

Economic and Corporate Criminal Responsibility Policy in Renewing National Criminal Law

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Abstract

There needs to be a realignment of arrangements regarding corporate criminal liability which concerns regulation of when a corporation is said to have committed a crime, who within the corporation can be held accountable and the provision of appropriate sanctions for corporations that commit crimes, so that there is alignment of rules that have an impact on achieving legal objectives. Based on this background, this study uses two problem formulations, the first is how to regulate corporate criminal responsibility in economic crimes and how to reform the law on corporate criminal responsibility in economic crimes in Indonesia? This research method uses a normative method that departs from differences in criminal liability arrangements for corporations that commit criminal acts under Indonesian law which will result in weak law enforcement against corporate crimes. The results of this study are first, Corporate Responsibility has been regulated in several laws and regulations in Indonesia, but each law and regulation that regulates corporate crime in terms of scope, definition and subject matter varies, therefore there is a need codification and harmonization. provisions regarding corporate crime in order to create legal certainty.

I. Introduction

In the current era of globalization, commodity exchange to meet human needs has been framed in the form of economic activity. Economic activities include all human activities to fulfill life's needs, which are generally grouped into three main activities, namely, production, distribution and consumption activities. The increasingly rapid development of the economy and business world, coupled with advances in science and technology, has triggered the emergence of irregularities in economic activities which in fact present various

forms of crime which constitute violations of criminal law.¹Facing an era of openness in the economic sector which is influenced by market freedom, has triggered the emergence of various forms of crime in the economic sector, so that legal protection for the economy in Indonesia is needed. When there is turmoil in the economy, people often think that this is simply the government's fault in taking policies in the economic sector.²

Economic crime is basically an activity carried out by parties who are professionally part of economic activities (production, distribution, consumption, etc.), but carried out in ways that are contrary to statutory regulations. Economic activities require the existence of various professions, such as entrepreneurs, workers/employees, consultants, distributors and many other professions related to economic activities. The implementation of various professions in economic activities should ideally be equipped with a professional code of ethics that can glorify the profession. ³ Corporations as an entity or legal subject whose existence makes a major contribution in increasing economic growth and national development, but in reality corporations sometimes also do various criminal acts (corporate crimes) which have a detrimental impact on the state and society.

In facing competition, corporations are faced with the discovery of new technology, marketing techniques, and efforts to expand or dominate the market. This situation can result in corporate actions to spy on rivals, imitate, counterfeit, steal, bribe, and conspire regarding prices or marketing areas. In short, because of the drive for competition, corporations can and often do commit criminal acts in order to achieve their goals.³

The issue of corporate liability is not simple, considering that corporations are legal entities. Apart from that, corporate responsibility regulations are still not explicit. This problem stems from the principle of no crime without error. Mistakes are *mens rea*⁶ or an attitude of the heart that naturally only exists in natural people. *Mens rea* is an element that is difficult to prove for a corporation that is considered to have committed a criminal act considering that corporations can only take action through the organs of the board of directors. Corporations can be considered to have committed criminal acts based on actions carried out by people who control the management of the corporation.

Differences in regulations regarding criminal liability for corporations that commit criminal acts in Indonesian law will result in weak law enforcement against corporate crimes. The participation of the Government, DPR and society is very necessary to fix this problem because the times are changing, accompanied by the development of forms of crime. The lack of regulations in some laws regarding the provisions on when a corporation is said to have

¹Iza Fadri, Criminal Policy for Overcoming Economic Crime in Indonesia. Law Journal No. 3 Vol. 17 July 2010. pg 4.

²Loebby Loqman. Capita Selecta Crime in the Economic Sector. Jakarta: Datacom, 2001, p. 1.

