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Original Research Article

Reconstruction of Liability for Corruption Involving Corporations Based on the Justice Value

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Abstract

The formulation of the problem in this study is what are the weaknesses of the accountability for criminal acts of corruption involving corporations in Indonesia Currently and How is the reconstruction of the accountability for criminal acts of corruption involving corporations in Indonesia based on the justice value in a Sociological-Juridical Type of Research where the researcher's primary data refers to data or facts and legal cases that are obtained directly through research in the field, including information from respondents related to the object of research and practices that can be seen and related to the object of research. Secondary data is done by means of literature study. Secondary data in this study include: Primary legal materials, which consist of: 1945 Constitution of the Republic of Indonesia, Law No. 2 of 2011 concerning Amendments to Law No. 2 of 2008 concerning Political Parties. The results of the study shows that the weakness of accountability for criminal acts of corruption involving corporations is from the aspect of legal substance, that the purpose of punishment in the Criminal Code has not been properly implemented in corporations. Weaknesses from the aspect of legal structure, that there is no synergy between law enforcers so that they are no longer fragmented, and weaknesses from aspects of legal culture, including the low loyalty of the law enforcement officers in carrying out and carrying out state duties, behavior patterns and professionalism. Apparatus is one of the main problems that must be studied for reform and become a solution in the enforcement of integral corporate criminal responsibility. Therefore the Reconstruction of accountability for criminal acts of corruption involving corporations based on the value of justice is in Article 15 and Article 20 paragraph 8 of Law Number 20 of 2001.

Keywords: Legal Reconstruction, Corruption Liability, Corporation, Justice Value.

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INTRODUCTION

Corruption is a serious problem in that persists in various countries. Corruption has ensnared many officials, executive, legislative and judicial, as well as the private sector involved in corporations. The perpetrators range from high-ranking officials to low-level employees in rural areas, as well as corporate administrators. The state losses caused by rampant corruption are clearly very large and will hinder the development process in order to prosper the community (Klitgaard, 2005).

The shift of corrupt actors towards corporations is a challenge for the legal world, considering that so far, as in the doctrine or practice of the Criminal Code, only individuals and not corporations are legal subjects. However, in development, it turns out that corporations through the policies and actions of their management can also abuse them, resulting in state financial losses. Therefore, it is important to discuss and further analyze how the doctrine of criminal responsibility, the subject of which is a corporate crime, is clearly different in character from people as perpetrators.

Indonesia, for example, has entered a new dimension of corporate crime, namely collusion between political power holders and economic power holders. The collusion referred to here is an evil conspiracy between businessmen and bureaucrats to commit acts that are against the law. This type of crime is carried out by a corporation that has a large enough power to commit a criminal act of corruption.

Although there have been many debates regarding the placement of corporations as the subject

of criminal acts, Law No. 31 of 1999 as amended by Law No. 20 of 2001 has placed corporations as makers of criminal acts. This was done as a reaction to the existence of collusion between economic powers which in fact is increasingly detrimental to the country's economy. The hope is that corporations that are involved in corruption can be snared so that state losses can be returned, which indirectly is the right of the people. This is where the law plays a role in fulfilling the rights of the people.

The involvement of corporations in corrupt practices can be observed from several cases handled by the KPK. The Corruption Eradication Commission (KPK) stated that the institution has handled 146 cases involving the alleged management of a corporation or company. All the management of the corporation were successfully snared and thrown into prison, but the corporation was not touched and can still operate to this day.

One example of criminal acts of corruption involving corporations is the BUMN PT. Merpati Nusantara Airline (hereinafter referred to as PT. MNA). In his court decision it was stated that Hotasi D.P. Nababan who is the President Director of PT. MNA was proven legally and convincingly guilty by fulfilling the elements in Article 2 paragraph (1) in conjunction with Article 18 of the Anti-Corruption Law in conjunction with Article 55 paragraph (1) 1 of the Criminal Code because it had harmed state finances amounting to US$ 1,000,000 (one million US dollars). Hotasi was then sentenced to 4 years in prison and a fine of Rp. 200,000,000 (two hundred million rupiah), but PT. MNA itself was never listed as a suspect (Widodo, 2018).

