

Corporate Criminal Accountability in Indonesia and Other Countries

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Abstract

Corporations are established with different objectives and ways to achieve different goals, not only in ways that are permitted by law but also in ways that are prohibited by law. Today, corporations are frequently involved in various criminal acts or used as a means to commit criminal acts. Therefore, it is a fact that cannot be denied that the role of corporations is currently very important in people's lives. Corporations as perpetrators of criminal acts in terms of criminal liability need to be considered carefully. Because today's corporations are increasingly playing an important role in people's lives, especially in the economic sector, Business activities, or the business world in general, are the main basis for meeting the competitive needs of life. In the United States and the United Kingdom, they also regulate corporate criminal liability, so the problem that can be formulated is how corporate criminal responsibility is regulated in Indonesia, the United States, and the United Kingdom. The research was carried out using a normative-juridical method using secondary data that was used as research material. The results of the study show that corporate criminal responsibility in Indonesia and other countries has agreements and differences, both in terms of regulation and the application of sanctions.

1. Introduction

The country's legal system is founded on Pancasila and the 1945 Constitution.. The law is very important in many aspects of life because it serves as a guide for human behavior in relation to other humans. Directly or indirectly, a corporation's existence affects the economy and environment in which it operates. The legislation, specifically Law Number 40 of 2007 regulating Limited Liability Companies, governs both the good and bad effects of a company's operations, whether they are carried out by the business alone or in conjunction with other companies. With the regulation of corporations that are legal entities

in the law, the corporations that are legal entities will fully comply with these laws and regulations. However, for corporations that are not legal entities, the regulations can be found in various laws and regulations.¹

Currently, corporations are established with different goals and ways to achieve those goals, not only those that are permitted by law but also those that are prohibited by law. Today, corporations are frequently involved in or used to commit crimes. Therefore, it is a fact that cannot be denied that the role of corporations is currently very important in people's lives. The purpose of the corporation is to continue to increase the profits it earns, which results in frequent violations of the law.²

Even though there have been many laws and regulations that regulate the eradication of various kinds of criminal acts, in practice, everything that is revealed is like the tip of the iceberg, which still has much more that has yet to be revealed. Until now, there have been very few corporations that have been made suspects or defendants in criminal acts, despite the fact that the losses incurred by the corporations' actions have been clearly seen. For this reason, the community needs to be knowledgeable in terms of criminal acts committed by corporations. Because, with the growing public awareness of their rights being violated as a result of corporate actions, of course, the higher the level of public legal awareness, This is, of course, also a warning for corporations to be more careful in their actions so as not to cause losses.³

Increasing public awareness to help law enforcement uncover these criminal acts must be seen in the context of upholding the rule of law, as expressed by Ali Mansyur, that in a rule of law, the rule of law should have its proper place, the function of law in the material sense which seeks to protect society by treating every citizen with the right to work and a life worthy of humanity, and to provide everyone with the means to achieve this.⁴

When Indonesian people are asked to talk about crime, the image that comes to mind is that of traditional or conventional crimes, such as murder, rape, theft, fraud, and persecution, where the victims are individuals. They do not understand that there are actually other types of crimes which, if seen from the number of victims, can be massive, as well as the losses suffered. That is what is called corporate crime. Such a public view is not wrong, because through the mass media, both print and electronic, the public is presented with views of conventional cases. This corporation, in carrying out its activities, is engaged in various fields of life. So it can be said that there is no one area of life that is not a

¹ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana*, Cahaya Atma Pustaka Kelompok Universitas Atma Jaya Yogyakarta, Cet.1, Yogyakarta, 2014, hlm.155

² Alvi Syahrin, *Pertanggungjawaban Pidana Korporasi*, <http://alvisyahrin.blog.usu.ac.id/2011/05/21/pertanggungjawaban-pidana-korporasi/> [diakses tanggal 03/12/21, pukul 09.46]

³ Eddy O.S. Hiariej, *Op.cit*, hlm. 157

⁴ Ali Mansyur, *Aneka Persoalan Hukum (Masalah Perjanjian, Konsumen dan Pembaharuan Hukum*, Penerbit Unisula Semarang, 2010, hlm. 148

corporate affair. In fact, every one of our needs, starting from when we were still in the womb or when we passed away, cannot be separated from the grip of the corporation.⁵

Corporate crime is a new thing when compared to conventional crime. People used to be fixated on the idea that the perpetrators of crimes or crimes were only poor people, people with low education, people from slum communities on the outskirts of cities or villages, and so on." To describe what is recognized in other areas of law, particularly civil law, as a legal entity, the word "corporation" is often employed by criminal law specialists. Under criminal law, a corporation can include non-formal organizations such as foundations, cooperatives, and associations. Criminal law treats corporations as businesses, LLCs, and partnerships (matrixes).⁶

