

The Legal Position of Corporate Crime in Indonesia

Joelman Subaidi^{1*} & Budi Bahreisy¹

¹ Faculty of Law, Universitas Malikussaleh, Aceh, Indonesia

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Abstract:

In the context of Indonesian criminal law, legal subjects extend beyond humans or individuals to include legal entities or corporations. Corporations, as legal entities that can be held accountable for their actions, are subject to a range of legal frameworks, including those outlined in various laws such as Law No. 7 Drt. Year 1955 concerning Investigation, Prosecution and Trial of Economic Crimes, Law No. 31 Year 1999 as amended by Law No. 20 Year 2001 concerning Amendments to Law No. 31 Year 1999 concerning Eradication of Crimes, Law No. 9 Year 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing, Law No. 31 Year 1999 concerning Corruption Eradication, Law No. 41 Year 1999 concerning Forestry and others. Criminalizing corporations differs from criminalizing individuals due to the inherently distinct nature of corporations, which is not subject to the same legal principles as individuals within the criminal law. While certain forms of punishment can be imposed upon people, they are not applicable to corporations; for example, imprisonment and death penalty. Therefore, it is necessary to impose an appropriate form of punishment on corporations in order to achieve the objectives of criminalization. Accordingly, a variety of sanctions exist that are regulated by several different laws, including probation sanctions, equity fines, diversion to alternative sanctions, supplemental sanctions, community service sanctions, the authority of external legal entities, and the requirement to purchase shares.

Keywords: Legal Position; Corporate Crime; Indonesia

INTRODUCTION

Conventional crimes, their perpetrators, modus operandi, and the outcomes achieved are not proportionate to the risks undertaken by perpetrators or the impartiality of the law. In the past, it was believed that a country's level of crime was directly proportional to its poverty level. However, this is no longer applicable in contemporary times, as it only holds true for conventional crimes, such as theft, embezzlement, fraud, and robbery. This is because the economic development of a country leads to the emergence of a variety of complex and advanced forms of criminal activity (Irianto 2021). Unlike a situation in which a corporation commits a crime or is referred to as a corporate crime, the law is often lenient from a law enforcement perspective. The queen of justice, with her eyes initially tightly closed, is now open and can see. Similarly, the sword in her hand, which was once sharp, is now dull, and the scales on her left hand that were once balanced are now biased (Rodliyah, 2020).

Corporate crimes have far-reaching consequences and often affect a larger number of individuals. The impact of corporate-caused forest fires, in particular, can be significant, as the community is adversely affected by the hazardous effects of smoke, which impairs both vision and breathing. This is a problem that is not confined to a single country, as forest fires that occur in Indonesia also have a negative impact on neighboring nations. Disruption of the flight resulted in significant financial losses, estimated at trillions of dollars. The magnitude of the impact cannot be overstated, because it

*Corresponding Author : Joelman Subaidi, Faculty of Law, Universitas Malikussaleh, Aceh, Indonesia, ORCID ID: 0009-0007-5671-874X, E-mail: joelman.subaidi@unimal.ac.id

was caused by a single individual. Moreover, the environmental damage caused by this incident is yet to be fully assessed.

Corporations that engage in narcotic trafficking may be subject to prosecution under Article 130 of Law Number 35 of 2009 concerning Narcotics and Articles 60 to 64 and Article 70 of Law Number 5 of 1997 about psychotropics. Corporations that distribute illegal narcotics can be sentenced to using a variety of weighted criteria or types of punishment. In addition to the primary penalty, which is a fine of twice the amount under Articles 60, 61, 62, 63, and 64 of Law No. 5 of 1997 Concerning Psychotropics, corporations may also face additional penalties under Article 70, including the suspension of their license to conduct business and other legal actions against management. Therefore, in addition to the corporation itself, individuals acting as administrators of business entities may be subject to criminal liability.

According to its qualifications, corporate crime is classified as a transnational white-collar crime. This combination allows for a wide scope of crime and the possibility of a significant impact on losses, since victims of corporate crimes also include members of society at large, people who buy the products they make, rival corporations, and unprotected workers. When corporate crime results in damage to public finances or the national economy, even the state may become a victim. To safeguard its economic policies, the government should consider refining the regulations governing business activities through the establishment of new regulations and implementation of stricter enforcement, especially those related to corporate legal responsibility for criminal offenders.