In addition, other facts also show that until now many corporate executives, cq Limited Liability Companies, have been brought to trial with charges of committing a criminal act of corruption, even though very few corporations have been prosecuted as perpetrators of corruption, such as the Century Bank scandal, the Hambalang case, the cows import case by PT. Indo Guna Utama and many more.

Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Reconstruction of the Authorities of Accountability for Corruption Involving Corporations Based on the Justice Value*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of the accountability for criminal acts of corruption involving corporations in Indonesia Currently?
2. How is the reconstruction of the accountability for criminal acts of corruption involving corporations in Indonesia based on justice value?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Corruption Act Regulations against Corruption in the Indonesian Legal System

The Weakness problems as referred to in the Corporate Crime Legal System are in the form of; First, (corporate criminal act) the law that determines which actions are not allowed which are prohibited from being carried out by corporations accompanied by sanctions in the form of certain crimes for corporations that violate the prohibition; Second, (substantive corporate criminal liability) that determines when and in what cases a corporation that has violated the prohibition may be subject to or subject to a criminal offense that is threatened; and Third, (corporate criminal procedure) to determine how the imposition can be carried out when a

corporation violates the prohibition as stipulated in PERMA No. 13 of 2016 concerning procedures for handling criminal acts by corporations (Widodo, 2019).

The main problems in the substance of corporate criminal law are related to three main pillars, namely; “Criminal Acts, Criminal Liability, and Crime and Criminalization”, for which the three main pillars were formulated in the old paradigm of the Criminal Code and that is Criminal (P) = Crime (TP) + Criminal Liability (PJP). The purpose of the punishment is to create a sad effect on the legal subject person (natuurlijke person), and not on the corporation (rechts persoon/legal and non-legal person), even though the corporation receives and enjoys the benefits directly from the proceeds of the crime.

The purpose of punishment in the KUHP which is still absolute to create a sad effect only for people is now no longer appropriate to be applied to corporations.

In the future, the politics of corporate criminal law is ius constituendum (what needs to be achieved) regarding the substance of corporate criminal law (corporate criminal legal substance), which was initiated as a new paradigm of corporate criminal law, will refer to the balance of interests theory by Roscoe Pound in Toebagus (2022). The balance of interest’s theory concerns the existence of a balance between the interests of the state, the public interest, the interests of individuals, the interests of the perpetrators of criminal acts, and the interests of the victims of crime as the purpose of corporate punishment. In the 2015 Draft Criminal Code the formulation is: Criminal = Crime + Error/PJP + Purpose of Sentencing”. This is one of the causes of the need for comprehensive corporate criminal law reform.

Viewed from the perspective of legal substance (legal substance) norms of material corporate criminal law, the things that need to be reviewed for reform are related to the pillars of corporate crime, corporate crime, corporate criminal liability (corporate error), corporate crime and punishment, including corporate criminal purposes. The formula is: Corporate Crime = Corporate Crime + Errors/Corporate PJP + Purpose of Corporate Crime".

Other issues regarding corporate criminal law also arise in the implementation/application stage. This concerns the legal structure of the corporate criminal responsibility enforcement agency implementing technical investigations/investigations, pre-prosecutions/prosecutions, trials and executions, which are currently still fragmented (Maulana, 2013). This situation is a juridical and logical consequence of the fragmentation of the Judicial Body which can be interpreted narrowly in Article 24 of the 1945 Constitution of the Republic of Indonesia.

In essence, Article 24 of the 1945 Constitution of the Republic of Indonesia states that the Judicial Body is only the Supreme Court and the courts under it and a Constitutional Court. Thus, the Police, the Prosecutor's Office, and especially the Corruption Eradication Commission (KPK) are no longer integrated judicial bodies as originally laid out in Article 24 of the 1945 Constitution before the amendment.

