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Criminal acts eradication of corruption in corporates in Indonesia

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ABSTRACT

Crime is a social phenomenon that is always faced by every society at some point in time. The existence of crime is alarming; it is also considered to disturb order and peace in society. The research method used in this study is empirical juridical, namely legal research on the enforcement or implementation of legal provisions. The results of the analysis conclude that corporations that commit criminal acts of corruption can be held criminally responsible based on doctrine and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption Articles 1, 2 and 3 in terms of formal law. It is regulated by Supreme Court Regulation Number 13 of 2016. The factors that cause corporations to commit criminal acts of corruption are the political system, the culture of business actors, the culture of state administrators, both executive, legislative, and judicial, low legal awareness, and intense competition between one corporation and other corporations. Law enforcement officers have trouble dealing with corporations that do illegal acts of corruption because of how corporations are punished for doing illegal acts of corruption, as well as because of corporate responsibility and personal responsibility.



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Introduction

Indonesia is a legal country that is based on Pancasila and the Constitution of 1945, which regulates all people's lives in Indonesia. Globalization and modernization through advances in technology, communication, transportation, and informatics, especially in economy, trade and investment, world progress and development, seem to have blurred national boundaries, sovereignty and sovereign rights. This condition creates a negative impact, especially regarding the development of crime. Concerning the current era of globalization, the existence of a corporation has a significant role in the interests of the state and its citizens. Corporations cannot be separated from social life and meet humanity's needs. Existence is also felt for the State because corporations have an essential role in the national economy to increase a country's economic growth. (Puspitasari & Devintawati, 2018). The term corporation or legal entity is known in criminal law, especially in-laws outside the Criminal Code. As in law number 31 of 1999, as amended by law number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption Article 1 paragraph (1), a corporation is a collection of people and organized wealth, whether it is a corporation a legal entity or not. Law (Indonesia, 2001). Etymologically, the word corporation (Dutch: corporate, English: corporation, German: corporation) comes from the Latin word corporation.

Corporate comes from the word "corpus" (Indonesian: Badan), which means giving a body or forming a corporation. A body made into a person or a body obtained by human actions as opposed to a human body, which occurs according to nature. Corporate crime that is increasingly sophisticated in its form or type and its modus operandi often transcends national boundaries and is often influenced by other countries due to the era of globalization (Priyatno, 2017). Furthermore, what can be qualified for a criminal act of corporate corruption according to the corruption law is if people commit the criminal act, either based on work relationships or based on other relationships, acting within the corporate environment, either alone or jointly together.

Corruption is a global problem. It is no longer a problem that is regional or national in nature because corruption is a threat that can lead to the fragility of stability and public safety (Alhakim & Soponyono, 2019). Criminal acts of corruption committed by corporations are detrimental to state finances and the state economy; this is possible because of the connection with the power and power of corporations to non-legal aspects, including political, economic, social and cultural aspects. Therefore, when it comes to criminal liability and the choice of criminal and sentencing against corporate subjects as perpetrators of TPK, it is strongly believed that these aspects also influence these non-legal aspects (Siswanto, 2015). Research conducted by (Alhakim & Soponyono, 2019) states that in the policy of corporate criminal responsibility, in an effort to overcome corporate crime in an effort to combat corruption at this time, there are several weaknesses regarding when corporations commit criminal acts of corruption and the problem of criminal sanctions. Therefore, future corporate criminal liability policies will explain these provisions and law enforcers can apply them.

In practice, it turns out that it is not easy to bring corporations that commit criminal acts of corruption to court, even though based on doctrine and laws and regulations outside the Criminal Code, corporations can be held criminally responsible. Corporations' legal violations include starting from the establishment process, operating the company, and running its business. The effects of corporate activities that commit crimes such as forest fires, flooding due to not having waste disposal, bribery of bribing permits and collusion with law enforcement officers, legislators and state civil servants. Corporations carry out these actions from the main level to the regional level. There are many examples of corporations committing criminal acts of corruption, such as the case of the construction of the Meikarta megaproject in Bekasi, the case of the construction of the Gelora Bandung stadium in the sea of fire in the city of Bandung, licensing in the Subang district, the flood case in the Rancaekek area of Bandung Regency, waste disposal by companies in the Bandung Regency area, Cimahi and West Bandung Regency. The person has just processed the corruption case above. In contrast, the corporation has not yet been processed to the court, even though it is indicated that it has committed a criminal act of corruption.

