



Reform of Corporate Criminal Liability Arrangements in Indonesia and Types of Sanctions That Can Be Implemented

Rya Elita Br Sembiring^{1*}, Pujiyono²

^{1,2} Faculty of Law, University of Diponegoro, Semarang, Central Java, 50275, Indonesia

* corresponding author: ryaelitapandia_sembiring@yahoo.com

Article Info	Abstract
<p>Keywords: Corporate; Criminal Liability; Sanction</p> <p>Article History Received: Jan 13, 2020; Reviewed: Jan 20, 2020; Accepted: Mar 11, 2020; Published: Mar 31, 2020</p> <p>DOI: 10.22219/ljih.v28i1.10949</p>	<p><i>Individuals who commit criminal acts will receive criminal sanctions for them. However, criminal sanctions for corporations that commit criminal acts are not regulated in the Criminal Code. whereas, it does not rule out the possibility of a company being involved in a crime. The research method used to answer the problem is the normative legal method by presenting data qualitatively, and using the statutory approach and conceptual approach. This study aims to examine the criminal liability arrangements by corporations as well as what sanctions can be applied. In Indonesia, criminal liability by corporations has been regulated in several statutory regulations that are outside the Criminal Code. Corporations as subjects of criminal law can be compared to humans. because companies are equated with humans, whereas humans are legal subjects, companies can also develop rights and obligations. Therefor, sanctions that can be applied to corporations include basic crimes such as criminal fines, additional crimes, and corporate confiscation</i></p>

©2020; This is an Open Acces Research distributed under the term of the Creative Commons Attribution Licencee (<https://creativecommons.org/licences/by/4.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original works is properly cited.

INTRODUCTION

Business entities or companies in the community are divided into several forms, namely legal entities and non-legal entities. The form of regulation of these business entities is regulated in the Commercial Law Code or *Kitab Undang-Undang Hukum Dagang* (KUHD). The whole business entity, whether a business entity with a legal entity or not a legal entity is referred to as a corporation. Corporations in Latin, substantially (*substantivum*) derived from the word “*corporare*” which consists of the word “*corpus*” in Indonesian which means the body or give the body or make a body (Qudus & Pujiyono, 2019). The corporation is a legal copyright entity, this was stated by Satjipto Rahardjo. According to him, the created body itself consists of a

corpus, that is, the physical structure and into the law includes the animus element that wants the body to have a personality, therefore the legal entity is a legal creation, so unless its creator, his death is also determined by law (Disemadi & Jaya, 2019).

It cannot be denied that industrial development carried out by companies or legal entities, in addition to having a positive influence, can also have a negative influence. Industrial and technological activities can have direct and indirect impacts (Disemadi & Roisah, 2019). It said the direct impact if the industrial activity can be directly felt by humans. Positive direct impacts are expected, but negative direct impacts that reduce the quality of human life must be avoided or reduced. The negative direct impact can be seen from the occurrence of problems such as air pollution, water pollution, and land pollution (Sularman & Ma'ruf, 2017). The three types of pollution mentioned above will reduce the carrying capacity of nature. Air, water and land pollution must be avoided as part of efforts to preserve the environment, such as pollution or environmental destruction (Qudus & Pujiyono, 2019).

The role of corporations both national and trans-multinational in modern life in the era of globalization is increasingly important and strategic. But not infrequently the strategic position of the corporation is used to get a lot of profits from the results of crimes committed by its management. Likewise, the losses suffered by the community caused by the actions of corporate management (Tawalujan, 2012). It is an undeniable fact that the role of companies or corporations nowadays is very important in people's lives. The purpose of the corporation to continue to increase the benefits it receives results in frequent violations of the law (Jaya, 2017). Whatever type of crime is committed, it is the victim who always suffers losses due to the crime that occurred. Likewise, crimes committed by corporations that cause victims of corporate crimes that suffer losses (Rofiq, Disemadi, & Jaya, 2019).

Victims of corporate crime both directly and indirectly need special attention from all parties involved in law enforcement efforts, especially those involving corporations. This is because corporate crime is very difficult to detect so that in law enforcement it is likely to experience obstacles (Butarbutar, 2015).

