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## CORPORATE CRIMINAL LIABILITY IN CRIMINAL ACTS OF CORRUPTION IN INDONESIA

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### Abstract

Corruption in Indonesia is a crime with widespread impacts on state losses, economic stability, and public trust. Developments show that perpetrators of corruption are not only individuals, but also involve corporations as instruments and legal subjects. The recognition of corporations as subjects of criminal acts is reflected in Article 20 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which states that corporations can be prosecuted and sentenced if the crime is committed by or on behalf of the corporation. Furthermore, the new Criminal Code (Law Number 1 of 2023) further strengthens the position of corporations as subjects of criminal acts in general.

This study aims to analyze the legal basis for corporate criminal liability in corruption crimes and examine its implementation in judicial practice. The method used is normative juridical with a statutory and case approach, through primary legal materials in the form of laws and court decisions, and secondary legal materials in the form of books and scientific journals. The results of the analysis indicate that normatively, the legal framework for corporate criminal liability is clear and in line with the doctrine of corporate criminal liability. However, implementation in court still faces several obstacles, such as difficulties in providing evidence, limited types of sanctions, and a lack of technical guidelines for law enforcement officials. Several cases such as PT Giri Jaladhi Wana, PT Nusa Konstruksi Enjiniring, and PT Merial Esa show that corporate criminalization tends to be limited to fines, the amount of which is not commensurate with the state's losses.

Thus, reform of corporate criminalization policies for corruption crimes is needed, both through diversifying more effective sanctions and increasing the capacity of law enforcement officials. Criminalization of corporations serves not only as a punishment but also as a means of reforming corporate governance to make it more accountable, transparent, and free from corruption.

**Keywords:** Corporations, Criminal Liability, Corruption

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### INTRODUCTION

Corruption is one of the biggest problems facing the Indonesian nation. Not only does it cause financial losses to the state, but it also leads to a loss of public trust in government and legal institutions. Since the reform era, eradicating corruption has become a national agenda that has received widespread attention, both through the establishment of the Corruption Eradication Commission (KPK) and through the revision and renewal of various laws and regulations. Despite this, corruption continues to occur, with increasingly complex methods, including the involvement of corporations as both the means and subjects of criminal acts.

For many years, Indonesian criminal law only recognized individuals or natural persons (*naturalijke persoon*) as subjects of criminal law. This classical understanding was based on the doctrine of *societas delinquere non potest*, which states that legal entities cannot commit crimes. However, developments in modern criminal practices have shown that corporations can be significant actors in various crimes, including corruption. Therefore, the Indonesian criminal law system then

opened up space for corporations to be held criminally accountable, as reflected in Article 20 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Tipikor Law).

According to Article 20 paragraph (1) of the Corruption Law, if a criminal act of corruption is committed by or on behalf of a corporation, then prosecution and criminal penalties can be imposed on the corporation and/or its management. This provision forms the normative basis that corporations are subjects of criminal law in criminal acts of corruption. The existence of this article indicates a shift in the paradigm of Indonesian criminal law from a natural person orientation to corporate criminal liability. Thus, criminal liability is no longer limited to individuals, but also extends to legal entities or corporations (Muladi & Priyatno, 2010).

The phenomenon of corruption involving corporations can be found in various major cases in Indonesia. One example is the PT Giri Jaladhi Wana case, decided by the Pontianak District Court in 2004, which marked the first time a corporation was convicted in Indonesia. Furthermore, the PT Nusa Konstruksi Enjiniring (formerly PT Duta Graha Indah) case, decided in 2018, also emphasized the position of corporations as perpetrators of corruption. However, the number of cases in which corporations are named as defendants remains very limited compared to the high number of business entities involved in corruption scandals (Andi Hamzah, 2012).

