



## Political Parties in Corporate Regulation as Subjects of Criminal Law

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### **Abstract**

The aim of this study is to investigate the similarities between political parties and corporations as legal entities, and to determine whether political parties are recognized as subjects of criminal law. The study uses the normative research method, specifically a statutory approach, to examine relevant laws and regulations. The findings suggest that political parties and corporations share similar characteristics, such as being associations of people and organized wealth associations that can be legal or non-legal entities. Therefore, political parties can be considered corporations. In terms of criminal law, both political parties and corporations are recognized as subjects of criminal law according to Article 1 Paragraph (1) of Law Number 20 of 2001, which amends Law Number 31 of 1999 concerning the eradication of criminal acts of corruption.

**Keywords:** *Political Parties; Corporations; Criminal Law Subjects*

### **Introduction**

Criminal law evolves as a response to the growing number of criminal acts, particularly in the realm of corruption. This is due to the fact that as a country's economy grows, criminal activity also increases and becomes more diverse, with corruption being one of the most prevalent forms of criminal behavior. The rise in corruption within economic, social, and political activities is heavily influenced by the behavior of corporations (Hutabarat et al., 2022). When a corporation engages in corrupt behavior, it results in financial losses and therefore requires criminal law sanctions to be imposed (Rodliyah et al., 2020).

Enforcing criminal law sanctions on corporations is a complex task due to the legal structure in Roman law, which includes a unit called a university that encompasses the State, municipalities, and private associations. This legal principle of "*societas delinquere non potest*" was established at a time when universities were not regarded as having a will or soul, and therefore could not be punished (Sjawie, 2017). Consequently, sanctions are often applied to individuals instead. However, given that corporations

are legal entities with a status similar to natural humans, it is essential to consider their liability and potential for punishment within the framework of criminal law.

When discussing legal entities, legal theory identifies a concept known as a legal subject, which comprises both natural human beings (*natuurlijke persons*) and legal entities (*rechtspersoon*). Legal subjects are vested with rights and obligations, and are considered capable of taking legal action to enforce them. Natural human beings are regarded as legal subjects from birth, and are thus entitled to exercise their rights and fulfill their obligations. Similarly, legal entities are also authorized to carry out their rights and obligations once they have been legally recognized as such.

Legal entity is a term that is commonly used in criminal law, criminology, and other fields of law, particularly in civil law where legal entities are also known as "rechts persons," "legal persons," or "legal bodies" (Suartha, 2015). A legal entity refers to an entity or organization that can have its own rights and obligations when committing acts that may go against the law, just like a natural human being who has personal assets that can be sued or brought to court (Subekti, 2003). Examples of legal entities include Limited Liability Companies, State Companies, Foundations, and Government Agencies (Halim, 1985). As a legal subject, a legal entity bears the same rights and obligations as a natural human being and has assets that can also be sued or brought to court (Subekti, 2003). This is consistent with the concept of a corporation, which is defined as a legal entity in Article 1, paragraph (1) of Law No. 31/1999, stating that "a corporation is a group of people and/or wealth that is organized either as a legal entity or not as a legal entity."

The development of the economy has shown that corporate development plays an important role. As a legal subject in corporate civil law, corporations are also recognized as a legal subject in criminal law (Novianto, 2007). This is reflected in Law No. 31 of 1999 regarding the Eradication of Corruption.

The general explanation of the 2015 Criminal Code Bill Book One number 4 states that in the era of globalization and the development of organized crime, the scope of criminal law cannot be limited to human beings only but should also include legal entities such as corporations, especially in the fields of finance, economy, and trade. The recognition of corporations as subjects of criminal law has been acknowledged globally, as evidenced by the 14th International Conference on Criminal Liability of Corporations held in Athens from 31 July to 6 August 1994.

In the development of criminal law, particularly in the field of corruption, corporations have been recognized as legal subjects alongside individuals, as stated in Article 1, paragraph 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which reads, "Every person is an individual or includes a corporation." Therefore, if a corporation commits unlawful acts that result in enriching themselves or other individuals or corporations, and could potentially harm state finances, they can be punished as stipulated in Article 2, paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

When discussing legal entities aside from corporations, political parties are also recognized as legal entities. Political parties are regulated by Law Number 2 of 2008 jo. Law Number 2 of 2011 concerning Political Parties, which requires political parties to be registered with the Ministry to become a legal entity. Article 1 paragraph (1) of the aforementioned law defines political parties as "national organizations that are established by a group of Indonesian citizens voluntarily based on shared will and aspirations to struggle for and defend political interests of their members, society, nation and state, as well as to maintain the integrity of the Unitary State of the Republic of Indonesia in 1945."

