

## Corporate As a Criminal Act of Corruption in Indonesia

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### Abstract

*In Indonesia, corruption is widely accepted as an epidemic disease, some even consider it to have become a societal culture. Corruption in Indonesia today is systemic and endemic so that it is not only detrimental to state finances and the country's economy but has also violated the economic and social rights of the wider community. The existence of a corporation as a legal subject has a very important role in the development of a country. So that corporations have the potential to commit deviant acts and lead to criminal acts. The punishment of corporations is different from the punishment of people, because corporations have a different character in principle from the criminal law subject of people. Corruption in Indonesia has penetrated into all aspects of life, to all sectors, to all levels. In this study, the authors formulate several problem formulations, namely regarding the regulation of criminal acts of corruption by corporations, corporate responsibility as perpetrators of criminal acts of corruption, and sanctions or punishment of corporations as perpetrators of corruption. This study uses a normative legal research method, and by using a statutory approach and a philosophical legal approach. The results of the research obtained are that normatively, it has outlined provisions other than individuals, corporations are also legal subjects who can be charged with corruption. With the stipulation of a corporation as a legal subject, rights and obligations arise in it, so if a corporation commits a criminal act of corruption, it must be viewed as a Person who can be held accountable. And also later the imposition of sanctions or crimes against corporations that legally commit a criminal act of corruption, for the determination of sanctions for corporations that commit criminal acts of corruption there are several ways, among others, imposing fines on corporations and revocation of business licenses.*

### Keywords

Corruption; corporations; criminals



## I. Introduction

A National Development certainly has a goal to create prosperity, prosperity, order and justice in the State of Indonesia. Of course, to realize this, an effort must be continuously developed in order to realize the goals of the direction of the National Development. One of the factors that hindered the realization of the goals of the National Development direction is the number of corruption cases committed by government officials and also large and small corporations in Indonesia. 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)

Unlike other conventional crimes, corruption is a crime or criminal act that develops dynamically from time to time. Because it moves dynamically, law enforcement in its eradication cannot only rely on conventional methods. Various strategies, both within the scope of legislation policy and law enforcement as well as progressive judge decisions must always be pursued.

One of the criminal acts of corruption is classified into extraordinary crimes or often called "extra ordinary crimes". in Indonesia since 2002. Due to the increasing prevalence of corruption and its increasing systematic implementation, it violates the economic and social rights of the community, the "Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes jo. Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (herein after abbreviated as UU PTPK).

In practice, corruption is not only committed by individuals or government officials, but also by corporations. corporation is the main characteristic or requirement for industrial society. Development in Indonesia is currently directed at improving the industrialization process, so it can be understood that industry is currently in the tug of progress in the business world, followed by a very large role for corporations. Reality shows that the development of corporations as an effort of development actors is increasing playing an important role in people's lives. It is within this framework that the development of theories and concepts regarding corporate criminal liability is increasing attracting the attention of legal theorists and practitioners in countries that adhere to both common law and civil law systems. At this time corporations are felt to be increasing important and strategic, besides being able to help improve the economy, corporations have also reached almost all spheres of people's lives. In Indonesia itself, corporations are engaged in various fields, such as education, social, construction, transportation and communication. In this context, corporations are able to create jobs and reduce unemployment.

Legislative policy extends the subject of criminal acts of corruption to include corporations, not without reason. The background of the policy to carry out the expansion is that corrupt behavior that is detrimental to the state's finances and economy is not only carried out by those who meet the qualifications of civil servants according to the employment law. Those who are not civil servants in the sense of the employment law, who receive certain tasks from a state agency, or an agency or corporation that receives assistance from the state, can also commit disgraceful acts that harm state finances or the state economy. Likewise, corporations, which are believed and predicted to have the potential to commit criminal acts.