The word corruption comes from English, namely corrupt, which comes from a combination of two words in Latin, which means together and umpire, which means broken. Corruption is an act of dishonesty/unfairness/greedy/greedy or fraud committed because of a gift. In practice, corruption is better known as bribery in money related to a particular activity or position without any administrative records. In law number 20 of 2001 concerning amendments to law number 31 of 1999 concerning the eradication of criminal acts of corruption, there are 31 forms of criminal acts that can be categorized as acts of corruption such as harming state finances, enriching oneself, enriching others, gratuities, bribes bribery, project markups, fictitious projects, obstructing the investigation of corruption, and others (Indonesia, 2001). The articles in the law have clearly explained in detail the actions that can be subject to criminal sanctions due to corruption. Corruption is no longer an ordinary crime but has become an extraordinary crime and is an organized crime, difficult to prove, and the perpetrator has the power and intellect.

The last law on eradicating corruption, namely Law No. 20 of 2001, contains at least 30 types of corruption offenses, consisting of 7 types of corruption, namely (Indonesia, 2001): (1) corruption is related to the loss of state finances, (2) bribe-related corruption, (3) corruption related to embezzlement in office, (4) corruption related to extortion, (5) corruption related to fraudulent acts, (6) corruption in procurement due to a conflict of interest, (7) corruption related to gratuities. According to Chaerudin and Syarif Fadillah in the journal (Sukmana et al., 2020), the types of corruption can be grouped into: (Chaerudin and Syarif Fadillah, 2008) : (a) state financial losses, (b) bribery, (c) embezzlement in office, (d) extortion, (e) fraudulent acts, (f) conflict of interest in procurement; and, (g) gratuity.

In addition to the types of corruption crimes that have been stated above, there are several articles that essentially deal with matters related to criminal acts of corruption, namely: (a) against the law to enrich oneself (Article 2), (b) abusing authority (Article 3), (c) Bribing civil servants (Article 5 paragraph 1), (d) the contractor cheats (Article 7 paragraph 1), (e) civil servants receive gifts/promises related to their position (Article 11), (f) civil servants extort and participate in the procurement they administer (Article 12), (g) gratuity and not reporting to Corruption Eradication Commission (KPK) (Article 12 B).

Characteristics of Corruption Crime

According to Shed Husein in the journal (Kadir & Bunga, 2020), the characteristics of corruption acts are as follows: (1) corruption is generally carried out in secret, (2) corruption always involves more than one person, (3) corruption involves an element of mutual obligation and benefit, (4) those who practice corrupt methods usually try to cover up their actions by hiding behind legal justifications, (5) those involved in corruption want firm decisions and can influence those decisions, (6) every act of corruption contains fraud, usually carried out by a public or general, (7) every form of corruption is a betrayal of trust.

Corporate Accountability in criminal acts of corruption

In criminal law, the concept of liability or responsibility is a central concept known as the teaching of error (schuld). In Latin, the teaching of error is called mens rea. The doctrine of men's rea is based on the concept that an act is not guilty unless the person's thoughts are evil. In English, the doctrine is formulated as an act that does not make a person guilty unless the minds are legally blameworthy. According to Hanafi in the journal (Anindia, 2017) to punish someone, two conditions must be met: a forbidden outward act or a criminal act (actus reus) and an evil or disconnected inner attitude (men's rea). So, corruption that often occurs as a result of the effects of local and legislative elections will reduce accountability and representation in policy formation; corruption in the court system stops the rule of law; and corruption in public administration results in imbalances in public service (Arifin, 2018).

