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Criminal System Against Corporation in Corporate Crime Based on Justice

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Abstract:

Provisions regarding the punishment of corporations are not regulated in the Criminal Code, but are contained in several special laws and regulations and the National Criminal Code, namely Law Number 1 of 2023. The corporation itself has a very important role in today's modern era, because the importance of corporations makes the administrators end up using all means to get profits and commit criminal acts. As a result of criminal acts committed by the administrators resulting in losses to the community. Corporations in special laws and the national Criminal Code have designated corporations as criminal subjects. The problem in this article is how the system of punishment against corporations in corporate crime is based on justice and how the system of punishment against corporations in various countries. This research is a normative research by approaching laws and regulations, analysis and legal comparison. From the discussion, it can be concluded that corporations can be subject to criminal law in several laws and regulations outside the Criminal Code which are included in special crimes and in the national Criminal Code. The corporate legal responsibility system is divided into: management as maker and as person in charge, corporation as maker and responsible manager, corporation as maker and as person in charge and manager and corporation as non-criminal offender and Both are responsible.

Keywords: *Punishment; Corporation Crime; Justice; Criminal Code*

I. Introduction

Corporate development is in line with trade activities and business activities. If trade or business activities have their complexity, then corporations also have complex forms of crime. Since the industrial revolution, that complexity has become more

apparent. Crime also generates new models, dangers and varied consequences. Especially now that it has entered the era of digitalization. (Rosania Paradias 2022)

When humans commit an offense through an organization, here there has been a criminal act by the corporation (*Corporation Crime*). This can be seen when

the management uses the corporation, be it in terms of infrastructure or assets, as a means of committing criminal acts, so as to provide benefits to the corporation or its management. And in this case the corporation is seen in the approach of functional actors, namely the existence of corporations other than humans as individuals. (National 2023)

The emergence of corporations as perpetrators of criminal acts has also changed the penal system that has been people-oriented. The inclusion of corporations in the joints of human life brings several consequences in various areas of life. As an entity that contributes greatly to the improvement of the economy and national and global development. Sometimes corporations commit actions that harm individuals, society and the state. This corresponds to the fact that corporations have long committed various kinds of crimes.

Before the industrial revolution corporations were not criminalized, but now corporations can be criminalized. Broadly speaking, corporations become the sunjek of criminal law starting from corporations that are limited to individuals through those who take care of the corporation as people who make mistakes. Furthermore, corporations are equated with associations or business entities and those who make mistakes through the management, to those who govern or who are negligent in leading. Now corporations can be criminally awarded. (Djaelani Prasetya 2023)

The reform of the material criminal law that has been passed in Law Number 1 of 2023 concerning the Criminal Code (KUHP) has an impact on corporate crime in Indonesia. According to Barda Nawawi, corporate crime is all speech, deeds and behavior economically, politically and socio-psychologically very detrimental to society, violating moral norms and attacking public safety that have been stated in the criminal law. Therefore, a corporation can be said to have committed a crime if it has harmed society at large both in terms of politics, economics and social. (Melissa, Utami, and Primary 2024)

Regarding the provisions of punishment in positive criminal law, between one law and another there is no uniformity of pattern. Or in other words, each law has a different policy. There are complete laws governing criminal matters for corporations. But on the other hand there are also very simple laws in the provisions of punishment against corporations. It can be concluded that there is no uniformity in the pattern of punishment in the law, even the provisions for punishment for corporations in the law tend to be haphazard. (National 2023)

Although corporate crime from year to year shows an increase, it is inversely proportional to the law enforcement efforts made. There are not many criminal cases involving or committed by corporations, corporations are filed as court defendants. This is due to various factors, including

inadequate legal understanding from law enforcement officials, the complexity of investigations and the difficulty of proof, the lack of victim participation because victims do not feel it directly, the assumption that criminal acts are *mala prohibita*, perpetrators of corporate crime have power and influence both economically and a relatively low level of professionalism of law enforcement. (Pujjiono and Dwi Sutanti 2019)

Problem Statement

1. What is the corporate penal system in Law Number 1 of 2023 concerning the Criminal Code?
2. How do corporate penal systems compare in different countries?

II. Legal Materials and Methods

Research criminal system against corporation crime based on justice is a type of normative legal research. This approach method uses a *statute approach*, and a comparative approach. The legal materials obtained by the author will be analyzed using library studies (*Library Research*) by studying and analyzing legal materials qualitatively related to the problems to be discussed.

The collection of legal materials is carried out with literature studies, namely by reading and studying both primary legal materials and secondary legal materials. Meanwhile, the analysis of legal materials is carried out through a deductive reasoning approach.