In Continental European countries, such as in the Netherlands, the regulation of corporate responsibility is contained in the General Provisions of the Criminal Code, so it does not need to be regulated widely outside the Criminal Code (Dutch WvS's that still in use in Indonesian Law System), because with the enactment of the Act dated June 23, 1976 Stb. 377, which was ratified on September 1, 1976. With the enactment of this law, all provisions of the special criminal legislation spread outside the Dutch Criminal Code which regulates corporate criminal liability are revoked because they are deemed unnecessary, because with the regulation of corporate liability in Article 51 of the Dutch Criminal Code, then as a general provision based on Article 91 of the Dutch Criminal Code (Article 103 of the Indonesian Criminal Code), this provision applies to all regulations outside of codification as long as they are not violated. In relation to this, in Germany, there has been developed a theory, to convict legal entities without requiring fault, which came from Schunemann in Piplica (2022). According to him, legal entities cannot be found guilty. However, punishment of legal entities can be carried out. In his view, *Schuldgrundsatz* can be replaced by another principle of legitimacy, namely what is called *Rechtsguternotstand. Rechtsguternotstand* has the meaning of "*that is when there is a possibility that certain important legal objects are threatened and their protection can only be provided by imposing a criminal sentence on a legal entity*".

If a criminal conviction is to be based on a *Rechtsguternotstand*, according to Schunemann, certain conditions must still be met. The most important requirements are as follows: (a) the criminal must have preventive action; (b) the interests of preventive workforce must outweigh the interests of the financial integrity of the company; and (c) it is impossible to punish human legal subjects because in reality the crime is committed in a corporate bond.

In Anglo Saxon countries using the direct liability doctrine or identification theory, the actions/mistakes of senior “*officers*” are identified as corporate actions/errors. Also called the "*alter ego*" theory/doctrine or organ theory in a narrow sense (English) only the actions of senior officials (corporate brains) can be accounted for to the corporation. In a broad sense (United States) not only senior officials / directors, but also agents under him. There are several

opinions to identify "*senior officer*". In general, senior officers are people who control the company, either alone or jointly. In general, the controlling company is directors and managers (Das, 2016).

Then in terms of legal culture, the weak technical ability of law enforcement officials objectively with legal knowledge in understanding corporate crime, elements of corporate crime, development of theories and corporate crime, and doctrines of corporate responsibility.

Likewise, legal culture, which is often subjective, which highlights, among other things, the loyalty and loyalty of law enforcement officers in carrying out and carrying out state duties, patterns of behavior and professionalism of the apparatus, are one of the main problems that must be studied for reform and a solution. In the enforcement of integral corporate criminal liability.

In this context, Soediman Kartohadiprodjo, who was cited by Shidarta (2015), realized that it was not easy to replace the Dutch colonial legal system in Indonesia. For this reason he introduced the idea of a legal revolution. This is because the Main Criminal Code (KUHP is material), although there have been several evolutionary (partial and gradual) regulatory reform policies through the Special Criminal Law, as well as corporate criminal law reform policies through the Draft Law on the Criminal Code (RUUKUHP).) The 1st concept in 1993 until the Draft Criminal Code-2013, but still felt an anomaly and a crisis on an ongoing basis by law makers.

2. Legal Reconstruction of Corruption Act in Indonesia to Realize Just Law Enforcement

Legal experts generally identify three basic problems in criminal law. One of these fundamental problems is the issue of criminal responsibility (responsibility). Discussing criminal responsibility cannot be separated from the problem of criminal acts. Criminal liability will depend on the existence of prohibitions and threats by laws and regulations against an act. This is based on Article 1 paragraph (1) of the Criminal Code which is a provision that regulates and determines the determination of a criminal act.

From this description, criminal liability can only occur after someone has previously committed a crime. Criminal liability is carried out on the basis of an unwritten legal principle "*no crime without error*". Thus, in determining criminal liability, it is determined whether someone has committed a crime or not.

Not every maker who commits a crime can be held accountable. This is in accordance with Moelyatno's opinion in Huda (2006) which states that even though they commit a crime, it is not always possible to be punished (accounted for) as there are several permissible reason such as the person accounted for is proven to be mentally incapable. In other words, the maker can commit a crime without having a fault, but on the other hand the maker cannot possibly have a mistake if he does not commit an act that is against the law.

