



Characteristics of Corporate Crime in Indonesia through Organizational Structure and Third Party Facilitation

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Abstract

Corporate crime in general is a new thing that becomes a topic of discussion even in contemporary times. This is due to the fact that criminal law generally only regulates/recognizes individual crimes. This causes many legal loopholes that are used by corporations to commit crimes, for example through corporate structures and facilitation of third parties (panama papers). The purpose of this study is to look at the concept of corporate crime and the interrelationships of the characteristics of corporate crime through the use of third party structures and facilitation. In this research, mainly using normative research methods with a conceptual approach. The results of the study show that corporate crime begins with the premise of John Locke that every unlawful act is a crime (crime. Even though at first this concept only aimed at individuals, with the development of the times this concept shifted to corporate criminal responsibility. In addition, if you look at the characteristics through the company's structure and facilitation, it shows that there are top and bottom management managerial efforts to commit corporate crimes by utilizing third parties, for example, Panama Papers which involve many companies owned by state officials.

Keywords: *Crimes; Corporations; Organizational Structures; Third Parties*

Introduction

Although it has long been recognized that corporate financial crimes generate financial returns that substantially exceed those of other serious crimes, such as counterfeiting, illegal drugs, prostitution, and gambling¹, research on corporate crime mainly focuses on its nature, and their size, description or determinants of them, harms and casualties, or regulation and enforcement (for an overview see.²A special issue is how the financial aspects of corporate crime, both in terms of operational costs and the profits generated, are still not in accordance with the theory.

¹McGurrin, Danielle, and David O. Friedrichs. 2010. Victims of Economic Crime—On a Grand Scale. *International Journal of Victimology* 8: 147, p. 57

²Levi, Michael, and Nicholas Lord. 2017. White-Collar and Corporate Crimes. In *Oxford Handbook of Criminology*, 6th ed. Edited by Alison Lieblich, Shadd Maruna and Lesley McAra. Oxford: OUP. P. 32

This is becoming increasingly evident as law enforcement authorities in many countries have adopted a 'follow the money' approach in the surveillance and enforcement of corporate financial crimes³ along with an increasing focus on the financial (eg banks) and professional (eg lawyers, accountants) organizations that enable and facilitate such crimes.⁴ In this article, the authors seek to better understand the intersection of organizational and corporate financial crime with a particular focus on the use of legitimate organizational structures as tools to control illicit finance. Next, the author explores the theoretical benefits that can be gained by approaching these issues from the perspective of integrated corporate and organizational law studies.

Referring to the scope of Indonesian corporate crime regulation, it is still very implicit, from the provisions of Article 103 it opens up opportunities to construct legal subjects which the Criminal Code does not recognize other legal subjects other than humans or people, even though in the Criminal Code there are several articles that allude to criminal acts/offences. carried out by legal entities.

The most important thing to know is deviations in the law concerned from general provisions or principles of criminal law. The rest, which do not deviate by themselves, still apply the general provisions of the Criminal Code based on *adegium lex specialis derogate legi generalis* (special provisions exclude general provisions). The principles of criminal law in Book I of the Criminal Code include the principle of legality, the principle of *transitoir*, the scope of application of criminal law, the criminal system, trial (poging or attempt), inclusion (*deelneming* or participation), combined offenses (*samenloop*), and others.⁵

The distinctive feature of corporate crime is that the act is committed by the corporation or its agents (such as managers, employees or owners) against the public, the environment, creditors, investors or against their rivals. Losses resulting from corporate crime are greater than the losses incurred by individual criminals.⁶

Criminal law policies in criminal liability for corporations must be seen through the Criminal Code (KUHP) and laws and regulations outside the Criminal Code. The fact is that criminal responsibility for corporate crime as a legal subject is not strictly regulated in the Criminal Code considering that the National criminal law is designed to deal with individual human behavior (*natuurlijk person*). The Criminal Code is based on the principle that only humans can be prosecuted as the maker/perpetrator (*dader*) who is held accountable for an offense, whether in the form of a crime or violation.

When viewed from the characteristics, there are several characteristics of corporate crime that are different from other conventional crimes, including:⁷

1. Corporate crimes are always committed in secret, it is difficult to know and often the victims are not even aware of the losses they have suffered.
2. These crimes are very complex (complexity) because they are always related to lies, fraud and theft and are often related to scientific, technological, financial, legal, organized, and involve many people and run for years.
3. There is a wider diffusion of responsibility due to organizational complexity.
4. Very wide spread of victims (diffusion of victimization) such as pollution and fraud.

