

Criminal Liability for Corporate Crime in Indonesia

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Abstract

Criminal liability for corporate crime in Indonesia has become a topic of increasing interest and importance in recent years. The issue is particularly relevant given the rapid growth of the Indonesian economy and the expanding role of corporations in the country's development. The purpose of this abstract is to provide an overview of the current legal framework in Indonesia for holding corporations criminally liable for their actions, as well as to examine some of the challenges and opportunities associated with enforcing corporate criminal liability in practice. The main sources of corporate criminal liability in Indonesia are the Criminal Code and the Law on Limited Liability Companies. Under these laws, corporations can be held criminally liable for a wide range of offenses, including corruption, environmental crimes, and labor violations. However, the legal framework for corporate criminal liability in Indonesia is still relatively new and untested, and there are a number of challenges to effective enforcement, including limited resources and capacity within law enforcement agencies. Despite these challenges, there are also opportunities for improving the enforcement of corporate criminal liability in Indonesia. For example, recent efforts by the government to strengthen anti-corruption measures and improve transparency and accountability in the business sector have the potential to create a more favorable environment for enforcing corporate criminal liability. Additionally, there is growing awareness among both the public and private sectors of the importance of corporate social responsibility and ethical business practices, which could help to promote greater compliance with the law. In conclusion, while there are challenges to enforcing corporate criminal liability in Indonesia, there are also opportunities for improving the legal framework and enhancing enforcement efforts. The successful implementation of corporate criminal liability will require a collaborative effort between the government, law enforcement agencies, and the business sector to ensure that corporations are held accountable for their actions and that the rule of law is upheld.

Keywords

Criminal Liability; Corporate Crime; Indonesia

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1. INTRODUCTION

Corporations are a modern phenomenon that greatly affects human life in society. Corporations emerged as a result of modernization development that made it easier for humans to meet their needs. Initially, legal entities were better known than corporations. However, over time, the term corporation



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became more popular among criminal law experts to replace the term legal entity in civil law (Okikiola, 2022).

It is undeniable that the existence of corporations provides many benefits to society and the state, such as increasing state revenue from taxes and foreign exchange, opening job opportunities, and increasing technology transfer and innovation (Tymoshenko et al., 2023). However, on the other hand, corporations can also have serious negative impacts, such as environmental pollution, exploitation or depletion of natural resources, unhealthy competition, tax manipulation, exploitation of workers or laborers, and production of goods or services that do not meet standards and may endanger consumers.

In this context, research on the impact of corporations on the environment and society is becoming increasingly important (Ren et al., 2022). This research can help society, the government, and corporations themselves to understand and address the negative impacts caused by the existence of corporations. Thus, this research can contribute to creating a more sustainable and fair world for all parties. Therefore, this research will discuss the positive and negative impacts caused by the existence of corporations, with a focus on their impact on the environment and society.

The development of corporations today is increasingly rapid and uncontrollable, causing negative impacts on the environment and society (Ekici et al., 2022). This phenomenon is increasingly worrying because the existence of corporations not only affects local states and societies, but also affects the world globally. Therefore, there is a need for research to examine the impact of corporations on the environment and society, as well as efforts that can be made to reduce these negative impacts.

The purpose of this research is to examine the positive and negative impacts of corporations on the environment and society, as well as to find solutions to reduce these negative impacts. Specifically, this research aims to identify the positive and negative impacts of corporations on the environment and society, analyze the factors that influence the impact of corporations on the environment and society, and identify efforts that can be made to reduce the negative impact of corporations on the environment and society.

This research has several benefits, namely providing a better understanding of the impact of corporations on the environment and society, providing input for the government in formulating better policies related to corporate management, and providing recommendations for corporations to reduce their negative impact on the environment and society, thus improving the company's image.

2. METHODS

The method used in writing this article is library research method, which is by studying legislation, books, websites, court decisions, and using case approach (H. M. Putra & Ahyani, 2022). Research using statute approach is a research that prioritizes legal materials in the form of legislation as the basic reference in conducting research.

3. FINDINGS AND DISCUSSION

a. Definition of Corporate Crime

The discussion of corporate crime is relatively new compared to conventional crimes (Calderoni et al., 2022). In the past, people were only accustomed to the idea that criminal acts were committed by the poor, the uneducated, those from slum areas on the outskirts of cities or villages, and others. However, many were surprised by the emergence of the idea of Edwin H. Sutherland, who discussed corporate crime. He was the first to unveil white-collar crime at the 34th annual meeting of the American Sociological Society in 1939, which highlighted or explained the behavior of American corporations that violated the law. However, if we look back, the ideas or issues raised by Sutherland were not something new.

