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The Application of Strict Liability and Vicarious Liability Principles in The Corporate Responsibility System in Corruption Criminal Cases in Indonesia

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Abstract

Corruption has always been an interesting topic of conversation. The implementation of the Criminal Procedure Code in Indonesia, especially the Evidence stage in Court, in its implementation often occurs legal dynamics which is influenced by the evidence presented and the proof of the elements of the criminal act itself. The research method used in this study is a qualitative descriptive method. Based on the results and discussions that have been submitted, it can be concluded that a criminal act is considered committed by a corporation in Indonesia if it fulfills the provisions of Article 20 paragraph 2 of the Corruption Crime Act.

Keywords
strict liability; vicarious liability; corporation

I. Introduction

The problem of proving criminal acts in Indonesia, especially corruption, has always been an interesting topic of conversation. The implementation of the Criminal Procedure Code in Indonesia, especially the Evidence stage in Court, in its implementation often occurs legal dynamics which is influenced by the evidence presented and the proof of the elements of the criminal act itself. Talking about Corruption Crimes, of course, cannot be separated from State Finance Management, although there are Corruption Crimes that are not related to State Finances.

The definition of State Finance was first found in Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, which is stated in the explanation general, not listed in the body or the Articles of the Law on the Eradication of Criminal Acts of Corruption. The definition of State Finance according to the Law on the Eradication of Criminal Acts of Corruption is all State Assets, in any form, separated or not separated, including all parts of State Assets and all rights and obligations arising from:

a. Being in the control, management, and accountability of state agency officials, both at the central and regional levels;
b. Being in the control, management, and accountability of State-Owned Enterprises (BUMN) / Regional-Owned Enterprises (BUMD), Foundations, Legal Entities, and companies that include third party capital based on agreements with the State.

Furthermore, in Article 1 point 1 of Law Number 17 of 2003 concerning State Finance, the definition of State Finance is all rights and obligations of the State that can be valued in money, as well as everything in the form of money or goods that can be used as state property in connection with the exercise of rights. and these obligations.

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Currently in society and some of the law enforcement officers still have the mindset that corruption is carried out by individual legal subjects, where the corrupt actions are carried out in the name of themselves. However, if we look deeper, actually in a corruption case, an official in a company commits an act or act against the law on behalf of the company or in the capacity of that person's position in the company. So that we can act on the legal subject in the form of a corporation. Of the many cases of corruption, we can see that the involvement of legal entities in the form of corporations is often found, especially criminal acts related to the procurement of government goods/services.

Based on the description that has been stated above, the authors are interested in conducting a writing regarding corporate accountability in the case of Corruption Crimes in Indonesia. So the author took the title "Application of the Strict Liability Principle and the Vicarious Liability Principle in the Corporate Accountability system.

II. Review of Literature

2.1 Corporate Responsibility Theories

The lack of studies related to proof of corporate wrongdoing, especially in corruption cases, is one of the reasons for the lack of use of the corporate criminal responsibility approach. Proof of corporate wrongdoing is very important to be able to determine the criminal liability of the corporation so that it is a matter that is still being discussed by both experts and law enforcers. Promotion strategy is a concept that is close to communication science. In the promotion, there are various forms of communication learned in communication science such as advertising, publicity, communication from mouth to mouth, personal sales, and direct marketing (Amin, 2019). In addition, the Corruption Crime Law does not directly mention the types of offenses that can be committed and corporate criminal accountability is required so that interpretation efforts are needed from law enforcement.

The theories of corporate responsibility include:

1. **Strict Liability Theory**

   Strict liability is defined as a criminal act by not requiring the perpetrator to make a mistake against one or more actus reus. Strict liability is liability without fault. With the same substance, the concept of strict liability is formulated as the nature of strict liability offenses is that they are crimes which do not require any mans rea with regard to at least one element of their "actus reus" (the concept of absolute liability is a form of violation/ a crime in which it does not require an element of guilt, but only requires an act).

