

Research Article

Patterns of Corporate Punishment in Corruption Crimes in the Indonesian Legal System

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ORCIDAde Mahmud: <https://orcid.org/0000-0002-3711-2474>**Abstract.**

The issue of criminalizing corruption crimes involving corporations has become a concern because, recently, the phenomenon of corruption in several cases has involved corporations that are not easily subject to criminal sanctions. This research aims to analyze the criminal liability for corporations as perpetrators of corruption crimes in the Indonesian legal system and the pattern of punishment for corporations that commit corruption crimes. This research method applies the normative juridical method with a qualitative analysis of secondary data. The results show that law enforcement officials who determine corporations as suspects in corruption crimes and punish them but have difficulty in ensnaring corporations. One of the causes is the incomplete provisions regarding corporations as legal subjects in the anticorruption law. In addition, investigators have difficulty finding evidence and determining the identity of corporate offenders. The pattern of punishment for corporations is to apply a cumulative-alternative punishment pattern aimed at the corporation and its management. For corporations, the type of punishment imposed is fines or economic punishment aimed at recovering losses due to corruption or administrative punishment such as revocation of business licenses, while for the management, the punishment imposed is imprisonment and fines.

Keywords: sentencing, corruption, corporationCorresponding Author: Ade Mahmud; email: ade.mahmud@unisba.ac.id**Published** 30 October 2023

Publishing services provided by Knowledge E

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Selection and Peer-review under the responsibility of the 5th Sores Conference Committee.

1. Introduction

Recently, the role of corporations in the country's economic turnover has increased with a large amount of capital, complete resources and able to absorb labor, making its position more strategic in improving the welfare of society. With such a role, the corporation is considered capable of performing legal acts through its management. However, act of corporation and management or person has a separate legal responsibility as different legal personality.[1] Starting from this condition, the Indonesian legal system began to place corporations as subjects of criminal law. The development of corporations as the

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subject of criminal acts develops gradually.[2] Muladi and Diah Sulistyani mentioned that there are 62 laws in Indonesia that regulate corporate criminal liability.[1] From the observation of the regulation of corporate criminal liability in various laws, it can be concluded that the pattern of regulation varies greatly and is not standardized. As a result, there is a lot of confusion in law enforcement, because the arrangements are often unclear and ambiguous. These variations include, among others:

1. General provisions of the law that do not state that every person in the formulation of criminal offenses includes corporations;
2. Definition and scope of corporation;
3. Types of sanctions that can be imposed on corporations, both in the form of crimes and actions; and
4. Investigation procedures and criminal justice system processes when carried out against corporations.

Law Number 31 of 1999 on the Eradication of Corruption as amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Corruption makes corporations the subject of criminal acts, as can be seen from Article 20 of the Anti-Corruption Law. In the Anti-Corruption Law, a corporation is an organized group of people and/or wealth, whether a legal entity or not. Thus, corporations involved in criminal acts of corruption can be subject to punishment.

Although the Corruption Eradication Law has been in effect for a long time, only a few decisions have punished corporations. One of them is the corruption case of PT Giri Jaladhi Wana (PT GJW) in the Sentra Antasari Market construction project investigated by the Banjarmasin District Attorney's Office. The High Court with a panel of judges chaired by H.M. Mas convicted the corporation, in a decision that has been legally binding based on Banjarmasin High Court Decision Number 04/PID.SUS/2011/PT. BJM of 2011, read out on August 10, 2011, upholding the Banjarmasin District Court Decision Number: 812/Pid.Sus/2010/PN.Bjm, dated June 9, 2011. PT GJW was sentenced to pay Rp1,317,782,129 and an additional penalty of temporary closure for six months. [2]

Factually, the involvement of corporations in corruption crimes can be seen in several cases. Among the cases involving corporations are the beef import case by PT Indo Guna Utama, the Hambalang case relating to PT Adhi Karya and PT Dutasari Citralaras. The case of the head of the special working unit for upstream oil and gas activities (SKK Migas) involving PT Kernel Oil. In these cases, corporations have not been touched

by the law to take responsibility for losses suffered by the state from corporate activities. Criminal liability still covers the management or director of the company who is determined as a defendant in court. [3]

The involvement of corporations in corrupt practices can be observed from several cases handled by the Corruption Eradication Commission (KPK). KPK data in 2016 states that this institution has handled 146 cases with corporate management as suspects. All corporate administrators were successfully charged and sentenced to imprisonment, but the corporations remain untouched and continue to operate to this day. The KPK has never charged corporations in corruption cases, although the KPK has often stated in indictments that corporations have enjoyed money from corruption. This is due to the difficulty in determining the subject of corruption. Investigators have difficulty in finding that all or the board of directors of the corporation cooperated in committing corruption whose profits or proceeds were used for the corporation.[4]

Determining the guilt of the corporation is very difficult because the guilt that is delegated to the corporation is not the corporation personally, because in essence the person who commits the criminal offense is the person (the management of the corporation). Also, the problem of punishment patterns in the laws and regulations relating to corporate liability has not been clearly organized into main punishment, additional punishment, and action. As a result of this lack of clarity, there will be doubts in law enforcement officials to ensnare corporations as subjects of criminal acts, so that legal certainty will be difficult to achieve.