## **II. Research Method**

In this study, the author uses a research method in the form of a research method that can be used is Normative Legal Research "Normative Legal Research is legal research carried out by researching library materials or secondary legal materials". This research is a normative juridical research approach to legislation (Statute Approach) and a philosophical approach (philosophical approach). In this study, the researcher chose the type of qualitative research, so the legal material obtained must be in-depth, clear and specific. In this study, the researcher used the technique of collecting legal materials by means of library research and interviews. The legal materials obtained are analyzed qualitatively juridically to achieve legal certainty.

### III. Result and Discussion

#### 3.1 Regulation of Corruption Crimes by Corporations

An improvement from the 1999 TPK Law compared to the 1971 TPK Law is that the subject of criminal acts is not only "individuals" but also "corporations". What is meant by a corporation is an organized collection of people and/or assets, both legal entities and non-legal entities (Article 1 to 1 UU-PTPK 1999).

The word corporation comes from the Dutch (*corporatie*), corporation (English), *Körperschaft* (Germany), all of which come from the Latin word "*corporatio*". As with other words that end in "tio", "*corporatio*" as a noun (*substantivum*) comes from the verb "*corporare*" which was widely used in medieval times. "*Corporare*" itself comes from the verb "*corpus*" (body) which means to give body or make up. Thus "*corporatio*" comes from the results of body work. A body that is made into a person, a body that is obtained by human actions that occur according to nature.

The recognition of the corporation as a subject of criminal law, seems to be worldwide. This was proven, among others, by the holding of the 14th international conference on the Criminal Liability of Corporation in Athens from July 31 to August 6, 1994. In which, among other things, Finland did not initially regulate corporations as subjects of criminal law, but in its development has recognized the corporation as a subject of criminal law and can be accounted for.

Corporate regulation as a subject of criminal law is motivated by different history and experiences in each country, including Indonesia. But in the end there is a common view, namely in connection with the development of industrialization and the progress that has occurred in the economic and trade fields has prompted the idea that the subject of criminal law is no longer only limited to natural people (natural person) but also includes corporations, because certain crimes can also be carried out by corporations.

In its development, it turns out that corporations do not only carry out activities at achieving their goals, but in certain cases there have also been corporations that have committed crimes. Corporate crime is a form of crime that currently affects almost all countries in the world, which causes widespread harm to society. The characteristics of corporate crime are different from other conventional crimes. In general, the characteristics of corporate crime are as follows: the crime is difficult to see (low visibility), the crime is very complex (complexity), the occurrence of the spread of responsibility (diffusion of responsibility)

As previously mentioned, Article 20 paragraph (2) of the PTPK Law states that a criminal act of corruption is committed by a corporation 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 jointly. same. If this formulation is read carefully, then in the formulation there are two important elements that must be interpreted, namely the notion of "people based on work relationships" and "people based on other relationships". In interpreting the notion of "people based on employment relationships".

The development of the concept of cooperatives as the subject of criminal acts is actually a result of changes that occur in society in carrying out business activities. In a society that is still simple, it is enough to carry out business activities individually. In the development of society which is no longer simple, the need arises to cooperate with other parties in carrying out business activities. Some things that are considered factors for establishing cooperation, among others, are collecting more capital, combining skills in a

business is much better than a business being run alone and perhaps also on consideration of being able to share the risk of loss.

### 3.2 Corporate Accountability as Perpetrators of Corruption Crimes

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 the 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 existence of the ability to be responsible;
2. The existence of an inner relationship between the perpetrator and his actions in the form of intentional and negligent, or it can be called a form of error;
3. No excuses

Discussing the issue of corporate criminal liability certainly cannot be separated from criminal acts. In the science of criminal law, there are two streams that discuss between criminal acts and criminal liability. The first stream is a monoistic school which views that in criminal acts there is also accountability. One of the adherents of this school is Simons. Simons formulated a crime (*strafbaar feit*) in the sense of "een strafbaar gestelde, onrechtmatige met schuld verband staande handeling vaan een toerekeningsvatbaar person" whose elements are:

1. Human actions (positive or negative; doing or not doing or letting);
2. Threatened with a criminal (*strafbaar gesteld*);
3. Against the law (*onrechtmatig*);
4. Done with error (*met schuld in verband staand*);
5. By a responsible person (*toerekeningsvatbaar persoon*)

