

Corporate Criminal Responsibility in Corruption Criminal Act

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ABSTRACT: *The form of corporate criminal liability in corruption acts is based on: 1) Errors such as intentional or corporate negligence; 2) The ability to be responsible for corporations in terms of actus reus and men's rea from the directing minds identified as actus reus and men's rea from corporations; 3) The absence of a reason for criminal abolition (strafuitsluitingsgronden) in the form of no reason for forgiveness and justification from the corporate mind directing causes the corporation to not have a reason for criminal abolition. The application of corporate criminal liability in criminal acts of corruption in corporate cases as the responsible maker and board, it is confirmed that the corporation is 'possible' as the maker. The board is appointed as responsible; what is deemed to be done by the corporation is an act carried out by the corporate equipment according to the authority based on its articles of association. The nature of the act that makes the crime is onpersoonlijk, that is, the person who leads the corporation is liable to criminal liability, regardless of his knowledge of the act. This is in accordance with the thinking based on Article 20 section (2) of the Law on the Eradication of Corruption Crime which regulates that a criminal act of corruption is committed by a corporation if the criminal act is: 1) Conducted by people either based on work relationship or based on other relationships; 2) Acting in the corporate environment both individually and jointly. . Criminal liability can be charged to the corporation, so the punishment that can be applied is criminal prosecution which is in accordance with the provisions in article 20 section (7) of the UUPTK. In addition, the corporation can be subject to additional crimes as stipulated in article 18 section (1) and section (2).*

KEYWORDS = Responsibility, Corporation, Corruption.

I. INTRODUCTION

Indonesia as a state of the law as mandated in the 1945 Constitution of the Republic of Indonesia Article 1 section (3), requires that all types of acts of national and state life must have a legal basis or a clear legal basis to ensure legal protection and certainty. One of the fields that must have a strong legal basis is the field of economics which, among others, must be regulated on the legal basis of criminal acts related to the economy.

In its development, criminal acts related to the riskiest and most prominent economy in Indonesia today are criminal acts of corruption. In fighting and eradicating corruption in this country, several laws and regulations have been made that are expected to guarantee legal protection and certainty for the people. The regulation includes Law Number 31 of 1999 concerning Eradication of Corruption Crimes which is then amended through Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (hereinafter referred to as the Law on Eradication of Corruption).(Undang-Undang No.20 Tahun 2001,) In addition, Indonesia also ratified the United Nations Convention Against Corruption

(UNCAC) in 2003 which was promulgated through Law No. 7 of 2006 concerning the Ratification of the United Nation Convention Against Corruption 2003 (2003 United Nations Anti-Corruption Convention).

Corruption acts not only involve actors from the public sector or government apparatus but also involve private sector actors in this case the corporation. Corruption committed by corporations is a phenomenon that is growing rapidly at this time. The criminal act was carried out in various modes and violated the applicable legal provisions with the aim of benefiting the corporation. Corporate arrangements as legal subjects of corruption in article 1 number (1) of the Law on Eradicating Corruption has provided an opportunity for law enforcement officials to hold corporations accountable in cases of corruption.

In the practice of law enforcement against corporations that commit corruption, law enforcers still rarely touch crimes committed by corporations, especially asking for corporate responsibility. Of several criminal acts of corruption committed by corporations, it seems that at the stage of imposing criminal liability on corporate officials, the application of corporations as the subject of criminal law that is prosecuted and sentenced is rarely applied by law enforcement.

Based on corruption committed by corporations in this case, it is necessary if there is a discussion on Corporate Criminal Responsibility in Corruption Crime.

II. FORMULATION OF THE PROBLEM

Based on the explanation above, the problem can be formulated: how to apply the corporate criminal responsibility model in corruption?

III. DISCUSSION

Application of Corporate Criminal Responsibility Model in Corruption

The model of corporate criminal liability that is applied is the Corporation as the responsible maker and board in this case the corporation.

