



Corporate Criminal Liability for Victims of Corporate Crime

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Abstract

Corporate crime has actually been a concern in the development of criminal law for a long time. This can be seen by the emergence of various theories of corporate criminal liability that were born in order to stop or punish corporations that commit crimes/criminal acts, such as the identification doctrine and aggregation doctrine which were born far in the early 20th century. Talking about corporations, it cannot be separated from a civil point of view, because at first civil law is related to corporate issues as a subject of law. In civil law, the word person means the bearer of rights or legal subjects (*subjectum juris*). Regarding non-criminal offenses committed by a company/corporation, so that it is charged with criminal liability, is a new development. And what has long been theories imposes civil liability on these legal entities or on their members. Therefore, until now, there are pros and cons among experts against the criminalization of legal entities.

Keywords: *Corporation; Criminal Acts; Sanctions*

Introduction

Accountability of a person in criminal law not only means that it is legal to impose a criminal sentence on that person, but it can also be fully believed that it is indeed in its place to hold accountable for the criminal acts committed by him. Roeslan Saleh stated that: "In talking about criminal liability, it cannot be separated from one or two aspects that must be seen with philosophical views. One of them is justice, so that the talk about criminal liability will provide a clearer contour. Criminal liability as a matter of criminal law is intertwined with justice as a matter of philosophy."¹

In talking about criminal liability based on the criminal laws of countries that adhere to the '*common law system*', in principle, there is no fundamental difference from *the 'civil law system'*. The

¹ Roeslan Saleh, *Thoughts on Criminal Liability*, (Jakarta: Ghalia Indonesia, 1982), p.10

United Kingdom penal code requires that "in principle every person who commits a crime can be held accountable for his or her actions, unless there are causes that preclude *exemptions from liability*."²

Chairul Huda stated that "criminal liability is the responsibility of a person for the criminal acts he committed"³. Strictly speaking, what the person is responsible for is the criminal act he committed. Thus, criminal liability occurs because there has been a criminal act committed by a person. Talking about the issue of criminal liability cannot be separated from criminal acts. It is impossible for people to be held accountable for being criminalized, if they do not commit a criminal act. Criminal liability is essentially a mechanism built by criminal law to react to violations of an agreement to refuse a certain act. The community's rejection of an act is manifested in the form of a prohibition (and a threat with a criminal penalty) for the act. This is a reflection that the community through the state has denounced the act. Whoever or everyone who does it will be reproached also. The creator is reproached if he commits the crime, in fact, he can do something else.

Criminal liability is to impose reproach on the maker for his actions that violate the prohibition or create prohibited circumstances. Criminal liability therefore concerns the transfer of reproaches in the criminal act to the perpetrator. Accountability for a person in criminal law is "passing on the reproach that objectively exists in the criminal act subjectively against the maker".

The concept of criminal liability is the necessary conditions to impose a criminal penalty on a criminal offender. Meanwhile, based on the idea of monodualism (*daad en dader strafrecht*), the due process of determining criminal liability is not only carried out by paying attention to the interests of the community, but also the interests of the makers themselves. The process depends on the fulfillment of the conditions and circumstances under which the perpetrator of the criminal act can be reprimanded, so it is legal if convicted. According to Galligan, "if this requirement is ignored and there are no criminal circumstances that show that the maker is reprehensible, then the law and its institutions have failed to fulfill their functions.

Criminal liability in practice in the field has complex problems. Where in the criminal justice system, judges are not only required to be creative, but further able to realize justice. So judges are required to be more creative in using the treasures of existing juridical tools to realize justice. Where there is a possibility that if the criminal judge only applies the law, it will be difficult to realize justice. Muladi said "applying the law normatively with the original legal spirit in actual cases with a changed spirit is malpractice". Thus, judges in Indonesia do not only play the role of applying the law, but also explore and interpret it, so that the decisions they produce are closer to justice. Pameo that judges are the mouthpieces of the law has been abandoned. The role of judges is not only to apply the law, but furthermore, also to dig into, and interpret it. This does not only happen in the common law system, but the same tendency also appears in the community that uses the civil law system, considering that today the two legal families are moving towards each other. The following will describe various concepts of criminal liability in the upcoming national criminal law.

Problem Statement

- 1.How is Corporate Criminal Liability?
- 2.How to Apply Sanctions Against Corporations According to Indonesia's Laws and Regulations in an Effort to Provide Protection for Crime Victims?

