

CORPORATE CRIMINAL LIABILITY: AN ANALYSIS OF CORPORATE CRIME PERPETRATORS UNDER POSITIVE LAW IN INDONESIA

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Abstract

This research discusses corporate criminal liability in Indonesia regarding corporate crime perpetrators in positive law. The economic interdependence between nations has increased the need for legal rules related to international trade and business. Corporate crimes have significant negative impacts on society and the environment. This research aims to analyze how corporate criminal liability is established based on positive laws in Indonesia regarding corporate crime perpetrators. This research employs a normative juridical approach, utilizing literature studies encompassing various sources such as books, online media, dissertations, and other relevant literature. The discussion encompasses the concept of corporate accountability in criminal acts and debates about who can be held accountable, the corporate entity or its executives. The results of this research serve as a basis for evaluating and improving the existing legal framework and contribute to developing more effective policies in addressing corporate crimes in Indonesia. The regulations regarding criminal liability for corporate crime perpetrators in Indonesia currently lack clear provisions and are scattered across multiple legislations. Therefore, a new Criminal Code should be promptly enacted to avoid legal loopholes in enforcing corporate criminal acts.

Keywords: *Accountability; Corporation; Crime.*

INTRODUCTION

The analysis in this research complements previous studies on the "Perspective of Corporate Criminal Liability as a Corruption Offender, which has been done in Eddy Rifai's research" (Rifai, 2014). Previous research analyzed the perspective of corporate criminal liability limited only to corruption crimes. At the same time, in this article, the authors will examine corporate criminal liability broadly and not only be limited to corruption crimes.

By complementing previous studies, this research aims to explore other aspects of corporate criminal liability in the context of corporate criminal offenses. This will make an important contribution to expanding the understanding of corporate

criminal liability in Indonesia, not only in the context of corruption but also in various other types of criminal offenses in which corporations may be involved.

This research can explore legal arrangements, individual responsibility, law enforcement mechanisms, and criminal sanctions related to corporate crime in Indonesia by conducting a broader analysis. This will provide a more comprehensive insight into how Indonesian positive law addresses corporate criminal liability in various corporate crime contexts. Thus, it is expected that this research will provide a valuable contribution to expanding the understanding of corporate criminal liability in Indonesia beyond the scope of



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previous research, which is limited to corruption crimes.

In the Reformation era, there was a significant change in the spirit of developmentalism, where the government adopted a policy format that involved corporations to accelerate economic growth and development. This provided a positive impact, fresh air, and improved economic performance so that Indonesia could compete in the global business world, especially in the ASEAN Economic Community (Sirait, 2016). Economic interdependence between countries impacts their economic lives, increasing the need for the rule of law regarding international trade and business. There is a saying that poor countries tend to have higher crime rates (Manullang et al., 2020).

Every country will fight for its interests in the development and economy, especially those aimed at the country's progress and other things that support it, such as the construction of public facilities, including facilities and infrastructure. It aims to improve the welfare of its people. These efforts must be carried out in a group and not individually, including in the form of a corporation (Disemadi & Jaya, 2019). In a narrow sense, a corporation is a legal entity authorized to do business. (Retnowinarni, n.d.). For the nation's economic development, the existence of Corporations is very useful (Tantimin, 2018). Corporations have an important role in state tax revenue, including opening jobs and becoming a pillar of national progress, especially technological advances. Corporations can create good and bad things in the development of technology and its capabilities. The unpreparedness of the tools governing corporations can

provide an opportunity for corporate crime (Kumala Sari & Serikat Putra Jaya, n.d.).

Business entities or corporations and individuals who have a relationship with the corporation when committing a crime can be said to be a corporate crime. So, it can be done without the approval of the corporate officer. The important thing is that the officer can speak on behalf of the corporation. Therefore, in substance, corporate crime is interconnected with the actions of its officers. Corporate crime reflects the character of the people who manage the corporation itself. It is very reasonable if the credibility of the company's officials is doubted if they are involved.

