



Application of Guidelines for Handling Cases against Corporations as Criminal Actors

¹Yasmirah Mandasari Saragih, ²Ariansyah

¹ Faculty of Social Science, Universitas Pembangunan Panca Budi, Medan, Indonesia

² Judge of Pengadilan Negeri Pasuruan, Indonesia

Email - ¹ yasmirahmandasari@gmail.com, ² ariansyah.ari@gmail.com

Abstract: *Crimes committed by corporations are very detrimental to society and the state. Conventional accountability systems, which are individual, direct and based on school, are difficult to apply to corporations. According to the results of the study, it can be concluded that currently many laws place corporations as the subject of criminal acts that can be held accountable. Through Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. This regulation was made, among others, aimed at being a guide for law enforcers in handling criminal cases for corporate actors and/or their management, filling legal voids, especially criminal procedural law in handling criminal cases with corporate actors and/or their management, as well as in order to encourage effectiveness and optimization. Handling criminal cases with corporate actors and/or their management. It is suggested that there is a common perception among law enforcers about the criminality of corporations. With the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, it is hoped that it will become a guideline in the context of imposing criminal penalties against perpetrators of corruption so that the punishment applied can guarantee legal certainty and approach a sense of justice in an effort to provide a deterrent effect.*

Key Words: *Case Handling Guidelines, Corporations, Criminal Act.*

1. INTRODUCTION:

Corporations are the subject of a strong global economy and has a stronger compressive power than individuals, because the potential losses incurred are much greater than those of individuals. With the recognition of corporations as the subject of criminal acts, it is important to impose penalties not only on the management but also on the related corporations. By not being convicted of a criminal act, the purpose of the punishment achieved will be different if the crime is only directed at the management but not at the corporation.

Indonesia has recognized corporations as perpetrators of criminal acts, this can be proven by the existence of corporations as perpetrators of criminal acts in various laws and regulations in Indonesia outside the Criminal Code. However, although there has been an acknowledgment that corporations are the subject of criminal law, in reality we see that there are still many criminal acts involving corporations that do not direct corporations to become suspects in the judicial process..

As a subject of criminal law, corporations do not have an inner attitude. But in order to be criminally accountable, it is necessary to have mens rea/schuld. Crimes committed by corporations are very detrimental to society and the state. The legality of corporations as perpetrators of criminal acts who can be held criminally accountable has not been stated. However, the legal basis is regulated in regulations outside the Criminal Code, including:

- a) Undang-Undang Republik Indonesia Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, in Chapter I Article 1 what is meant by corporation is an organized collection of people and or assets, both legal entities and non-legal entities and each person is an individual or including a corporation. This Law since the enactment of Law No. 3 of 1971 concerning the Eradication of Criminal Acts of Corruption is a further regulation of the crimes listed in Articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420 , 423, and 435 of the Criminal Code;



- b) Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law. In Article 1 point 9 it is stated that every person is an individual or a corporation;
- c) Law Number 1 Year 2009 concerning Aviation. In Article 1 number 55 it is stated that "every person is an individual or corporation";
- d) Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 17 of 2016. In Article 1 number 16 it is stated that "every person is an individual or corporation";
- e) Law Number 35 of 2009 concerning Narcotics. In Article 1 number 21, it is stated that a corporation is an organized collection of people and/or assets, whether they are legal entities or not;
- f) Law Number 31 of 2004 concerning Fisheries as amended by Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, and so on.

The criminal imposition of the perpetrators of criminal acts as regulated in the above-mentioned regulations, is based on liability (liability based on fault). This is in accordance with the principle of "nulla poena sine culpa", which means that there is no crime without guilt. This condition becomes difficult if applied to corporations.¹

As a legal entity, a corporation does not have a soul, so it is impossible to make mistakes. The doctrine of liability based on fault, cannot be applied to corporations as perpetrators of criminal acts. However, theoretically it is possible to deviate from the principle of error by using the doctrine of strict liability (absolute liability), vicarious liability (surrogate responsibility). Consequently, corporations as perpetrators of criminal acts are difficult to punish.

2. METHOD:

Regarding the problem of the object of research that is the target of certain sciences, in this case the science of law, as according to Ronny Hanitijo Soemitro "every science has its own identity, so there will always be differences. The research methodology applied in every science is always adapted to the science that is the parent".² So this research is a normative juridical research, namely legal research that aims to find methods, norms or *das sollen*.

Normative research is carried out on theoretical matters on legal principles related to law enforcement in terms of corruption in Indonesia. The main problem in this research is one of the central problems of criminal policy (criminal and sentencing issues). Therefore, the approach cannot be separated from a policy-oriented approach.

