



THE CONCEPT OF CRIMINAL JUSTICE SYSTEM AND CORPORATE CRIMINAL LIABILITY IN INDONESIA

Irpan Suriadiata

Business Law Department, Universitas Nahdlatul Ulama Nusa Tenggara Barat

irpan.suriadiata@gmail.com

Abstract: The Criminal Justice System and Corporate Criminal Liability in Indonesia focuses on the imposition of legal sanctions on corporations involved in criminal acts. Under Indonesian law, corporations are recognized as legal subjects that can be held criminally liable. This study aims to: (1) examine the regulation of corporate criminal sanctions in Indonesian legislation, and (2) analyze the forms of criminal punishment and sanctions imposed on corporations in Indonesia. The research adopts a normative legal approach, utilizing statutory and conceptual analyses. The findings indicate that: (1) corporate criminal sanctions are regulated in various laws, including Law No. 7 of 1955 on Economic Crimes, Law No. 6 of 1984 on Post, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 8 of 1999 on Consumer Protection, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption, and Law No. 15 of 2002 in conjunction with Law No. 25 of 2003 on Money Laundering. (2) Criminal sanctions for corporations in Indonesia are stipulated in Article 10 of the Criminal Code (KUHP). The imposition of fines on corporations aims to reduce their economic rights. The types of sanctions that may be imposed on corporations include principal sanctions and additional sanctions.

Keywords: Corporate Criminal Liability, Criminal Sanctions in Indonesia, Corporate Penal System.

INTRODUCTION

The development of criminal law in Indonesia, particularly special criminal laws outside the Criminal Code (KUHP), has expanded the scope of criminal law subjects, encompassing not only individuals but also corporations. This evolution aligns with similar trends in criminal law development in other countries. The adoption of corporations as subjects of criminal law in Indonesia is evident from several recently enacted laws.

Corporations often act as perpetrators or are at least involved in crimes that harm society, the nation,

and the state. Such crimes or offenses involving corporations occur across various domains, including social, business, environmental, and other strategic areas. Simply put, corporate crimes are violations of criminal law committed by senior corporate officials or the corporation itself, where unlawful actions result in benefits for the corporation.

While corporations generally bring significant benefits to society and the state, such as increased state revenue from taxes and foreign exchange, job creation, technological advancement, and more, they also pose considerable

risks. Negative impacts include environmental pollution (air, water, soil), exploitation or depletion of natural resources, unfair competition, tax manipulation, labor exploitation, substandard or defective products that endanger consumers, and more.

Corporate crimes are often referred to as "shadow crimes" because ordinary people are frequently unaware that they are victims of corporate offenses disguised as legitimate business activities. In cases of corporate offenses, responsibility is often dispersed, making it challenging for authorities to identify the party accountable for the crime.

Corporate crimes can also be categorized as a type of white-collar crime. They are generally committed by business professionals, executives, or those working in professional capacities. A distinguishing feature of corporate crimes, compared to other types of crime, is the method of execution. Corporate crimes are typically non-violent, causing no physical harm to victims.

MAIN PROBLEM

This study aims to explore the regulatory framework governing corporate criminal sanctions in Indonesia. Its primary focus is to identify the legal framework regulating corporate criminal liability and to analyze the implementation of penalties and types of sanctions imposed on corporations. Consequently, this research seeks not only to outline the relevant legal provisions but also to examine various types of sanctions, including principal sanctions such as fines and additional

sanctions, like obligations to undertake social activities or repair damages caused by offenses. The findings are expected to contribute to a better understanding of corporate criminal law in Indonesia and the effectiveness of sanction implementation in practice.

METHOD OF RESEARCH

The research methodology employed in this study is normative legal research, which involves examining legislation relevant to the issues being investigated. The study adopts a statutory and conceptual approach. The types and sources of legal materials utilized include primary and secondary legal materials. Legal materials were collected through library research, employing techniques and tools for document analysis. Additionally, this study uses interpretative analysis as the method for analyzing legal materials.

RESEARCH RESULT AND DISCUSSION

1. Corporate Criminal Sanctions in Indonesian Legislation

The subject of criminal offenses, as initially recognized by the Indonesian Criminal Code (KUHP), is the individual (natural person). This can be observed in the formulation of offenses in the KUHP, which begins with the words "barang siapa" ("whoever"). The term "barang siapa" refers to individuals, not legal entities. Consequently, the Indonesian Criminal Code continues to adhere to the principle that a criminal offense can only be committed by a human being. Legal entities (juridical persons), influenced by Von Savigny's

theory of fiction, are not recognized as subjects in criminal law. This is because, at the time, the Dutch government was not yet willing to adopt civil law doctrines into criminal law.