The management of a corporation that commits a crime for the benefit of the corporation is called a corporate crime, according to David O. Friedrichs (Sudariyanto, 2018). Meanwhile, according to Hasbullah F. Sjawie, corporate crime refers to actions or acts committed by directors, employees, and all levels within a company to carry out their duties and functions and represent the company. These actions can lead to criminal liability for the company and its employees (Manullang et al., 2020).

Regarding the expert opinions above, it is necessary to understand corporate crime. They are quoting the Regulation of the Supreme Court of the Republic of Indonesia (Perma RI) Number 13 of 2016, Article 3 states that "criminal acts by corporations are criminal acts committed by persons based on employment relationships, or based on other relationships, either individually or jointly acting for and on behalf of the Corporation inside or outside the corporate environment" (Court, 2012). Criminal law

enforcement against corporate perpetrators should involve corporate liability, such as perpetrators of corruption that have been regulated in Article 20 of Law No. 31 of 1999, which has been amended by Law No. 20 of 2001 concerning Eradication of Corruption (Law No. 31/1999), stating that in addition to individuals, corporations can also be considered as legal subjects or perpetrators of criminal acts. However, public prosecutors rarely use this provision to bring corruption offenders as corporate criminals to court (Muladi, 1999).

For example, in a corruption case at the Class IA Tanjungkarang District Court, the defendant Sugiarto Wiharjo alias Alay was a corporate offender. The defendant, who served as President Commissioner of PT BPR Tripanca Setiadana and witnessed St. the Regent of East Lampung, committed or participated in several corruption offenses. Although each Act is an interrelated crime or offense that can be considered as a continuing act, only the President Commissioner was made a defendant in this case, while other administrators of PT BPR Tripanca Setiadana, such as the managing director, directors, and staff/employees, were not considered responsible either as corporate administrators or individually concerning Article 55 of the Criminal Code (Rifai, 2014).

According to the Criminal Code, Corporations are not legal subjects but only individuals, natural persons who can be used as legal subjects. (Tawalujan, 2012). Thus, the Regulation of the Supreme Court of the Republic of Indonesia (Perma RI) Number 13 of 2016 is one of the efforts to fill the legal vacuum before enacting the latest Criminal Code. Based on Article 3 of Perma No. 13/2016, corporate crime is

defined as a criminal act committed through work relationships or other relationships, either individually or collaboratively, for and on behalf of the corporation, both inside and outside the corporate environment. (Chief Justice of the Republic of Indonesia Supreme Court, 2016). In simple terms, the relationship between employees and corporations is formed after an agreement, where employees agree to receive wages and corporations agree to hire these employees by paying wages.

As happened in the case of PT Duta Graha Indah (PT DGI), which was revealed in 2017, Dudung Purwadi, as President Director of PT DGI, worked with Nazaruddin and Made Meregawa to design an agreement related to the construction project of the Udayana University special infection and tourism hospital in 2009 and 2010. The agreement aimed to ensure that PT DGI won the tender as the executor of the work (partner) Purwadi has been named a suspect by the Corruption Eradication Commission (KPK). Subsequently, the Central Jakarta Corruption Court sentenced Purwadi to imprisonment and a fine. In addition, the Central Jakarta Corruption Court also imposed an additional penalty on PT DGI, namely the obligation to pay restitution. Based on the description and explanation above, the author formulates the problem: How is Corporate Criminal Liability for Corporate Criminals in Positive Law in Indonesia?

RESEARCH METHODS

The research method used in this research is a normative legal research method with a statutory, conceptual, and case approach (Mamudji, 1995). The use of data in this research focuses on secondary data in the form of primary, secondary, and

tertiary legal materials. The secondary data collection method uses literature study, and the data analysis technique is qualitative analysis with grammatical and systematic interpretation. Grammatical interpretation is an interpretation to determine the meaning of the provisions of laws and regulations (Abdussamad, 2021). Meanwhile, systematic interpretation is the interpretation of laws as part of the overall system of laws and regulations by connecting other laws (Hasibuan & Nst, 2023).