² Romli Atmasasmita, *Comparative Contemporary Criminal Law*, (Jakarta: fikahati aneska, 2009), p. 93

³ Chairul Huda, *From No Crime Without Fault to No Criminal Liability Without Guilt*, 4th Edition, (Jakarta: Kencana Prenada Media Group, 2011), p.70

Research Methods

That the author explained that the Research Method used is Normative which focuses on the applicable legal regulations and policies after the Constitutional Court Decision which repealed several Regulations so that in its development it will be adjusted to the existing theories of the Primate method, then in this study using the Literature Study Research method, which then in this case the author uses a Normative Juridical approach, namely research conducted by researching Literature materials (*Secondary data*) or Literature Law Research⁴.

The research approach used is Conceptual, Legal, Comparative which is research that focuses on rational, critical analytical and philosophical views, and ends with a conclusion that aims to produce new findings as an answer to the main problem that has been determined,⁵ and will be analyzed by analytical descriptive methods, namely by describing applicable laws and regulations related to legal theory and practice positive law enforcement related to the issue.⁶

Results and Discussion

1. Definition of Corporation

According to Soetan K. Malikoel Adil, (in the book Muladi and Dwidja Priyatno), etymologically the word corporate (Netherlands: corporate, United Kingdom: corporation, Germany: corporatio) comes from the word "corporatio" in Latin. Like other words ending in "tio", corporatio as a noun (substantivum), comes from the verb corporare, which was widely used by people in the Middle Ages or later. Corporare itself comes from the word "corpus" (Indonesia: badan), which means to give a body or to incorporate, or in other words, a body that is made into a body obtained by human actions as opposed to the human body that occurs according to nature⁷.

Muladi and Dwidja Priyatno, talking about corporations, we cannot separate this understanding from the field of civil law. Because a corporation is a terminology that is closely related to a legal entity (rechtsperson) and the legal entity itself is a terminology that is closely related to the field of civil law.

2. Corporate Criminal Liability

Due to the advances that have occurred in the fields of finance, economy, and trade, especially in the era of globalization and the development of organized crime, both domestic and transnational, the subject of criminal law cannot be limited to human beings by nature, but also includes Corporations, which are organized collections of people and/or wealth, whether they are legal entities or non-legal entities. In this case, the Corporation can be used as a means to commit a Criminal Act and can also obtain profits from a Criminal Act. With the adherence to the understanding that Corporations are the subject of Criminal Acts, it means that Corporations, both as legal entities and non-legal entities, are considered capable of committing Criminal Acts and can be accounted for in criminal law. In addition, it is still possible that criminal liability is borne jointly by the Corporation and its managers who have a functional position in the Corporation or only its managers can be held accountable in criminal law.

That with the regulation of corporate criminal liability in Book I of this Law, corporate criminal liability, which originally only applies to certain criminal acts outside this Law, also applies in general to

⁴ Soerjono Soekanto, Normative Legal Research, a Brief Review, (Jakarta, PT Raja Grafindo Parsada 1995) pp. 12-13.

⁵ Ishaq, *Legal Research Methods and Thesis Writing, Thesis, and Dissertation*, Bandung: Alfabeta, 2017, p. 45

⁶ Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2011, p. 22

⁷ Soerjono Soekanto and Sri Mamudji, Normative Legal Research, Raja Grafindo Persada, Jakarta, 2001, p. 14

other criminal acts, both inside and outside this Law. Sanctions against Corporations can be in the form of criminal, but they can also be in the form of actions. In this case, the Corporation's fault is identified from the fault of the management who has a functional position (has the authority to represent the Corporation, makes decisions on behalf of the Corporation, and has the authority to implement supervision over the Corporation) who commits the Criminal Offense in favor of the Corporation, both as the perpetrator and as an assistant to the Criminal Offense within the scope of the Corporation's business or work, including the Corporation's controller, the giver of orders, and beneficiaries.

Sudarto explained the ability to be responsible if mentally healthy with the classification, the perpetrator is able to know and/or realize that the act committed violates the provisions of the law and the perpetrator consciously and desires to commit the criminal act⁸ that from the opinion mentioned above, it can be known that the ability to be responsible is determined from two things, namely reason and will. Where with reason a person can distinguish between good and bad or forbidden deeds, while the will or desire to realize awareness or realization of the evil deeds that have been committed.

3.The Application of Sanctions Against Corporations According to Indonesia Laws and Regulations in an Effort to Provide Protection for Crime Victims

The forms of losses and victims due to corporate crime cannot be felt immediately (actual victims), but are only felt and seen later (potential victims).

By seeing the number of victims caused by corporations, it is very natural that corporations must also be responsible for all their actions.

Legislation policies in the applicable laws and regulations in Indonesia, which regulate the types of criminal sanctions against corporations in an effort to provide protection for victims of crime.