Victims of corporate crime are wider in scope than victims of crime in general both in terms of the number of victims and the losses incurred, so victims of corporate crime need special attention in preventing and overcoming corporate crime in this case in the form of corporate criminal responsibility for victims of corporate crime (Suhariyanto, 2016b).

Corporations as perpetrators of criminal acts in criminal law have been recognized hence can be criminally accounted for. Therefore, it can be concretized its mistakes in the form of a criminal conviction. In criminal law when it comes to corporations, there are three systems of corporate responsibility as subjects of crime namely a). The management of the corporation as a maker, the management is responsible; b). The corporation as the maker, the management is responsible; and c). The corporation as a maker and also as responsible. The corporation as the maker and also the person responsible for the motivation 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 determine the management as a person who can be convicted.

Previous research has discussed the difficulty of criminal proving against corporations committing criminal acts, Corporate criminal regulatory urgency in Indonesia, and corporate criminal liability as a development of criminal acts (Runtuwene, Massie, & Tumewu, 2017).

Starting from the background that the writer put forward above and previous research, There has been no further research discussing corporations as perpetrators of criminal acts as well as any sanctions that can be dropped on to companies that commit criminal acts therefore, so contribution of this research will discuss the subject of how the arrangement of the corporation as a legal subject and what sanctions can be applied to corporations in Indonesia..

METHOD

The research method used is a normative legal research method (Efendi & Ibrahim, 2018). In this method, the researcher uses the statutory approach with a conceptual approach in reviewing the reform of corporate criminal liability arrangements and assessing the types of sanctions that can be applied to corporations. This study uses secondary data collection techniques with library research. Secondary data used in the form of primary legal materials, secondary legal materials, and tertiary legal materials such as laws and regulations, books and legal research journals related to corporate criminal liability and types of sanctions that can be applied.

RESULTS AND DISCUSSION

Reform of Criminal Liability Arrangements for Corporations

The issue of corporate responsibility as a criminal offense is not a simple matter considering the corporation is a legal entity. This problem stems from the principle of no criminal without error. *Mens rea* or error is the attitude of the heart, which

naturally only exists in natural people and therefore, it is considered only natural people who can be held liable for criminal liability. Today, corporations have a very large role in the economic country in line with developments and economic growth in the face of the industrialization era that is being developed by the government. In connection with the renewal of criminal law in Indonesia, along with the development of law as a means of public renewal, the law itself requires renewal and guidance (Sularman & Ma'ruf, 2017). The renewal of the criminal law itself is in essence closely related to the background and urgency of the reform.

The Roman legal entity of corporate unity is called the “*universitas*”, which includes state, municipalities and private associations. The principle of “*societas delinquere non potest*” was known at that time where “*universitas*” were not the same as humans who had the will and soul, universities were a fiction that did not have body and soul and therefore could not be convicted. This principle answers why in the Criminal Code there is no place for corporations as legal subjects. The subject of law is anything that can have rights and obligations. Rights are powers, the authority given by law to legal subjects while obligations are burdens given by law to legal subjects (Qudus & Pujiyono, 2019).

Etymologically about the word corporation (Dutch: *corporate*, English: corporation, German: *Korporation*) comes from the word “*corporation*” in Latin. Like other words that end in “*-tio*”, *corporatio* as a noun (*substantivum*), comes from the verb *corporare*, which many people used in the middle ages or after that. Corporate itself comes from the word “*corpus*” (in Bahasa: badan/body), which means giving body or comparing, or in other words, a body made as a body that is obtained by human prostitution as opposed to the human body that occurs according to nature (Pradjonggo, 2010).

Corporations are placed as criminal law subjects that are recognized in special criminal laws (outside the Criminal Code), whereas in the Criminal Code corporations are not recognized as legal subjects. According to him the content of the threat of punishment against the corporation of a legal entity (*rechtsperson*) because it was suspected (suspected) of committing an offense (a criminal offense), in Article 59 of the Criminal Code only applies in terms of violations. Furthermore, those who can be punished according to this article are members of the management of commissioners of a corporation, not the collective responsibility of members and commissioners of a corporation that is incorporated (Jaya, 2018). Although not a person (*person*), a legal entity (*rechtsperson*) is a legal subject that has its rights and obligations, in this case in the form of a legal entity or organization consisting of a group of people who join for a certain purpose and have certain wealth. Therefore in legal traffic, the legal entity is represented by a board that acts for and on behalf of and in the interests of the legal entity (representing it) (Disemadi & Jaya, 2019).

