even though several laws outside the Criminal Code have listed corporations as the subject of criminal acts. This relates to the principle of error (geen straf zonder schuld), limits of ability to be responsible and forms of criminal responsibility. The research method used is a literature study research system where research is carried out by searching, reading, recording and analyzing findings in the field related to written sources such as books, journals, archives, articles or magazines that have a correlation with the problem being studied. In the socio-cultural field, corporate criminal acts are carried out in the form of actions that are detrimental to copyright holders, brands; not paying attention to the safety and health of workers/laborers; criminal acts that result in damaging education and the younger generation such as narcotics and psychotropic abuse and so on. In the Indonesian Criminal Code (KUHP), there is no known criminal provision that stipulates an artificial legal subject (rechtspersoon) or corporation, as a subject that can be subject to a crime. This can be seen in the general provisions of the Criminal Code which state that Indonesian laws and regulations apply to everyone.

Keywords

accountability; criminal;
corporate; Indonesia



I. Introduction

The existence of a corporation is actually a result of the development of modernization in order to make it easier to meet human needs in society. In the beginning, people were more familiar with legal entities than corporations. A corporation is a term commonly used among criminal law experts to refer to what is common in other fields of law, especially in the field of civil law, as a legal entity.

At present the development of the corporation appears to be increasingly rapid both in terms of quality, quantity and the field of business it undertakes. The corporation is engaged in various fields such as banking, transportation, communication, agriculture, forestry, marine, automotive, electronics, entertainment and so on. Almost no area of our lives is separated from corporate networks. The existence of corporations brings many benefits to society and the state, such as an increase in state treasury income from taxes and foreign exchange, creating jobs, increasing technology transfer and so on.

However, in addition to the advantages or positive impacts mentioned above, the existence of corporations can also have negative impacts, such as environmental pollution (water, air, land), exploitation or depletion of natural resources, unfair competition, tax manipulation, exploitation of workers/laborers, produce substandard or defective products that endanger consumers and others.

In fact, corporations also commit crimes. For this reason, it is necessary to think about how corporations should be subject to criminal liability. Several criminal acts outside the Criminal Code regulate corporations as criminal law subjects; such as Emergency Law No.7/1965 regarding economic crimes, Law No.33/1999 on eradicating criminal acts of corruption as amended by Law no. 20 of 2001 and other laws. The crime of money laundering is a relatively new crime in Indonesia, although in practice other forms of money laundering have been practiced for a long time. Money laundering is a double crime. An act that is preceded by another crime which is commonly referred to as a predicate offence.

The issue of corporate responsibility is still a matter of debate even though several laws outside the Criminal Code have listed corporations as the subject of criminal acts. This relates to the principle of error (*geen straf zonder schuld*), limits of ability to be responsible and forms of criminal responsibility. In corporate crime, more complex problems arise considering that corporate crime is an organized act. It must be proven and searched for the element of error first, of course this is not easy. Especially if the one doing it is a corporation whose accountability capacity is difficult to measure like humans. This is the background of researchers to conduct research with the title "Corporate Criminal Liability in the Indonesian Criminal Law System". The objectives to be achieved in this research are as follows. (1) Describe the form of corporate crime. (2). Describe corporate criminal liability in Indonesia.

II. Research Method

The research method used is a literature study research system where research is carried out by searching, reading, recording and analyzing findings in the field related to written sources such as books, journals, archives, articles or magazines that have a correlation with the problem being studied. So that it can be evidence to strengthen the argumentation statement presented

The research was conducted in June which is done by finding the source first. The collected sources consist of primary sources consisting of books, scientific articles and journals. While secondary sources are obtained through other sources such as news, online newspapers, or internet pages.

The data collection technique in this study was by tracing the sources of writings that had been made previously. The search was carried out on various written sources, either in the form of books, archives, magazines, articles, and journals, or documents and internet sites correlated with the problems studied.