Similar to corporations, political parties are also considered legal entities that have rights and obligations attached to them as part of the legal subject. However, a question arises whether political parties can be categorized as corporations based on the same criteria. Moreover, since corporations are

recognized as subjects of criminal law, it raises the question whether political parties, as legal entities like corporations, can also commit criminal acts and be held accountable under the same regulations governing corporations. Therefore, the issues mentioned above require further consideration and exploration.

### ***Formulation of the Problem***

1. Can a political party be categorized as a corporation?
2. How is the existence of political parties in the presence of regulations regarding corporations as subjects of criminal law?

### ***Research Methods***

In this research, the truth of coherence was examined or analyzed, namely a rule that was in accordance with legal norms or orders or prohibitions that were in accordance with legal principles, besides that an action was in accordance with the rule of law (Marzuki, 2013). The research method used was a normative research method by taking a statutory approach which was carried out by examining the laws and regulations related to this research. The data used as material for analysis in the writing of this research were data obtained from primary legal materials, namely legal materials that had legally binding power, secondary legal materials, namely legal materials that provided an explanation of primary legal materials such as books, articles, magazines, and newspapers, internet articles, and papers related to the topic of this writing.

### ***Discussion***

#### **A. Categorization of Political Parties and Corporations**

Law Number 31 of 1999, in conjunction with Law Number 20 of 2001, defined corporations as organized groups of people and/or assets, comprising both legal and non-legal entities. In line with Supreme Court Regulation Number 13 of 2016, which lays out procedures for handling criminal cases involving corporations as organized groups of people and/or assets, both as legal and non-legal entities, the term "corporation" is clearly defined.

Etymologically, the term "corporation" comes from the Latin word "*corporatio*". According to Satjipto Rahardjo's book "Legal Sciences", a corporation is a body that is created with a "corpus", which refers to its physical structure. The animus elements of the body, which give it personality, are incorporated into it by law. Hence, a corporation is a legal entity that is created by law and its existence and termination are determined by law (Kristian, 2014).

Regarding legal entities, the law not only regulates natural persons as legal subjects but also regulates other legal subjects, namely legal entities, to which legal rights and obligations are attached, similar to natural persons. The characteristics of a legal entity are as follows: (Mochtar, 2019)

- a. It has assets that are separate from the wealth of its members;
- b. It has rights and obligations;
- c. It has a specific purpose;
- d. Its existence is not solely bound to carrying out its rights and obligations.

In sum, a corporation is an established legal entity with a specific objective or function, possessing assets that are distinct from its members, and holds the status of a legal subject, recognized by law as having rights and responsibilities (Trihardianto, 2018).

When discussing legal entities as legal subjects, it is important to also consider political parties. According to Article 1 Paragraph 1 of Law Number 2 of 2008 jo. Law Number 2 of 2011 concerning Political Parties, political parties are national organizations formed voluntarily by a group of Indonesian citizens with the common will and aspirations to fight for and defend the political interests of their members, society, nation, and state. Additionally, political parties aim to maintain the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Political parties are organizations that are formed on a national level and to be recognized as legal entities, they must be registered with the Ministry. The Deed of Establishment of a Political Party, which contains the Articles of Association, Bylaws, and Management of Political Parties, serves as proof of a political party's existence as a legal entity, as stated in Article 2, paragraph (3) and (4) of the Political Party Law.

Based on the understanding that political parties are recognized as legal entities, their existence is established through a legal process, as stated in Article 3 of the Political Party Law (Butarbutar, 2016). Political parties that are recognized as legal entities have the right and obligation to take legal action, and they can own their own wealth. They are also responsible for the use of their assets and have rights and obligations that allow them to take legal action. Therefore, political parties can be held accountable if they commit acts against the law

To find out the relevance of political parties to corporations, there is a similarity in meaning that can be seen from their characteristics. *First*, "an association of people" is part of the organization of an association of organized political party members. This can be seen in the provisions of Article 1 number 1 of the Political Party Law, which contains the phrase "a group of Indonesian citizens".

*Second*, "an organized association of wealth" where political party finances are separate from the personal finances of its members which have been expressly regulated in Article 3 Paragraph (2) letter e of the Political Party Law which basically states that a legal entity is required to have an account in its personal name separate from its members.

*Third*, "Legal Entity or not a legal entity" which has a status or position in law so that it can act on its own behalf. Political parties are required to register with the Ministry to become legal entities as stated in Article 3 Paragraph (1) of the Political Party Law.