³Ruggiero, Vincenzo. 2017. Networks of Greed. *Justice, Power and Resistance* 2:3, p. 23

⁴Zabyelina, Yuliya G. 2015. Reverse money laundering in Russia: Clean cash for dirty ends. *Journal of Money Laundering Control* 18:19, p. 219

⁵Padil, (2016), Characteristics of Corporate Criminal Liability in Corruption Crimes, *IUS Journal* | Vol IV | Number 1 | April | p. 46

⁶Mahrus Ali and Aji Pramono, *Dimensional Human Trafficking, International Instruments and Their Arrangements in Indonesia*, Bandung, Citra Aditya Bakti, 2011, Pg. 300

⁷Mahrus Ali, *Corporate Criminal Law Principles*, Jakarta, Rajawali Press, 2013, P.15

5. Obstacles in detection and prosecution (detection and prosecution) as a result of unequal professionalism between law enforcement officials and perpetrators of crimes.
6. Unclear regulations (ambiguity law) which often cause losses in law enforcement. The dual attitude of the perpetrators of criminal acts.
7. It must be admitted that the perpetrators of criminal acts generally do not violate laws and regulations but indeed these actions are illegal.

If referring to the characteristics above, none of them refer to the organizational structure and role of third parties. For example, the abuse of organizational and entity structures in this way became prominent in the 2016 leak of 11.5 million files at the center of the Panama Papers scandal, even though it has been high on the international policy agenda since the early 21st century. This is not to imply that organizational structure has not been historically abused, but the foreground of the issue by the OECD in 2001 is the next driver of the policy and scientific agenda.⁸The Panama Papers provide insight into the flow of (illicit) money through the global financial system and the concealment of the legally, unethically and illegally generated wealth.

The spotlight in the Panama Papers case fell on Mossack Fonseca, a Panama-based law firm and corporate services provider (CSP) that specializes in creating offshore companies in jurisdictions such as the British Virgin Islands and the Bahamas to act as conduits for the movement of finance. In 2017, the Paradise Papers leak reaffirmed how such financial arrangements hold up transnationally, with Appleby's CSP being scrutinized for its role in facilitating wealth control being called into question. The implication raised in the Panama and Paradise Papers is that these legal structures are abused for illicit and illegitimate purposes, such as tax evasion and evasion by the wealthy, concealment of corrupt funds by public officials, and other criminal behavior.⁹

The Panama Papers scandal not only involved top businessmen and celebrities, but also Indonesia. For example, there are Lippo group owners James Riady and John Riady who founded Golden Walk Enterprise Ltd and Phoenix Pacific Enterprise Ltd in the British Virgin Islands. There is also Franciscus Welirang, one of the directors of Indofood Sukses Makmur, listed as one of Mossack Fonseca's clients. Apart from that, there is also the name Sandiaga Uno, a prominent businessman who is running for Governor of DKI Jakarta, who is recorded as having 3 offshore companies in the British Virgin Islands. Sandiaga owns Aldia Enterprises Ltd, Attica Finance Ltd and Ocean Blue Global Holdings Ltd. There are also names that have been sought by law enforcement, namely oil businessman Muhammad Riza Chalid and property entrepreneur Djoko S. Tjandra.¹⁰In this regard, it is important to see Organizational Structure and Third Party Facilitation as one of the characteristics of contemporary corporate crime.

Formulation of the Problem

1. What is the concept of corporate crime?
2. What are the characteristics of the organizational structure and third party facilitation of corporate crimes committed by Indonesian companies?

⁸Lord, Nicholas, and Michael Levi. 2017. Organizing the finances for and the finances from transnational corporate bribery. *European Journal of Criminology* 14: 89, p. 365

⁹Meerts, Clarissa Annemarie. 2018. The Organization as the Cure for Its Own Ailments: Corporate Investigators in The Netherlands. *Administrative Sciences* 8:1, p. 15

¹⁰Look, <https://nasional.kontan.co.id/news/apa-saja-orang-indonesia-di-panama-papers>, Quoted on November 26, 2022

Research Methods

This research is categorized into the type of normative legal research, this is based on the issues and or themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational views, critical analysis and philosophy, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined.¹¹ It will also be analyzed using descriptive analytical methods, namely by describing the applicable laws and regulations related to legal theory and positive law enforcement practices related to the problem.¹²

Discussion

1. Corporate Crime Concept

Criminal and moral responsibility presuppose personal identity. John Locke started the modern fascination with that premise, and philosophers have embraced it, in one form or another, ever since. Personal identity is central to moral responsibility in two ways. The first is "synchronous," which basically refers to identity at any given time — how can we know which things in the world make up a person, and by extension what that person is responsible for. Philosophical explanations of synchronic identity for the natural man cover a wide range.¹³

Questions arise in criminal law for natural persons when we have to distinguish causal powers that can be identified with the agent (eg, acts of his will) from those that are not (eg, acts of interference by others, psychotic episodes, epileptic seizures, remote disorders). and unforeseen events). Writers generally only punish people for the things they do, not for any other external force.