Criminal liability is defined as the continuation of objective reproaches in criminal acts and subjectively those who meet the requirements to be sentenced for their actions. Criminal liability occurs because someone has committed a crime. The basis of the person being convicted must have a rule (the principle of legality), and the perpetrator made a mistake. Criminal liability is essentially a mechanism built by criminal law to react to a violation of an agreement to refuse a particular act (Chairul Huda, 2015).

Corporate Criminal Liability Theory

Direct Corporate Criminal Liability Theory

In countries that adhere to the Anglo-Saxon legal system, such as England and America, the theory of direct corporate criminal liability is known. According to this theory, corporations can commit several offenses directly through agents closely related to the corporation, acting for and or on behalf of the corporation. Where the purpose of criminal liability is to determine and place the perpetrators of criminal acts as legal subjects according to criminal law in the provisions of laws and regulations so that the perpetrators of criminal acts can be held accountable for all their actions (Telaumbanua, 2015). According Sue Titus Reid in the journal (Ali, 2011) The requirement for direct corporate criminal liability is that the actions of these agents are still within the scope of the corporation's work.

Strict liability Theory

According Russel Heaton in the journal (Melisa et al., 2022) Strict liability is defined as a criminal act by not requiring any fault of the perpetrator against one or more of the actus reus. This strict liability is a 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 that do not require any men's rea with regard to at least one element of their "actus reus". a crime in which it does not require the presence of an element of guilt, but only requires the existence of an act). According L.B. Curzon in the journal (Dewi, 2019) suggests three reasons why in strict liability, the fault aspect does not need to be proven. First, it is very essential to ensure compliance with certain important regulations that are necessary for the welfare of society. Second, proving the existence of mens rea will be difficult for violations related to public welfare. Third, the high level of social danger posed by the act in question.

Vicarious Liability Theory

According Sue Titus Reid in the journal (Dewi, 2019) Vicarious liability, commonly referred to as liability substitute, is defined as a person's legal liability for wrongdoing committed by another person. According to statute law, vicarious liability or substitute liability can occur in the following ways: (Kristian, 2014). (1) A person can be charged with criminal responsibility for actions committed by other people, if there is a delegation (the delegation principle). (2) A person can be charged, or an employer can be held accountable for an act that is physically carried out by his job if the act is seen as an act by the employer according to law.

Method

The method used is empirical juridical, which is about the enforcement or implementation of normative legal provisions in action on every particular legal event in society. The main legal material is by examining theories, concepts, legal principles and legislation. The data used are secondary data such as the Criminal Code, Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the

eradication of criminal acts of corruption, the principles of criminal law, the theory of corruption, and the doctrines of corporate responsibility. The data will be inventoried, studied, and researched as material to answer each question.

Results and Discussions

Corporate criminal liability when committing a criminal act of corruption

Legal arrangements in general are things made by a government agency or institution that contain norms in society where to regulate the order of human life in a country. Indeed, law becomes a regulation that is difficult to link between understanding and practice, so that sometimes the essence of practice is broader than the essence of its understanding and vice versa. In Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Criminal Acts of Corruption, Articles 2 and 3, 3 legal terms need to be clarified, namely the term corruption, state finances and the state economy. The meaning of a criminal act of corruption is "Anyone who unlawfully commits an act to enrich himself or another person and a corporation that can harm state finances or the state economy" and "Anyone who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of his position or position which can harm state finances or the state economy".

In Indonesia, the regulation regarding corporations does not yet have a specific law, but it has been regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 in Article 1 paragraph (1), namely that a corporation is a collection of people and/or wealth that is well organized by a legal entity or not a legal entity. Article 20: (1) if a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and or its management, (2) a criminal act of Corruption is committed by a corporation if the crime is committed by people, either based on a work relationship or based on other relationships, acting within the corporate environment, either individually or jointly, (3) in the event that a criminal charge is made against a corporation, the corporation is represented by the management, (4) the management representing the corporation as referred to in paragraph (3) may be represented by another person, (5) the judge may order the corporation's management to appear in person in court and may also order that the management be brought before a court session, (6) in the event that a criminal charge is made against a corporation, the summons to appear and the submission of the summons shall be submitted to the management at the management's place of residence or at the management's office, (7) the principal punishment that can be imposed on corporations is only a fine, with the maximum sentence being added by 1/3 (one per three).