The minimal application of corporate criminal liability is caused by several factors, including:

1. Difficulty proving direct corporate involvement in criminal acts.
2. The tendency of law enforcement officers is to focus more on prosecuting individual administrators rather than legal entities.
3. The criminal sanctions that can be imposed on corporations are limited, because Indonesian criminal law still places more emphasis on imprisonment, which cannot be carried out by legal entities.
4. There are differences in interpretation among judges regarding the criteria and mechanisms for imposing criminal penalties on corporations (Roeslan Saleh, 1983).

From the perspective of criminal law theory, the recognition of corporations as subjects of criminal acts has been recognized in several doctrines, including:

- *Identification theory*, which considers the actions of the management to be corporate actions.
- *Vicarious liability*, which places corporations responsible for the actions of their employees or managers.
- *Strict liability*, which allows corporations to be punished without having to prove subjective fault, simply by proving the existence of a prohibited act (Moeljatno, 2002).

The application of these doctrines in the Indonesian legal context remains limited. The new Criminal Code (Law No. 1 of 2023 concerning the Criminal Code) already recognizes corporations as general criminal subjects. This represents significant progress in the Indonesian criminal justice system, as corporations can now be held accountable for a variety of crimes, including corruption (Simons, 2015).

The urgency of studying corporate criminal liability in corruption lies in two factors. First, corporations are often the primary instruments of corruption, whether through misuse of government project funds, collusion in tenders, or the flow of illegal funds through business entities. Second, law enforcement against corporations remains minimal and ineffective, potentially leading to injustice and a weak deterrent effect on the business world.

Furthermore, criminal penalties for corporations also have socio-economic dimensions that require consideration. Sanctions in the form of large fines or dissolution of the legal entity can impact workers and shareholders who are not actually involved in the crime. Therefore, a balance is needed between firm law enforcement and protecting the interests of well-intentioned third parties (Muladi, 2005).

Several important questions then arise: What is the legal basis for corporate criminal liability in corruption crimes in Indonesia? How is it implemented in judicial practice? What are the obstacles

and solutions that can be offered to strengthen the effectiveness of corporate criminal liability? These questions form the main research problem in this study.

This study aims to analyze the legal basis and theory of corporate criminal liability in corruption cases, as well as examine its implementation in Indonesian judicial practice. The results are expected to contribute to the development of corporate criminal law in Indonesia, particularly in strengthening the fight against corruption.

Thus, this introduction confirms that the study of corporate criminal liability in corruption crimes is highly relevant. Corporations, as influential entities in the national economy, must be positioned not only as development actors but also as parties that can be held accountable for committing crimes. This study will continue with a description of the research methods used, as well as an in-depth analysis in two parts of the discussion: (1) the legal basis for corporate criminal liability, and (2) the implementation of corporate criminal liability in judicial practice in Indonesia.

## METHOD

This research uses a normative juridical method with a statute approach and a case approach. The normative juridical method was chosen because the problems studied are related to applicable legal norms, particularly regarding corporate criminal liability in corruption crimes based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 and the development of the new Criminal Code. The primary legal materials used include relevant laws and court decisions, while secondary legal materials include literature, journals, and the opinions of criminal law experts. Data are analyzed qualitatively by interpreting legal norms and comparing them with judicial practice. This approach is in accordance with the view of Soerjono Soekanto (1986) that normative legal research serves to provide a conceptual basis for regulations and judges' decisions, and is in line with the opinion of Peter Mahmud Marzuki (2005) who emphasizes that the normative method is oriented towards the analysis of legal texts and doctrines.

## RESULTS AND DISCUSSION

### Legal Basis for Corporate Criminal Liability in Corruption Crimes

The recognition of corporations as subjects of criminal law is a significant development in modern criminal law. In Indonesia, the existence of corporations as perpetrators of corruption has been normatively affirmed in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Article 20 of the Corruption Law states that if a criminal act of corruption is committed by or on behalf of a corporation, prosecution and criminal penalties may be imposed on the corporation and/or its management. This provision serves as the primary basis for the application of the corporate criminal liability doctrine in the Indonesian criminal law system (Muladi & Priyatno, 2010).