3. RESEARCH RESULTS & DISCUSSION:

a) Policy Guidelines for Case Handling Against Corporations as Criminal Actors

In order to be found guilty and then sentenced, the perpetrator of a crime must have the ability to take responsibility. Criminal acts, mistakes, and crimes are 3 (three) main things in criminal law. Helbert L. Packer stated that: "These three concepts symbolize the three basic problems of substance on the criminal law: 1. What conduct should be designated as criminal law; 2. What determinations must be made before a person can be found to have committed a criminal offense (what conditions must be met before a person is determined to have committed a criminal offense); 3. What should be done with persons who are found to have committed criminal offenses".³

The criminal responsibility system adopted in Indonesia is based on mistakes. Mistakes are the mental attitude of criminals. Errors only exist in natural human legal subjects. In corporations, it is not possible to have an inner attitude. Meanwhile, the *nulla poena sine culpa* principle must still be adhered to to hold criminals accountable. Therefore, it is not easy to prove that there is a mistake in a corporation or legal entity, because corporations are not natural legal subjects who do not have *mens rea*.

The concept of criminal law regarding corporate responsibility has developed. The model of corporate responsibility as perpetrators of criminal acts along with the times, which include:

- Legal Fiction Theory. A legal entity or corporation is an abstraction not a concrete thing, so it is impossible to become a legal subject of a legal relationship. Legal Entity is a fiction, that is, something that doesn't really exist but people live it in the shadows to explain something. People act as if there are other legal subjects, but their unreal form cannot perform actions so that those who do are humans as representatives.
- Ultra Vires Doctrine. A corporation is not entitled to take actions that are outside the objectives outlined in its articles of association, so that such action is null and void and cannot be confirmed by the shareholders.

¹ Warih Anjari, Pertanggungjawaban Korporasi Sebagai Pelaku Tindak Pidana, *Jurnal Ilmiah WIDYA Yustisia*, Volume 1, Nomor 2 November 2016, p. 116

² Ronny Hanitijo Soemitro, *Bahan Kuliah Metodologi Penelitian Hukum*, Badan Penerbit UNDIP, 2001, p. 8.

³ Hebert L Packer. *The Limits of The Criminal Sanction*. Stanford University Press. California. 1968. p. 17.



- Identification Theory (Alter Ego Theory). The will power of the corporation's manager represented the will power of corporation. In this case, the corporation can only be held accountable for the actions of individuals acting on behalf of the corporation and that person has a high position or key function in the corporate decision-making structure. In this concept, the perpetrators of natural crimes (humans) are identified first. If the perpetrator is a person who acts for the corporation (directing mind), then the corporation can be held accountable.
- Strict Liability. Absolute accountability regardless of the inner attitude or mens rea of the perpetrator. This accountability model is the most practical accountability.
- Vicarious Liability (Respondent Superior). A person in this case the corporation can be held responsible for the actions of others or substitute liability. This concept is based on the relationship between employers and workers, where the employer is responsible for the actions of his workers within the scope of his duties and work.
- Successive Liabilities. Criminal liability can be transferred to other people.
- Delegation Theory. Is a modification of identification theory, where corporations are very large and decision making is fragmented. The subject of the criminal act who is responsible is expanded, as long as the person carries out the authority of the corporation.

With the recognition of corporations as the subject of criminal acts, it is important to impose penalties not only on the management but also on the related corporations. By not being convicted of a criminal act, the purpose of the punishment achieved will be different if the crime is only directed at the management but not at the corporation. In general, the purpose of the punishment imposed is apart from a deterrent effect on corporations that commit criminal acts but also as a preventive measure so that the crime is not committed by other corporations..

Currently, many laws place corporations as the subject of criminal acts that can be held accountable, but cases with legal subjects in the form of corporations that are submitted in criminal proceedings are still very limited, one of the reasons is that the procedures and procedures for examining corporations as perpetrators of criminal acts are still unclear. Therefore, it is necessary to have a guideline for law enforcement officers in the context of handling criminal cases committed by corporations.

The Supreme Court based on its authority as determined in Article 8 of Law Number 12 of 2011 concerning the Establishment of Legislations has created regulations in order to fill legal voids in handling criminal cases committed by corporations and/or their management through Supreme Court Regulations. Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. This regulation was made, among others, aimed at being a guide for law enforcers in handling criminal cases for corporate actors and/or their management, filling legal voids, especially criminal procedural law in handling criminal cases with corporate actors and/or their management, as well as in order to encourage effectiveness and optimization. Handling criminal cases with corporate actors and/or their management.

b) Implementation of Guidelines for Handling Cases Against Corporations as Criminal Actors

According to Barda Nawawi Arief, that although in principle corporations can be held accountable for the same as individuals, there are some exceptions, namely in cases which by nature cannot be carried out by corporations and in cases where the only punishment can be imposed which cannot be imposed on corporations.⁴ With the recognition of the corporation as the subject of a criminal act, it is important to impose a crime not only on the management but also on the related corporation.