The concept of criminal liability towards corporations in the Indonesian criminal law system is relatively new, even though the Criminal Code (KUHP) has not explicitly stipulated corporate responsibility as a perpetrator of crimes. This concept has only recently been introduced and regulated by special laws outside KUHP. However, in practice, law enforcement views corporations differently. In the context of narcotic distribution, corporations can take on the roles of producers, collectors, and distributors to the general public. The role of corporations in the distribution of narcotics has the potential to be substantial considering that these corporations operate as centers for health services such as hospitals, health clinics, pharmacies, drug depots, and other business entities (Ali, 2024).

Although corporations are considered legal entities rather than human subjects under law, it is not a straightforward matter to hold them accountable for committing crimes from a theoretical perspective. This complication stems from the existence of the 'no liability without fault' principle. Faults are *mens rea* or the heart's attitude, which only naturally exists in people. *Mens rea* is a difficult element to establish from a corporation alleged to have committed a crime because corporations can only act through the board of directors' orders. Corporations can be considered to have committed a crime based on the actions committed by persons who sit in management. The juridical consideration that can be used to decide whether a corporation has committed a crime is whether the crime was committed by the management or the employees while they were still acting within the bounds of their authorities and for the benefit of the corporation.

METHODS

This research is normative, legalistic, and doctrinal in nature. Rowe claims that normative research seeks to find, explain, examine, analyze, and systematically present various types of facts, principles, concepts, theories, and specific laws to discover new knowledge and ideas that can be proposed as a change or improvement. This study examines every document, source, fact, theory, doctrine, and law pertaining to businesses that engage in narcotic trafficking in Indonesia (Rowe, 2015). According to Zahraa, normative research is a fresh, diligent, systematic inquiry or investigation of factual data and/or theoretical concepts of the rules and principles of a particular legal issue in an attempt to discover, revise, or improve relevant concepts, theories, principles, and applications (McCrudden, 2006).

In addition, normative research can also be conducted on issues involving overlapping laws, laws that are in conflict with one another, and laws that are unclear or ambiguous. According to Diantha, legalistic research can take a variety of approaches in the form of legal approach (*statute approach*),

legal history (*historical approach*), case analysis (*case approach*), and comparison of law (*comparative approach*) (Rowe, 2015). However, this study only applies the statutory approach with the objective of analyzing concepts and laws relating to the regulation of drug crimes, particularly those relating to corporate regulations as actors in Indonesia.

RESULTS

Corporate crime is sometimes referred to as organizational crime. The word “*korporasi*” (Indonesian) is etymologically translated from *corporatie* (Dutch), *corporation* (English), and *corporation* (German), which means a body or combine in one body, or in other words a body that is made into an entity, a body that is obtained by human actions as opposed to humanity that occur naturally. The term “*corporation*” is frequently used among criminal law experts to refer to what is common in other laws, particularly in the field of civil law, as a legal entity.

In Dutch, it is referred to as *recht persoon*, or as it is referred to in English, a legal entity, or corporation (Budianto, 2012). In current development, however, corporations do not necessarily have to be interpreted only as legal entities, but also more broadly as an organized collection of people or assets, whether they are legal entities or not. Thus, besides being recognized as a company, acooperative, or foundation, it can also be a firm, a limited liability company without legal entity rights and partnerships, associations, and others (Muladi, 1995).

Initially, convicting criminals was a challenging task because of the difficulty in identifying the physical forms and behaviors of companies at fault in the context of criminal law. As stated by G William, corporations have “*no soul to be damned, no body to be kicked*” and corporations cannot be shunned because “*they have no soul*” (QC, 2008). This is a reflection of the adage in criminal law, namely *the deed does not make a man guilty unless his mind is guilty (Actus non facit reum, nisi mens sit rea)* (QC, 2008).

