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JURIDICAL REVIEW OF THE CRIMINAL SYSTEM OF THE CRIMINAL ACTS OF CORRUPTION CONDUCTED BY THE CORPORATE

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Abstract: *Penalties imposed on corporations are only in the form of fines which have less deterrent effect than capital punishment or imprisonment and difficulty proving the corporation's "guilt" as part of an element against the law rather than proving the guilt of individuals which results in the acquittal of the defendant. Although at first the criminal acts of corruption that were examined by the Corruption Eradication Commission (KPK) and decided by the Corruption Court (TIPIKOR), still revolved around criminal acts committed by individuals such as civil servants, public officials, members of the DPR from political parties, directors and company employees. In other words, it has not reached other individuals outside of individuals known as legal entities or corporations. In the case of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption (UUPTPK) has designated corporations as the subject of criminal acts of corruption, however, efforts are still made for legal reform of several corruption crimes. There are obstacles in the form of technical criminal procedural law in terms of processing corporations as perpetrators of criminal acts that law enforcers deem unclear. Another obstacle is that law enforcers are not fully able to prove the actions and mistakes of the corporation for the actions of its management, the proof is quite complicated and requires expertise in functional relationships between them, and the close influence of adhering to this principle is delinquere no potest (article 59 of the Criminal Code) which stipulates that only humans/people can respond and sentenced to a crime.*

Key Words: *Criminal System, Corruption Crime, Corporations.*

1. INTRODUCTION :

Corruption crimes committed by corporations are a rapidly growing phenomenon at present, these crimes are committed in various modes to violate applicable legal provisions with the aim of benefiting the corporation. corporations are regulated as legal subjects in criminal acts of corruption in Article 1 number 1 and Article 1 point 3 of the Corruption Eradication Law, this has provided an opportunity for law enforcers to impose criminal responsibility on corporations in corruption cases. Although there have been many debates regarding the placement of corporations as subjects of criminal acts, the Corruption Eradication Law has placed corporations as legal subjects along with humans. This is done as a reaction to the collusion between political power and economic power, which in fact is increasingly detrimental to the country's economy (Ali, 2008). Penalties imposed on corporations are only in the form of fines which have less deterrent effect than capital punishment or imprisonment and difficulty proving the corporation's "guilt" as part of an element against the law rather than proving the guilt of individuals which results in the acquittal of the defendant.

Several cases of corruption involving corporations, including the bribery case of the 2011 Palembang Sea Games Athlete House, which involved officials of the Ministry of Youth and Sports of the Republic of Indonesia, members of the People's Representative Council, and the private sector PT. Duta Graha Indah, and the Hambalang case involving PT. Adhi Karya and PT. Duta Sari Citralaras. From these cases, criminal liability has only been borne by the corporate management. However, there are several cases where corporations have been prosecuted and convicted, for example in the case of PT. Giri Jaladhi Wana, which is the first corporation to be charged with the Corruption Eradication Law. PT. Giri Jaladhi Wana was named a suspect in a corruption case against the abuse of the antasari central market in Banjarmasin in 2010.

Although at first the criminal acts of corruption that were examined by the Corruption Eradication Commission (KPK) and decided by the Corruption Court (TIPIKOR), still revolved around criminal acts committed by individuals such as civil servants, public officials, members of the DPR from political parties, directors and company employees. In other words, it has not reached other individuals outside of individuals who are known as legal entities or corporations. In the case of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crime (UUPTPK) has designated corporations as the subject of criminal acts of corruption, but efforts are still made to make legal reforms so that from several corruption crimes committed by corporations only in the accountability phase of the company management, it has not yet caught up with the corporation. Therefore, this paper

wants to review corporations as legal subjects that can be held accountable. From the background description that has been stated above, the author raises the issue of whether a corporation is the subject of a criminal act of corruption and what form of legal responsibility is it if the corporation is considered a perpetrator of a criminal act of corruption.