RESULTS AND DISCUSSION

1. The Concept of Corporate Liability in Criminal Offenses.

One of the important principles known in criminal law is the theory of *geen straf zonder schuld* or no punishment without fault (*schuld*). (Moelyatno, 1993). This principle is very fundamental in criminal law; why is that? According to this principle, only prohibited acts can be punished; the law states that a person can only be punished if his guilt can be proven (Seno Adji, 1985). Currently, corporate crime has occurred in many countries in the world; in Indonesia itself, there are several companies, both local and foreign companies, that are suspected of committing corruption crimes, among others:

1. In Sidoarjo, there was the infamous Lapindo mudflow, which was indicated to be the result of PT Lapindo Brantas drilling improperly and resulted in thousands of homes being lost to the mud.
2. PT Galuh Cempaka is alleged to have carried out activities that resulted in the pollution of the environment.

3. The Newmont case in Buyat Bay and North Sulawesi are examples of corporate crimes that can harm many people (Manullang et al.,2020).

The main purpose of punishment is to determine whether the perpetrator of the criminal Act charged can be held accountable (Tawalujan, 2012). Meanwhile, the Criminal Code itself does not recognize corporations as legal subjects. Article 59 of the Criminal Code (KUHP) states: "In cases where an offense is punishable against the management, members of the management body or commissioners, the management, members of the management body or commissioners who are found not to have participated in committing the offense shall not be punished" (State Secretariat of the Republic of Indonesia, 2022).

It can be concluded that only individuals who are members of a corporation commit criminal acts, and criminal responsibility can be sought from them. On the other hand, the corporation is considered not to have committed the criminal Act itself, so it cannot be held liable. Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016 is to anticipate and avoid a legal vacuum on this issue. The purpose of the issuance of Perma is to expand the scope of legal subjects to reach corporations as legal entities so they can be punished. Outside the Criminal Code, there are already several regulations specifically in terms of corporate crime, namely (Anjari, 2016):

Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons, Articles 13-16; Law Number 5 the Year 1997 on Psychotropic Substances, Article 70; Law 35/2009 on Narcotics, Article 130;

Emergency Law No. 7/1955 on the Investigation, Prosecution and Trial of Economic Crimes, Article 15; Law Number 31 the Year 1999 jo. Number 20 of 2001 on the Eradication of Corruption, Article 20; Law No. 18/2010 on the Crime of Money Laundering, Articles 6, 7 and 9; Law No. 15/2003 on Terrorism, Articles 17 and 18; Law No. 40/2007 on Limited Liability Companies.

Furthermore, what is debated is how to determine whether a corporation can be held accountable because the Criminal Code only regulates individuals to be legal subjects. Then, who can be held accountable, the corporation or its management, if a criminal activity is committed on behalf of the corporation?

The establishment of the corporation as the subject of criminal law, then inevitably, the criminal system, along with the punishment, needs a corporation-oriented formulation. To fulfill the elements of *actus reus* and *mens rea* in a mistake, several aspects must be considered regarding the perpetrator, namely *dolus* or *culpa*, the psychology of the perpetrator, the ability to be responsible, the relationship between the behavior and the consequences caused (Sjawie, H, 2018). There are theories or doctrines in terms of corporate liability, including "identification doctrine, vicarious liability, and strict liability" (Tawalujan, 2012).

a. Identification Doctrine Theory

The identification doctrine theory, also known as direct responsibility, is the direct responsibility of the corporation's management, closely related to the corporation. (Alhakim & Soponyono, 2019). The management can be liable if the corporation commits the error as a legal

entity. (Sudariyanto, 2018). This doctrine is the basis for justifying corporate criminal liability. The crime of a person or management of a business entity on behalf of and providing benefits for the business entity, then a corporate crime has occurred through the management (Rahim et al., 2022).