Based on the definitions of political parties and corporations listed in relevant laws, it can be seen that they share several criteria, such as institutional status as a legal entity. They are both considered organizations that have the same legal status as humans, with long-term existence, rights and obligations before the law, and separate property from their members. Moreover, both can be held legally accountable for actions that are contrary to legal norms, since they have legal authority (Rusdiana, 2016).

Political parties are classified as corporations because they, like corporations, have the legal capacity to perform legal acts. This is because they are recognized as legal subjects with rights and obligations, making them independent actors or 'persons standing in judicio'. It is important to note that political parties are categorized as corporations to carry out public interests in the political field, allowing them to play a central role in achieving these goals (Zoelfan, 2021).

## **B. The Existence of Political Parties with Regulations Regarding Corporations as Subjects of Criminal Law**

The concept of corporations in criminal law has been widely accepted by academics and practitioners, particularly in cases where corporations have committed acts that are contrary to criminal law. In criminal law, the concept of corporations is broader, encompassing both legal entities and non-legal entities. In contrast, in civil law, corporations are considered as legal entities (Muladi & Priyatno, 2015).

Making corporations accountable for criminal acts is not an easy matter in criminal law, as corporations are legal entities. This raises the issue of whether corporations can be considered as subjects of criminal acts. Initially, only natural persons were considered as subjects of criminal law. However, with the development of legal science, the subject of criminal law has expanded to include corporations. The process of making corporations subjects of criminal law can be divided into three stages. The first stage involves holding the management of the corporation responsible for any criminal acts committed in the corporate environment. The second stage recognizes that corporations can commit criminal acts, but only the management can be held criminally responsible. Finally, the third stage involves prosecuting corporations and holding them criminally liable for their actions

Based on the development of legal science, specifically the enactment of laws outside the Criminal Code, the expansion of criminal law subjects to include corporations was initially introduced in the 1951 Goods Hoarding Law. This was later applied more broadly in the 1955 Economic Crime Law and various laws and regulations relating to the economy and corporations, such as Law No. 31 of 1999 concerning Corruption Crimes (amended by Law No. 20 of 2001), Law No. 32 of 2009 concerning Environmental Protection and Management (Environmental Law), Law No. 31 of 2004 concerning Fisheries (Fisheries Law), and other related laws and regulations.

The expansion of the subject of criminal law that includes corporations is regulated only outside the Criminal Code because the Criminal Code only regulates "person" as a subject of criminal law. This can be recognized by 3 reasons as follows: (Priyatno, 2019)

1. The formulation of the subject of criminal law in the Criminal Code only uses the term "every person" which is aimed specifically at natural human beings;
2. Article 59 of the Criminal Code stipulates that criminal liability only applies to natural human beings in relation to criminal acts within the corporation;
3. Criminal punishments under the Criminal Code, such as imprisonment, the death penalty, and confinement, can only be applied to natural human beings.

To determine the validity of corporations as subjects of criminal law, we need to examine the regulations that define corporations as such. Article 1 number 1 of Law Number 31 of 1999 concerning the eradication of corruption outlines that a corporation is essentially:

- a. A group of people and assets that are organized;
- b. A group of people and organized assets that are not incorporated;
- c. An organized group of people in the form of a legal entity;
- d. An organized group of people that is not in the form of a legal entity;
- e. An organized asset in the form of a legal entity;
- f. An organized asset that is not in the form of a legal entity.

The provision confirms that the meaning of corporation in Law Number 20 of 2001 amending Law Number 31 of 1999 concerning Corruption Crimes has a broad scope, indicating that corporations as subjects cannot only be determined based on their position or status as legal entities in a narrow sense (Zoelfan, 2021). Treating corporations as human beings, as subjects of criminal law, is consistent with the legal principle of equality before the law (Sjahdeini, 2017). Therefore, corporations as subjects of criminal law, whether they are legal entities or not, are deemed capable of committing harmful criminal acts.

Developments regarding corporations as subjects of criminal law are the result of changes that occur in a society. Given the fact that often occurs, a crime committed by humans is carried out in many ways, one of which is committing criminal acts through organizations (Suhariyanto, 2017). However, there is an exception regarding criminal acts that can be committed by corporations, namely: (Arief, 2018)

1. Regarding criminal cases which by their nature cannot be carried out by corporations, namely such as bigamy, rape, and perjury;
2. Regarding criminal cases that can be imposed, it is also impossible to apply imprisonment or death penalty to corporations. However, in recent developments, there is a doctrine or theory known as the "corporate cleath penalty" theory which states that in essence imprisonment and death penalty can be applied to corporations.