Based on the identification theory, the difficulties that might arise in determining whether or not there is corporate criminal liability can be further simplified (Sularman & Ma'ruf, 2017). With the identification theory, mistakes made by members of the board of directors or other corporate officials can only be charged to the corporation. In requesting accountability from a corporation, from what its management or employees have done, several conditions must be fulfilled, namely: a). Such actions are carried out by people who have the authority to do so or must be within the scope of their authority; b). The action taken by the person does not exceed his authority; c). His actions were carried out in order to fulfill the aims and objectives of his corporation, and not to exceed the authority of acting of the corporation; and d). His actions were for the benefit or benefit of the corporation (Qudus & Pujiyono, 2019).

Corporations as subject to criminal acts that are legal entities or non-legal entities are considered capable of committing criminal acts (corporate crime) that are able to have a detrimental impact and can be held accountable in criminal law. In the field of corporate economics in conducting its activities it is certainly oriented to get as much profit as possible. Therefore, it is possible for corporations to do actions that can harm others in achieving their goals (Toruan, 2014).

The Indonesian Penal Code, which is a legacy of the Dutch government, is still used, but the new Penal Code has put the notion of corporations in Article 45 to Article 50 in which corporations can be used as perpetrators of crimes and can be held liable. The existence of a corporation can be made a criminal offense can be concluded from several articles in the Criminal Code Bill, namely: a). In principle, in the Criminal Code Bill, the concept of the corporation has been accepted as a legal entity that can be subject to criminal law; b). Thus corporations as legal entities can be prosecuted and sentenced to the criminal; c). Criminal actions that can be accounted for by corporations are all acts that include crimes committed by people who have functional positions (*functioneel daders*) in a corporation that commits such acts in the business environment of the corporation in accordance with its articles of association; d). Only part of the legislation can be applied to corporations, for example, it is not possible to impose sanctions imprisonment or capital punishment on corporations (Qudus & Pujiyono, 2019).

The development of current legislative products illustrates the phenomenon of issues regarding those who commit criminal acts and those which can be accounted for in criminal law (Tawalujan, 2012). There are three models of regulation of the above, namely: 1). Models that commit people and those who are responsible for criminal law are also people (Article 59 of the Criminal Code); 2). The models that do are people and/or corporations and those who are responsible for criminal law are only people (Law No. 10 of 1998 concerning Banking), and 3). A model that

commits people and/or corporations and can also be responsible for people and/or corporations (Law No. 7 of 1955 Concerning Investigation, Prosecution and Judicial Economic Crimes) (Disemadi & Jaya, 2019).

In Indonesia, the development of laws and regulations governing criminal acts carried out by people and/or corporations and which is answered by only those among them: a). Law No. 1 of 1951 concerning Manpower; b). Law No. 2 of 1951 concerning Accidents; c). Law No. 3 of 1951 concerning Labor Inspection; d). Law No. 12 of 1951 concerning Firearms; e). Law No. 3 of 1953 concerning Opening of Pharmacy; f). Law No. 22 of 1957 concerning Labor Settlement; g). Law No. 3 of 1958 concerning the Placement of Foreign Workers; h). Law No. 83 of 1958 concerning Aviation; i). Law No. 5 of 1989 concerning Telecommunications; j). Law No. 7 of 1981 concerning Obligatory Reporting on Labor; k). Law No. 2 of 1981 concerning Legal Metrology; l). Law No. 3 of 1982 concerning Mandatory Registration of Companies; 2) Law No. 7 of 1992 concerning banking as amended by law No. 10 of 1998 concerning banking.

Then the development of statutory regulations governing those who commit criminal acts of people and/or corporations and those responsible for criminal law are also people and/or corporations including a). Law No. 7 of 1955 concerning Economic Crimes; b). Law No. 5 of 1984 concerning Industry; c). Law No. 6 of 1984 concerning Post; d). Law No. 8 of 1995 concerning Capital Markets; e). Law No. 5 of 1997 concerning Psychotropic; f). Law No. 22 of 1997 concerning Narcotics; g). Law No. 23 of 1997 concerning the Environment; h). Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition; i). Law No. of 1999 concerning Consumer Protection; and j). Law No.20 of 2001 concerning Eradication of Corruption Crimes (Disemadi & Jaya, 2019).