³Budi Suhariyanto, Corporate Criminal Responsibility Based on the Corporate Culture Model and Its Implications for Community Welfare, RechtsVinding Journal, Volume 6, Number 3, December 2017, p. 1

committed a criminal act, who in the corporation is responsible and the appropriate sanctions for corporations that commit crimes, will definitely have an impact on legal uncertainty in crime prevention efforts. Based on this, it is necessary to reorganize the regulations regarding corporate criminal responsibility which involves regulations regarding when a corporation is said to have committed a criminal act, who in the corporation can be held accountable and the appropriate sanctions for corporations that commit crimes, so that there is harmony in the rules that have an impact on achieving legal objectives.

Based on this background, this research uses two problem formulations, the first is how to regulate corporate criminal liability in economic crimes and how to reform corporate criminal liability law in economic crimes in Indonesia

2. Research Method

The Normative legal research, starting with differences in regulations regarding criminal liability for corporations that commit criminal acts in Indonesian law, will result in weak law enforcement against corporate crimes. The problem approach used by this author is a legislative and regulatory approach which is related to legal issues regarding the harmonization of statutory regulations. The primary legal material used in this writing is Law No. 20 of 2001 concerning the Eradication of Corruption Crimes.

3. Results and Discussion

1. Regulation of Corporate Criminal Liability in Criminal Offenses

Etymologically, the word "corporation" (Dutch: *corporatie*, English: *corporation*, German: *corporation*) comes from the word "corporatio" in Latin. As with other words that end in "tio", *corporatio* as a noun comes from the verb *corporate*. *Corporate* itself comes from the word *corpus* which means to give body or make a body. *Corporatio* is defined as the result of bodily work, in other words a body that is made into a person, a body that is obtained by human actions as opposed to the human body, which occurs according to nature.⁴ According to the legal dictionary as quoted by NHT Siahaan, a corporation is an association or organization, which by law is treated like a human being (*persona*), namely as a bearer of rights and obligations; has the right to sue or be sued before a court.⁵

According to Subekti and Tjitrosudiro, what is meant by corporation (*corporatie*) is a company which is a legal entity. And according to Wirjono Prodjodikoro, a corporation is an association of people. In a corporation, usually those who have an interest are human beings who are members of the corporation, whose members also have power in the corporate regulations in the form of member meetings as the highest means of power in the corporate

⁴Muladi and Dwidja Priyatno, *Corporate Criminal Responsibility*, Kencana, Jakarta, 2010, p. 23.

⁵NHT Siahaan, *Environmental Law*, Revised Edition Second Printing, Pancuran Alam, Jakarta, 2008, p. 377.

regulations.⁶Regarding the responsibility capacity of corporations as perpetrators of criminal acts, according to Rolling, as quoted by Muladi et al, that legal entities can be treated as perpetrators of criminal acts, if prohibited acts for which responsibility is borne by the legal entity (corporation) are carried out in the context of their duties and achieving goals. the legal entity. According to him, this criterion is based on functional offenses. In connection with this, what is meant by functional offenses are offenses originating from the socio-economic scope or atmosphere where conditions are stated on how certain social or economic activities must be carried out and are directed or aimed at certain groups of functionaries.⁷

Recognition of corporations (recht person) as legal subjects in criminal law is full of theoretical obstacles. There are 2 (two) reasons why this condition occurs. Firstly, the influence of Von Savigny's fiction theory is so strong, namely that legal personality as human units is the result of a fantasy. Personality actually only exists in humans. States, corporations, or institutions cannot be the subject of rights and individuals, but are treated as if they were human bodies.⁸

Second, the principle of universality of delinquere non potest is still dominant, which means that legal entities cannot commit criminal acts in the criminal law system in many countries. This principle is the result of thinking from the 19th century, where crimes according to criminal law were always implied and were actually only crimes from humans, so it is closely related to the individualization of the Criminal Code. In the context of the Criminal Code which is currently still in force in Indonesia, this principle has apparently greatly influenced the emergence of Article 59 of the Criminal Code which implies that the subject of criminal acts, namely corporations, is not yet known and those who are recognized as subjects in criminal acts are generally people.⁹

The stages of development of corporations as subjects of criminal law in Indonesia apparently follow developments that occurred in the Netherlands. In the first stage in the Dutch WvS, Article 51, before changes to the provisions were made, had the same formulation as the provisions of Article 59 of the KHUP. This is influenced by the principle of non-potest delinquency, namely that the nature of offenses committed by corporations is limited to individuals.