   Another opinion regarding strict liability was put forward by Roeslan Saleh as follows: "In practice, criminal responsibility disappears, if there is one condition that forgives. This practice also gives birth to various levels of mental conditions that can be a condition for the abolition of the imposition of a crime, so that in its development a crime group is born which is sufficient for handling crimes with strict liability. defendant), and it is sufficient to demand criminal responsibility from him. So, there is no question about the existence of mens rea because the main element of strict liability is actus reus (deeds) so that what must be proven is actus reus (deeds) not mens rea (errors).

2. **Vicarious Liability Theory**

   Vicarious liability, commonly referred to as substitute liability, is defined as a person's legal responsibility for wrongdoing committed by another person. Barda Nawawi Arief argues that vicarious liability is a concept of a person's responsibility for mistakes made

by others, such as actions taken that are still within the scope of his work (the legal responsibility of one person for wrongful acts of another, as for example, when the acts are done within the scope of employment). In Henry Black's dictionary, vicarious liability is defined as follows: “The liability of an employer for the acts for an employee, for a principle for torts and contracts of an agent (employer's responsibility for the actions of workers;

Vicarious liability is only limited to certain circumstances where the employer (corporation) is only responsible for the wrongdoing of workers who are still within the scope of their work. The rationale for applying this theory is that the employer (corporation) has control and power over them and the profits they earn are directly owned by the employer (corporation). The principle of working relations in vicarious liability is called the principle of delegation, which is related to giving permission to someone to manage a business. The license holder does not run the business directly, but he gives full trust (delegates) to a manager to manage the corporation. If the manager commits an unlawful act, then the permit holder (delegator) is responsible for the manager's actions. On the other hand, if there is no delegation, the delegate will not be responsible for the manager's crime.

III. Research Method

The research method used in this study is a qualitative descriptive method. The type of data used in this research is qualitative data, which is categorized into two types, namely primary data and secondary data. Sources of data obtained through library research techniques (library study) which refers to sources available both online and offline such as: scientific journals, books and news sourced from trusted sources. These sources are collected based on discussion and linked from one information to another. Data collection techniques used in this study.

IV. Result and Discussion

4.1 Strict Liability and Vicarious Liability

The principle of absolute responsibility (strict liability) is a principle of legal responsibility (liability) that has developed for a long time, originating from a case in England (Rylands v. Fletcher) in 1868. Then this principle was adopted in various national laws and conventions – international convention. Indonesia submits itself to applying this principle as a party or ratification of international conventions, which then expressly regulates them in national laws and regulations.

There are several definitions put forward by legal experts related to the concept of strict criminal liability, namely:

1. Marise Cremona defines strict liability as: "an expression that refers to a criminal act without requiring fault for one or more elements of the actus reus".
2. Smith and Brian Hogan give a definition of strict liability, namely: "crimes that do not require intention, recklessness, or even negligence as one or more elements of actus reus)".
3. Richard Card argues that strict liability is: "the defendant may be punished even though his actions were not intentional, reckless, or negligent with respect to the conditions required in an alleged crime".
4. Redmond gives an understanding of strict liability, namely: "referring to the exception of situations, where the defendant is responsible by ignoring the fault, as a result of

which the plaintiff who suffers a loss can sue without having to prove the defendant's intention or negligence".

In other countries such as the UK and the Netherlands, attention to victims of crime in the form of compensation has been going on for quite a long time. The compensation can be given by a representative of the perpetrator, or commonly called vicarious liability, where a criminal liability is imposed on a person for the actions of the perpetrator. (Romli, 1996:97) Unfortunately, this vicarious liability only applies to certain types of criminal acts according to English criminal law. This vicarious liability only applies to offenses that require quality and offenses that require a relationship between workers and employers (Arief, 1990:33).

In addition, there are also several opinions from legal experts who put forward the concept of substitute criminal liability (vicarious liability), namely:

1. Peter Gillies gives the understanding that: "surrogate liability is the imposition of criminal liability against a person based on a criminal act committed by another person, or based on another person's fault, or with respect to both matters".
2. La-Fave argues that: “surrogate liability is something in which a person, without personal fault, is responsible for the actions of another”.
3. Smith and Brian Hogan explain: “In general an employer can be held accountable for crimes committed by his employees, except for public nuisance and slander or defamation).
4. According to Henry Compbell: “substitute liability is the indirect legal liability, the employer's liability for the actions of the worker, or the principal liability of the agent's actions in a contract).