There are several steps in the preparation of a written work which can be described in detail as follows. At the preparatory stage, the researcher made a framework of thinking that aims to make it easier for the author to find information related to the related variables. Editing is reviewing and re-examining the data that has been obtained and then prepared for further processing. In this study, the researcher did editing in terms of matching various relevant sources obtained through literature study so that the data obtained could be confirmed as valid.

III. Results and Discussion

3.1 Corporate Criminal Form

The discussion of the forms of criminal acts/crimes committed by corporations is very diverse, in the economic field according to Joseph F. Shelley the forms of corporate crime are as follows (Mardjono Reksodiputro, 1994): Defrauding stockholders, namely embezzling or deceiving shareholders (eg not reporting with actual company profits). Defrauding the public, which is deceiving the public/public (eg unrepresentative pricing and products or misleading advertisements). Defrauding the government, namely defrauding the government (eg avoiding taxes). Endangering the public welfare, namely endangering public welfare (eg causing industrial pollution). Endangering employees, namely endangering workers (eg not paying attention to work safety). Illegal intervention in the political process,

The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). In line with economic developments, the practice of corporate crime that is often carried out is the provision of incorrect information such as transfer pricing, under-invoicing, over-invoicing and window dressing (Setiyono, 2002:81-85). Transfer pricing is a conspiracy in determining the selling price of fellow corporations to reduce the amount of tax that must be paid to the state. Under invoicing is a conspiracy between importers and exporters of goods to issue two invoices, one invoice with the actual price for the purpose of calculating the cost of goods, the other at a lower price calculated for customs purposes (payment of import duty, PPh and VAT).

Over invoicing, namely manipulating prices in procurement activities to obtain personal benefits for the parties implementing the transaction or those authorized to do so. This is done with the cooperation and support of the seller, asking for the purchase receipt to be written at a price greater than the price paid or the actual price, procurement of government projects by direct appointment to certain contractors on the pretext that it must be done immediately or the project location is remote or limited partners and so on.

Window dressing is an act of deceiving the public, which is generally in the form of activities to create a good image in the eyes of the public by presenting false information (fraudulent misrepresentation), for example by presenting balance sheet figures that are less or incorrectly made in such a way as if corporations have good and strong capabilities.

In the socio-cultural field, corporate criminal acts are carried out in the form of actions that are detrimental to copyright holders, brands; not paying attention to the safety and health of workers/laborers; criminal acts that result in damaging education and the younger generation such as narcotics and psychotropic abuse and so on. Corporate crime involving the wider community, among others, can occur in the environment (pollution of water, air, soil from an area), to consumers (defective products that harm consumers, misleading advertisements), to shareholders (providing information that is not true in the capital market, fraudulent practices and fraudulent acts can be carried out by the issuer/corporation itself or with the assistance of other professions or institutions), and so on.

3.2 Corporate Criminal Liability in Indonesia.

In the Indonesian Criminal Code (KUHP), there is no known criminal provision that stipulates an artificial legal subject (rechtspersoon) or corporation, as a subject that can be subject to a crime. This can be seen in the general provisions of the Criminal Code which state that Indonesian laws and regulations apply to everyone. Another term used in the Criminal Code is "citizen" as stated in Article 5 of the Criminal Code, which essentially

stipulates the enactment of Indonesian laws and regulations for Indonesian citizens who commit certain crimes outside the territory of Indonesia. However, in its development, corporations have become legal subjects in the formulation of criminal provisions. The following is an example where a special law, regulating corporations as the subject of criminal acts,

- a. Law Number 1 of 1951 (Law on Work);
- b. Law Number 2 of 1951 (Accident Law);
- c. Law Number 3 of 1951 (Labor Supervision Law);
- d. Law Number 12 of 1951 (Law on Firearms);
- e. Law Number 3 of 1953 (Law on Pharmacy Opening);
- f. Law Number 22 of 1957 (Labor Settlement Law);
- g. Law Number 3 of 1958 (Law on the Placement of Foreign Workers);
- h. Law Number 83 of 1958 (Law on Aviation);
- i. Law Number 5 of 1964 (Telecommunication Law; changed to Law Number 5 of 1989);
- j. Law Number 7 of 1981 (Law on Mandatory Reporting on Employment);
- k. Law Number 2 of 1981 (Legal Metrology Law);
Law Number 3 of 1982 (Law on Compulsory Reporting Companies).
Law Number 7 of 1992 (Banking; replaced by Law Number 10 of 1998).