In connection with the urgency of criminal prosecution against corporations, Elliot and Quinn argue about several reasons regarding the need to impose criminal liability on corporations with the following reasons:⁵

- 1) Without criminal liability to corporations, it is not impossible for companies to escape from regulations and only their employees are prosecuted for committing criminal acts which are actually the fault of the business activities carried out within the company;
- 2) In some cases, for procedural purposes it is easier to sue a company than its employees;
- 3) In the case of a serious criminal offense, a company has more capacity to pay the fine imposed than a company employee;
- 4) The threat of lawsuits against the company can encourage shareholders to supervise the activities of the company in which they have invested;
- 5) If a company has made profits from illegal business activities, then the company should also bear the sanctions for criminal acts that have been committed instead of employees of the company.
- 6) Corporate responsibility can prevent companies from putting pressure on their employees, either directly or indirectly, so that employees try to make profits that do not come from illegal activities.

⁴ Muladi dan Dwija Priyatna, *Pertanggung jawaban Pidana Korporasi*, Jakarta: Kencana, 2010, p.96

⁵ Sutan Remi, *Pertanggungjawaban Pidana Korporasi*, Jakarta; Grafiti Pers, 2006, p.55



7) Adverse publicity and imposition of fines can serve as a deterrent for the company, it can function for the company to carry out illegal activities, where this is not possible if it is the employees who are being prosecuted.

Currently, through the provisions in the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, it is hoped that this will become a guideline in the context of handling cases in order to impose crimes against corporations and/or their management as perpetrators of criminal acts so that the punishment applied can guarantee legal certainty. and approach a sense of justice in an effort to provide a deterrent effect. In Article 4 of the Regulation of the Supreme Court, it gives authority to judges in imposing crimes to assess corporate mistakes, among others:

1. The corporation may gain or benefit from the crime or the crime is committed for the benefit of the corporation;
2. Corporations allow criminal acts to occur; or
3. The corporation does not take the necessary steps to prevent a bigger impact and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts.

Regarding the concept of corporate punishment, according to Dwija Priatna, corporate punishment is aimed at an integrative sentencing goal, which contains several characteristics, including: first, the purpose of sentencing is general and specific prevention. Specific prevention here means that the perpetrator of a crime can be prevented from committing a criminal act in the future if he already believes that the crime has brought suffering to him, so that the crime here is considered to have the power to educate and improve, while general prevention has the meaning that the imposition of a crime is intended so that other people are prevented from committing a crime. commit a crime⁶.

In relation to the importance of punishment for corporations, it cannot be separated from the type of punishment that can be given to corporations, so that the punishment of corporations will be in accordance with the purpose of punishment to be achieved, namely overcoming crimes committed by corporations.

4. CONCLUSION:

- a) Currently, many laws place corporations as the subject of criminal acts that can be held accountable, but cases with legal subjects in the form of corporations that are submitted in criminal proceedings are still very limited, one of the reasons is that the procedures and procedures for examining corporations as perpetrators of criminal acts are still not yet clear, therefore there is a need for a guideline for law enforcement officers in the context of handling criminal cases committed by corporations. Through Supreme Court Regulation (Perma) Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. This regulation was made, among others, aimed at being a guide for law enforcers in handling criminal cases for corporate actors and/or their management, filling legal voids, especially criminal procedural law in handling criminal cases with corporate actors and/or their management, as well as in order to encourage effectiveness and optimization. handling criminal cases with corporate actors and/or their management.
- b) Currently, through the provisions in the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, it is expected to be a guideline in the context of handling cases in order to impose criminal charges against corporations and/or their management as perpetrators of criminal acts so that the punishment applied can guarantee legal certainty and approach a sense of justice in an effort to provide a deterrent effect.

REFERENCES:

1. Dwija Priyatna, (2009). Kebijakan Legislasi Tentang Sistem Pertanggungjawaban Pidana Korporasi di Indonesia, Bandung: CV Utomo.
2. Hebert L Packer. (1968). The Limits of The Criminal Sanction. Stanford University Press. California.
3. Muladi dan Dwija Priyatna, (2010). Pertanggung jawaban Pidana Korporasi, Jakarta: Kencana.
4. Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana Oleh Korporasi
5. Ronny Hantijo Soemitro, (2001). Bahan Kuliah Metodologi Penelitian Hukum, Badan Penerbit UNDIP.
6. Sutan Remi, (2006). Pertanggungjawaban Pidana Korporasi, Jakarta ; Grafiti Pers.
7. Warih Anjari, (2016). Pertanggungjawaban Korporasi Sebagai Pelaku Tindak Pidana, Jurnal Ilmiah WIDYA Yustisia, Volume 1, Nomor 2 November 2016.

⁶ Dwija Priyatna, Kebijakan Legislasi Tentang Sistem Pertanggungjawaban Pidana Korporasi di Indonesia, Bandung: CV Utomo, 2009, p.121.