According to this theory, corporations can be subject to criminal liability, but it is only possible if the person who committed the criminal Act can be identified first. The corporation will only be fully responsible for the criminal Act if it is committed by a person who has a role as the "directing mind" of the Corporation (Muladi & Sulistyani, 2013). According to the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 Article 4 paragraph (2), there are three important points against corporate crime, namely: Corporations can be found guilty if they benefit from the crime omission by the corporation of the occurrence of a criminal offense. A corporation can be found guilty if it does not take mandatory measures to prevent criminal acts, minimize more serious impacts, and ensure compliance with applicable legal regulations to prevent criminal acts from occurring (Tanjung, 2019). From this, there is the possibility of a policy being taken or not. Corporations have "Mens rea" and are considered equal to humans (Tanjung, 2019).

b. Doctrine of Vicarious Liability

This doctrine is also known as Vicarious liability. In Indonesia's theory of positive legal perspective, the doctrine of vicarious liability is an important concept in understanding corporate criminal liability. This concept states that a corporation can be held liable for the

criminal acts of its employees if they act in the course of their employment or for the corporation's benefit. According to Pitter Gillies, vicarious liability is defined as a vicarious liability in which a person is held liable based on the commission of a crime because of the conduct of another, including in the context of the two issues mentioned above (Almira & Indawati, 2023).

In the context of corporate criminal liability, the doctrine of vicarious liability allows corporations to be held legally responsible for criminal acts committed by employees, agents, or representatives acting in their official capacity. This means that a corporation can be subject to criminal sanctions even if the Act was committed without the direct knowledge or consent of the executive or upper management. In practice, the doctrine of vicarious liability is often applied in corporate crime cases in Indonesia. For example, if an employee of a corporation is involved in an act of corruption or other violation of law during his or her duties, the corporation may be held liable and subject to criminal sanctions. This principle assumes that corporations are legal entities responsible for the actions of individuals acting on their behalf.

However, it should be noted that several important elements must be met to impose substitute liability on corporations. One is a special relationship between the perpetrator of the criminal offense and the corporation, such as an agent-power relationship or an employee-corporation relationship. In addition, the criminal Act must be committed within the scope of work or for the corporation's benefit. Workers or employees are liable to their employers. In the principle of Substituted

Liability, if an individual commits a criminal act with the elements of the legal Act (actus reus) and wrongful mind (mens rea) for the benefit of the corporation, the company can be punished (Wong, 2012).

Although the doctrine of vicarious liability provides an important legal framework for strengthening corporate criminal liability, its implementation still faces challenges in Indonesia. Among them are the difficulties in gathering evidence and proving the involvement of corporations in criminal acts committed by individuals, as well as the lack of understanding and awareness of this concept among law enforcement and the public. Ultimately, the doctrine of vicarious liability plays an important role in Indonesia's positive legal perspective on corporate criminal liability. This concept allows a corporation to be held responsible for criminal acts committed by its employees or agents, in line with the principle that a corporation is an independent legal entity with separate legal obligations. However, challenges in its implementation must be overcome to ensure effectiveness and fairness in law enforcement related to corporate crime in Indonesia.

c. Doctrine of Strict Liability or Direct Liability

Namely, direct responsibility where countries with a common law legal system, criminal crimes according to this doctrine refer to the applicable regulations (Krismen et al., 2013). This means that a person can be held liable without considering whether there is a fault in their actions. This principle is known as liability without fault. In this case, what needs to be proven is the actus reus (Act) and not the mens rea (faulty mind). The principle of this liability

is that "fault" is considered irrelevant, as the focus is on the "act." Strict liability is significant because it ensures compliance with the rules necessary for public welfare. In addition, it is difficult to prove fault (*mens rea*) in offenses associated with a high degree of social harm and impact on welfare, hence the importance of strict liability.

This concept needs to fulfill two requirements; namely, there is a working relationship between the superior and subordinate parties, and the criminal offense is committed in the context of work (Almira & Indawati, 2023). According to Barda Nawawi Arief, in the concept of strict liability, a person can be held responsible even though there is no element of guilt (*mens rea*) in a particular criminal offense. Arief took a quote from Curzon to explain that strict responsibility is based on the following reasons (Hanafi, 2014):

It is imperative to ensure compliance with important regulations necessary for the well-being of society. Proof of guilt (*mens rea*) will be particularly difficult in cases of offenses associated with a high degree of "social harm" resulting from them, and this is also a consideration for the prosecution as such, the doctrine of strict liability or direct liability is imposed without requiring personal fault but rather focuses on the importance of complying with regulations that protect the public welfare and the difficulty in proving fault.