Synchronic identity problems are also common in corporate criminal law. There is not much controversy about what constitutes a corporation, for example, the corporation charter, shareholders, directors and employees. But things can get complicated when we turn to causal forces and wonder when a corporation, not just one human-sized piece doing its own thing, has done something. Academics have had much to say on the matter, and criminal courts have long ruled in favor of the respondeat superior doctrine.¹⁴

Corporate crime'. That is, the breach, whether criminal, civil, or administrative, was committed by company officials (various, but representatives of the corporate entity) or the corporate entity itself or articulated as an offense 'for the company by the company or its agents in the course of business' That 'respectable' organizations and companies regularly engaging in criminal behavior is nothing new; major scandals, such as the LIBOR fraud involving financial institutions including Barclays and UBS, or accounting fraud such as that of Tesco Plc, or the facilitation of money laundering such as that of HSBC and Deutsche Bank, provides us with insight into how corporations and their environments can become conducive to a range of illicit behaviors for corporate and individual gain at the expense of public and private actors. Empirical evidence has corroborated the widespread, pervasive, and extensive nature of corporate crime.¹⁵

¹¹Compare, Ishaq, *Legal Research Methods and Thesis Writing*, Thesis and Dissertation, Bandung: ALFABETA, 2017, p. 45

¹²Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2011, p. 22

¹³Alexander, C., & Cohen, M. (2011). *The Causes of Corporate Crime: An Economic Perspective*. In A. Barkow & R. Barkow (Eds.), *Prosecutors in the Boardroom: Using Criminal Law to Regulate Corporate Conduct* 11. New York: New York University Press. P. 231

¹⁴O'Sullivan, J. (2016). *Federal white collar crime*. St. Paul: West Academic Publishing, p. 22

¹⁵Robinson, P., et al. (2017). *Criminal law: Case studies and controversies*, Philadelphia, PA: Wolters Kluwer, p. 91-92

It has long been recognized that corporate crime is also 'organized', both formally and informally, and is incentivized and enabled through legitimate business structures (. It is this last point that is most important here given the author's interest in regulating corporate crime finance through organizational structures. For example , it is necessary to understand how corporate actors deal with issues, such as managing finances for, and from, their criminal behavior, and the legitimate business structures that shape how, why, and under what conditions they may do so during this time and place.¹⁶

An interesting and important feature of these crimes is that the business actor has lawful access to the offending environment (i.e., the organization and its structures), has spatial separation from possible victims (e.g., market investors), and involves apparently common criminal behavior. and the routines in work practices provide a superficial display of legitimacy and outright concealment. Thus, organizations or corporations, in addition to providing opportunities and an environment that is conducive to violating behavior, can become (a) main actors, (b) agents, weapons, channels, tools, or locations of violations, and (c) third party criminal facilitators.

2.Characteristics of Organizational Structure and Third Party Facilitation of Corporate Crimes Committed by Indonesian Companies

The abuse of legitimate organizational structures, and corporate vehicles in particular, has received more academic attention in relation to the concept of 'organized crime' than to corporate and white-collar crime. For example, it has been demonstrated that organized crime groups may use corporate vehicles to launder illegal profits (eg, from drug trafficking), to generate revenue (eg, boiler room fraud), to avoid personal liability (eg, such as bankruptcy fraud).), or to legitimize other activities (for example, using a business as a 'cover' for black market trading).¹⁷In addition, cases of 'blackwashing' or 'reverse money laundering', where legally acquired assets are used to finance criminal activities, have also been analysed.¹⁸Money laundering, tax evasion and bribery where we see the misuse of 'company vehicles' are usually phenomena that transcend the categorical differences between corporate crime and organized crime.

Corporate and organized criminals adopt similar techniques and structures to commit their crimes. However, at the same time, the differences between the two can inform different institutional responses. therefore argued to analyze the similarities and differences between the techniques used in corporate and organized crime.¹⁹Analyzing and comparing corporate vehicle misuse in 'organized crime' and 'corporate crime' is a subject worthy of investigation, and an issue the authors explored as part of their Partnership for Conflict, Crime, and Security Research (PaCCS) project.