In criminal liability there is an important thing to prove, namely the existence of an error in the person who committed the act or crime, thus in the context of the acceptance of the corporation as a legal subject in criminal law which according to Mardjono Reskodipuro is an extension of the understanding of who is the perpetrator of a crime (father).

forms of corporate responsibility system contained in several laws and regulations, which consist of:

1. It is the management of the corporation as the maker and the manager who is responsible;

Von Savigny, the founder of fiction theory, stated that corporations were legal subjects, but this was not recognized in the field of criminal law, because at that time the Dutch government was not willing to adopt the teachings of civil law into criminal law. If we pay attention to the Indonesian Criminal Code in force, it can be seen that Indonesia is a follower of the principle of non-protest *delinquere societas/university*, this can be found in the provisions of Article 59 of the Criminal Code. do not intervene to commit violations are not punished.

2. Corporations as producers and administrators are responsible

In criminal law that is spread outside the Criminal Code, it is regulated that corporations can commit criminal acts, but the responsibility for that is borne by the management. This can be seen in Article 35 of Law no. 3 of 1982 concerning the Compulsory Registration of Companies. Article 35 paragraph (1) affirms:

"If the criminal act as referred to in articles 32, 33 and 34 of this Law is committed by a legal entity, a criminal prosecution will be imposed and a sentence will be imposed on the management or attorney of the legal entity. Paragraph (2) The provisions of paragraph (1) of this article are treated equally to legal entities acting as or holders of power of attorney of another legal entity."

UU no. 3 of 1982 expressly imposes criminal responsibility committed by corporations on the management/power holders of legal entities, thus management who do not participate must be responsible for all criminal acts committed by the corporation. In addition to management, those who can be held accountable for crimes committed by corporations are those who give orders and or those who act as leaders

### 3. Corporation as maker and also as responsible

direct responsibility of the corporation. In this system, it is possible to sue corporations and hold them accountable according to criminal law. Things that can be used as a justification and reason that the corporation is the maker and at the same time responsible is because in various economic and fiscal 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 if the criminal only imposed on the management of the corporation.

In connection with the acceptance of corporations as perpetrators of criminal acts and can be accounted for in several laws, related to corporate criminal liability, several doctrines regarding corporate criminal liability emerged, including: 1. Identification Doctrine, 2. Vicarious Liability Doctrine, and 3 The doctrine of strict liability under the law (strict liability).

Corporations have the following characteristics, having their own assets that are separate from the assets of the people who carry out the activities of these legal entities; have rights and obligations that are separate from the rights and obligations of the people who carry out the activities of the legal entity; have a specific purpose; continuous (has continuity) in the sense that its existence is not tied to certain people, because their rights and obligations remain even though the people who run them change. So it must be seen as a person who can be held accountable.

The burden of corporate responsibility according to the provisions of this Article is placed on the corporation itself and or on its management. The nature of this responsibility is known as cumulative-alternative. This can be seen from the sentence "corporation and/or management" in the formulation of article 20 (1), then to prosecute and impose a criminal in the event that a criminal act of corruption is committed by or on behalf of a corporation according to to this provision can be carried out against "Corporations and Management " or against "corporation" only or "manager" only.

In the provisions of Article 20, especially paragraph (7), it is stated that corporations can only be sentenced to a criminal fine in the form of a fine with a maximum provision of 1/3 being added. In addition to fines, corporations can also be subject to criminal penalties in the form of confiscation of tangible or intangible movable goods used for those obtained from criminal acts of corruption, including companies belonging to the convict where the crime of corruption was committed, as well as from goods that replace the goods. , and closing a business or part of a company for a maximum period of 1 (one) year according to Article 18 paragraph (1) letters a and c

Provisions Regarding Who Can Be Prosecuted and Imprisoned in the Case of a Corporation Committing a Criminal Acts of Corruption as regulated in Article 2 Paragraph (1) of the Law on the Eradication of Criminal Acts of Corruption and its Relation to the Formulation of Criminal Acts of Corruption in Article 2 Paragraph (1) of the Law on Eradication Corruption Crime



In the provisions of Article 20 paragraph (1) of the PTPK Law, it is stated, "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."