III. Result and Discussion

Criminal System Against Corporations in Justice Based Corporate Crime

The system is a fabric of several elements that become one function. While punishment is defined as convicting someone or imposing a crime on someone. According to Barda Nawawi, basically, punishment can be viewed from two sides, namely in a broad sense and in a narrow sense. In a narrow sense, the penal system is only viewed from the point of material criminal law norms from the provisions of the Criminal Code as the parent of criminal law and special criminal laws. While in a broad sense, the penal system seen from the point of view of the entire system includes formal criminal law. (National 2023)

Epitemologically, corporation is interpreted as an adjective, namely *Corporate* or *Corporation* which means the attachment of the word company related to legal entities. Soetan K mentioned that *Corporate* as a result of bodining, where the body as a person, or which comes from the actions of man naturally (as opposed to the human body). The meaning of a legal entity makes a corporation is said to be the reality of a set of human beings who are given rights as a unit of law, given personal law for a specific purpose. (Djaelani Prasetya 2023)

What is meant by a corporation is a series or collection of people who have different legal rights and obligations. Corporate crime is a corporate act committed by a person in the corporation as long as it is carried out

acting on behalf of and for the benefit of the corporation, where the act is an unlawful act and can be held criminally liable. (Nasichin and Nofita 2021)

In criminal law, it is not enough for a person to be proven to have committed an act if a criminal act is committed by, for or on behalf of a business entity, criminal prosecution and criminal sanctions are imposed on the business entity and/or the person who gave the order to commit the crime or the person who acts as the leader of the activity in the criminal act. (Zul and Heni 2017)

According to Steven Box, there are types and characteristics of criminal acts committed by corporasus, namely:

1. *Crimes for corporation*, namely crimes or violations of law committed by corporations in achieving certain businesses and goals in order to obtain profits.
2. *Criminal corporation*, which is a corporation that aims solely to commit crimes or in this case the corporation is only a place of a criminal organization.
3. *Crimes against corporation*, namely crimes against the corporation such as theft or embezzlement of corporate property, in the case of the corporate IMI as a victim. (Nasichin and Nofita 2021)

The formulation of corporate criminal liability is not enough just to place

corporations as subjects of criminal acts, but also to determine the rules about the criminal system and its punishment, so efforts are needed to reformulate criminal responsibility for victims of crime and the corporation itself including: (Muhammadiyah et al. 2020)

1. Provisions regarding when a criminal act can be said to be a criminal act committed by a corporation.
2. Who can be prosecuted and convicted for crimes committed by corporations.
3. Types of sanctions appropriate to the subject of corporate crime oriented towards compensation to victims

Corporation is a legal entity that has rights similar to individuals, including the ability to perform legal actions like humans, as well as owning assets that can be the subject of a lawsuit or file a lawsuit before a court. Crimes committed individually or jointly by individuals or groups of people in the framework of employment or other relationships, acting on behalf of or for the benefit of the company, both inside and outside the corporate environment, are referred to as corporate crimes. (Judgment et al. 2024)

According to Sally A. Simpson, there are 3 important points in John Braithwaite's opinion, namely: (Sony valentino tulung 2024)

1. Corporate crime is not only a crime of criminal law, but also a violation of civil and administrative law.

2. Both corporations (as "individual legal subjects") and their representatives (illegal actors) are included as perpetrators of crimes, which, in judicial practice, depend on, among other things, the crimes committed, the rules, and the quality of evidence and prosecution.³
3. The motivation for crimes committed by corporations is not aimed at personal interests (individuals), but rather at meeting the needs and achieving profits of the organization.

In criminal law outside the Criminal Code, the approach used is Retributive Justice, where fines are considered as principal crimes. The formulation of the threat of Criminal Fines in the Law outside the Criminal Code which states straightforwardly the maximum nominal amount that must be paid by the cooperative, which provides two fundamental weaknesses, namely as follows: *First* formulation of criminal threats of fines generalizing all corporate crimes. What is clear is that every corporate crime has different characteristics ranging from the type of crime, the level and the amount of profit and cost involved in it. *Second* The formulation of the threat of fines that are explicitly in nominal terms, actually provides opportunities for corporations to make various prohibited acts. This is done because the corporation can calculate the amount of

profit if committing a crime and calculate losses due to these actions. (Corporations, Efforts, and National 2023)