This corporate regulation is also contained in the Attorney General's Regulation Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects in Article 2 is a guideline for handling criminal cases with corporate legal subjects, as referred to in Article 1 is a guideline for the Prosecutor/General Prosecutor in handling criminal cases with corporate legal subjects as suspects/defendants/convicts. Then there is the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations Article 2, which becomes a guideline for law enforcers in handling criminal cases with corporate actors and/or administrators, filling legal voids, especially criminal procedural law in handling criminal cases by Corporate actors and/or Management; and encourage effectiveness and optimization of handling criminal cases with corporate actors and/or administrators. This arrangement is considered to fill the legal vacuum in processing corporations as criminal law subjects. However, this Regulation of the Attorney General and the Regulation of the Supreme Court are not included in the types and hierarchies of statutory regulations. Only the existence is recognized, thus it is only binding inward.

Factors that cause corporations to commit criminal acts of corruption

Corporate corruption is a rapidly growing phenomenon today. These criminal acts are carried out in various modes, deviating from applicable legal provisions to benefit the company. Corporate corruption impacts the economy and state finances, which also affects the development and welfare of the community. However, suppression of corporations that commit corruption is difficult to bring to justice. Usually, the corporate management represents the company before the law. Meanwhile, the community wants corruption committed by corporations to ensnare the directors and impose sanctions on the corporation (Toruan, 2014). Corporations are legal entities (legal persons) according to civil law. In contrast, according to criminal law, corporations are groups of organized people who have leadership and carry out legal actions, such as entering into agreements in the context of business activities or social activities carried out by their management for and on behalf of the group. that person (Creativity, 2014). Over the last 150 years, corporations have evolved from relatively obscure institutions to dominant world economic institutions. As time went on, corporations increasingly dictated the decisions made by those who should supervise them in government and began to

control areas of society that were previously attached to the public domain. A corporation comprises a group of people, directors and managers who run the business, while another group, namely shareholders, owns the business. This unique design is believed to be the beginning of many people who trigger corruption and scandal. Adam Smith has warned in *The Wealth of Nations* that managers cannot be trusted to manage "other people's money," "recklessness and waste" inevitably occur when business is run in a corporate form. In the mid-19th century, business leaders and politicians widely pushed for changes to laws to limit the liability of shareholders to the amount of money they had invested in a company. They argue that if a person buys stock worth 100 dollars, he should be immune from any liability that exceeds that amount no matter what happens to his company. Limited liability, as they call it. This encourages middle-class investors to enter the stock market. By losing the risk of investing in stocks, at least in terms of the amount of loss imposed on an investor, the way is opened for broad public participation in the stock market and opportunities for investors to diversify their securities. Meanwhile, technological innovations in transportation and communication have significantly boosted corporate mobility.

Corporations, no longer constrained by territorial jurisdiction, can now roam the earth looking for locations to produce goods and services at much lower costs. By increasing their independence from territorial boundaries, corporations can dictate the government's economic policies. In 1993, the World Trade Organization (WTO) was formed which was given the mandate to enforce the standards of the General Agreement on Tariffs and Trade (GATT) where corporations can take advantage of the mobility that has just been gained by globalization and also create new standards to hinder regulations that may restrict international trade flows. According Bakan in the *Jorunal* (Ilham et al., 2019) where the WTO has become a significant barrier to economic rights. The government is shackled to its capacity to protect its citizens from corporate crime, on the other hand strengthening the ability of corporations to evade government authority. To this day, the main character of a corporation is still embedded in the world economy, namely as a profit-making machine that pursues personal interests and the interests of its owners. However, the mass demonstrations in America's major cities in the mid-1990s demanded the abuse of corporations to the exclusion of social responsibility. Actions that then change the face of the corporation to be more human in the eyes of society.