4.2 Development of the Strict Liability Principle and the Vicarious Liability Principle

The principles of strict liability and vicarious liability are basically both principles contained in civil law which are then absorbed into criminal law in terms of corporate criminal liability. The principle of strict liability was first applied in the case of Rylands vs. Fletcher in 1868 in England. Where then the decision of the appellate judge of The Court of Exchequer Chamber is a jurisprudence that has developed into the basis of legal values not only in the environmental aspect, but also for other problems that are very complicated when associated with the development of various lives, even used in criminal law. Romli Asmasasmita, stated that English Criminal Law adheres to the principle of "actus non facit reum nisi mens sit rea" (a harmfull act without a blameworthy mental state is not punishable),

The principle of criminal responsibility is known as strict liability crimes. Barda Nawawi Arief briefly defines liability without fault or as "the nature of strict liability, liability offenses is that they are crimes which do not require any mens rea with regard to at least one element of their actus reus". Basically absolute responsibility (without fault) is a form of crime in which it does not require an element of error in sentencing, but only requires the existence of an act. This definition, according to the author, is not quite right because in order to be convicted of a criminal act, the element of error is a requirement that must be met.

In a criminal act that is strict liability, all that is needed is the conjecture or knowledge of the perpetrator, and it is sufficient to demand criminal responsibility from him. So there is no question about the existence of mens rea because the main element of strict liability is actus reus (deeds) so that what must be proven is actus reus (deeds), not mens rea (errors). The principle of absolute criminal responsibility according to English Criminal Law only applies to cases of minor offenses, namely violations of public order or

public welfare, and does not apply to serious offenses. Included in the categories of violations mentioned above are:

1. Contempt of court or violation of court order;
2. Criminal Libel or defamation or defamation of someone;
3. Public nuisance or disturbing public order.

However, most of the strict liability is found in offenses regulated in the law (statutory offenses; regulatory offenses; mala prohibita) which are generally offenses against public welfare (public welfare offences). This includes regulatory offenses, for example, the sale of harmful food and drink or drugs, the use of misleading trade images and traffic violations. Accountability without fault is not only a monopoly of the Common Law system because in Civil Law such accountability system is also known. According to Moeljatno, in the Netherlands such accountability is known as Leer van heit materielle feit or fait materielle or material action. This teaching was previously applied to criminal offenses.

Since then, this principle has been declared null and void. In practice in Indonesia, strict liability teachings have been applied, among others, for traffic violations. Drivers of motorized vehicles who violate traffic lights, for example, do not stop when the traffic light shows a red light, will be fined by the police and will then be tried in court. The judge in deciding the sentence for the violation will not question whether there is no fault with the driver who violates the traffic rules. In Article 211 of the Criminal Procedure Code, the proof of violations of this type of road traffic can be carried out easily and immediately, because it is impossible to deny the violators. The minutes that have been omitted are replaced with evidence of certain traffic violations, abbreviated as fines, which are filled out by law enforcement (POLRI Traffic Unit). Therefore, it also does not apply to all criminal acts, but only to certain crimes stipulated by law.

For certain criminal acts, the perpetrator of the criminal act can be punished only because the elements of a criminal act have been fulfilled by his actions. Here the guilt of the perpetrator of the crime in committing the act is no longer considered. As ius constituendum, the principle of responsibility for strict liability is regulated in the concept of the Draft Criminal Code 2011-2012 Article 38 paragraph (1) which reads: "For certain criminal acts, the law can determine that a person can be convicted solely because the elements of a crime have been fulfilled. without taking into account the existence of errors." In the explanation of the provisions of Article 38 paragraph (1) it is stated that the provisions in this paragraph are exceptions to the principle of crime without error. Therefore, it does not apply to all criminal acts but only to certain crimes stipulated by law. For certain criminal acts, the perpetrator of the crime can be punished only because the elements of a crime have been fulfilled by his actions. Here the guilt of the perpetrator of the crime in committing the act is no longer considered. This principle is known as the principle of strict liability.