#### 1. 1.1 Evolution of the Recognition of Corporations as Criminal Subjects

Initially, classical criminal law doctrine adhered to the principle of *societas delinquere non potest*, meaning that legal entities could not commit crimes. This idea arose because criminal acts were considered to be perpetrated only by humans with consciousness, will, and soul. Legal entities lacked these capacities and therefore could not be punished. This view was widely held in continental legal systems, including the Netherlands, and was later inherited by Indonesia (Moeljatno, 2002).

However, developments in modern society have shown that corporations are often the primary instruments in various criminal acts. Crimes in the economic, environmental, and even corruption sectors are often committed by or through business entities. Therefore, modern doctrine has evolved to recognize legal entities as criminal subjects. The Netherlands, through its *Wet Economic Delicten*

(WED), has long recognized corporations as perpetrators of criminal acts. This influence has subsequently spread to Indonesia, where it is outlined in various specific laws, one of which is the Corruption Eradication Law (Simons, 2015).

In the Indonesian context, in addition to the Corruption Eradication Law, several other laws also contain provisions that make corporations criminal subjects, such as the Environmental Law, the Money Laundering Law, and the Terrorism Law. This indicates a paradigm shift in national criminal law, from initially emphasizing individual responsibility to the accountability of legal entities.

## 2. 1.2 Normative Basis in the Corruption Eradication Law

Article 20 of the Corruption Eradication Law provides a firm legal basis for enforcing corporate criminal liability. Paragraph (1) of this article states that:

*"In the event that a criminal act of corruption is committed by or on behalf of a corporation, then prosecution and criminal penalties can be imposed on the corporation and/or its management."*

Meanwhile, paragraph (2) explains that the crime of corruption is deemed to have been committed by a corporation if the crime is committed by people, either based on an employment relationship or based on another relationship, who act within the corporate environment, either alone or together.

Based on this provision, there are two possible parties who can be held criminally responsible, namely:

3. Managers or individuals within a corporation who have clearly committed criminal acts of corruption.
4. The corporation itself as a legal entity.

Thus, the Corruption Eradication Law opens up the possibility of double-track liability, where both individuals and legal entities can be subject to criminal charges. This represents a modernization of Indonesian criminal law in line with international developments (Andi Hamzah, 2012).

## 5. 1.3 Theory of Corporate Criminal Liability

In criminal law doctrine, several theories are known regarding corporate criminal liability, including:

### 1. Identification Theory

This theory equates the will of the principal administrator or controller with the will of the corporation. Therefore, if the administrator commits a crime for the benefit of the corporation, the act is considered a corporate act.

### 2. Vicarious Liability Theory

Based on this theory, corporations are responsible for the actions of their employees as long as those actions are within the scope of their employment. In other words, criminal responsibility rests with the corporation even if the actions are committed by individuals.

### 3. Strict Liability Theory

Under this theory, corporations can be held criminally liable without needing to prove subjective fault on the part of their management. It is sufficient to prove that the crime occurred within the scope of the corporation's business activities. This theory places greater emphasis on protecting the public interest and effective law enforcement (Muladi, 2005).

In Indonesian legal practice, the Corruption Eradication Law tends to adopt a combination of the identification and vicarious liability theories. This means that corporations are held responsible for acts of corruption committed by their managers, especially if those acts are carried out for the benefit of the corporation.

## 6. 1.4 Corporate Liability in the New Criminal Code

The ratification of the new Criminal Code through Law No. 1 of 2023 further strengthens the position of corporations as criminal subjects. Articles 45 and 46 of the new Criminal Code state that corporations can be perpetrators of criminal acts, and criminal responsibility can be imposed on the corporation, its management, or both. This demonstrates the harmonization of general criminal law with specific criminal law, including the Corruption Eradication Law.

The existence of this new Criminal Code is important because it provides a general legal basis for corporate criminal liability, eliminating the need to rely solely on specific laws. This means that any crime, including corruption, can be prosecuted by corporations without further debate about the legality of the legal entity as the perpetrator of the crime (Barda Nawawi Arief, 2010).