Corporate liability in criminal offenses is a legal principle establishing that a corporation can be held legally responsible for criminal offenses committed by its agents or representatives. This reflects the recognition that a corporation, as a separate legal entity from the individuals involved,

can act independently and has its legal responsibility.

2. Analysis of Corporate Offenders in Indonesian Positive Law

In some environmental crimes, there have been cases where the court has given a prison sentence to an administrator without going through the court process. For example, in case No.228/Pid.Sus/2013/PN.PLW, the defendant was PT API, which director Mr. TKY represented during the trial. The Pelalawan District Court sentenced PT API to a fine, but the judge also stated that if the fine were not paid, Mr. TKY would be imprisoned. The Supreme Court later upheld this decision. From this decision, an administrator can be sentenced to confinement even though he or she was never a defendant in the trial (Wibisana, 2022).

Another case that demonstrates imprisonment without trial is Supreme Court decision No. 1450 K/Pid.Sus/2013. In this case, the only defendant was PT KPSS, which Br. WDB represented during the trial.

In addition to imposing a fine on the defendant (PT KPSS), the judge also sentenced Br. WDB to imprisonment, even though it was clear that Br. WDB was not the defendant in this case (Wibisana, 2022).

Furthermore, the defendant can be punished even though his contribution to the crime is unclear. This can be seen in the Pekanbaru High Court Decision No. 186/Pid.Sus/2015/PTPBR with the defendant, Mr. KS, who was the assistant plantation head of PT JJP. The defendant was criminally charged for a fire in the company's area. However, the prosecutor or the panel of judges did not explain the defendant's contribution to the crime. The

judges also recognized that the defendant replaced the previous plantation head, who had resigned. The Supreme Court also upheld this decision and recognized that the defendant was not the person in the field when the fire occurred. From this verdict, it appears that the defendant's only contribution was as an assistant to the plantation head, even though this work was not illegal or unlawful (Wibisana, 2022).

In Continental European countries, including the Netherlands, the regulation on corporate liability is in the General Provisions of the Criminal Code (Kitab Undang-Undang Hukum Pidana); therefore, it is no longer necessary to regulate it separately outside the Criminal Code (Wetboek van Strafrecht "Dutch"). This is due to the birth of the Act, dated June 23, 1976, Stb. 377, enacted on September 1, 1976, which resulted in a new formulation of Article 51 of the Dutch WvS, which states (Muladi, 1999):

1. Individual human beings or legal entities can commit criminal offenses.
2. Criminal charges may be brought if a legal entity commits a criminal offense. If deemed necessary, criminal sanctions and measures provided for in the law may be imposed against the legal entity itself, those who "order" it to commit the prohibited Act, or those who act as "leaders" in the prohibited Act. Criminal sanctions may also be applied against the "legal entity" and "those who ordered the act" jointly.
3. Users of other paragraphs are treated similarly to legal entities, including unincorporated companies, associations, and foundations. In practice, efforts to break the chain face obstacles and barriers, so cases tend to

increase yearly (Khoirunnisa & Basri, 20 C.E.).

Meanwhile, the application of legal sanctions against corporate crime in Indonesia is based on legal regulations governing corporate criminal liability. The Limited Liability Company (PT) regulated by Law No. 40 of 2007 is one of the relevant regulations. It stipulates that corporations can be held criminally liable for acts committed by their employees in carrying out company activities. In addition, other regulations such as Law No. 8 of 2010 on Prevention and Eradication of Money Laundering Crimes (TPPU) and Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition are also the legal basis for enforcement of certain corporate crimes.