Vicarious liability according to Barda Nawawi Arief is defined as a person's legal responsibility for wrongful acts committed by others, such as actions taken that are still within the scope of his work (the legal responsibility of one person for the wrongful acts of another, as for example, when the acts are done within the scope of employment). Vicarious liability is a teaching that comes from civil law in the Common Law system, namely the doctrine of respondeat superior where in the relationship between an employee and an employer or between an attorney and a power of attorney applies the adage qui facit per alium facit per se which means someone who acts through another person is considered as his own doing.

The employer is considered to be responsible for all actions taken by the employee in the context of his work because the employer is considered to be able to take preventive or preventive actions so that the employee does not make mistakes that can cause harm to third parties. Ibid In Criminal Law the doctrine of vicarious liability is an exception to the general principle that applies where a person cannot be held responsible for wrongdoing committed by his employees. According to Romli Atmasasmita, vicarious liability is a criminal liability imposed on a person for the actions of others. In the current draft of the new Criminal Code, the vicarious liability system has been included as a necessity that absorbs the interests of social protection against the corporate actions of businesses.

The doctrine of vicarious liability is regulated in the concept of the Draft Criminal Code 2011-2012, Article 38 paragraph (2) which states: "if it is determined by law, everyone can be held accountable for criminal acts committed by everyone else". As for the explanation in Article 38 paragraph (2), it is stated that the provisions of this paragraph are an exception to the principle of no crime without guilt. The birth of this exception is an extension and interior of the juridical, moral regulatory principle, namely in certain cases a person's responsibility is deemed appropriate to be extended to the actions of his subordinates who do work or actions for him or within the limits of his orders. Therefore, even if a person does not in fact commit a crime, however, in the context of criminal liability, he is deemed to have made a mistake if the act of another person in such a position constitutes a crime. As an exception, the use of this provision must be limited to certain events which are expressly determined by law so as not to be used arbitrarily. This exclusionary principle of responsibility is known as the principle of absolute liability or vicarious liability.

4.3 Overview of the Corporation

a. Definition of Corporation

Etymologically the word corporation (Dutch: corporatie, English: corporation, German: korporation) comes from the word "corporatio" in Latin. As is the case with other words that end in "tio", the corporatio as a noun (substantivum), comes from the verb corporare, which was widely used in the Middle Ages or later. Corporare itself comes from the word "corpus" (Indonesian: Badan), which means to give a body or make up. Thus, corporatio means the result of physical work, in other words a body made into a person, a body obtained by human actions as opposed to a human body, which occurs according to nature.

Therefore, from the above definition it can be interpreted that the "death" of a legal entity is determined by law considering that a legal entity is a legal creation. In the sense that a corporation can be said to have a "life", the corporation becomes something that can live or die by a legal decision. Meanwhile, in terms of terminology, a corporation is an organized collection of people and/or assets, both legal entities and non-legal entities. See Article 1 point 1 of Law Number 20 of 2001. According to Utrecht/Moh. Soleh Djindang about the corporation: "It is a combination of people who in legal relations act together as a separate legal subject and a personification. A corporation is a legal entity with members, but has its own rights and obligations apart from the rights and obligations of each member.

AZ Abidin stated that corporations are seen as the reality of a group of people who are given rights as legal units, given legal persons, for certain purposes. Meanwhile, Rudi Prasetyo stated: "The word 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, or in Dutch it is called rechtpersoon, or in English it is called rechtpersoon. legal entities or corporations."

So from some of the expert opinions mentioned above, it can be said that the corporation is considered a person who is able to carry out all legal actions with assets arising from such legal actions. Corporations consisting of a group of people have goals that will be achieved jointly between members. It can also be interpreted that corporations have legal rights and obligations as corporations are legal subjects, which is also contained in natural human legal subjects.

Corporation is a term commonly used by criminal law experts to refer to what in other fields of law, especially civil law, is a legal entity or in English it is called legal entities or corporations. According to the terminology of Criminal Law, that "a corporation is an entity or business that has its own identity, its own assets are separate from the assets of its members". According to the Big Indonesian Dictionary, corporations are:

a. Legal business entity; legal entity;
b. A very large company or business entity or several companies that are managed and run as a large company.