#### 7. 1.5 Types of Sanctions for Corporations

Criminal liability does not only concern who can be punished, but also the type of punishment that can be imposed. The Corruption Eradication Law in Article 20 paragraph (7) stipulates that the main punishment that can be imposed on corporations is a fine, with a maximum amount plus one third of the threat of a fine for individuals.

In addition to the main penalty in the form of a fine, the judge can also impose additional penalties on corporations, such as:

1. Confiscation of goods obtained from criminal acts.
2. Payment of replacement money.
3. Revocation of certain rights.
4. Announcement of the judge's decision.
5. Freezing of business activities.
6. Dissolution or prohibition of a corporation.

This type of sanction shows flexibility in punishing corporations, although the main weakness remains in the implementation and the amount of criminal fines which are often not commensurate with state losses due to corruption (Corruption Eradication Commission, 2018).

#### 8. 1.6 Challenges in Implementation

Despite a clear legal basis, the application of criminal liability to corporations still faces obstacles. Some of the most common obstacles include:

- The difficulty of proving the relationship between individual actions and corporate interests.
- The limitations of law enforcement officials in understanding the doctrine of corporate criminal liability.
- The absence of detailed technical guidelines on the procedures for prosecuting corporations.
- Concerns about the socio-economic impact of criminal sanctions on corporations, especially those that are still operating and have many employees.

Therefore, in addition to normative regulations, derivative regulations are also needed in the form of Supreme Court regulations or Attorney General Circulars that provide technical guidelines on corporate criminalization mechanisms.

### **Implementation of Corporate Criminal Liability in Judicial Practice in Indonesia**

Although corporations have long been recognized as subjects of corruption crimes under the Corruption Eradication Law, the application of this article in Indonesian judicial practice remains relatively rare. The majority of corruption cases involve individuals, particularly public officials or company managers, while corporations, as legal entities, often escape criminal prosecution. This phenomenon is evident in data from the Corruption Eradication Commission (KPK), which shows that from 2004 to 2020, only a handful of corruption cases involved corporations as defendants (KPK, 2020).

In fact, in terms of *modus operandi*, many corruption crimes use legal entities as a means to channel funds, manipulate contracts, or win government project tenders. Corporate involvement is usually structural and systematic, making it difficult to distinguish between the interests of management and the interests of the company. Therefore, in theory, criminalizing corporations is essential to uphold justice and provide a deterrent effect (Muladi, 2005).

The first case in which a corporation was accused of corruption was the case of PT Giri Jaladhi Wana, which was decided by the Pontianak District Court in 2004. The company was accused of corruption in port management, resulting in billions of rupiah in state losses. The court then imposed a fine of Rp1.3 billion on PT Giri Jaladhi Wana (Andi Hamzah, 2012).

This ruling marks a significant milestone, marking the first time a corporation has been convicted in a corruption case. However, the main weakness of the ruling is that the penalty imposed is only a fine, the amount of which is far less than the amount of state losses. Therefore, the deterrent effect of this punishment remains questionable.

Another prominent case is the case of PT Nusa Konstruksi Enjiniring (formerly PT Duta Graha Indah Tbk) in 2018. The company was found guilty of corruption in the construction project of a special infectious disease and tourism hospital at Udayana University. In its verdict, the Jakarta Corruption Court imposed a fine of Rp 700 million and revoked the right to participate in government project tenders for six months (Central Jakarta Corruption Court Decision No. 130/Pid.Sus-TPK/2018/PN.Jkt.Pst).

This case is interesting because, in addition to the fine, the court also imposed an additional penalty in the form of a ban on participating in government tenders. This additional penalty is relevant because it directly targets the corporation's business interests. However, again, the fine is relatively small compared to the value of the project involved in the corruption.