The VII UN Congress in 1985 discussed the types of crime under the theme "New Dimensions of Crime in the Context of Development." In addition, we see the symptoms of crime, which is a continuation of economic activity and growth in which corporations play a large role, such as the occurrence of tax fraud, environmental damage, insurance fraud, and advertising fraud, whose impact can damage the joints of a country's economy. Based on the development and growth of corporations that have a negative impact, the position of corporations has begun to shift from only being a subject of civil law to also being a subject of criminal law.⁷

There has to be considerable thought given to the possibility that a corporation might be held criminally liable for its actions. Business operations, or the business world in general, are the major base for satisfying the competitive requirements of modern living, notably in the economic sector, due to the growing importance of companies in people's daily lives. As the economy and the corporate world have advanced rapidly, so too have the accompanying deviations and changes in people's daily lives.⁸

The emergence of this negative impact is due to the fact that corporations are too aggressively pursuing sizable profits by not paying attention to the principle of prudence in carrying out their business.⁹

2. Research Method

The research was conducted using a normative-juridical method using secondary data that was used as research material, in addition to a normative

⁵ Ali Zainuddin, *Sosiologi Hukum*, Yayasan Masyarakat Indonesia Baru, Palu, 2003, hlm. 2

⁶ Alvi Syahrin, *Ketentuan Pidana dalam UU No.32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup*, PT. Sofmedia, Jakarta, 2011, hlm. 95.

⁷ George P. Fletcher, *Rethinking Criminal Law*, Oxford University Press, New York, 2000, hlm. 409-410

⁸ *Ibid*, hlm. 411

⁹ Muladi, dan Barda Nawawi A, *Teori-teori Dan Kebijakan Pidana*, Alumni, Bandung, 1984, hlm. 2-3

approach that focuses on theoretical speculative steps and qualitative normative analysis. In assessing corporate crime issues, the research was conducted using an analysis of secondary legal materials that collected legislation, doctrine, and jurisprudence.

3. Results and Discussion

Corporate Criminal Responsibility in Indonesia, the United States, and the United Kingdom

a. Corporate Criminal Responsibility in Indonesia

Theoretical obstacles exist in criminal law for recognizing corporations (*rechtspersonen*). There are two reasons why this condition occurs. First, the fiction theory of Von Savigny, which holds that legal personality as units of human beings is the outcome of a hallucination, has had a significant impact on the field. Only people have distinct personalities. While states, businesses, and government agencies are not afforded the same protections as people, they are nonetheless given rights as if they were human beings.¹⁰

Many countries' criminal law systems still adhere to *de lingere non potest*, which claims legal entities can't commit crimes. This idea dates to the 19th century, when criminal law was founded, and is tied to "individual responsibility" in the Criminal Code. Article 59 of the Criminal Code, which states that the subject of a crime, a firm, is unknown and that a person is generally the subject, has its beginnings in this notion and is currently enforced in Indonesia.¹¹

The evolution of criminal legislation regarding corporations in Indonesia seems to mirror that of the Netherlands. Before the provision was amended in W. v. S. The Netherlands, Article 51 contained the same formula as the provision in Article 59 KHUP. For this reason, the institution adheres to the concept of *delinquere non potest*, which states that the nature of corporate sins cannot extend beyond those committed by individuals. The notion of corporate responsibility is not yet acknowledged in Indonesia's Criminal Code. The individual who commits the elements of the crime and fulfills all of the elements and circumstances of the crime formulation is the perpetrator. The phrasing of the article, which consistently employs "anyone," "a person," or "a person who commits a crime," demonstrates the natural person as a subject of criminal law. The Indonesian Criminal Code does not treat corporations as persons, but other laws do.¹² Corporations have become criminals under various laws and regulations, including:¹³

¹⁰ Mahrus Ali, *Asas-Asas Hukum Pidana Korporasi*, Rajawali Pers, Jakarta, 2013, hlm. 64-65.

¹¹ Mahmud Mulyadi dan Feri Antoni Surbakti, *Politik Hukum Pidana terhadap Kejahatan Korporasi*, PT. Softmedia, Medan, 2010, hlm. 14

¹² Muladi dan Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi*, Kencana, Jakarta, 2010, hlm. 23.