According to the legal dictionary, a corporation is an association or organization, which by law is treated like a human (persona), namely as bearers of rights and obligations; have the right to sue or be sued in court. The definition of a legal entity itself actually occurs as a result of the development of society towards modernization. In the past, in the primitive world or in a simple life, business activities were carried out individually. In its development, there is a growing need to run a business in collaboration with several people who may be based on considerations in order to raise capital that is more successful than doing it alone.

First, the influence of Von Savigny's fiction theory is so strong, namely that legal personality as the units of human beings is the result of an illusion. Personality only exists in humans. States, corporations, or institutions cannot be the subject of rights and individuals, but are treated as if they were human beings. All laws exist for the independence inherent in each individual. Therefore the original concept of personality must be in accordance with human ideals.

Second, the principle of universality delinguere non potest is still dominant, which means that legal entities cannot commit crimes in the criminal law system in many countries. This principle is the result of thinking from the 19th century, where errors according to the Criminal Law are always hinted at and actually only human errors, so that they are closely related to the individualization of the Criminal Code. In the context of the Criminal Code, which is still enforced in Indonesia, this principle has greatly influenced the emergence of Article 59 of the Criminal Code which reads as follows: "In cases where due to a violation a sentence is determined against the management, members of the management body or commissioners, then the management, members of the management body, or commissioners do not appear to have interfered in committing a criminal offense."

In its development, these two reasons gradually began to weaken their influence. This can be proven by the existence of efforts to make the corporation a legal subject in a criminal environment, namely the existence of rights and obligations attached to it. This effort is motivated by the fact that it is not uncommon for corporations to get a lot of profits from the proceeds of crimes committed by their management. Likewise with the losses suffered by the community caused by the actions of corporate management. Therefore, it is considered unfair if corporations are not subject to rights and obligations like humans. This fact then gave rise to the stages of the development of the corporation as a legal subject in Criminal Law.

The first stage is marked by efforts so that the nature of the offense committed by the corporation is limited to individuals (natuurlijk persoon). So that if a criminal act occurs within the corporate environment, then the crime is considered committed by the management of the corporation. This stage is the basis for Article 59 of the Criminal Code. Seeing the above provisions, the compilers of the Criminal Code are influenced by the principle of societas delinquere non potest, namely that legal entities cannot commit criminal acts. The management at this stage does not fulfill the obligations that are actually the obligations of the corporation and can be declared responsible. The difficulty that arises in Article 59 of the Criminal Code is that if the owner or entrepreneur is a corporation, while there is no stipulation that the management is responsible,

The next stage is marked by the recognition that emerged after World War I in the formulation of a law that a crime can be committed by a union or business entity (corporation). The responsibility for that is also the burden of the management of the legal entity. Responsibilities at this stage gradually shift from members of the board to those who instruct, or are prohibited from doing so if they neglect to lead in fact. This stage causes the corporation to become the maker of the offense, but those who are accountable are the members of the management, as long as it is stated explicitly in the regulation even though direct criminal liability from the corporation has not yet emerged.

The next stage is the beginning of the direct responsibility of the corporation that began during and after World War II. At this stage it is possible to sue the corporation and hold it accountable under the Criminal Law. Another reason is because, for example, in economic and physical offenses, the profits obtained by the corporation or the losses suffered by the community can be so large that it will not be possible to balance it if the punishment is only imposed on the management of the corporation. The reason put forward is that by convicting the management there is no or no guarantee that the corporation will not repeat the offense. Corporate punishment with the type and severity in accordance with the nature of the corporation is expected to force the corporation to comply with the relevant regulations.

The stages of development of the corporation as a subject of criminal law in Indonesia have followed developments in the Netherlands. In the first stage of the Dutch WvS, Article 51 prior to the amendment of the provisions was the same as the provisions of Article 59 of the KHUP. This is influenced by the principle of the university delingquere nonpottest, namely that the nature of the offense committed by the corporation is limited to individuals. In the second stage, both in the Netherlands and in Indonesia, in the formulation of the law it is known that a criminal act can be committed by a corporation, but direct criminal liability has not yet arisen, so that those who can be accounted for are the management of the corporation.