2. RESEARCH METHODOLOGY :

This research is normative legal research, namely legal research conducted by examining library materials or secondary data. This legal research includes research on principles, laws, and regulations, and examples of cases of corruption in the procurement of goods/services in the construction sector. Analysis of research data is carried out in a juridical perspective, seen from the dynamics that occur and the relationship between dassollen (what should be, namely what is contained in legal provisions and legal principles) and dassein (what happens, related to data descriptions and research problems). In normative research, the data collection tool is a document study. The object of research in this writing contracts for the procurement of goods and services in the construction sector, the laws and regulations related to these contracts.

The data collection technique used in this research is document/library study. This study was conducted to obtain data from secondary sources which came from general documents in the form of books, legislation, dictionaries, mass media reports, and the internet related to research problems. The data obtained from further research becomes information as a basis for conceptual/theoretical analysis. Research data is also used to answer research questions by referring to the conceptual framework used, theories, and other relevant concepts. Then assisted by a case study (case approach), namely the study/analysis of cases that have been decided by the court.

3. RESEARCH RESULTS AND DISCUSSION :

a. Corporate Criminal Accountability as Perpetrators of Corruption Crimes

Indonesia is one of the countries whose statutory regulations have only just emerged and are known as legal entities or corporations as the subject of criminal acts in 1951, namely known in the goods hoarding law and widely known through Law Number 7 Drt. 1955 concerning Economic Crime. Furthermore, the regulation of corporate crime can be found in Article 17 paragraph (1) of Law Number 11 PNPS of 1963, Law on the Eradication of Subversive Activities, and Article 49 of Law Number 9 of 1976, Law on Narcotics.

However, in general, as stated in Article 59 of the Criminal Code, the subject of corporate crime has not been recognized and recognized as a subject in a criminal act in general is a "person" (Muladi and Priyatno, 1991). On the basis of the above legal rules, accepting corporations as subjects of criminal law, raises problems in our criminal law, especially those concerning the problem of criminal liability to corporations. Is the element of error can be maintained as well as in humans. According to Su er (in Sudarto, 1983), there are three basic definitions in criminal law, namely: (a) The nature of being against the law (Unrecht); (b) Errors (Schuld), and (c) Criminal (Strafe).

So dogmatically it can be said that in criminal law an element of guilt must exist, as a basis for criminalizing the maker. With regard to legal entities as legal subjects of criminal acts, Utrecht (1958) stated that the criminal law stated in the Criminal Code does not yet recognize collective punishment (collectivestraffen) because criminal law according to the Criminal Code is still individualistic (individualistic character vanhetstrafwetboek). What is regulated in Article 59 of the Criminal Code according to Utrecht is about the punishment for a commissioner or member of the management of a legal entity one by one, so that the Criminal Code does not adopt a collective responsibility (collective aansprakelijkheid). The justification of corporate responsibility as a criminal action can be based on the following: (1) On the basis of an integralist philosophy, that is, everything should be measured on the basis of balance, harmony, and harmony.

In order to support the development of criminal law in asking for corporate criminal responsibility (Reksodiputro, 1989; Sjahdeini, 2006), the science of criminal justice made progress with the emergence of various doctrines of corporate criminal responsibility. Among the many doctrines, including vicarious liability, identification theory, and due diligence defense. Vicarious liability by Romli Atmasasmita is defined as a criminal responsibility imposed on someone for the actions of another person (Atmasasmita, 1989). Vicarious liability is usually applied in the relationship between an employer and subordinates (employer and employee), the giver of power, and the recipient of power (principal and agent), and between partners (between partners). Another theory is the identification theory. Identification theory or identification theory originated in England. Corporations are seen as being able to commit criminal acts through individuals who are considered to have a close relationship with the corporation and can be viewed as such a corporation (Ali, 2008). The actions of people who are closely related to the corporation are those in high managerial positions so that they can be categorized as corporate actions. The actions performed by the high managerial officer, which Sutan Remy Sjahdeini called directing mind, are different from the actions performed by ordinary employees. The difference in factors between employees who are the directing mind and ordinary employees lies in the

degree of authority to make a policy that is carried out by someone. Someone who is responsible for making and implementing policies.