Muladi and Dwidja Priyatno (Muladi & Prayitno, 2010) stated that in the case of a corporation as a responsible maker and board, it was confirmed that the corporation was 'possible' as a maker. The board is appointed as responsible; what is deemed to be done by the corporation is an act carried out by the corporate equipment according to the authority based on its articles of association. The nature of the act that makes the crime is onpersoonlijk, that is, the person who leads the corporation is liable to criminal liability, regardless of his knowledge of the act.

This idea is based on Article 20 section (2) of the Law on the Eradication of Corruption Crimes which regulates that corruption is committed by a corporation if the crime is:

- 1) Conducted by people either based on work relationships or based on other relationships;
- 2) Acting in the corporate environment both individually and jointly.

Furthermore, whether criminal liability can be charged to the corporation in accordance with the elements and requirements stated by Sutan Remy Sjahdeini, as follows:

- a. The criminal act (whether in the form of commission or commission) is carried out or ordered by corporate personnel in the structure of the corporate organization as a directing mind of the corporation;
- b. The criminal act is carried out in the context of corporate intentions and objectives
- c. Criminal acts are committed by the perpetrator or at the behest of the order giver in the framework of his duties in the corporation;
- d. The criminal act was carried out with the intention of providing benefits to the corporation;
- e. The perpetrator or the giver of the order has no justifiable reason or forgiving reason to be released from criminal liability
- f. For criminal acts that require an element of action (actus reus) and an element of error (mens rea), these two elements do not have to be found in one person.

According to Sutan Remy Sjahdeini, people who carry out Actus reus do not need to have their own mens rea which is the basis for the purpose of doing the Actus reus, provided that in the case that the person

performs the actus reus the intended is to carry out orders or orders other people who have a heart attitude that wants do the mens rea by the person who was told. With a combination of actus reus carried out by actors who do not have mens rea and mens rea owned by the person who ordered or ordered the actus reus to be carried out, aggregately the elements of actus reus and mens rea are combined. Corporations must still be responsible for criminal acts which is done because the requirements for mens rea and actus reus are fulfilled even though as a result of aggregation (combination) of several people.

Furthermore regarding corporate criminal responsibility in corruption acts reviewing the principle of error in corporations in corruption, and reviewing the application of corporate criminal liability models in corruption crimes associated with the provisions of legislation in Indonesia, especially in the Law. Combating Corruption Crimes and corporate criminal liability theory.

To analyze corporate criminal liability in a corruption crime cannot be separated from the principle of error (*Geen Straf zonder schuld; actus non facit reintroducing mens sit rea*) or no crime without error.

According to Sutan Remy Sjahdeini, the principle of error implies that a person cannot be burdened with criminal liability by being punished with a criminal sanction for committing a crime if in doing an act, which according to criminal law is a criminal act, has committed the act by accidentally (*not based on opset or dolus*) or not due to negligence (*culpa*). (Sjahdeini, 2006)

This error principle or *shuldprinzip* is related to personal guilt or blameworthiness that is required to be able to determine the parameters for criminal liability and punishment. According to Duff, the discussion of criminal responsibility must begin with the question of who is (should be) criminally responsible for to whom? or who (should) be responsible for the crime that occurred.

This means that the principle of error will always review the legal subject of the offender. Can the offender be held accountable for the crime he committed or not. The principle of this guilty principle is that a person can only be convicted if he is found guilty of an act that is prohibited by law.

The form of error according to Moeljatno namely committing a criminal act (nature against the law), responsible ability, has a form of error in the narrow sense of intentional or negligence, and the absence of forgiveness reasons. (Moeljatno, 2002)

Referring to this, it means that if viewed from the principle of error, the questions that arise are: 1) whether the corporation can make a mistake (intentional or negligence); 2) whether the corporation has the ability to be responsible; 3) whether the basis for criminal abolition (*Strafuitsluitingsgronden*) can be applied to the corporation. To answer this question, the writer will describe the following:

a. Intentional or Corporate Negligence

To determine intentionality and negligence in the corporation, Muladi argued that it could be proposed by looking at whether the intentions of acting corporate officials were in fact included in corporate politics, or in the real activities of the company. So, it must be detected through the psychological atmosphere (*psychish klimaat*) that applies to corporations. With the construction of responsibility, the intentions of individuals acting on behalf of corporations can be corporate intentions.