However, the author's focus here is on the opportunities presented by the organizational structure in the context of corporate crime that individuals alone cannot realize. This structure allows individuals to manage, conceal and transfer their illicit finances. This phenomenon, with a particular focus on corporate financial crime, requires analysis of how legitimate business practices and structures facilitate this criminal behavior by internal employees and representatives of companies involved in financial crimes in 'global', often restricted, markets over time. . This organizational structure takes many forms (eg, limited

¹⁶Levi, Michael, and Nicholas Lord. 2017. White-Collar and Corporate Crimes. In Oxford Handbook of Criminology, 6th ed. Edited by Alison Liebling, Shadd Maruna and Lesley McAra. Oxford: OUP, p. 345

¹⁷ankhorst, Francien, and Hans Nelen. 2005. Professional services and organized crime in the Netherlands. *Crime, Law, and Social Change* 42:88, p. 163

¹⁸Van de Bunt, Henk G., Jan van Koningsveld, Maarten J. Kroeze, Benny van der Vorm, Jan-Berend Wezeman, Karin van Wingerde, and Amber Zonnenberg. 2007. Misuse of Corporate Vehicles in The Netherlands [Misbruik van buitenlandse rechtspersonen]. Rotterdam: EITC, p. 87

¹⁹Meerts, Clarissa. 2018. The organization as the cure for its own ailments: corporate investigators in the Netherlands. *Administrative Sciences* 8. Forthcoming, p. 193

liability companies, foundations, charities, partnerships) and the authors focus here specifically on what have been termed 'company vehicles' as one form of organization.

Between corporations and humans have different characteristics. If humans have thoughts, wills, and hands so that they can kill, take other people's things, hide, deceive someone, this is not the case with corporations. That's why the determination of criminal acts by corporations is different from a crime committed by humans. Corporate crime is always a functional act and takes the form of inclusion. With the characteristics of such crimes, the theory and system of corporate criminal responsibility must of course be based on a different concept compared to the concept that applies to humans.

The Panama Papers case shows that corporate organizational structures and third party facilitation are used explicitly in corporate crimes. In Indonesia, the names of well-known billionaires who are included in the Forbes Indonesia richest list every year are also scattered in the Mossack Fonseca document. They created dozens of offshore companies for their business needs. One of them is Sandiaga Uno, a prominent businessman who is currently nominating himself as a candidate. Governor of DKI Jakarta. However, Mossack Fonseca documents indicate that the firm's clients include ponzi schemers, drug mobsters, tax evaders and at least one convicted sex offender who is currently in jail.

Records show that one American businessman who was arrested after traveling to Russia to have sex with orphans, pressed paperwork for his offshore company while he was incarcerated in New Jersey. In Indonesia, two names that are often sought by law enforcement for the purposes of investigating corruption cases, namely Muhammad Riza Chalid and Djoko Soegiarto Tjandra, are also listed in this leaked document.²⁰

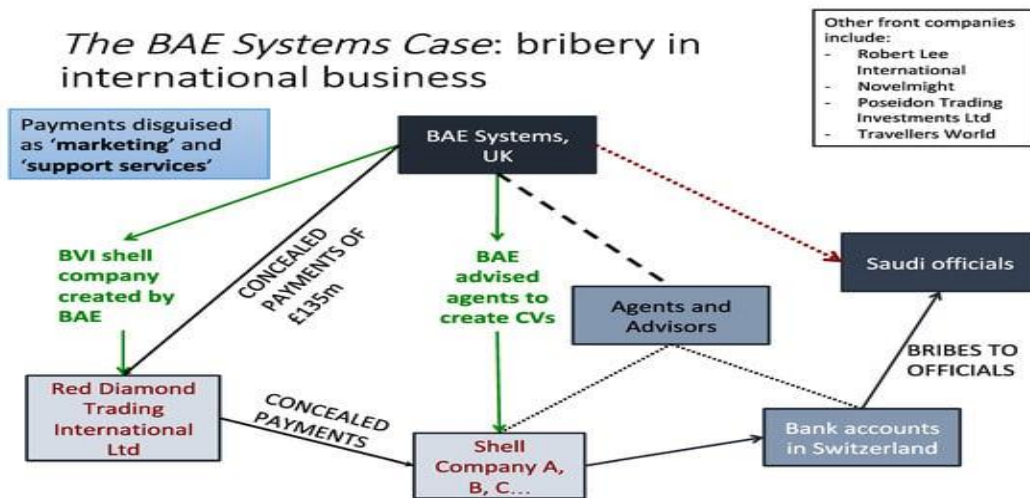
There are indications that Mossack Fonseca is working hard to protect the secrets of its clients, whether their clients are famous or not. In Nevada, a state in the United States, the firm is trying to protect itself and its clients from the effects of lawsuits in United States district courts, by removing all of the company's paperwork from its offices and enlisting the help of technologists to clean up the electronic footprints of their communications across the board. office computers and telephones.