The concept of corporations as subjects of criminal law has been unclear. Legal provisions concerning corporate criminal liability remain sparse, especially with regard to distinguishing between the criminal responsibility of the corporation itself and that of its management (natural persons) when a criminal act occurs within the corporation. This ambiguity in regulating corporate criminal liability has led to a limited number of cases where corporations can be held accountable for actions contrary to legal provisions.

When a corporation engages in criminal conduct in the insurance sector and this is proven according to applicable law, criminal provisions are applied to the corporation. The types of criminal sanctions that may be imposed on corporations under Indonesian legislation include the following:

1. Law No. 7 of 1955 on Economic Crimes

In the criminal sanction system established by the Economic Crimes Law, a "dual-track system" is applied, meaning that sanctions consisting of both criminal penalties and administrative measures are imposed together, such as fines and disciplinary actions.

2. Law No. 6 of 1984 on Postal Services

- a) Sanctions that may be

imposed on corporations include fines; and
b) Disciplinary actions (Article 19(3) in conjunction with Article 19(1) and (2)).

3. Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition

A business actor is any individual or business entity, whether a legal entity or not, established and domiciled or conducting activities within the legal jurisdiction of the Republic of Indonesia, acting alone or in collaboration through an agreement, to conduct various economic activities.

4. Law No. 8 of 1999 on Consumer Protection

Article 1, Clause 3 defines a business actor as any individual or business entity, whether a legal entity or not, established and domiciled or conducting activities within the legal jurisdiction of the Republic of Indonesia, acting alone or in collaboration through an agreement to engage in various economic sectors.

5. Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption

The primary sanction that may be imposed on a corporation is a fine, which can be increased by one-third (Article 20(7)).

6. Law No. 15 of 2002 in conjunction with Law No. 25 of 2003 on Money Laundering
Article 1, Clause 2 states that any individual or corporation

may be considered a subject. Article 1, Clause 3 further defines a corporation as a group of people and/or assets, organized as either a legal entity or not.

2. Penalization and Forms of Criminal Sanctions for Corporations in Indonesia

Indonesian law recognizes corporations as legal subjects, alongside individuals. As such, corporations can be held criminally liable or bear corporate criminal responsibility. This development necessitates legal frameworks to facilitate the imposition of sanctions on offending corporations, highlighting the urgency for clear regulations concerning corporate criminal liability in Indonesian law. However, in practice, the enforcement of criminal laws against corporations still faces significant obstacles, warranting further examination of the evolution of corporations as legal subjects under Indonesian criminal law.

The essence of imposing criminal sanctions lies in the infliction of suffering, which represents a limitation on human rights. While such limitations are prohibited in most contexts, criminal law permits them to deter offenders. The fundamental rationale for protecting public interest serves as a justification for imposing criminal sanctions, ensuring offenders do not infringe on the human rights of others. Human needs, classified as essential and existential, underline the universal nature of fundamental rights.

In practice, assessing the intent of a perpetrator in a criminal case is complex. Judges must evaluate and

confirm whether the wrongdoing was genuinely committed by the accused. If intent cannot be established, the accused must be acquitted. Similarly, corporate criminal liability hinges on the presence of intent within the corporation. The challenge lies in determining how intent is measured, often based on the doctrine of *ultra vires*. As long as the actions fall within the scope of duties and responsibilities of corporate management, the corporation can be held liable for those actions.

If the criminal sanctions outlined in Article 10 of the Criminal Code (KUHP) are directly applied to a corporation, imprisonment, as applicable to individuals, cannot be enforced. Such application would complicate the practical execution of penalties. In such cases, a representative of the corporation may be designated to serve the prison sentence. Another issue arises in identifying the culpable entity within the corporation—whether it be the owner, CEO, deputy directors, board members, or others. It is crucial to emphasize the principle that sanctions must target the actual perpetrator, not a proxy or assumed offender. To date, fines remain the primary criminal sanction applicable to corporations.

The imposition of fines on corporations aims to diminish their economic advantages. While profits derived from criminal activities may be confiscated, this does not apply to profits from lawful activities. However, fines are often criticized as ineffective because corporations frequently find ways to conceal the proceeds of long-standing offenses. Crimes may only come to light years after their

commission, during which corporations accumulate significant illicit gains. Consequently, the fines imposed are disproportionately small compared to the illegal profits accrued.

3. Types of Sanctions Imposed on Corporations

3.1. Principal Sanctions

- 1) Fines: Corporations can only be prosecuted and penalized with fines if imprisonment and fines are specified as alternative penalties within the relevant legislation. If both sanctions are optional, the court may impose imprisonment on individuals in management, fines on the corporation, or both cumulatively.
- 2) Administrative Sanctions:
 - a. Publication of Judicial Decisions: Judicial rulings may be publicized through print or electronic media to shame the corporation and its management.
 - b. Dissolution and Liquidation: When a corporation is dissolved as a penalty, its assets undergo liquidation.
 - c. Revocation of Business Licenses and Liquidation: Upon license revocation, the corporation ceases operations permanently. To protect creditors, courts may order the corporation to liquidate assets to settle debts.
 - d. Business Activity Suspension: Suspension of specific or all corporate activities for a set period is another penalty option.