This forces the government to recognize corporations as part of serving the public interest and further limits its legal authority in regulating corporations. The same thing happened in Indonesia. The role of corporations which is so influential in the Indonesian government castrates the legitimate authority of the state to protect the public interest. Various cases of land disputes eventually lead to violence because the public interest is sidelined, or labor rights are cut off in pursuit of company profits, even to permanent environmental damage caused by mining that does not meet environmental management standards. Next, analyze the cases around us, where corporations are becoming friendlier without compromising the public interest. How both parties agree upon regulations for the common good. The development of corporations in third-world countries is known as cheap production locations and abundant natural resources.

Below are explained the research results regarding the factors that cause corporations to commit criminal acts of corruption: (1) the political system that occurs in Indonesia, the political system in Indonesia is often misused to get the most significant profit, (2) entrepreneur culture, it is common knowledge that the culture of business actors in Indonesia is currently low in terms of integrity, honesty, (3) culture of state administration apparatus, whether executive, legislative or judicial, it is an open secret that the culture of the state administration apparatus, whether executive, legislative or judicial in Indonesia, is currently low in terms of integrity honesty, (4) complicated bureaucracy, It has become a general secret that the bureaucracy in Indonesia is very complicated, such as the example of licensing issues, causing business actors to sometimes commit acts against the law, (5) low legal awareness, low legal awareness is the cause of corporate crime; many business actors do not understand the rules well, (6) intense competition from one corporation to another, intense competition between one corporation and other causes corporations to practice fraudulent practices in running the business.

Barriers to law enforcement officials in processing corporations committed corruption crimes.

The Criminal Code only recognizes natural persons (*naturlijke persoon*) as subjects of criminal law which can be held criminally accountable. As a result, it is clear that the current Criminal Code (*KUHP*) does not recognize corporations as subjects of criminal law. However, several corporate arrangements outside the Criminal Code (*KUHP*) have recognized corporations as legal subjects. However, the regulation still tends to be hesitant because recognizing the law on corporations as legal subjects is still based on corporate responsibility in law enforcement. Corporate accountability and punishment regulation in the Indonesian criminal law system still refers to a paradigm that places people as perpetrators of crimes. Corporations here

do not yet have laws that specifically regulate, thus the power to recognize corporations as legal subjects in evidence is still tricky for law enforcement officers.

As in today, various Indonesian criminal laws have only established fines as the primary criminal sanction for corporations. Meanwhile, other forms of criminal sanctions are stipulated by law as additional criminal sanctions or disciplinary actions, namely the primary criminal sanctions and additional criminal sanctions imposed on the corporation. It is impossible to impose criminal sanctions on a corporation in the form of imprisonment. As a consequence, it is impossible to sue a corporation as a criminal act based on a criminal law if the law determines that the criminal sanctions that can be imposed on criminal actors are: cumulative imprisonment and fines (both criminal sanctions are cumulative, that is, both sanctions must be imposed on the perpetrator of the crime concerned). In other words, corporations may only be prosecuted and sentenced to criminal sanctions if imprisonment and fines are stipulated in the law as alternative criminal sanctions (meaning the judge can choose them). If the two criminal sanctions are alternative, the management can be sentenced to imprisonment only, or criminal sanctions to fines, or both sanctions are imposed cumulatively. Meanwhile, the corporation is only imposed with a criminal sanction of a fine because the corporation cannot undergo imprisonment. If the criminal sanction is determined cumulatively between imprisonment and a fine, not alternatively, but other provisions in the law stipulate that if a lawsuit is made against a corporation, only a fine will be imposed (perhaps with a higher fine). Moreover, the criminal sanctions of imprisonment and fines that are determined cumulatively do not prevent the corporation from being imposed a fine.