Accountability of the maker means that the maker meets the requirements to be accountable. Given the principle of no criminal liability without errors, the maker can be held accountable if he has an error. The meaning of the fault must be found based on the inner relationship of the maker with the act done. New mistakes can be judged whether there are or not, if it can first be ascertained the normality of the maker's mental or mental state to distinguish between what can be done and what cannot be done. The error described above is an error in the notion of psychology (psychologis schuldbegrip) which then shifted towards normative understanding (normatief schuldbegrip). The normative view holds that the fault is not how the maker's inner state is with the actions he has taken, but rather the judgment of others on his inner state as something that is wrong and can be reproached. This stance results in the intentional act being an element of error, meaning that the will that controls the act is a unity with the act desired by the perpetrator, so the mistake is an act that is reproached.

Accountability in criminal acts of corruption certainly has legal aspects and legal regulations regarding justice which are based on the theory put forward by the author.

Accountability on the basis of the theory of justice in the philosophy of Islamic law can be carried out in the form of realizing benefits for all elements both within the corporation and for the welfare of its surroundings. In the matter of criminal sanctions for perpetrators of corruption, the author argues that every person who enriches himself means he takes property, money or other party's property for his own possession. This act of taking property, money or other party's rights can be called stealing. However, considering that stealing according to jinayat fiqh is included in the area of jarimah hudud along with six other types of jarimah, namely adultery, accusing people of adultery, drinking khamr (liquor), rebelling, robbing, and apostasy, the legal sanctions for corruption cannot be equated with sanctions theft or robbery.

Because, equating corruption with stealing means making an analogy in the field of hudud. Whereas according to M. Cherif Bassiouni, as stated by Sahal (2018), that hudud, which are codified in the Quran, requires a rigid application of the principles of legality crime, hudud as jarimah which has been stated explicitly in the Al-Quran is carried out standardly, and firmly or as is in accordance with the principles of legality. Hudud is strictly and not analogy, it is strictly

forbidden to use analogy in hudud, in contrast to qisas and takzir in which analogies can apply. In the Qur'an there are only provisions for cutting hands for thieves, not for perpetrators of corruption.

In addition, there is a fundamental difference between stealing and corruption. Stealing, property as stolen object is beyond the power of the perpetrator and has nothing to do with the position of the perpetrator. While in corruption, property as an object of corruption is under its control and has something to do with the position of the perpetrator. It could even be that the perpetrator owns shares or at least has the right, no matter how small; to the property he was corrupted.

Pancasila as the basis of the state or state philosophy (*fiolosofische grondslag*) is still maintained and is still considered important for the Indonesian state. Axiologically, the Indonesian people are the supporters of Pancasila values. The Indonesian nation is a godly, humane, unified, populist, and a socially just nation.

Social justice concerns the interests of society by it-self, individuals with social justice must set aside their individual freedoms for the interests of other individuals. National law only regulates justice for all parties; therefore justice in the perspective of national law is justice that harmonizes general justice among some of the individual justices. In this justice, it focuses more on the balance between the individual rights of the community and the general obligations that exist within the legal community group.

To realize Accountability for Corruption Crimes Involving Corporations Based on the Value of Justice, the reconstruction as referred to is in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes with Article 15 and Reconstruction by adding one paragraph in paragraph 8 Article 20 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The Weaknesses in the accountability for criminal acts of corruption involving corporations can be divided in to 3 aspects, namely weaknesses in aspects of legal substance, legal structure, and legal culture. The weakness of the legal substance is that the purpose of punishment in the Criminal Code has not been properly implemented in corporations; this is what a comprehensive corporate criminal law reform is needed. The weakness of the legal structure aspect is that there is no synergy between law enforcers so that they are no longer fragmented. Next, The weakness of the legal culture aspect is often subjective which highlights, among other things, the low loyalty of law enforcement officers in carrying out and carrying out state duties, patterns of behavior and professionalism of officers, being one of the main problems that must be studied for reform and a solution in enforcing corporate criminal responsibility integrally.
2. The Reconstruction of accountability for criminal acts of corruption involving corporations based on the justice value is in the Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in Article 15 and Reconstruction by adding one paragraph to paragraph 8 of Article 20 of Law Number 20 of 2001 concerning Amendments to Law Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

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