¹³ Mahrus Ali, *Op.cit*, hlm. 281-282

- 1) Law No. 32 of the Republic of Indonesia, 2009, on Environmental Protection and Management;
- 2) Law No. 31 of 1999 on Eradication of Corruption Crimes, as amended by Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on Eradication of Corruption Crimes.
- 3) Law No. 8 of 1999 of the Republik Indonesia on Consumer Protection; and
- 4) Criminal Procedures Draft (RKUHP).

b. Corporate Criminal Responsibility in the United States

American Law Institute's Model Penal Code, Official Draft with Explanatory Notes governs US corporate criminal liability (1985). Since New York Central and H.R.R. v. United States in 1909, corporations have been criminalized in the U.S. The court immediately found the legal fiction that explained the crime. New York's respondeat superior/vicarious theory says that a firm may be held liable for an employee's illegal activities if they occur within the scope of their job and for the company's benefit.¹⁴

This view continues to be used today. After the emergence of this decision and pressure from prosecutors in the United States, all provisions in criminal law that apply to everyone also apply to corporations. To this day, the scope of corporate responsibility in the United States is considerable. Corporations can be punished for common criminal offenses, including fraud, money laundering, and other acts that could be considered "white-collar crimes."¹⁵

Federal and state legislation control US criminology. If the individual's criminal behaviour was within the scope of their employment and meant to benefit the company, the corporation may be held accountable.¹⁶ Monetary fines and other penalties (such as restitution and remediation), non-monetary penalties, judge-decided penalties, civil and administrative sanctions, and in rare circumstances reputational penalties may be imposed on businesses in the US if proved guilty of a crime.¹⁷

c. Corporate Criminal Responsibility in the UK

In England, it has been established since 1944 that a business may be held legally liable for each crime, either as the creator or participant, utilizing the identification concept. Unlike Indonesia, corporate accountability is not confined

¹⁴ Edward B. Diskant, *Comparative Corporate Criminal Liability: Exploring the Uniquely American Doctrine Through Comparative Criminal Procedure*, *The Yale Law Journal*, Vol. 118:126, 2008, hlm.138

¹⁵ *Ibid.*, hlm.139

¹⁶ Allens Arthur Robinson, 2008, *Corporate Culture "As A Basis For The Criminal Liability of Corporations"* <http://198.170.85.29/Allens-Arthur-Robinson-CorporateCulture-2008.pdf>, [diakses tanggal 03/12/21, pukul 10.29]. paper-for-Ruggie-Feb-

¹⁷ Jennifer Arlen, *Corporate Criminal Liability : Theory and Evidence*, Working Papers, New York University Law and Economic, 2011, hlm.5

to particular crimes, however not all may be committed by firms. The UK's corporate criminal liability regime is widely imitated. *Tesco Supermarket Ltd. v. Nattrass*, [1972] AC 153, is a well-known UK case on corporation criminal responsibility. Corporations may be legally responsible under English law, whether they are perpetrators or participants.¹⁸

In light of these provisions, it is clear that a corporation is liable for any illegal acts it commits, permits, or causes through the negligence of its directors, managers, secretaries, or other officials at any level within the corporation.¹⁹

While this generally extends the responsibilities imposed by criminal law on the offender or other parties involved, it can actually extend beyond the perpetrators of the crime and may also make the task of prosecuting criminal cases easier where the responsibility of proof is based on principles that are commonly used and would be difficult to apply. 23 Approving and condoning an offense generally overlap with assisting in the commission of an offense and advocating it, but these may all be easier to prove using the Betting, Gaming, and Lotteries Act of 1963, Section 53, and the Trades Description Act of 1968.²⁰

4. Conclusion

Based on the foregoing, corporations' legal liability for crime in Indonesia, the US, and the UK Indonesian corporations may be held liable for crimes if they violate the Corruption Law or the Environmental Law. According to Supreme Court Regulation 13 of 2016, corporations may receive primary and/or additional sanctions. Most companies are penalized. The company penalties are consistent with other laws and norms.

In the U.S., fines and other monetary penalties (such as restitution and remediation), non-monetary penalties, penalties that rely on the judge's judgment, civil and administrative sanctions, and in rare situations reputational penalties may be imposed on organizations found guilty of a crime. In England, criminal law holds corporations legally accountable regardless of their role as offenders or participants. With these provisions, it can be concluded that if a corporation has committed a legal violation, it has been proven to have been committed by an association or deliberately allowed by the company, or it can be linked to the negligence of directors, managers, secretaries, or other officials at the same level, the corporation must be declared guilty of committing an offense.

¹⁸ Barda Nawawi Arief, *Perbandingan Hukum Pidana*, PT RajaGrafindo, Jakarta, 2012, hlm. 36.

¹⁹ *Ibid*, hlm. 38

²⁰ Kristian, *Sistem Pertanggungjawaban Pidana Korporasi (Tujuan Teoritis dan Perbandingan Hukum Di Berbagai Negara)*, PT. Refika Aditama, Bandung, 2016, hlm. 275.

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