In the third stage, both in the Netherlands and in Indonesia, direct corporate criminal responsibility has been recognized. In the Netherlands the development of direct corporate criminal liability was initially contained in special legislation outside the Criminal Code, such as Article 15 Wet op de Ecconomische Delicten 1950, Article 74 in conjunction with Article 2 Rijksbelastingen Wet 1959. This development also occurred in Indonesia, such as contained in Article 15 of the Law on Economic Crimes (Law Number 7 Emergency. Year 1955), Article 17 of Law Number 11 PNPS Year 1963 concerning the Crime of Subversion. However, the development of direct criminal liability against corporations in the Netherlands finally came into effect in general in the Criminal Law, with the amendment of Article 51 of the Dutch WvS in 1976.

b. Corporations as Subjects of Criminal Law

At first, the legal subjects included were humans. Legal entities compared to humans, display many special characteristics. Because legal entities are not included in the human category, they cannot obtain all rights, cannot carry out all obligations, cannot carry out all legal actions as well as humans. Legal entities are not living beings as is the case with humans. A legal entity loses the power of thought, will, and does not have "centraal-bewustzijn" (central consciousness), therefore it cannot carry out legal actions on its own. He must act through ordinary people (natuurlijke personen), but the person who acts does not act for himself, or for himself only, but for and on behalf of legal entities.

From the explanation above, it can be said that the corporation is an artificial person with humans as controllers and who carry out the functions of the corporation. Corporations cannot move on their own because corporations are only "inanimate objects" that are moved by humans. The corporation is said to be the subject of a criminal act, so the corporation is considered capable of being responsible for the actions taken by the corporation itself and the management of a corporation. Nevertheless, corporations are considered as subjects of criminal law as humans, when committing a crime, the criminal arrangements and punishments of course remain different from human legal subjects. Among them, corporations cannot be sentenced to death, life imprisonment, imprisonment, and imprisonment.

4.4 Corporate Criminal Liability in Indonesia

Criminal liability is defined as the continuation of objective reproaches that exist in criminal acts and subjectively those that meet the requirements to be sentenced for their actions. The basis for the existence of a criminal act is the principle of legality, while the basis for criminal prosecution is the principle of error. This means that the perpetrator of a crime will only be punished if he has a mistake in committing the crime. When a person is said to be guilty of a criminal liability issue. Therefore, criminal liability is the responsibility of people for the crimes they have committed. Strictly speaking, that person is responsible for the crime he committed.

The occurrence of criminal liability because there has been a criminal act committed by someone. Criminal liability is essentially a mechanism established by the Criminal Law to react to violations or 'agreements to reject' a certain act. In connection with the ability to be responsible for corporations as perpetrators of criminal acts, the question arises what criteria are used to determine the ability to be responsible for corporations as subjects of Criminal Law considering that corporations do not have mental characteristics as well as natural humans.

According to Rolling, as quoted by Mahmud Mulyadi, a legal entity can be treated as a perpetrator of a criminal act, if a prohibited act whose responsibility is imposed on a legal entity (corporation) is carried out within the framework of the task and achievement of the objectives of the legal entity. According to him, this criterion is based on a functional offense. In connection with this, what is meant by functional offenses are offenses originating from the socio-economic scope or atmosphere in which the conditions for certain social or economic activities must be carried out and directed or directed at certain functional groups. In addition, Mardjono Reksodiputro, stated that the way of thinking in civil law can be taken over into criminal law. Previously in civil law there were differences of opinion whether a legal entity could commit an unlawful act (onrechtmatigedaad). However, through the principles of decency and justice as the main basis, Civil Law Science accepts that a legal entity can be considered guilty which is an act that is against the law, especially in economic traffic.

V. Conclusion

Based on the results and discussions that have been submitted, it can be concluded that a criminal act is considered committed by a corporation in Indonesia if it fulfills the provisions of Article 20 paragraph 2 of the Corruption Crime Act, "Corruption is committed by a corporation if the crime is committed by good people. based on work relationships or based on other relationships, acting within the corporate environment, either individually or jointly."

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