However, this adage is gradually becoming irrelevant because courts in various countries have begun to incorporate human elements into corporate arrangements that benefit corporations through the conduct of human intermediaries. Therefore, it can be ascertained that if the corporation can benefit from the expertise of its human element, they will also be held accountable for the costs associated with the crimes that they commit on the grounds that they not only act for the company (vicarious liability) but also act as a company.

The inclusion of corporations as legal objects in criminal law is inextricably linked to social modernization. According to Satjipto Rahardjo, it is important to acknowledge that as society becomes more modern, the social, economic, and political systems contained therein become more complex. Thus, the demand for a formal life-control system will become even greater. It is preferable to have arrangements that are more structured, explicit, and precise, because social life cannot be allowed to continue under a lax set of rules. These methods may satisfy the needs of a constantly evolving society, but the issues they create are much more significant.

In its development, crime is carried out in an organized manner in the form of a corporation, and many terms or definitions of corporate crime often confuse the difference between the actual corporate crime of the perpetrators and the characteristics of the crime. To clarify the problem, it can be explained by some limitations on the definition of crime in relation to corporations (Jenkins, 1980):

- a. Crime for a Corporation Is corporate crime committed to the benefit of the corporation itself, not for the benefit of individuals or perpetrators. This is done solely by the corporate organ (management) for corporate profit.
- b. Crime Against Corporation Crimes committed for the benefit of individuals are often committed by corporate workers (employee crime) against the corporation, for example, the embezzlement of company funds by officials or employees of the corporation.
- c. Criminal Corporation Corporations are deliberately controlled to commit crimes; the position of the corporation here is only to commit crimes, and the corporation is only a mask of its evil aims.

The aforementioned differentiation indicates that criminal activity is not only individual in nature, but can also be highly organized within an institutional framework. Corporate crime, in particular, refers to offenses committed by organizations with the primary objective of achieving financial gains, and such activities often involve transgressions of legal boundaries. The development of crime today is not only done by those who have social and personal ailments, but also by business people organized in a corporation, E.H. Sutherland states that, in contrast to these theories, my theory is that criminal behavior is learned just as any other behavior is learned, and that personal and social pathologies play no essential part in the causation of crime. I believe that this thesis can be substantiated by a study of the violation of law by businessmen. Businessmen are generally not poor, are not feeble-minded, do not lack organized recreational facilities, and do not suffer from other social and personal pathologies or commit many crimes, and such pathologies cannot be used as an explanation of the crime of other classes (Rahmah, 2023).

Such is the severity of organized crime, which has made a great deal of harm to society collectively and even to the state. In the UN congress in Caracas by taking a central theme on “crime prevention and quality of life,” looking at crime has endangered the environment, among others stated: Considering whereas the phenomenon of crime, through its influence on society, disturbs the entire development of nations, is the welfare of the people both spiritually and materially, endangers human dignity and creates an atmosphere of fear and violence that undermines the quality of the environment (Girsang et al., 2023).

Evil has become a historical necessity; this phenomenon seems to be an eternal problem in the order of human life. Since then, crimes have spread globally. This crime is not only a personal problem of the victim, but more broadly becomes a collective problem of the community and the state, and even includes transnational space as an international crime. The shift is not only done conventionally, but more than that, many of their actions are very difficult to know, whether as a crime or not. Even though there are so many victims, both the community and the state bear the burden of losses due to the crime.

In the development of corporate crime, several forms of crime and victims of corporate crime can be inventoried, including violations against consumers, environmental pollution, administrative violations, financial, labor, manufacturing, and unfair trade competition. Therefore, corporate crime in view of Marshall B. Clinard and Peter C. Yeagar states that A Corporate crime is any act committed by corporation that punished by the state, regard, or whether it is punished under administrative or criminal law (Kristian, 2014). The symptoms of legal violations committed by corporations, such as those mentioned above, have a negative impact whose risks are very broad on social life; on this basis, legal entities begin to be in the spotlight of the attention of legal experts so that legal entities are not only subject to civil law but can also be subject to criminal law so that they can be prosecuted and convicted of criminal sanctions.