An act that is against the law is not sufficient to impose a sentence in addition to unlawful behavior, there must be a maker (dader) who is responsible for his actions. criminal if the act is in accordance with the formulation in the criminal law (Huda, 2006). Even so, the person may not be convicted of a crime because the guilt still has to be proven whether his or her actions or mistakes can be accounted for, thus in order to be sentenced to a person must fulfill the elements of a criminal act and criminal responsibility in the criminal law.

According to Reksodipuro (1994) in connection with the acceptance of corporations as subjects of criminal law, this means that there has been an expansion of the definition of who is the perpetrator of a criminal act (dader). The problem that immediately arises is related to corporate criminal liability. The main principle in criminal responsibility is that there must be a fault (schuld) on the perpetrator. How should the error of a corporation be constructed? The teaching that is widely adopted today separates actions that are against the law (according to the criminal law) and criminal responsibility according to the criminal law. Actions against the law by corporations are now possible. Can you imagine that in the corporation there is an element of error (whether intentional or dolus or negligence or culpa)? If the perpetrator is a human being, this error is associated with reproach (verwijtbaarheid; blameworthiness) and is therefore related to the mentality or psyche of the doer.

Corporations act and act through humans (which can be administrators or other people). So the first question is how the legal construction is that the actions of the management (or other people) can be stated as corporate actions that are against the law (according to criminal law). And the second question is how the legal construction is that corporate actors can be declared guilty and therefore accountable according to criminal law. This question becomes more difficult when it is understood that Indonesian criminal law has a very basic principle, namely: that "no punishment can be given if there is no mistake" (in the sense of reproach).

Regarding some of the problems mentioned above, to be clearer, we must first know the corporate criminal responsibility system in criminal law, where for this criminal liability system there are several systems, namely:

1) The corporate management, as the maker and manager, is responsible;
2) The corporation, as the maker and manager, is responsible;
3) The corporation is a maker and also responsible.

Criminalization against corporations must be in accordance with the integrative stance on the objectives of punishment as mentioned above. Corporations are made the subject of criminal law the same as natural humans, but it should be remembered that not all criminal acts can be committed by corporations, and not all criminal sanctions as formulated in Article 10 of the Criminal Code can be imposed on corporations. According to Peter Gillies: "in most cases, the punishment visited upon the corporation will be fine". The same thing was also stated by Loebby Loqman, that not all types of crime contained in the criminal law can be applied to corporations. The death penalty, imprisonment, and imprisonment cannot be imposed on a corporation. What may be imposed on the corporation is a criminal fine. In addition to criminal fines, actions can also be taken to restore conditions such as before there was damage by a company. This compensation can be in the form of compensation for the victim, it can also be in the form of compensation for the damage that has been caused.

b. Application of Criminal Sanctions against Corporations as Corruption Actors

The term criminal offense or criminal offense is a translation of the terms used in the Dutch Criminal Code. Martiman Prodjohamidjojo said that there are two terms used in Dutch, namely Stafbaar feit and the term delict which have the same meaning. Delict is translated as the offense only, while Stafbaar feit in Indonesian has several meanings and there is no agreement among Indonesian scholars regarding language translation. Some use the translation: criminal acts (Moeljatno and Roeslan Saleh); criminal events (RIS Constitution, UUDS 1950 Tresna and Utrecht); criminal act (Wirjono Projodikoro); offense (Satochid Kartanegara, A.Z. Abidin and Andi Hamzah); acts that are punishable (Karni and van Schravendijk); criminal offenses (Tirtaamidjaja) (Moeljatno, 2009). Our legislators have used the word "stafbaar feit" to describe what we know as "criminal acts" in the Criminal Code without providing any explanation as to what exactly is meant by the words "Stafbaar feit". Thus, in the criminal law literature, various terms used by the author as translations of the terms Stafbaar feit and delict are found. In writing, this journal uses the term criminal act, which is more commonly used by the public.