The Criminal Code used by Indonesia to date does not yet recognize the concept of corporate responsibility. The perpetrator, first of all, is the person who carries out the parts of the offense, who fulfills all the conditions formulated in the offense formula. The natural person as a subject of criminal law can also be seen from the formulation of the article which always uses the editorial "whoever", "a person", or "person who commits a crime". Although, in the

⁶Muladi and Dwidja Priyatno, Op.Cit., p. 14-15

⁷Mahmud Mulyadi and Feri Antoni Surbakti, Politics of Criminal Law against Corporate Crime, PT. Softmedia, Medan, 2010, p. 46.

⁸Mahrus Ali, Principles of Corporate Criminal Law, Rajawali Pers, Jakarta, 2013, p. 64-65.

⁹ Mahmud Mulyadi and Feri Antoni Surbakti, Op.Cit., p. 14.

Indonesian Criminal Code, corporations are not a subject of criminal law, in several laws, corporations have been made the subject of criminal law.

In its development, corporations have become the subject of criminal law in various laws and regulations, including:

- a) Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management;
- b) Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes;
- c) Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection; And
- d) Draft Criminal Code (RKUHP).

Based on the explanation above in a legalistic manner¹⁰ Corporate accountability has been regulated in several laws in Indonesia, however, each legal regulation that regulates corporate crime in terms of scope, definition and subject is different, therefore there is a need for codification and harmonization of provisions regarding corporate crime in order to create legal certainty. .

2. Reform of the Corporate Criminal Liability Law in Economic Crimes in Indonesia

The current Criminal Code does not regulate the concepts adopted relating to the meaning of criminal acts or criminal responsibility. This situation often gives rise to debate, and also differences in the enforcement of criminal law in Indonesia. Although basically most Dutch criminal law teachers are influenced by a monistic view, which basically sees the issue of "accountability" as part of a "criminal act". This means that a "criminal act" automatically includes the ability to be responsible. For a long time in Indonesia there has been a development of dualistic thinking, one of which was specifically influenced by the thought of Moeljatno,¹¹ which basically assumes that the concept that separates "criminal acts" from the issue of "criminal responsibility" is considered more in line with the Indonesian way of thinking. This concept seems to have been used as one of the bases for updating the Criminal Code, as seen in chapter II (book I), namely "Criminal Offenses and Criminal Liability".

In relation to the definition of "Criminal Act", the Draft Criminal Code has formulated it as "an act of doing or not doing something which is declared

¹⁰The legalist school believes that all social problems will be resolved immediately if the law regulates them. The law is considered a panacea, an effective medicine. The law is everything. In the Netherlands, legalism was also adopted by legal science and legislators. It was also adopted by legal science and legislators in the 19th century when criminal law was codified. See, Mukhidin, Progressive Law as a Legal Solution for the Welfare of the People, Journal of Legal Reform Volume I No. 3 September – December 2014, p. 5

¹¹Rully Trie Prasetyo, et al, Corporate Crime in the Policy Perspective of Criminal Law Formulation Khaira Ummah Law Journal, Vol. 12.No. December 4, 2017, p. 6

by statutory regulations to be a prohibited act and punishable by crime". This formulation does not seem to include the definition of criminal acts in material offenses, such as in the crime of murder. This weakness certainly has no relevance in relation to criminal acts of corruption which so far have not been formulated as material offenses. The Draft Criminal Code considers every "criminal act" to be unlawful, unless it can be proven that there is a justification, which includes: the act of carrying out the law, the existence of an official order, an emergency, forced defense, and the act is declared not to be in conflict with the existing law. living in society (adhering to the materially unlawful teachings formulated in the Draft Criminal Code). This formulation ensures greater ease in the prosecution process, because the Public Prosecutor is not required to prove that the elements of unlawfulness are met.¹² Even though this is actually a common practice in criminal law enforcement in Indonesia, the current Criminal Code has never actually regulated it explicitly.