There is a justification for recognizing corporations as subjects of criminal law, namely: (Disemadi & Santoso, 2019) First, based on an integralistic philosophy that everything should be measured on the basis of balance, suitability or commensurate between individual interests and social interests. Second, based on Article 33 of the 1945 Constitution, namely regarding the principle of kinship. Third, anomie of success. Fourth, to provide consumer protection. Fifth, to keep up with technological advances.

Thus, when a corporation is recognized as a subject of criminal law, as an independent legal subject separate from its members, corporations have legal rights and obligations in their own name. Thus, corporations deserve to get the appropriate legal process, starting from the process of investigation, prosecution, proof, to the imposition of criminal responsibility.

Based on the regulations governing corporations as subjects of criminal law, the position of legal entities other than corporations is political parties which are also legal entities. It is necessary to know the existence of political parties with regulations that recognize corporations as subjects of law. Supposedly, political parties are also recognized as subjects of criminal law, which have the status of legal entities as stated in Law Number 2 of 2011 Article 3 paragraph (1) concerning Political Parties has clearly stated that political parties can become legal entities which must first be registered with the ministry. Political parties that become legal entities can be said to be legal subjects that are equated with humans and have rights and obligations. Political parties that are registered with the Ministry and then legalized by the state are things that cannot be seen and felt. However, its real existence as a legal subject is separate and independent from natural human legal subjects, namely political party members (Mustofa, 2010).

In connection with the placement of corporations as a subject of criminal law which clearly includes legal entities and not legal entities as contained in Article 1 paragraph (1) of Law No. 20 of 2001 amending Law No.31/1999 concerning the eradication of criminal acts of corruption, which reads "corporation is an organized group of people and / or wealth, whether a legal entity or not a legal entity. So, if political parties are interpreted as organizations with legal entities or legal entities as stated in the law. Thus, political parties can be included in the group of legal entity corporations which in this case become the subject of criminal law, so that political parties as legal entity corporations can be examined if

suspected of committing corruption crimes (Harahap, 2009). The concept of corporations applied to political parties as subjects of criminal law follows the principle of no punishment without fault (*geen straf zonder schuld*) (Mochtar, 2019).

The existence of political parties with regulations that recognize the existence of corporations as subjects of criminal law where political parties and corporations both have the status of legal entities, so that the existence of political parties in criminal law can be said to commit criminal acts so that they can be recognized as subjects of criminal law. Thus, political parties deserve to get the appropriate legal process, starting from the process of investigation, prosecution, proof, to the imposition of criminal responsibility.

It can be seen that with the regulation of corporations that are recognized as subjects of criminal law as has been confirmed regarding the definition of corporations as subjects of law contained in Article 1 paragraph (9) of Law No. 8 of 2010 concerning Prevention and Eradication of the Criminal Act of Money Laundering and Article 1 paragraph (1) of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Eradication of Corruption, political parties that have the same criteria as corporations which are legal entities are also recognized as subjects of criminal law. The placement of political parties that have the status of legal entities recognized as subjects of criminal law is juridically in line with Article 3 of Law No. 2 of 2011 concerning Political Parties, which essentially emphasizes that political parties can be recognized or have the status of a legal entity if they have registered with the Ministry of Law and Human Rights by fulfilling the requirements in accordance with the Law (Wangga, 2018).

For this reason, as an organization that holds the status of a legal entity, political parties are recognized as subjects of criminal law that can be held accountable for acts that violate criminal law. Thus, political parties as legal entities that have legal rights and obligations on their own behalf must follow the legal process from investigation, investigation, prosecution, proof, to the imposition of criminal liability.

## **Conclusion**

Based on the definition of a political party with the definition of a corporation listed in a related law, it can be seen from the criteria that political parties and corporations have the same category, namely equality in institutional status as a legal entity. In addition, it also has similar criteria, namely having similarities as an organization, having status as a legal entity that has the same position as humans as a subject of law, an organization that has a long term, has rights and obligations before the law, has equal property that is separate from the property of its members, can commit illegal acts because those who have legal authority, and can both be held legally accountable for their actions that are contrary to legal norms.

The existence of corporate regulations that are recognized as subjects of criminal law as has been confirmed regarding the definition of corporations as legal subjects in Article 1 paragraph (1) of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Eradication of Corruption, the existence of political parties as organizations that have the status of legal entities, political parties are recognized as subjects of criminal law that can be held accountable for their actions that violate criminal law. Thus, political parties as legal entities that have legal rights and obligations on their own behalf must follow the legal process from investigation, investigation, prosecution, proof, to the imposition of criminal liability.

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