- e. Asset Confiscation by the State: The state may confiscate all or part of a corporation's assets, whether directly linked to the offense or not.
- f. Corporate Seizure and State Acquisition: This involves transferring corporate ownership to the state, differing from asset confiscation, where ownership remains with shareholders.
- g. Corporate Seizure: During ongoing investigations, courts may authorize corporate seizures and appoint temporary directors.

3.2. Additional Sanctions

Corporations may also face supplementary sanctions requiring them to undertake specific social activities, such as:

- 1) Environmental Clean-Up: Cleaning environmental damage caused by the corporation, either at its own expense or by reimbursing the state.
- 2) Project Construction or Financing: Supporting development projects related to the offense.
- 3) Social Initiatives: Engaging in other social activities, whether related to the offense or not, as mandated by the court, specifying minimum duration and cost.

These sanctions aim to address the broader implications of corporate offenses while promoting accountability and restitution.

CONCLUSION

Based on the discussion presented, it can be concluded that the regulation of corporate criminal sanctions in Indonesia is governed by various legislative frameworks, including Law No. 7 of 1955 on Economic Crimes, Law No. 6 of 1984 on Post, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 8 of 1999 on Consumer Protection, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption, and Law No. 15 of 2002 in conjunction with Law No. 25 of 2003 on Money Laundering. Penalization of corporations is stipulated under Article 10 of the Indonesian Criminal Code (KUHP), with the primary objective of diminishing the economic advantages of the corporation. Sanctions imposed on corporations include principal sanctions, such as fines and administrative penalties, as well as additional sanctions. Additional sanctions may encompass actions such as environmental clean-up at the corporation's expense or through the state, the construction of projects related to the criminal offense, or other social activities, whether or not directly related to the offense. The determination of minimum durations and costs for additional sanctions is left to the discretion of the court.

REFERENCE

- [1] Herman, K. M. S., Nurmawati, B., Iryani, D., & Suhariyanto, D. (2023). Tindak pidana perpajakan yang merugikan keuangan negara atas penyalahgunaan transfer pricing untuk penghindaran pajak. *JPP/ (Jurnal Penelitian Pendidikan Indonesia)*, 9(3), 1523–1532.
- [2] Mappatunru, A. M. D. (2020). The Pure Theory of Law Dan Pengaruhnya Terhadap Pembentukan Hukum Indonesia. *Indonesian Journal of Criminal Law*, 2(2), 132–152.
- [3] Marzuki, P. M. (2021). *Pengantar ilmu hukum*. Prenada Media.
- [4] Mueller, G. O. W. (1957). Mens Rea and the Corporations-A Study of the Model Penal Code Position on Corporate Criminal Liability. *U. Pitt. L. Rev.*, 19, 21.
- [5] Nurainin, A. B., Mufidah, I., Imayuri, I. R., Putri, W. A., & Rahmawati, Y. (2024). Tindak Pidana Pencurian Dalam Perspektif Hukum Pidana: Kajian Terhadap Jenis-Jenis Tindak Pidana. *Lentera Ilmu*, 75–85.
- [6] Nwafor, A. O. (2013). Corporate criminal responsibility: A comparative analysis. *Journal of African Law*, 57(1), 81–107.
- [7] Pardamean, M. C. (2023). Pertanggungjawaban Direksi Atas Tindak Pidana Korporasi. *UNES Law Review*, 6(2), 7366–7373.
- [8] Prakasa, R. S., Putri, V. D., Retno, I., Elvayanti, F., & Fadhli, A. (2024). Pertanggungjawaban Korporasi Terhadap Korban Kejahatan. *PUAN INDONESIA*, 5(2), 772–779.
- [9] Syahrums, M. (2022). *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif*,

Empiris, Penulisan Proposal, Laporan Skripsi dan Tesis. CV. Dotplus Publisher.

- [10] Widowaty, Y. (2012). Pertanggungjawaban Pidana Korporasi Terhadap Korban Dalam Kasus Tindak Pidana Lingkungan Hidup. *Jurnal Yudisial*, 5(2), 154–169.
- [11] Zakaria, A. (2019). Criminal Law Enforcement of Indonesian Commerce Act Number 7 the Year 2014 for Corporation Perpetrators: Why It Will Be Difficult. *Brawijaya Law Journal*, 6(2), 129–140.