The difficulties for law enforcement officers in processing corporate criminal acts is the problem of proof. This is still very difficult even though many rules have been made. In practice, investigators and public prosecutors are reluctant or do not dare to delegate corporate crime cases to the courts because of the difficulty in compiling and formulating indictments in corporate crime cases. When adjudicating corporate crime cases, the courts also rely heavily on the indictment submitted by the public prosecutor. The KPK itself, as one of the institutions with interest, has determined the corporation as the subject or suspect or defendant of corruption. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 has provided an instrument to process corporations as perpetrators of criminal acts of corruption. Although many of the company's directors have become convicts, the Corruption Eradication Commission has been constrained in formulating the responsibility of corporations as perpetrators of corruption. The KPK and the Prosecutor's Office themselves have tried to demand that corporations participate in paying state losses. However, they often fail because the judge considers the corporation not a defendant in the indictment. If a corporate crime occurs, the director or commissioner is made a defendant; the punishment is only imposed on the person, not the corporation. In a corporation, the position of directors and commissioners is one of the vital organs in a legal entity where members of the board of directors and commissioners are trustees or known as the fiduciary duty principle, who must behave as befits a trust holder. Therefore, directors and commissioners are positions with a high level of trust.

As a result of this fiduciary duty, coupled with the provisions in the Limited Liability Company Law, which states that the board of directors is an organ of the company that is authorized and entirely responsible for the management of the company, by the aims and objectives of the company and represents the company, both inside and outside the court by the law. With the provisions of the articles of association, it becomes clear why many directors are accused if the company is considered to have committed a corporate crime. However, it is necessary to distinguish between corporate responsibility and personal responsibility in a corporate criminal case. If a director is declared a defendant, it is necessary to pay attention to whether the mistake made by the director is a criminal act as a person or a criminal act committed by a corporation. Inaccuracy in distinguishing actions as described above will make the case unclear/blurry (obsuur libels).

From the results of the study, it was found that the obstacles for law enforcement officers in processing corporations that have committed criminal acts of corruption are regarding the application of criminal sanctions against corporations that commit corruption crimes, namely regulatory issues. However, in various laws outside the Criminal Code it is clear that corporations are legal subjects and the draft law. The 2019 Criminal Code in Article 45 paragraph (1) there is an acknowledgment that corporations are legal subjects of criminal acts and in Article 49 of the Criminal Code Bill it is also explained that Accountability for Criminal Acts by Corporations as referred to in Article 48 can be imposed on Corporations, administrators who have available positions, give orders, control holders, and beneficial owners of corporations, law enforcement officers, especially police investigators, are still hesitant to carry out investigations and determine the suspect of a corporation because police investigators must obtain approval from the police. from the public prosecutor who will be held accountable in court. In addition, other obstacles are regarding corporate responsibility and personal responsibility. If a director is declared a defendant, it is necessary to pay attention to whether the mistake made by the director is a criminal act as a person or a criminal act committed by a corporation.

Inaccuracy in distinguishing actions as described above will make the case unclear/blurred (obsuur libels). Another obstacle is the problem of proof, this is still very difficult in practice, namely police investigators and public prosecutors are reluctant or do not dare to delegate corporate crime cases to court because of the difficulty of compiling and formulating indictments in corruption cases committed by corporations. Even when adjudicating corporate crime cases, the Court relies heavily on the indictment submitted by the public prosecutor.

Conclusions

From the description in the discussion, it can be concluded that where corporate criminal liability when committing a criminal act of corruption, in general, is responsible for the corporate management as stated in Article 1 paragraphs 1 and 3, Law number 31 of 2001 as has been amended by Law number 20 of 2001 concerning the eradication of criminal acts corruption. Factors that cause corporations to commit criminal acts of corruption include the political system in Indonesia, the culture of business actors, the culture of state officials, executive, legislative and judicial, complicated bureaucracy, low legal awareness, and intense political awareness competition between one corporation, with other corporations. Barriers to law enforcement officials in processing corporations that have committed criminal acts of corruption, namely the problem of the rule of law, the application of criminal sanctions against corporations that commit corruption, the existence of doubts from law enforcement officers to conduct investigations and determine whether a corporation's responsibility is the responsibility company or individual as well as evidentiary issues.

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