Thus, in the Aquo case, there must first be identified an element of error in the narrow sense (intentional or negligence) of people acting for and on behalf of the corporation.

b. Corporate responsibility ability

According to Simons, responsible ability can be interpreted as such a psychological state, which justifies the application of a criminal effort, both from a general angle and from the person. A person is able to be responsible if his soul is healthy, that is if:

- 1) He is able to know or realize that his actions are contrary to the law;
- 2) He can determine his will according to that awareness.

In the Criminal Code, the provision of responsible ability is regulated in article 44 section (1) which reads:

"Whoever commits an act that cannot be accounted for to him because his soul is deformed in growth or disrupted due to illness, is not punished".

The formulation of the Criminal Code provisions above and some expert opinions on the ability to be responsible is only directed to someone (*persoon natural*) as the perpetrator of a crime because they only see the psychological condition or the state of mind of the perpetrator. The thing that needs to be analyzed is how to see the psychological state or the attitude of the heart of a corporation while the corporation does not have its own mind.

Hasbullah F. Sjawie argued that related to mens rea corporation in corruption, then Article 20 section (2) of the Law on Eradicating Corruption follows the teachings of the Identification theory and the Functional Actor theory, where corruption is deemed committed by the corporation, if the crime is carried out by people (people) closely related to the corporation concerned. (Hasbullah & Sjawie, 2015)

The ability to be responsible is related to the activities of achieving corporate goals and objectives which in this case are always manifested by human actions. Based on the Identification theory, a person who embodies the purpose and objectives of the corporation is not considered acting for and on behalf of his corporation, but is considered as his own corporation.

c. There is no reason for criminal dismissal (*starfuitsluitingsgronden*)

In determining whether or not the reasons for criminal abolition of corporations cannot always be found separately between individuals and corporations. In some cases a corporation may have taken over the situation in an individual.

The reasons for common criminal dismissal are divided into two, those are justification reasons (*rechtsvaardingsgronden*) and forgiveness reasons (*schulduitsluitingsgronden* or *verontschuldingsgronden*). The justification is the nature of the law against eradication or unproven, so the defendant must be released by the judge. While the reason for forgiveness is that the elements of the offense have been proven, but the element of error does not exist in the author, the defendant is released from all lawsuits.

Based on this, it can be seen that the reasons for the improvement will be reviewed from the actions of the corporation whether the act can be a proper and right thing or not. Furthermore regarding forgiveness reasons, based on the Identification theory which states mens rea from directing minds or people acting for and on behalf of corporations are identified and considered as mens rea of the corporation itself, giving its own consequences regarding the existence of excuses for forgiveness of crimes committed by corporation.

In addition, one of the doctrines of corporate criminal responsibility is doctrine of vicarious liability. According to Sutan Remy Sjahdeini, this teaching or substitute doctrine shows that to be able to impose criminal liability on corporations must first be able to prove that the criminal act was actually committed by the board and the correct board of guilty, then if it is required then the criminal liability can be charged vicariously to the corporation. This can give rise to other possibilities that human perpetrators (corporate administrators) must bear criminal responsibility while the corporation is free (not necessarily responsible).

Based on this, then to determine the ability to be responsible for corporations in the Aquo case, the actus reus and mens rea must first be identified from people acting for and on behalf of the corporation. Thus, it would be easier to impose criminal liability on corporations if the elements of actus reus and mens rea from the corporate directing mind or a combination of actus reus and mens rea from managers who commit criminal acts have already been proven.

In addition, the ability to be responsible for corporations is also related to the type of corporation that commits a crime. Article 1 point (1) of the Law on the Eradication of Corruption Crimes states that the definition of a corporation is a collection of people and / or wealth that is organized both as a legal entity and not a legal entity.