In connection with the many specific regulations regarding corporations that commit criminal acts, these regulations contain criminal sanctions for corporations. Because the corporation does not have an external bodily form, the criminal sanctions that can be given to it are not classic criminal sanctions, except sanctions relating to fines or penalties.

Types of Sanctions that Can Be Implemented to Corporate

Corporate criminal responsibility have four main issues that need attention, namely 1). The problem of the formulation of prohibited acts; 2). The issue of determining corporate wrongdoing; 3). The problem of determining sanctions against corporations; and 4). The nature of corporate responsibility (Lasmadi, 2004). For the formulation of prohibited acts and corporate responsibility, it is still unclear in determining who can commit criminal acts and responsible corporations. In determining corporate misconduct, which is a vein of criminal law, it is very difficult

because the mistakes handed over to the corporation are not corporations in person, because the person committing the crime is the person/management (Toruan, 2014). Likewise, criminal sanctions related to corporate liability have not been clearly arranged. While the nature of corporate responsibility in various laws and regulations is absolute if the person who commits the crime has a relationship with the corporation or has a functional position. But what about the reasons for the elimination of criminal sanctions against the corporation not found (Sintung, 2015).

This article will describe the legislative policy in the laws and regulations in force in Indonesia, which regulates the types of criminal sanctions against corporations. In general, the imposition of sanction on corporations will be optimal given the execution is quite easy, especially if previously confiscation of corporate assets was deemed sufficiently tangent to criminal offenses which were proven to have been carried out. In addition to the imposition of basic penalties in the form of fines, corporations may also be given additional penalties in various forms, such as temporary revocation of licenses, or prohibition of conducting certain businesses within a certain time, or the dissolution of the corporation concerned (Widowaty, 2012). The forms or types of criminal sanctions that can be imposed on corporations can be in the form of principal and additional crimes. During this time, various Indonesian criminal laws only stipulate fines as the main criminal sanctions for corporations (Kristian, 2017). Meanwhile, other forms of criminal sanctions by law are determined as additional criminal sanctions or disciplinary actions (Krismen, 2014). The following are the main criminal sanctions and additional penalties that will be imposed on the corporation, namely:

a. Basic Crimes

1) Criminal Fines

It is not possible to impose criminal sanctions on a corporation in the form of imprisonment, so as a consequence it is not possible to sue a corporation as a criminal offense based on a criminal law if in that law it is determined that criminal sanctions that can be imposed on a criminal offender are cumulative imprisonment and fines (both criminal sanctions are cumulative, i.e. both sanctions must be imposed on the offender concerned). In other words, corporations may only be prosecuted and convicted if sanctions imprisonment and fines in the law are determined as alternative criminal sanctions (meaning they can be chosen by a judge). If the two criminal sanctions are alternative, the management may be subject to imprisonment or imprisonment, or both will be cumulatively imposed (Suhariyanto, 2016a). While the corporation is only imposed with a criminal fine because the corporation is unlikely to undergo imprisonment. If criminal sanctions are determined cumulatively between imprisonment and fines, not alternatively, but there are other provisions in the law that explicitly specify that in the case of a claim

made against a corporation, criminal penalties will be imposed only (possibly with a higher criminal fines severe), then the penal sanctions imposed and the cumulative fines do not prevent fine penalties from being imposed on the corporation. Example Article 45 of Law No. 23 of 1997 concerning Environmental Management which determines: “If the criminal acts referred to in this chapter are carried out by or on behalf of a legal entity, corporation, union, foundation or other organization, the threat of criminal penalties shall be increased by one third”.