1.Law Number 5 of 1997 concerning Psychotropics.¹⁴ Article 1 point 13, a corporation is an organized collection of people and/or wealth, whether it is a legal entity or not.

- a) According to article 59 paragraph (3), corporations that commit criminal acts in article 59 are only charged with Rp 5,000,000,000 (five billion rupiah).
- b) According to Article 70, corporations that commit criminal acts in Articles 60 to 64 are subject to:
 - (a) Criminal fines of two times threatened; and
 - (b) An additional penalty in the form of revocation of a business license can be imposed.

The victim referred to in this law is self-victimizing, that is, someone who becomes a victim because of his own actions.

2.Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.

Article 1 point 5, business actors are any individual or business entity, whether in the form of a legal entity or a non-legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement, carrying out various business activities in the economic field. And the sanction that can be imposed on the corporation is a fine (Article 48).

⁸ Sudarto, Criminal Law I, Sudarto Foundation, Semarang 1990, p. 89.

In addition, additional penalties can be imposed (Article 49), in the form of:

- a) Revocation of business licenses; or
- b) Prohibition of business actors who have been proven to have violated this law to occupy the position of director or commissioner for at least 2 years and for a maximum of 5 years; or
- c) Cessation of certain activities or actions that cause losses to other parties.

Specifically for administrative actions in article 47 paragraph (2) there are irregularities in the legislative policy in formulating administrative actions in the form of:

- a) Determination of cancellation of the agreement;
- b) Command stop vertical integration;
- c) Orders to stop activities that cause monopolistic practices, unfair business competition, or harm to the community;
- d) An order to stop the abuse of the dominant position;
- e) Determination of cancellation of mergers/consolidations of business entities and takeovers of shares;
- f) Determination of compensation; and/or
- g) Imposition of a minimum fine of IDR 1,000,000,000 (one billion rupiah) and a maximum of IDR 25,000,000,000 (twenty-five billion rupiah)

The administrative action mentioned above should be applicable to corporations, but in the law the sanction is not one of the types of criminal sanctions that can be imposed by judges/courts if the corporation is filed as a perpetrator of a criminal act. However, it is unfortunate that these administrative actions are not integrated into the criminal liability system for corporations. This means that the sanction is not one of the types of criminal sanctions that can be imposed by a judge/court if the corporation is filed as a perpetrator of a criminal act.

The victims referred to in this law are people who invest with small capital that is fraudulently defrauded by corporations that have large capital. Which results in people with small capital losing competition with corporations with large capital.

3. Law Number 8 of 1999 concerning Consumer Protection

Article 1 point 3, business actors are any individual or business entity, whether in the form of legal entities or non-legal entities that are established and domiciled or carry out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to carry out business activities in various economic fields.

And the sanctions that can be imposed on corporations are:

- a) The penalty that can be imposed on business actors is a fine (article 62);
- b) Additional crimes (article 63) in the form of:
 - (a) Confiscation of certain goods;
 - (b) Announcement of the judge's decision
 - (c) Payment of compensation;
 - (d) Orders to stop certain activities that cause consumer losses;
 - (e) Obligations for withdrawal of goods and circulation; (f) Revocation of business licenses.

The criminal threat in article 62 above applies equally to all business actors, both individuals and business entities/legal entities. For criminal fines, there should be a difference between individual perpetrators (individuals) and business entities/legal entities, because the impact of victims (consumer losses) from the actions of business entities/legal entities is likely to be greater than the actions of individuals.

The distinction between criminal fines can be achieved by determining different maximum fines, or by determining a special minimum amount of fines for business entities/legal entities. However, because Law Number 8 of 1999 has been passed, the existence of criminal distinction is expected to receive attention in its application/application policy.

The victims referred to in this law are people who are deceived by advertisements made by manufacturers. Advertisements made in print/television media are inversely proportional to the reality in the field. 4. Law Number 22 of 2001 concerning Oil and Gas.

4. Law Number 22 of 2001 concerning Oil and Gas

Article 1 point 17, a business entity is a company in the form of a legal entity that carries out a permanent, continuous type of business and is established in accordance with applicable laws and regulations and works and is domiciled in the territory of the Unitary State of the Republic of Indonesia.

- a) The sanction that can be imposed on a business entity/legal entity is a fine, with the highest provision of a fine plus one-third (Article 56 paragraph 2). In the law, the maximum penalty is a threatened fine of Rp 60,000,000,000 (sixty billion rupiah) (Articles 52, 54, and 55).
- b) An additional penalty is in the form of revocation of rights or confiscation of goods used for or obtained from the proceeds of a criminal act (Article 58).