If it is based on the understanding of the legal subject, namely the rights and obligations, then it is fitting that corporations that are not legal entities cannot be charged with criminal liability against them. In addition to not being the right holders and obligations, corporations not legal entities also do not have assets and

do not have the authority to act. Thus, criminal liability can only be charged to the corporation legal entity (*rechtspersoon*).

According to Muhammad Damis, S.H., M.H., the Chief Judge of the Assembly who examined the aquo case, in a corporation not a legal entity such as a CV (*Comanditer Venootschap*), the responsibility business did not recognize strict liability or there was no separation of responsibilities between the management and the corporation itself. Relating to the Law on Eradication of Corruption that regulates corporations are not legal entities, in the sense of the corporation in general, the law enforcement agencies such as investigators and prosecutors must be able to interpret that corporations that can be charged with criminal responsibility under the Corruption Eradication Act are corporations that are legal entities.

Thus, the corporation in question has fulfilled the corporate element that can be criminally accountable, namely a corporation in the form of a Limited Liability Company. Pursuant to Article 1 section (1) Law Number 40 of 2007 concerning Limited Liability Companies stipulates that a Limited Liability Company is a legal entity which is a capital alliance, established based on an agreement, conducts business activities with authorized capital which is entirely divided into shares and meets the requirements set forth in This law and its implementing regulations.

The application of corporate criminal liability in criminal acts of corruption in corporate cases as the responsible maker and board, it is confirmed that the corporation is 'possible' as the maker. The board is appointed as responsible; what is deemed to be done by the corporation is an act carried out by the corporate equipment according to the authority based on its articles of association. The nature of the act that makes the crime is *onpersoonlijk*, that is, the person who leads the corporation is liable to criminal liability, regardless of his knowledge of the act. This is in accordance with the thought based on Article 20 section (2) of the Law on Eradicating Corruption which regulates that a criminal act of corruption is committed by a corporation if the crime is: 1) Conducted by people either based on work relationship or based on other relationships; 2) Acting in the corporate environment both individually and jointly.

Provisions for corporate crimes in corruption are regulated in Article 20 section (7) of the Corruption Eradication Act which states that the main criminal that can be imposed on corporations is only a fine with a maximum penalty plus 1/3. Thus, if the corporation in this case can be charged with criminal liability as the analysis carried out by the author in the previous discussion, then the corporation can be given a criminal sanction in fine with the maximum penalty fine plus 1/3. However, based on the provisions of article 20 section (7) of the Corruption Eradication Act, there are still problems in terms of criminal penalties imposed on corporations, because if the corporation cannot pay the fine in accordance with the criminal sanctions imposed, then the penalty fine against the corporation cannot be accompanied with a criminal confinement in accordance with article 10 number (3) of the Criminal Code, namely imprisonment. Because, imprisonment is a criminal body that cannot be applied to corporations.

Nevertheless, it is also possible that additional criminal sanctions against corporations are in accordance with the provisions of article 18 section (1) and section (2) of the Law on Eradication of Corruption Crimes. Thus, if the model of corporate criminal liability is applied is the imposition of criminal liability to the management and corporation, what is given to the management is the payment of replacement money as much as that obtained by the management, the corporation will be charged with an additional penalty for the payment of the amount obtained by the corporation other than that obtained by the management so that it will cover the losses of the state's finances and the goal of returning state financial losses will be achieved.

IV. Conclusion

From the presentation of the results of the research and discussion, it can be concluded that there are some of the application of corporate criminal responsibility in criminal acts of corruption in corporate cases as the responsible maker and management, it is confirmed that the corporation is 'possible' as the maker. The board is appointed as responsible; what is deemed to be done by the corporation is an act carried out by the corporate equipment according to the authority based on its articles of association. The nature of the act that makes the crime is *onpersoonlijk*, that is, the person who leads the corporation is liable to criminal liability, regardless of

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