DISCUSSION

They can only be held criminally responsible when corporations are enabled as legal subjects. In terms of criminal law, the Criminal Code (KUHP) does not implicitly specify or assertively mention that businesses are criminally liable for crimes they commit. However, legal justification is governed by particular laws or regulations outside the Criminal Code, including, but not limited to:

- a. Article 15 of Emergency Law Number 7 of 1955 about Investigation, Prosecution, and Trial of Economic Crimes.
- b. Article 20 of Law Number 31 of 1999 Jo Number 20 of 2001 about the Eradication of Corruption Crimes.
- c. Articles 6,7 and 9 of Law Number 18 of 2010 on the Crime of Money Laundering.
- d. Article 13-16 of Law Number 21 of 2007 about the Eradication of Human Trafficking Crimes.
- e. Article 70 of Law Number 5 of 1997 concerning psychotropics.

- f. Article 130, Law Number 35 of 2009 concerning Narcotics.
- g. Articles 17 and 18 of Law Number 15 of 2003 concerning terrorism.
- h. Law Number 40 of 2007 concerns Limited Liability Companies.

The imposition of punishment on those who commit crimes covered by the aforementioned regulation is based on guilt (liability based on fault). This is in accordance with the *nulla-poena sine culpa* principle, which states that there is no crime without guilt. Applying this condition to corporations is challenging. A corporation is considered to have no soul because it is a legal entity; therefore, it cannot make mistakes. Liability *based on the fault* doctrine cannot be applied to corporations as perpetrators. Nonetheless, it is theoretically possible to deviate from the principle of error using the doctrines of strict liability and vicarious liability. Consequently, as perpetrators of criminal acts, corporations are difficult to punish.

The court decision by Tangerang District Court Number 30/Pid. B/1990/PN/TNG dated August 1, 1990, concerning poisoned biscuits, is an example of how corporations were not being convicted as perpetrators of criminal acts. The director of CV Gabisco was charged with guilt as an individual and in his capacity as a director. Decision of the Supreme Court of the Republic of Indonesia Number 2239K/Pid. Sus/2012 for PT. Asian Agri Group (AAG) was sentenced to a crime, even though the Public Prosecutor did not prosecute the corporation. In both decisions, the perpetrators of criminal acts were directed towards individuals instead of legal entities or corporations.

CONCLUSION

Corporate crime is defined as a crime that involves or uses a company, such as a Limited Liability Company (PT), to abuse narcotics. Small businesses such as pharmacies, hospitals, and health clinics may also be involved in the distribution of narcotics through corporations. The corporation is not fiction; it really exists and occupies an important position in society and can cause harm to other parties in society as well as humans. Treating corporations like humans (natural persons) and imposing responsibility for criminal acts made by corporations is in line with the legal principle that anyone is equal before the law (the principle of equality before the law). Corporations that can have a profound impact on social life are also required to respect the fundamental values of our society that are determined by criminal law.

Corporations act on the interests of corporations through a systematic management structure, based on this view and supported by several theories such as Strict Liability and Vicarious Liability, and corporations can be subject to criminal penalties. Corporations are liable because, without corporate criminal liability, it is not impossible for a company to avoid criminal regulations and not only its employees are sued but also directors, commissioners, and shareholders because they have committed a crime that is actually a mistake in business activities carried out by the company. If a company has made a profit from illegal business activities (money laundering), then the company (board of directors, commissioners, shareholders) should also be subject to sanctions for crimes that have been committed, not just for the employees of that company.

For example, corporations that engage in narcotic trafficking may be subject to prosecution under Article 130 of Law Number 35 of 2009 concerning Narcotics and Articles 60 to 64 and Article 70 of Law Number 5 of 1997 about Psychotropics. Corporations that distribute illegal narcotics can be sentenced using a variety of weighted criteria or types of punishment. In addition to the primary penalty, which is a fine of twice the amount under Articles 60, 61, 62, 63, and 64 of Law No. 5 of 1997 Concerning Psychotropics, corporations may also face additional penalties under Article 70, including the suspension of their license to conduct business and other legal actions against the management. Therefore, in addition to the corporation itself, individuals acting as administrators of business entities may also be subject to criminal liability.

Conflict of Interest

All the authors declare that there are no conflicts of interest

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