Meanwhile, forces with a driving character will have a stopping effect because strict consequences must be faced (Pandia et al., 2023). Legal sanctions may be applied to corporations that commit crimes depending on the type of crime and the relevant legal regulations. Such sanctions may include significant fines, payment of damages, revocation of business licenses, release of assets, prohibition of operations, supervision, or other administrative measures. In addition, in some cases, individuals acting on behalf of the corporation and involved in corporate crimes can also be tried and punished personally. Current laws are inadequate in effectively identifying or apprehending perpetrators of personal crimes, and the court process with judges' final decisions presents challenges when dealing with cases involving their modus operandi (Purwanto & Widyaningrum, 2023).

Article 45, paragraph (1) of the latest Criminal Code Law, which was passed in January 2023 and will be effective in the next three years, has provisions on corporate responsibility and "corporate criminal liability" and states that "corporations are the subject of criminal acts." Furthermore, the article explains that legal entities such as PT (Perseroan Terbatas), foundations, cooperatives, state-owned enterprises, regional-owned enterprises, or the equivalent, as well as associations both incorporated and unincorporated, and business entities in the form of a firm, partnership or the equivalent following the provisions of laws and regulations, are corporations (Sekretariat Negara RI, 2022).

Furthermore, Article 188 of the latest Criminal Code Law states that the punishment for corporations consists of main and additional punishment. The main punishment is a fine. Meanwhile, the additional punishment for corporations includes the payment of compensation, repair of criminal offenses, and implementation of obligations that have been neglected (State Secretariat of the Republic of Indonesia, 2022).

Measures need to be taken to strengthen law enforcement against corporate crime. This includes increasing public awareness, increasing the capacity of law enforcement to handle corporate crime cases, increasing cooperation between law enforcement agencies, and improving relevant legal regulations. In addition, it is important to encourage the application of effective and proportional sanctions against corporations that commit crimes to provide a deterrent effect and prevent corporate crime in the future.

Corporate crime refers to criminal crimes committed by corporations or other entities. In Indonesia, corporate crime often includes corruption, money laundering, environmental violations, fraud, intellectual property rights violations, and business practices with unfair competition. From the explanation of some of the problems above, there is a difference between the norms that should be enforced and what happens in the field. For example, even though a person is not a defendant, he can still be imprisoned if his corporation does not fulfill the court's decision. This shows that, in practice, the implementation of corporate criminal liability still requires improvement.

This can happen for several reasons. First, there are difficulties in gathering sufficient evidence to prove the company's involvement in the crime. Complex investigative processes and limited resources are often obstacles that law enforcement authorities must face. Second, there may be areas for improvement in supervision and enforcement that lead to violations going undetected or needing to be followed up appropriately. Lack of transparency or corruption in the legal system can lead to a mismatch between norms and practices. In addition, economic and political factors can also affect the implementation of legal norms. Dependence on large corporations or political pressure can affect fair and consistent law enforcement.

To overcome this discrepancy, there needs to be better efforts in law enforcement, increased transparency, and strengthened monitoring systems. In addition, there also needs to be awareness and commitment from all relevant parties, including the government, companies, and

communities, to ensure that the norms that should be enforced happen on the ground.

CONCLUSION

Corporations that significantly impact social life should be obliged to respect the fundamental values that the criminal law of society has regulated. Corporate actions and policies are usually taken in the corporation's interests through a well-organized management structure. With this approach and supported by theories such as strict liability and vicarious liability, corporations can be subject to criminal sanctions. The criminal liability of corporations is considered important because, without such liability, corporations may be able to avoid liability to criminal regulations. In addition to its employees, directors, commissioners, and shareholders can also be prosecuted for being involved in criminal offenses that are mistakes in the company's business activities. This includes situations where the company profits from illegal business activities such as money laundering, and criminal sanctions should be applied to the company and related parties in leadership and ownership.

The regulation of criminal liability against perpetrators of corporate crime in Indonesia currently is not strictly regulated and is still scattered in several regulations. For this reason, a new criminal code must be enacted immediately to avoid a legal vacuum regarding corporate crime enforcement. Efforts continue to strengthen law enforcement by increasing public awareness, increasing the capacity of law enforcement, and improving relevant legal regulations in preventing corporate crime.

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