Criminal articles in a law can also be applied to corporations as perpetrators of criminal acts regulated in the law, and does not cause doubts for law enforcers to also sue corporations in addition to demanding their management at least contain the following matters: 1). Strictly determined in the law that the corporation can be prosecuted as the perpetrators of criminal acts regulated in that law; and 2). Imprisonment sanctions and fines that are determined as sanctions must be imposed cumulatively only if the perpetrators of the crimes charged with criminal liability are human; whereas if the perpetrators of a criminal offense are a corporation, then the criminal acts determined in the criminal articles in the law are in the form of criminal fines (Krismen, 2014). By taking such a stand, investigators (police), public prosecutors (prosecutors) and judges need not doubt whether a corporation can be prosecuted as a criminal offense under the relevant law and do not hesitate too about the form or type of sanctions the criminal.

2) Announcement of Judge’s Decision

One form of criminal sanctions that can be imposed on corporations is the announcement of judges' decisions through print and/or electronic media. This announcement aims to embarrass the management and/or corporation (Kristian, 2017). Corporations that previously had a very good reputation would be truly embarrassed if such things were to happen. This form of criminal sanction, even if it is only an additional criminal sanction, will be very effective in achieving deterrence goals.

3) Dissolution followed by Corporate Liquidation

What about the crime in the form of capital punishment? Is it possible to impose capital punishment on a corporation? Another meaning of “death” for a corporation is the “dissolution” of the corporation. Corporations are given criminal sanctions in the form of “corporate liquidation” which is nothing but the same nature as “capital punishment” or “capital punishment” for the corporation. If the corporation is dissolved as a result of the imposition of criminal sanctions, then the civil consequence is “liquidation” of the dispersed corporate assets. In Article 37 of Law No. 7 of 1992 concerning Banking as amended by Law No. 10 of 1998, a bank may be ordered to be dissolved by the leadership of Bank Indonesia if the bank

experiences difficulties that endanger its business or in the judgment of Bank Indonesia the condition of a bank may endanger the banking system. The bank dissolution order by the Banking Law is seen as an act of order, not as an administrative sanction.

4) Revocation of Business License followed by Corporate Liquidation

For corporations, criminal sanctions should also be imposed in the form of revocation of business licenses. With the revocation of the business license, then, of course, the corporation will no longer be able to conduct business activities forever. In order to protect creditors, the judge's decision in the form of revocation of the business license must also be accompanied by an order to the corporate management to liquidate the company's assets to settle the corporation debts to its creditors. Between judge's decision in the form of revocation of a business license accompanied by an order of liquidation and the judge's decision in the form of the dissolution of the corpse as the final result may be said to make no difference (Suhariyanto, 2017). Both result in companies not being able to conduct business activities and corporate assets are liquidated.

5) Freezing of Business Activities

The freezing of activity is stopped, it can be determined by the judge for a certain period of time or forever (Kristian, 2017). Meanwhile, the freezing of all activities can only be decided by the judge for a certain period of time. If for all time, the decision is not in the form of freezing of all business activities, but in the form of corporate liquidation or revocation of business license followed by liquidation.

b. Additional Criminals

Additional crimes include: 1). Conduct environmental clean-up or clean up at own expense or submit the cleaning to the State at the expense of the corporate fees (in the case of environmental criminal acts) determined by the judge of the minimum costs that must be incurred by the corporation based on price estimates by an independent consultant; and 2). Building or financing the construction of projects related to criminal acts committed, for example building a hospital or rehabilitation-center for drug victims determined by the Judge the minimum costs that must be incurred by the corporation based on price estimates by an independent consultant.

c. Corporation Confiscation

During the examination process, confiscation of the corporation should be made possible by the court followed by surrender of its management to the temporary directors determined by the court. The court can issue a decree to appoint one of the

similar SOEs in the line of business with the corporation concerned to temporarily manage the corporation until the confiscation is lifted.”

CONCLUSION

A corporation is an engagement by some people who agree to intend to seek profit and being recognized legally. Corporations as subjects of criminal law can be compared to humans. Because in it there are rights and obligations given by law, and therefore corporate skills are also equated with the human skills that are seen in them. Corporations have been determined as subject to criminal law by laws outside the Criminal Code and the Draft Law of the Criminal Code, which will apply throughout the criminal legal system. As a result, every law outside the Criminal Code no longer needs to be specifically regulated, unless the legislation outside the Criminal Code wants to determine otherwise or deviate. Any sanctions that can be applied to corporations that commit crimes are the main criminal, additional criminal, and corporate confiscation.