Acts against the law (criminal) which are known as criminal acts by corporations (groups/legal entities) in carrying out their business activities are corporate crimes that cause enormous losses to the majority of the people/society who are building/managing their lives. Corporate crime (crime) has a very wide range of crimes with various forms of action in order to achieve corporate goals, such as bribery problems or the provision of “facilitation payments” is one of the most prominent behaviors in corporate crime (Koesoemahatmadja, 2011). The main objective of a corporation according to economic principles is to seek maximum profit by spending the smallest capital possible. In order to seek this profit, corporations often carry out irregular practices that have led to crimes that violate laws.

Crime is any act committed by corporation that is punished by the state, regardless of whether it is punished under administrative, civil, or criminal law". In order to avoid confusion with various terms relating to corporations, a distinction must be made between: (1)*crime for corporation*, (2) *crimes againts corporation* dan (3) *criminal corporations*.

Of the three terms of corporate crime, Crimes for a corporation is a corporate crime. In this case, it can be said, "corporate crimes are clearly committed for the corporate, and not against." Corporate crimes are committed for the benefit of corporations and not the other way around, crimes against corporations, which are often called employee crimes, are crimes committed by employees or workers against corporations, for example, embezzlement of company funds by officials or employees of the company (Setiyono, 2002).

In the event that the corporate management as the maker and the manager is responsible, certain obligations are imposed on the corporate management. The obligations that are charged are actually the obligations of the corporation. Managers who do not fulfill their obligations will be punished with punishment. So that in this system there are reasons that abolish crime. The rationale for this is: the corporation itself cannot be held accountable for a violation, but it is always the management who commits the offense. And because of that, it is the administrators who are punishable and sentenced.

In the case of a corporation as a responsible maker and manager, it is emphasized that the corporation may be a maker. Management appointed as responsible; what is considered to be done by the corporation is what is done by the corporate equipment according to its authority based on its articles of association. A criminal act committed by a corporation is a criminal act committed by a certain person as an administrator of the legal entity. The nature of the act which becomes a criminal act is on-person. The person who leads the corporation is responsible for the crime, regardless of the act.

The motivation of the corporation as the maker and also the one responsible is to pay attention to the development of the corporation itself, namely that it turns out that for certain offenses, it is not enough to just assign the officials as punishable. In an economic offense, it is not impossible that the fine imposed as a punishment to the management is compared to the profits that the corporation has received by committing the act, or the losses incurred in society, or suffered by rivals, the gain and/or loss is greater than the fine. which was imposed as a criminal. Being convicted of the management does not provide a sufficient guarantee that the corporation will no longer commit acts prohibited by the law.

Regarding the criminalization of corporations, there are provisions in Law Number 7 Drt 1955 concerning Investigation, Prosecution and Economic Crime Justice (UUTPE) where Article 15 paragraph (1) states: "If an economic crime is committed by or on behalf of a legal entity, a company, an association of other people or a foundation, criminal charges are filed and criminal penalties and disciplinary measures are imposed, whether against the legal entity, company, association or foundation, whether against those who give the order to commit the economic crime or who acts as a leader in the act or negligence, as well as against both. "

In the elucidation of Article 15, it is stated that penalties or actions can also be imposed on legal entities, companies, associations, and foundations. In economic criminal law, this regulation is very much needed because many economic crimes are committed by these agencies. Modern criminal law has recognized the teaching that punishment can be pronounced against a legal entity.

So in special criminal law, namely economic criminal law, it is possible to impose penalties on corporations as determined in UUTPE. This has also been applied to criminal provisions in banking, capital market, and so on. However, the practice of imposing penalties on corporations in criminal acts of these financial institutions places more emphasis on criminal fines. The question becomes, how is the responsibility of corporations in criminal acts of corruption? If you look into the provisions of the UUPTPK Article 1 paragraph (3) it is said that the words "Everyone" in the Law is considered corporations. This means that the corporation is a legal subject besides humans. Thus Article 2 paragraph (1) UUPTPK automatically applies to corporations that commit a criminal act of corruption, namely "committing illegal acts to enrich themselves or other people or corporations that can harm state finances and the state economy, shall be punished with imprisonment of at least 4 (four) years and a fine of at least two hundred million rupiahs and a maximum of one billion rupiahs. "