2. Identification of Problems

1. How is the application of criminal liability for corporations as perpetrators of corruption in the Indonesian legal system?
2. What is the pattern of punishment for corporations that commit corruption crimes?

3. Research Method

To produce precise findings, the author applies a normative juridical approach that uses secondary data in the form of research results such as journals, international proceedings, reference books, legal dictionaries, encyclopedias and studies of various laws and regulations, the United Convention Against Corruption which regulates corporate liability. The secondary data is obtained using literature study techniques, all existing

research data is inventoried and analyzed using qualitative analysis techniques so as to produce descriptive analytical research.

4. Discussion

4.1. Implementation of Criminal Liability Against Corporations as Corruption Offenders

It has been mentioned that law enforcement officers have difficulty in ensnaring corporations. Investigators who carry out the initial process of examining cases have difficulty in determining corporations as perpetrators of criminal acts. This can be seen from the rarity of cases handled by Investigators involving corporations as suspects. For example, investigations conducted by the Police, in the North Sumatra Regional Police (Polda Sumut) area, in the last 5 years there have been no cases handled involving corporations as suspects.⁴⁸ Polda Sumut investigators said it was difficult to find evidence to ensnare corporations as perpetrators of criminal acts. In addition, in filling out the identity of the perpetrator, regarding gender and religion, it cannot be mentioned in the case of corporate perpetrators.

Regarding the practice of law enforcement against corporations, from 2018 to 2021 law enforcement officials (prosecutors, KPK and Police) have handled 7,651 corruption cases. Especially for prosecutors throughout Indonesia, in the last 5 years they have investigated approximately 8,628 cases and filed prosecutions in 8,022 cases, however, the intensity and massive actions of law enforcement in eradicating corruption have not been matched by the prosecution of cases against corporations. Companies and their management must control every corporate activity to prevent unlawful acts.^[5]

In frame of criminal responsibility, in addition to the criminal responsibility of natural persons, in general, corporate criminal responsibility is also regulated on the basis of identification theory, given the increasing role of corporations in criminal acts, both in the form of crime for corporations that benefit corporations and in the form of corporate crimes, namely corporations formed to commit crimes or to accommodate the proceeds of crime. In this case, the corporation can be held accountable together with the management (by-punishment provision) if the corporate management (natural human) who has key positions in the corporate management structure has the authority to represent, make decisions and control the corporation, commit criminal acts for the benefit of the corporation acting either individually or on behalf of the corporation. So there is power decision and decision accepted by corporation as policy of the

corporation. In this case, the mens rea of the natural human management is identified as the mens rea of the corporation. (Council of Europe Criminal Law Convention on Corruption, 1999).

Criminalization of corporate management is considered insufficient to repress offenses committed by or with a corporation. [6] considering that in social and economic life it turns out that corporations are increasingly playing an important role as well. Criminal law must have a function in society, namely protecting society and enforcing the norms and provisions that exist in society. [7] If criminal law is only emphasized on the individual aspect, which only applies to humans, then that goal is ineffective, therefore there is no reason to always suppress and oppose the criminalization of corporations so that corporations must correct management systems that have the potential to violate the law [8] Criminalizing corporations with criminal threats is an effort to avoid criminalizing the employees of the corporation itself. The corporation benefits from the actions or actions taken by its management.

To solve the problem of holding corporations accountable as subjects of criminal acts, the Supreme Court issued Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Crimes by Corporations, on December 29, 2016. This regulation was issued as a guideline for law enforcement officials and fills the legal vacuum regarding the procedures for handling certain crimes committed by corporations and/or their management. This regulation is not only to ensnare corporations in corruption crimes, but also for corporations that are criminally liable under other special laws.

Supreme Court Regulation Number 13 of 2016 contains the formulation of the criteria for corporate guilt that can be called a criminal offense; who can be held criminally responsible for the corporation; procedures for examining (investigation-prosecution) the corporation and or corporate management; procedures for corporate trials; types of corporate punishment; decisions; and implementation of decisions.

KPK and the Attorney General's Office have tried to demand that corporations participate in paying state losses, but often fail because the judge considers the corporation in question not to be the defendant in the indictment. The first corruption case examined by the court that convicted a corporation was the corruption case of PT GJW. So far, corporations charged with criminal offenses can still be counted on the fingers. Law enforcement officials, both police and prosecutors as well as judges have admitted this on several occasions. One of the reasons is the difference in views among law enforcers, especially with regard to procedural law. One case that is often used as an example is PT GJW in Banjarmasin District Court. This case is already legally binding.