This leaked document also shows how Mossack Fonseca regularly offers their clients to produce backdated documents to help their clients benefit from their various business agreements. Such services were very commonly offered until an email communication in 2007, Mossack Fonseca employees discuss special pricing structures for clients who request that their document dates be pushed back. Every one month back in setting the date of their company documents, the client must pay US \$ 8.75 to Mossack.²¹ However, when confirmed Mossack Fonseca confirmed that their company does not protect or support any illegal activity. In general, the characteristics of corporate crime associated with the structure and facilitation of third parties are described as follows:²²

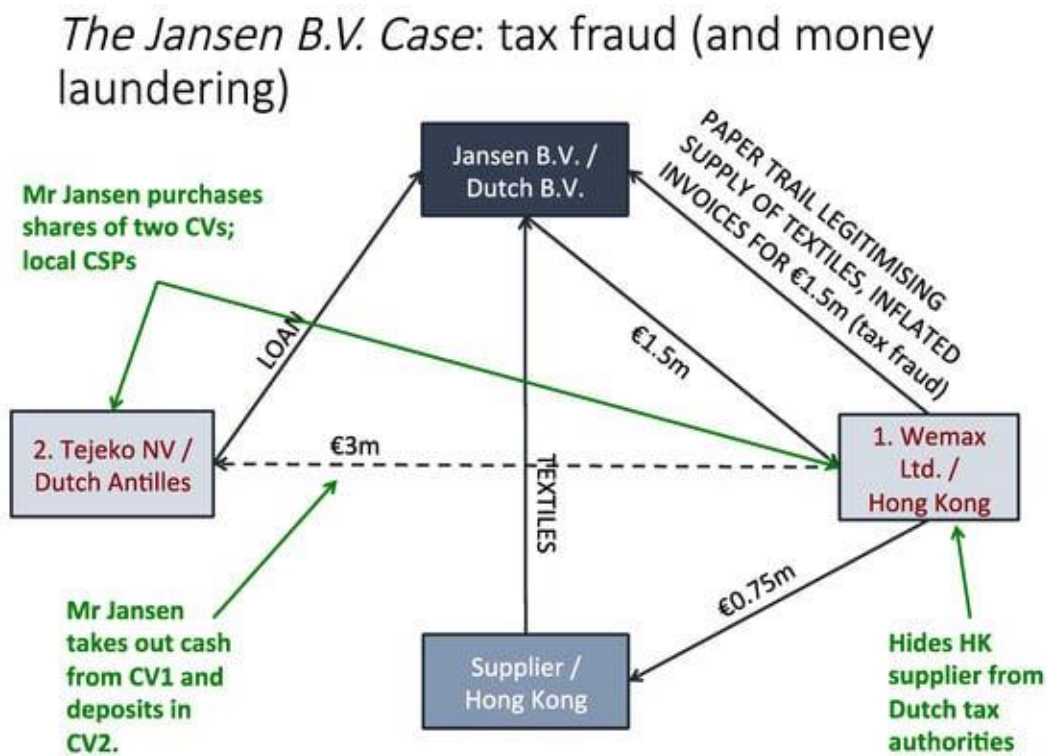
²⁰See, <https://investigation.tempo.co/panama/>, accessed on 26 November 2022

²¹Kurnianto Rombe Rante, (2019), Reaction of the Indonesian Government After the 2016 Panama Papers Appeared, *eJournal of International Relations*, 7(3), p. 1367

²²Transparency International. 2014. *Hiding in Plain Sight: How UK Companies Are Used to Launder Corrupt Wealth*. London: Transparency International.



Furthermore, in the case of tax evasion in panama papers, Indonesian companies have the following patterns and characteristics:²³



Based on this, it can be said that the pattern of organizational structure involving top and bottom management is very supportive of corporate crimes committed by Indonesia. Moreover, there is a network of crime facilitators contained in the panama papers.

²³Ibid

Conclusion

In general, the concept of corporate crime is implicitly contained in the premise built by Jhon Locke that a crime is a natural crime that must be enforced. Contemporary developments in the concept of corporate crime are increasingly evident because many companies commit crimes such as tax evasion and money laundering. As for the characteristics of corporate crime in Indonesia, structurally it is carried out through upper and lower management who agree to commit acts against the law, this is reinforced by the facilitation of third parties in committing crimes, for example in the panama papers.

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