If what is meant by everyone including a corporation, it means that the corporation can commit a criminal act of corruption so that it is subject to imprisonment according to Article 2 paragraph (1) of the UUPTPK. But the problem arises how it is possible to impose imprisonment on a corporation because it is not a human being. If we follow the explanation of Article 2 paragraph (1), it also does not explain how the punishment is imposed on corporations. Only explaining the meaning of "unlawfully" includes acts against the law in a formal and material sense, that is, even though the act is not regulated in statutory regulations, if the act is considered despicable because it is not in accordance with the sense of justice or the norms of social life in society, the act can be punished. This explanation is further away from the purpose of punishing the corporation.

Because disgraceful acts can only be done by humans because it is impossible for a corporation to commit such acts. Therefore, the application of Article 2 paragraph (1) is very unlikely to be imposed on criminal acts of corporate

corruption. Because these criminal acts can only be committed by humans. Whereas Article 2 paragraph (1) UUPTPK is the entry point to say whether or not a person or corporation can commit an act against the law so that the act can be punished. Thus acts against the law in criminal acts of corporate corruption can be held accountable by imposing additional crimes such as confiscation of movable or immovable property, payment of replacement money, revocation of permits, and so on. It's just that in practice this additional punishment is very rarely carried out, even though many parties want criminal sanctions to be imposed on corporations.

4. CONCLUTION :

a) The form of corporate liability in an action against the law of corporate crime, can only be imposed with a substitute punishment. If the criminal act of corruption is committed on behalf of the corporation, then the punishment can be carried out against the corporation or its management or other people related to the corporation. The legal basis for imposing criminal sanctions on corporations that commit criminal acts of corruption is regulated in Article 18 paragraph (1) letters a, b, c, d, and paragraph as well as Article 20 of the UUPTPK.

b) Additional penal sanctions as stipulated in Article 18 paragraph (1) letters a and b, may be imposed by a judge, but are limited to confiscation of movable property that is a tangible or intangible or immovable property and payment of replacement money as much as obtained from the proceeds of the crime. corruption. However, the imposition of sanctions based on Article 18 paragraph (1) letters c and d, such as company closure and revocation of certain rights or elimination of all or part of profits, should not be imposed by a judge. This is because the imposition of punishment is not only based on juridical considerations but must also pay attention to its sociological and economic aspects. If it has to impose sanctions based on points c and d, it is feared that it will bring greater losses to the community, namely those who depend on the company for their livelihoods, such as employees and their families, goods supply companies, and small businesses around the company. Shareholders, who do not interfere in the management of the company, will also be disadvantaged by the imposition of these sanctions.

REFERENCES :

1. Ali, Mahrus. *Kejahatan Korporasi*, Arti Bumi Intaran, Yogyakarta, 2008.
2. Atmasasmita, Romli. *Asas-Asas Perbandingan Hukum Pidana,* Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 1989.
3. Huda, Chairul. *Tiada pidana tanpa kesalahan menuju kepada tiada pertanggungjawaban pidana tanpa kesalahan*, Kencana, Jakarta, 2006.
4. Koesoemahatmadja, Etty Utju R. *Hukum Korporasi, Penegakan Hukum terhadap Pelaku Economic Crimes dan Perlindungan Abuse of Power*, Cetakan 1, Bogor: Penerbit Ghalia Indonesia, 2011.
5. Moeljatno, Asas-asas Hukum Pidana, Jakarta: Rineka Cipta, 2009.
6. Reksodipuro, Mardjono. *Kemajuan Pembangunan Ekonomi Dan Kejahatan*, Kumpulan Karangan Buku Kesatu, Jakarta, Pusat Pelayanan Keadilan dan Pengabdian Hukum, 1994.
7. Reksodiputro, Mardjono, *Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korporasi,* Semarang: FH UNDIP, 1989.
8. Setiyono, *Kejahatan Korporasi: Analisis Viktimonologis dan Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*, Malang : Averros Press, 2002.
9. Sjahdeini, Sutan Remy. *Pertanggungjawaban Pidana Korporasi,* Jakarta: Grafiti Pers, 2006.