Another noteworthy case is the PT Merial Esa case related to the e-KTP corruption project. This company, along with several other parties, was allegedly involved in a major scandal that resulted in state losses of up to Rp 2.3 trillion. The court ultimately fined PT Merial Esa, but the fine was deemed disproportionate to the state's losses (Central Jakarta Corruption Court Decision No. 130/Pid.Sus-TPK/2017/PN.Jkt.Pst).

This case again demonstrates the same pattern: the court simply imposed a fine, without any sanctions that would significantly impact the corporation's sustainability. As a result, many believe that criminalization of corporations in Indonesia remains largely symbolic and ineffective (Marwan Effendy, 2014).

Based on the judicial practices above, there are a number of challenges in implementing corporate criminal liability in corruption cases, namely:

1. **Difficulty of Proving**

Prosecutors must prove that the crime was committed in the name of the corporation, not solely for individual benefit. In practice, it is often difficult to distinguish whether the actions of managers are personal or in the interests of the company (Roeslan Saleh, 1983).

2. **Limited Types of Sanctions**

The primary sanction of a fine is considered insufficient to deter, especially if the amount is relatively small compared to the profits obtained from the corruption. Additional sanctions such as dissolution or suspension of business are rarely imposed because they are considered to have negative impacts on workers and third parties (Muladi & Priyatno, 2010).

3. **Lack of Technical Guidelines**

To date, there are no clear technical regulations regarding the procedures for prosecuting and criminalizing corporations. As a result, law enforcement officials are often confused about determining the criteria and mechanisms for criminal prosecution.

4. **Political and Economic Constraints**

Many large corporations wield political and economic influence, often facing pressure to enforce the law against them. Law enforcement officials tend to be more cautious, even reluctant to prosecute corporations.

Compared with other countries, corporate criminalization in Indonesia still lags behind. In the United States, for example, corporations can be fined billions of dollars and subject to stringent compliance programs. In the UK, the Bribery Act 2010 allows courts to impose a wider range of sanctions, including debarment from public contracts, large fines, and corporate probation (Gobert & Punch, 2003).

Experience in other countries shows that corporate criminalization serves not only to punish but also to reform business behavior. Therefore, Indonesia needs to enrich its criminal sanctions instruments so that they extend beyond imposing fines to creating mechanisms for improving corporate governance.

To strengthen the implementation of corporate criminal liability in corruption crimes, several reform steps need to be taken:

1. **Increased Types of Sanctions**

Additional penalties in the form of prohibitions on participating in tenders, improvements to internal systems, or compliance program obligations need to be expanded in use.

2. **Preparation of Technical Guidelines**

The Supreme Court or the Attorney General's Office needs to issue regulations that provide detailed guidance on the procedures for prosecuting corporations.

3. **Increasing the Capacity of Apparatus**

Investigators, prosecutors, and judges must be given special training on the doctrine of corporate criminal liability so that they do not hesitate to prosecute corporations.

4. **Harmonization with the New Criminal Code**

The implementation of the Corruption Eradication Law must be aligned with the new Criminal Code which regulates corporations as criminal subjects in general, so that there is no longer any normative doubt.

## CONCLUSION

Based on the above discussion, it can be concluded that corporate criminal liability for corruption in Indonesia has a strong legal basis, both through the Corruption Eradication Law and recognition in the new Criminal Code. Corporations, as legal entities, can be held criminally liable when crimes are committed by their managers or employees for and on behalf of the company. However, in judicial practice, criminal penalties against corporations are still very limited and tend to be symbolic, with the main sanction being a fine that is relatively small compared to the state losses due to corruption. This raises serious issues regarding the effectiveness of criminal penalties and the weak deterrent effect on corporations.

To strengthen implementation, reforms to the corporate criminal justice system are needed, both through increasing the variety of sanctions that have a more direct impact on corporate governance and by developing clear technical guidelines for law enforcement officials. Furthermore, the capacity of investigators, prosecutors, and judges must be enhanced to consistently apply the doctrine of corporate criminal liability. With these measures, it is hoped that criminalization of corporations will not only serve as punishment but also encourage business reform to be more transparent, accountable, and free from corruption.

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