But until now, the concept of criminal liability by corporations as a person (corporate criminal liability) is something that still invites debate. Many parties do not support the view that a corporation that is pseudo-existent can commit a crime and has criminal intent that gives birth to criminal liability. In addition, it is impossible to present the corporation with actual physicality in the courtroom and sit in the defendant's seat to undergo the trial process. In legal considerations Supreme Court Decision No. 1144K/Pid/2006 dated September 13, 2007 stated: "... As a civil law entity, each legal entity has its own assets that are separate from shareholders, as a civil law entity, the actions of the defendant as a Board of Directors are indeed accountable to (in) the GMS. Thus, any shareholder who feels aggrieved can hold the Board of Directors accountable through the GMS. Is it therefore, the entire liability of the Board of Directors is solely civil in nature? absolutely not. If it is proven that the Board of Directors harms a legal entity due to abuse of authority, or other acts of a criminal nature, the Board of Directors can be held liable under criminal law." (Parameshwara and Riza 2023)

Corporate Penal System in Corporate Crime in Various Countries

Broadly speaking, the New Zealand legal system is an adoption of the legal system that applies in England (common law system). Thus, the main source of law refers to unwritten traditions or customs and through previous court decisions of permanent legal force (the doctrine of *stare decisis*). New Zealand generally adopted and implemented provisions on rights and obligations under international law in terms of law enforcement by ratifying UNCLOS 1982 in 1996. However, only New Zealand residents or citizens may be prosecuted for offences offences outside New Zealand's jurisdiction in accordance with the provisions of international law.(andi Yudha Prayoga, Riski septiawan, and Ni ketut ayu intann 2024)

Corporate criminal liability imposed on the management or to the corporation in connection with the acts or omissions referred to, is limited to:

- a. Potential or probable benefits/benefits obtained, or losses suffered by the person or corporation from such acts or omissions, if the breach remains undetected; and
- b. With the intent or purpose or motive of the person concerned.
- c. The relationship between the person or corporation and the person concerned between the person or

corporation and any person likely to benefit from the alleged infringement

- d. In the case of a corporation, is there a person responsible or related to the management of the corporation who appears to benefit or benefit from the acts or omissions, or is likely to benefit or benefit if the alleged infringement remains undetected
- e. Whether the person or corporation has taken all reasonable steps and performed due diligence to control the activities of the person concerned, to ensure that acts or omissions do not occur.

Criminal liability can be imposed on directors or managers in a corporation. Classification of directors or managers who can be criminally charged if proven to have committed violations, namely: (andi Yudha Prayoga, Riski septiawan, and Ni ketut ayu intann 2024)

- a. Acts or omissions that constitute violations occur with the authority, permission, or consent of the director or person.
 - b. The Director or such person knew or should have known that such breach would or was being committed and failed to take all reasonable steps to prevent or stop it.
1. English

Britain is the country in Europe that has given corporations the ability to be

responsible for criminal acts since 1944. Three cases marked the condition: DPP v Kent and Sussex Contractors, R V ICR Haulage and Moore v Bresler. Corporations may be liable for money laundering, tax evasion, bribery and corruption, fraud, conspiracy, export control violations, environmental violations, health and safety violations, and market abuse. Each of these crimes has regulations governing corporate criminal liability and can expand jurisdiction. For example, the United Kingdom Bribery Act (UKBA) allows for the enactment of extraterritorial jurisdiction. The United Kingdom Bribery Act (UKBA) states individuals and companies in close contact with the United Kingdom can be prosecuted for bribery offences committed overseas. In this state, close relationships have Three indicators are a British citizen, an individual who normally resides in the United Kingdom or they are an entity established in the United Kingdom. An individual or corporation only

IV. Conclusion and Suggestion

In criminal laws outside the Criminal Code, the penal system that tends to be used against corporations is the criminal fine as the principal crime. The formulation of the threat of criminal fines in the Law outside the Criminal Code which states straightforwardly the maximum nominal amount to be paid by the cooperative, which provides two fundamental weaknesses,

needs to meet one of the indicators in order to be held liable for corporate crime under English law.(Dwiyantama 2023)

Corporate criminal liability takes the form of payment of fines, compensation orders (i.e., orders for companies to compensate victims), bans from public procurement proceedings and/or forfeiture orders (i.e., orders for proceeds of crime to be confiscated). The seizures were made under the Proceeds of Crime Act 2002 (POCA). This liability is given after the corporation is found guilty. This situation occurs if the corporation meets the elements of actus reus and mens rea in the case. Corporate criminal liability is given based on two theories, namely identification theory and vicarious ability.

namely as follows: *First*, the formulation of the threat of criminal fines that generalizes all corporate crimes. What is clear is that every corporate crime has different characteristics ranging from the type of crime, the level and the amount of profit and cost involved in it. *Second*, the formulation of the threat of fines that are explicitly in nominal terms, actually provides opportunities for corporations to make various prohibited acts. This is done

because the corporation can calculate the amount of profit if committing a crime and calculate losses due to these actions.

In law enforcement, it is expected that judges can give rulings that not only punish their administrators but can also impose criminal liability on corporations.

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