The victims referred to in this law are people who are in areas where oil and gas is exploited. Where the procedures regarding oil and gas exploitation are not fully implemented by corporations which results in the surrounding natural environment being damaged. As a result, people who live in the area become victims due to oil and gas exploitation.

5. Law number 15 of 2002 jo. Law number 25 of 2003 concerning the Crime of Money Laundering

Article 1 point 2, everyone is an individual or a corporation. Article 1 point 3 is that a corporation is a collection of people and or wealth that is organized either as a legal entity or a non-legal entity.

The crimes that can be imposed in the Money Laundering Crime Law are:

- a) Fine, with the maximum provision of the fine plus one third (article 5 paragraph 1)
- b) Additional penalties are in the form of revocation of business licenses and/or dissolution of corporations followed by liquidation (Article 5 paragraph 2).

The victims referred to in this law are people who suffer losses due to the actions of corporations that process haram money into halal money.

6. Law Number 23 of 2002 concerning Child Protection

Article 1 point 16, everyone is an individual or corporation. The penalties that can be imposed on corporations are: Fines (Article 90 paragraph 2).

The victims intended in this law are children who are victims of violence, persecution and even trafficking from corporations.

7. Law number 21 of 2007 concerning the Eradication of Trafficking in Persons

Article 1 point 4, everyone is an individual or corporation who commits the crime of trafficking in persons. Article 1 point 6 corporation is a collection of people and/or wealth that is organized either as a legal entity or as a non-legal entity.

And, the crimes that can be imposed on corporations are:

- a) Criminal fines (Article 15 paragraph 1)
- b) Additional Crimes, in the form of revocation of business licenses, confiscation of assets resulting from criminal acts, revocation of legal entity status, dismissal of administrators and/or prohibition of the management to establish a corporation in the same field (Article 15 paragraph 2).

The victim referred to in the law is a person who experiences psychological, mental, physical, sexual, economic, and/or social suffering, resulting from the crime of human trafficking.

8. Law Number 44 of 2008 concerning Pornography

Article 1 point 3, everyone is an individual or corporation, both legal and unincorporated. The crimes that can be imposed on corporations are:

- a) Criminal fines (Article 40 paragraph 7)
- b) Additional crimes are in the form of freezing business licenses, revocation of business licenses, confiscation of wealth resulting from criminal acts, and revocation of legal entity status (Article 41).

The victim of this law is the community who, due to the actions of corporations, has increased the number of pornographic VCDs. And the worst is if minors watch pornographic films.

9. Law Number 32 of 2009 concerning Environmental Protection and Management

Article 1 point 32, everyone is an individual or business entity, both legal entities and non-legal entities.

And the sanctions that can be imposed on corporations are:

- a) The principal penalty is in the form of a fine aggravated by one-third (Article 117);
- b) Disciplinary actions (Article 119) in the form of:
 - (a) Deprivation of profits obtained from criminal acts;
 - (b) Closure of all or part of the place of business and/or activities;
 - (c) Improvement due to criminal acts;
 - (d) Obligation to do what is done without rights; and/or
 - (e) Placing the company under the custody of a maximum of 3 (three) years.

The victims referred to in this law, especially for human victims as a result of irresponsible environmental management, can be in the form of temporary disability, permanent disability or death.

10. Law Number 35 of 2009 concerning Narcotics

Article 1 point 21, a corporation is an organized collection of people and or wealth, whether it is a legal entity or a non-legal entity. And the sanctions that can be imposed on corporations are:

- a) Criminal fines (Article 130 paragraph 1)
- b) Additional crimes are in the form of revocation of business licenses and/or revocation of legal entity status (Article 130 paragraph 2).

The victim referred to in this law is *selfvictimizing*, that is, someone who becomes a victim because of his own actions.

Conclusion

The corporate accountability system is: corporate administrators as makers and managers are responsible, corporations as makers and administrators are responsible, corporations as makers and also as responsible, and administrators and corporations as perpetrators of criminal acts and both are also responsible. And in the criminal law literature, corporate liability can be asked for is known by several doctrines, including: identification doctrine, aggregation theory, reactive corporate fault, vicarious liability, management failures model, corporate mens rea doctrine, specific corporate offences and strict liability.

The application of sanctions against corporations according to laws and regulations, the author has concluded that the sanctions that can be imposed on corporations in an effort to provide protection for victims of crime are: 1) The main crime includes a fine. 2) Additional Crimes and 3) Sanctions Crimes committed by corporations must be strictly regulated, so that corporations cannot evade crimes committed by taking refuge behind corporate management.

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