The decision to ask for corporate accountability in the form of management accountability can also be seen in the provisions of Article 46 paragraph (2) of Law Number 7 of 1992 which states "In the event that the activities as referred to in paragraph (1) are carried out by a legal entity in the form of a limited liability company, union, foundations or cooperatives, the prosecution of the said bodies shall be carried out either against those who gave the order to carry out the act or those who acted as leaders in the act or against both. in the banking corporation, which can later be held criminally accountable.

Errors in Corporate Criminal Liability. To determine that a corporation or corporation that is proven to have committed an act that is prohibited has a fault, it must first be ascertained that the corporate crime used as a theoretical basis to determine whether or not a corporation or corporation is a functional actor theory or identification theory. It is important to note that based on the traditional view of the Criminal Code, which is still dominant until now, it is still influenced by the principle of "societas delinquere non-potest", as a result, corporations cannot be wrong because they do not have a heart. After that, the crime committed by the Corporation must be an act that is against the law and without any reason that erases the unlawful nature of an act.

In the corporation, there must also be things that come to a conclusion that it is an actor who has the ability to be criminally responsible for the crime committed. Since a corporation cannot commit a crime without going through an intermediary between its management, both based on the theory of functional actors and identification theory, the determination of corporate error is to see whether the management, acting for and on behalf of the corporation, has made a mistake. If the answer is yes, then the corporation is found guilty of the crime it has committed.

And vice versa. Mardjono Reksodiputro stated that the fault that was in the management of the corporation was transferred or became the fault of the corporation itself. Even though the mistakes of the corporate management are transferred and become corporate errors, the content of the errors is different from errors in human legal subjects. The basis and determination of the blame for the corporation is that the corporation's social functions are not properly fulfilled. From the perspective of society, the corporation has

not carried out its function properly. An indicator of wrongdoing for corporations is how corporations carry out their social functions. The social functions must include but are not limited to preventing the occurrence of criminal acts.

Thus, the law expects corporations to carry out their social functions properly so that as far as possible they can avoid the occurrence of criminal acts. In other words, while it is possible for corporations to "be able to do other things" apart from committing a criminal act, that hope is reflected as far as possible in the policies and methods of operation. For corporations, the assessment of the existence of errors is determined by how the corporation fulfills its social function, so that it can be "reproached" when a criminal act occurs because of it.

IV. Conclusion

1. The discussion of the forms of criminal acts/crimes committed by corporations is very diverse, in the economic field according to Joseph F. Shelley the forms of corporate crime include defrauding stockholders, namely embezzling or deceiving shareholders. Defrauding the public, namely deceiving the public/public. Defrauding the government, namely defrauding the government. Endangering the public welfare, namely endangering the general welfare. Endangering employees, namely endangering workers. Illegal intervention in the political process, namely illegal intervention in the political process. Besides that, there are transfer pricing, under-invoicing, over-invoicing and window dressing.
2. In the Indonesian Criminal Code (KUHP), there is no known criminal provision that stipulates an artificial legal subject (rechtspersoon) or corporation, as a subject that can be subject to a crime. This can be seen in the general provisions of the Criminal Code which state that Indonesian laws and regulations apply to everyone. Another term used in the Criminal Code is "citizen" as stated in Article 5 of the Criminal Code, which essentially stipulates the enactment of Indonesian laws and regulations for Indonesian citizens who commit certain crimes outside the territory of Indonesia. However, in its development, corporations have become legal subjects in the formulation of criminal provisions.

Suggestion

Referring to the findings in this study, several suggestions can be made despite the shortcomings of this paper as follows:

1. Hopefully this paper can be a reference and reference for the government in making policies related to innovation in the senior secondary education curriculum.
2. Hopefully the public will gain new insights related to corporate crimes and become literate.

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