From the formulation of the article, normatively it can be concluded that in the case of a criminal act of corruption committed by or on behalf of a corporation, there are three alternatives that can be prosecuted and held accountable, namely: 1). The corporation; or 2). the manager; or 3). The corporation and its management;

### **3.3 Sanctions Against Corporations As Perpetrators of Corruption Crimes**

The use of the term sanction (not criminal) is based on the reason that the meaning of sanction is broader than criminal. In criminal law (KUHP or other statutory regulations), the use of punishment is only limited to the forms of sanctions or punishments which according to the *ius constituum* are contained in Article 10 of the Criminal Code and according to the *ius constituendum* Articles 66 to 68 of the 2015 Criminal Code Bill for types of crimes and Article 103 of the 2015 Criminal Code Bill for types of action sanctions. Meanwhile, sanctions are not only limited to Article 10 of the Criminal Code, because many laws outside the Criminal Code adhere to sanctions (in the form of disciplinary actions) which are threatened to perpetrators of criminal acts, especially corporations.

PERMA Corporation limits the type or types of punishment that can be imposed on a corporation that commits a criminal act. Bearing in mind that in general, Indonesian criminal law recognizes that there are two types of crimes that can be imposed on each legal subject; namely the principal and additional penalties. So in this case it is expressly regulated in Article 25 of the Corporation's PERMA which specifically states that the main punishment that can be imposed on a corporation is only a fine, while for additional crimes that can be imposed on a corporation, it depends and must be in accordance with the existing criminal provisions and which regulates about punishment of the corporation.

If the corporation that has committed a crime has been punished and penalized a fine, the corporation is given a period of time to pay the fine for 1 month, which is calculated from the date the decision has permanent legal force. This period can be extended up to 1 month, if there is a strong interest or reason. However, when the corporation has passed the maximum time limit set, and the corporation still does not pay the fine, the Prosecutor may confiscate it and then auction off the assets owned by the corporation so that if the fine is paid. The regulation regarding the mechanism for the payment period of the fine is regulated in Article 28 of the Corporate PERMA, which in full stipulates as follows;

1. In the event that a fine is imposed on the Corporation, the Corporation is given a period of 1 (one) month from the date the decision has permanent legal force to pay the fine.
2. If there is a strong reason, the period as referred to in paragraph (1) may be extended for a maximum of 1 (one) month
3. If the convict of the Corporation does not pay the fine as referred to in paragraphs (1) and (2), the property of the Corporation may be confiscated by the prosecutor and auctioned off to pay the fine.

Although the regulation regarding the mechanism for the payment of criminal fines imposed on corporations has been regulated, there are still problems. This problem arises when the criminal fine imposed on the corporation has not been (sufficiently) paid, even though all efforts have been made to confiscate and confiscate the assets of the corporation. In this case, the Corporation's PERMA has not clearly regulated this matter.

However, if the person charged with criminal liability is the Corporate Manager, the arrangements are different. In general, basically the period of time given by the Corporate PERMA for a convict who serves as a Corporate Manager to pay the criminal fine imposed by the judge is regulated in article 29 of the Corporate PERMA, and the arrangement related to the period is not much different from the period given to him. a corporation that is liable to a fine.