4.2. Pattern of Punishment for Corporations Committing Corruption Crime

The concept of corporate punishment is a criminal law concept that has not been accepted by criminal law for a long time. Although this concept has appeared for the first time in England in the 19th century, in other countries this concept was only accepted in the 20th century. For example, France only recognized the concept of corporation as a criminal offender in 1994, Luxembourg and Spain in 2010, and Italy in 2011. The rise of criminal cases against corporations in the US and Canada also only occurred in the 21st century.[9]

The United States and Europe in recent times have been faced with various cases of crimes involving corporations, such as environmental pollution, unfair business competition, food and drug products that interfere with health, fraud involving corporate accounting records, worker accidents, bribery, and financial crimes.[10]

Legislation in Indonesia until now does not have a "national punishment system" which includes "punishment patterns" and "punishment guidelines". "Pattern of punishment", which is a reference/guideline for lawmakers in making/formulating laws and regulations that contain criminal sanctions. The term "pattern of punishment" is often referred to as "legislative guidelines" or "formulative guidelines", while "sentencing guidelines" are guidelines for the imposition/application of punishment for judges ("judicial guidelines"/"applicative guidelines") Judging from the function of its existence, the pattern of punishment should exist before criminal legislation is made, even before the national Criminal Code is made.

Criminal responsibility is born with the continuation of the reproach (*verwijtbaarheid*) which is objective to the act declared as a criminal offense based on the applicable criminal law and subjectively to the maker who meets the requirements to be subject to punishment for the act.[11]

Corporate criminal liability system in criminal law, where for this criminal liability system there are several systems, namely: [12]

1. The management of the corporation as the maker and the management is responsible;
2. The corporation as the maker and the management is responsible;
3. The corporation as the maker and also as the one responsible.

The responsibility system is also regulated in Article 20 paragraph (1) of Law Number 31 Year 1999 stipulates that: "In the event that a criminal offense is committed by or on

behalf of a corporation, the prosecution and imposition of punishment may be carried out against the corporation and or its management". According to the author, those who can be held accountable are:

1. The corporation;
2. The management;
3. The corporation and its management.

Based on that, it is clear that in the UUPTPK, the corporate criminal liability system has reached the stage where the corporation can commit a criminal offense and can be held accountable. If it is related to this case, the actions of the defendant as the director of PT Indosat Mega Media (PT IM2) signed an agreement with PT Indosat to transfer the operation of the IMT-2000 cellular mobile network in the 2.1 GHz radio frequency band owned by PT Indosat, which should have been prohibited, by the actions of the defendant are clearly against the law and enrich themselves and or their corporation (PT IM2) which caused losses to state finances. Thus, liability according to the provisions of Article 20 paragraph (1) of Law Number 31 Year 1999 Jo. Law Number 20 of 2001 concerning Corruption Eradication (UUPTPK) is carried out by the Corporation and / or its management. This implies that the law adheres to a cumulative-alternative liability system in imposing criminal sanctions, namely against the corporation and its management.

Because of that, the ideal pattern of punishment that is in accordance with the characteristics of the corporation as a legal subject in the form of an institution is to use a cumulative-alternative pattern that targets the management / organs by applying imprisonment and fines as well as corporations with fines or economic punishment such as the return of profits from the proceeds of crime, recovery of victims' losses and other similar punishments. This pattern of punishment in the Indonesian legal system is possible to be regulated in various laws and regulations, especially the law on corruption eradication so that it can become a safety net so that guilty corporations do not escape criminal liability[1]. In several countries, including the US, fines in various cases of corporate crime can reach billions of US dollars. [13] Such is the magnitude of the crime that the corporation can be bankrupted and dissolved. [14]

According to the Indonesian Criminal Law, in addition to the main punishment in the form of fines, judges can impose additional criminal sanctions.[15] In accordance with the provisions of the Law, additional punishment is not mandatory for judges to impose because it is only optional.[16] In my opinion, it is better if some of the additional

punishments stipulated by the Law are mandatory and not optional. Thus, it will be able to create a deterrent effect for the same corporation or create a sense of horror for other corporations. For corporations, there is a possibility that the additional punishment that is very feared is the announcement of the judge's decision (to cause the effect of shame and termination of business relations by its business partners), seizure or expropriation of the corporation by the state, and revocation of business licenses.

5. Conclusions

1. Corporations as subjects of criminal law have been stipulated in Law Number 31 of 1999 on the Eradication of Corruption as amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Corruption. Although the Anti-Corruption Law establishes corporations as subjects of criminal law, only a few law enforcement officers have named corporations as suspects in corruption crimes and punished them. This is because law enforcement officers have difficulty in ensnaring corporations. One of the causes is the incomplete provisions regarding corporations as legal subjects in the Anti-Corruption Law. In addition, investigators have difficulty finding evidence and determining the identity of corporate perpetrators.
2. The pattern of punishment for corporations found guilty of committing corruption is to apply a cumulative-alternative punishment pattern aimed at the corporation and its management. For corporations, the type of punishment imposed is fines or economic punishment aimed at recovering losses due to corruption crimes or administrative punishment such as revocation of business licenses, while for the management the punishment imposed is imprisonment and fines.

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