REFERENCES

- Butarbutar, R. (2015). Pertanggungjawaban Korporasi Dalam Tindak Pidana Korupsi Pengadaan Barang Dan Jasa Pemerintah Di Bidang Konstruksi. *Jurnal Penelitian Hukum Legalitas*, 9(1), 51–66.
- Disemadi, H. S., & Jaya, N. S. P. (2019). Perkembangan Pengaturan Korporasi Sebagai Subjek Hukum Pidana Di Indonesia. *Jurnal Hukum Media Bhakti*, 3(2), 118–127.
- Disemadi, H. S., & Roisah, K. (2019). Urgency of the Contempt of Court Criminalization Policy to Overcome Harassment Against the Status and Dignity of Courts. *Brawijaya Law Journal*, 6(2), 24–233.
- Jaya, N. S. P. (2017). *Pembaharuan Hukum Pidana*. Semarang: PT. Pustaka Rizki Putra.
- Jaya, N. S. P. (2018). *Hukum Dan Hukum Pidana Di Bidang Ekonomi*. Semarang: Badan Penerbit Universitas Diponegoro.
- Krismen, Y. (2014). Pertanggungjawaban Pidana Korporasi Dalam Kejahatan Ekonomi. *Jurnal Ilmu Hukum*, 4(2), 133–160.
- Kristian. (2017). Jenis-Jenis Sanksi Pidana Yang Dapat Diterapkan Terhadap Korporasi. *Jurnal Hukum & Pembangunan*, 43(2), 270–288.
- Lasmadi, S. (2004). *Pertanggungjawaban Korporasi Dalam Perspektif Kebijakan Hukum Pidana Indonesia*. Universitas Airlangga Surabaya.
- Pradjonggo, T. S. (2010). Alternatif Sanksi Pidana Dalam Kejahatan Korporasi. *Yustisia*, 8(1), 70–78.
- Qudus, M. A., & Pujiyono. (2019). Pertanggungjawaban Korporasi Terhadap Tindak Pidana Human Trafficking Di Indonesi. *Jurnal Komunikasi Hukum (Jkb)*, 5(2),

26–39.

- Rofiq, A., Disemadi, H. S., & Jaya, N. S. P. (2019). Criminal Objectives Integrality in the Indonesian Criminal Justice System. *Al-Risalah*, 19(2), 179–190.
- Runtuwene, V. E., Massie, J. D. ., & Tumewu, F. (2017). Quality Control Analysis Using Statistical Quality Control At PT Massindo Sinar Pratama Manado. *Jurnal EMBA*, 5(2), 2516–2525.
- Sintung, L. (2015). Penuntutan Terhadap Korporasi Sebagai Pelaku Tindak Pidana Suap. *Lex Crimen*, 4(1), 199–207.
- Suhariyanto, B. (2016a). Progresivitas Putusan Pidana Terhadap Korporasi Pelaku Tindak Pidana Korupsi. *Jurnal Penelitian Hukum De Jure*, 16(2), 201–213.
- Suhariyanto, B. (2016b). Restoratif Justice Dalam Pidana Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara. *Jurnal Rechts Vinding*, 5(3), 421–438.
- Suhariyanto, B. (2017). Putusan Pidana Terhadap Korporasi Tanpa Didakwakan Dalam Perspektif Vicarious Liability. *Jurnal Yudisial*, 10(1), 17–38.
- Sularman, A., & Ma'ruf, U. (2017). Pertanggungjawaban Pidana Korporasi Kepada Korban Tindak Pidana. *Jurnal Hukum Khaira Ummah*, 12(2), 387–396.
- Tawalujan, J. (2012). Pertanggungjawaban Korporasi Terhadap Korban Kejahatan. *Lex Crimen*, 1(3), 5–22.
- Toruan, H. D. L. (2014). Pertanggungjawaban Pidana Korupsi Korporasi. *Jurnal Rechts Vinding*, 3(3), 397–416.
- Widowaty, Y. (2012). Pertanggungjawaban Pidana Korporasi Terhadap Korban Dalam Kasus Tindak Pidana Lingkungan Hidup. *Jurnal Yudisial*, 5(2), 154–169.