Both (Corporate Managers and Corporations who are sentenced to fines) are both given 1 (one) month to pay the fine, and the calculation of the 1 (one) month period starts from the date the decision has permanent legal force. The period of payment of fines by the management can also be extended for 1 (one) month if there is a strong reason to extend the period. This is exactly the same as setting the term for the payment of fines for the Corporation. In full, the arrangements related to the period are regulated in article 29 of the PERMA of the Corporation which stipules as follows;

1. In the event that a fine is imposed on the Management, the Management is given a period of 1 (one) month from the date the decision has permanent legal force to pay the fine.
2. If there is a strong reason, the period as referred to in paragraph (1) may be extended for a maximum of 1 (one) month.
3. If the fine is not paid in part or in full, the Management shall be sentenced to imprisonment in lieu of a fine which is calculated proportionally.
4. (3) The imprisonment in lieu of a fine as referred to in paragraph (3) is carried out after the end of the main criminal sentence

The essential difference between the two arrangements lies in the existence of a substitute imprisonment for the Corporate Management when the Corporate Management is unwilling or unable to pay the amount of fines imposed by the Judge against the Corporate Management. Meanwhile, the substitute imprisonment sentence is not regulated and cannot (and is not possible) imposed on corporations.

As previously explained, if a corporation is sentenced to a fine, its assets must first be confiscated and auctioned so that the proceeds from the auction are then used to pay the fine imposed on the corporation. However, if the one who bears the punishment is the Corporate Manager, then this does not apply. In the sense that the Corporate Manager can be immediately imposed with imprisonment in lieu of a fine if the fine imposed on the Corporate Manager is not paid. Thus, the Prosecutor does not need to confiscate and auction the assets of the Corporate Management.

For additional criminals themselves, basically the Corporate PERMA regulates the matter in the provisions related to additional penalties which are specifically regulated in articles 30-34 of the Corporate PERMA. In article 30 of the Corporation's PERMA, it is regulated that an additional criminal or disciplinary action or other action against the Corporation is carried out based on a court decision. Furthermore, the Corporate PERMA also regulates the mechanism for confiscation of evidence as regulated in article 31 of the Corporate PERMA.

Specifically for corporations that are subject to a number of additional penalties in the form of compensation, compensation, or restitution, article 32 paragraph (1) of the Corporation's PERMA provides guidelines that the procedure for its implementation must be carried out in accordance with the provisions of the legislation, and paragraph (2) of article the same time provides a deadline for payment for the corporation to pay the additional penalty for 1 month, along with the possibility for it to be extended, and the confiscation of the corporate property if the corporation that is sentenced to additional

punishment does not make payment for the additional criminal sentence imposed. This is as stipulated in paragraph (3) to paragraph (5) of PERMA Corporation.

It should also be noted that the provisions regarding criminal sanctions against corporations in Indonesia are relatively light. The maximum fines that are threatened in various criminal provisions are often of small value and not significant enough for large corporations. Heavy sanctions in practice in the United States and Britain are obtained through settlement in an agreement between the government and the corporation or what can also be called a Deferred Prosecution Agreement.

With light sanctions, it is feared that efforts to convict corporations will not have a positive impact on changes in Indonesian corporate behavior. However, it should be noted that considering that the purpose of criminal law is not to seek profit, then severe punishment for corporations solely to seek profit for the state is also not the right thing. Thus, one of the possible solutions to cases like this is the need to take other measures together with criminal prosecution, namely a claim for compensation through a case merger mechanism or a request for restitution (if the relevant law stipulates). In this regard, it is hoped that the judge can impose significant compensation or restitution so that it can directly cause changes in corporate behavior.

#### IV. Conclusion

1. corporation in the legal field, the existence of a legal entity or business entity that bears the term corporation is accepted and recognized as a legal subject who can commit criminal acts and can also be held accountable
2. Corporate criminal liability for criminal acts of corruption committed by corporations can be carried out by: corporations, management or management and corporations.
3. The punishment of corporations is different from the punishment of people, because corporations have a different character in principle from the subject of criminal law of people. There are criminal forms that can be applied to people but cannot be applied to corporations. For example, imprisonment and the death penalty. Therefore, a suitable form of punishment (sanctions) is needed to be applied to corporations so that the purpose of punishment can be achieved. The forms of sanctions imposed on corporations must look at the benefits of corporate punishment which do not only look at the interests of the corporation itself but furthermore must look at the interests of the wider community.

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