The Criminal Code regulates the possibility of qualifying the act of "malicious conspiracy" as a criminal offense, in certain criminal acts, which are expressly stated in the law. In the Draft Criminal Code, criminal conspiracy is qualified as a criminal offense in the following crimes: Treason, Treason against the State, Sabotage, Terrorism, Treason against Friendly Countries, Causing Fires, Explosions and Floods, Endangering People and Public Security, Psychotropics, Money Laundering. The Draft Criminal Code does not qualify "malicious conspiracy" to commit a criminal act of corruption as an act that can be punished.

In the concept of the Criminal Code, a definition of "beginning of implementation" has also been formulated, which is one of the conditions for qualifying an act as an "attempted criminal act". The formulation of this definition certainly has a positive impact, in particular it can facilitate and provide legal certainty in determining an act as an "attempted criminal act".¹³ Indirectly, this formulation of course also makes it easier to distinguish between an act, whether it is an "attempted criminal act" or merely a preparation for a criminal act.

The topic of corporate crime is indeed important to discuss, especially in relation to the reform of the Criminal Code, the final draft of which has now arrived at the President's office. It cannot be denied that the role of corporations is currently very important. The role of corporations dominates everyday life, especially with increasing privatization. It is no longer the state that provides needs, but corporations. Corporations can increase the country's wealth and workforce, but the economic and political structural revolution has grown the power of large corporations so that the state is too dependent on corporations so that the state can be dictated according to its interests. Therefore, corporations must have responsibility. Various efforts to demand corporate responsibility

¹²Barda Nawari Arief, *Criminal Law Reform in the Perspective of Comparative Studies*, Bandung: PT Citra Aditya Bakti, 2011, p. 25

¹³Schaffmeister, N. Keijzer, Sitorius, *Criminal Law*, Bandung: PT Citra Aditya Bakti, 2007, p. 210

continue to be carried out, but are full of obstacles, some of which are not touched by the law. So that weaknesses in legal instruments do not happen again, it is necessary to create corporate responsibility regulations that are comprehensive and cover all crimes.¹⁴

The Draft Criminal Code also defines corporate criminal acts,¹⁵ as formulated in the Draft Criminal Code, "Criminal acts are committed by corporations if they are committed by people who have functional positions, within the corporate organizational structure who act for and on behalf of the corporation, or in the interests of the corporation, based on employment relationships or based on other relationships, within the scope of corporate business, either individually or jointly." This formulation is different from the formulation as regulated in article 20 of the Corruption Eradication Law, which has been formulated more broadly, because it can be carried out by anyone either based on work relationships or based on other relationships. Meanwhile, in the Draft Criminal Code, it is limited only if the act is carried out by people in certain functional positions within the corporation. This difference can lead to legal debate, especially regarding whether in this case, the Corruption Law can still be excluded as *lex specialist*. In the sense that in enforcing criminal acts of corruption against corporations, the criteria for "corporate acts" used still refer to the Corruption Law and not to book I of the Criminal Code (if the bill later becomes law). In fact, Book I itself applies to criminal provisions outside the Criminal Code.

4. Conclusion

Corporate accountability has been regulated in several laws in Indonesia, however, each legal regulation that regulates corporate crime in terms of scope, definition and subject is different, therefore there is a need for codification and harmonization of provisions regarding corporate crime in order to create legal certainty. Corporations can increase the country's wealth and workforce, but the economic and political structural revolution has grown the power of large corporations so that the state is too dependent on corporations so that the state can be dictated according to its interests. Therefore, corporations must have responsibility. Various efforts to demand corporate responsibility continue to be carried out, but are full of obstacles, some of which are not touched by the law.

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