Several years earlier, precisely in 1907, Edward Ross had already discussed this issue. What Ross called Criminaloid is perhaps what is now called corporate crime behavior (Peoples & Sutton, 2020). Ross described that criminoids enjoyed immunity from their sins due to their respectable appearance, showing the public that they were social people, obedient to religion, and at home, they appeared as

exemplary fathers. But behind it all, these corporate leaders are actually immoral people who at some point are not hesitant to bribe bureaucrats in the government, evade taxes, in short: wolves in sheep's clothing (Muldoon et al., 2022).

White Collar Crimes can be grouped into three categories, namely (P. Putra et al., 2023):

- 1) Crimes committed by professionals in carrying out their work, such as doctors, notaries, lawyers/advocates.
- 2) Crimes committed by government officials such as corruption and other abuses of power, such as violations of citizen rights, unlawful arrests/detentions.
- 3) Corporate crimes. Corporate crime is corporate actions that can be subject to criminal, administrative, or civil sanctions, in the form of illegal abuses of economic power, such as industrial products that endanger health and life, consumer fraud, violations of labor regulations, misleading advertising, environmental pollution, tax manipulation, and others.

Kriesberg proposed three models of decision-making by corporations that violate the law:

- 1) Rational actor model, where the corporation is viewed as a single unit that rationally intends to violate the law if it is in the corporation's interest.
- 2) Organization process model, where the corporation is viewed as a loosely organized system of units, where various corporate units may not comply with the law because they face difficulties in meeting target products, so to meet them, they tend to violate the law, such as by reducing the necessary expenditures to maintain work safety, misleading advertising, and others.
- 3) Corporate crime is the product of individual decisions made for personal gain.

b. Forms of Corporate Crime

The discussion on the forms of criminal acts committed by corporations is varied. According to Joseph F. Sheley, in the field of economics, the forms of corporate crime are as follows (Levi & Soudijn, 2020) : Defrauding stockholders, which is embezzling or deceiving shareholders (such as not reporting the actual company profits). Defrauding the public, which is deceiving the public (such as pricing and selling products that are not representative or misleading advertising). Defrauding the government, which is deceiving the government (such as evading taxes). Endangering public welfare, which is endangering public welfare (such as causing industrial pollution). Endangering employees, which is endangering workers (such as ignoring work safety). Illegal intervention in the political process, which is illegal intervention in the political process (such as providing illegal political campaign funds). Along with economic development, the practices of corporate crime that are often carried out are false statements such as transfer pricing, under-invoicing, over-invoicing, and window dressing (Zafarullah & Haque, 2023). Transfer pricing is a collusion in determining the selling price among corporations to reduce the amount of tax payable to the state. Under-invoicing is collusion between importers and exporters of goods to issue two invoices, one invoice with the actual price for the cost calculation, and another with a lower price for customs purposes (payment of import duties, income tax, and VAT). Over-invoicing is manipulating prices in procurement activities to gain personal profits for transaction performers or those authorized to do so. This is done in collaboration and with the support of the seller, requesting that purchase receipts be written with a higher price than the price paid or the actual price, procuring government projects by directly appointing certain contractors on the grounds that it must be done immediately or the project location is remote, or there are limited partners, and so on.

c. Criminal Liability for Corporate Crime in Indonesia

In criminal law, it is recognized that corporations can be subject to or perpetrators of criminal acts, but criminal liability is still dual. If we look at the Criminal Code (KUHP), which we still follow faithfully to this day, corporate crime cannot be caught because corporations are not included as legal subjects or perpetrators. In the KUHP, only humans or individuals are subject to the law. However, several laws and regulations outside the KUHP, including Law No. 7 Drt of 1955 concerning Economic Crimes, Law No. 2 of 1992 concerning Insurance Business, Law No. 11 of 1995 concerning Excise,

Environmental Management Laws, and laws governing the eradication of corruption have formulated that corporations are explicitly recognized as legal subjects or perpetrators and can be held accountable under criminal law. However, other laws are unclear about corporate criminal liability. Seeing this, it indicates the uncertainty of lawmakers in placing corporations or legal entities as subjects or perpetrators that can be held criminally responsible.

Seeing such a thing shows the doubt of lawmakers to place corporations or legal entities as subjects or perpetrators that can be burdened with criminal responsibility. The inconsistent regulations will certainly make it difficult for law enforcement to hold corporations accountable for the crimes they commit. In addition to the above weaknesses, there are other factors that hinder law enforcement or control of corporate crime, namely: first, corporations (as potential perpetrators of crimes) generally have effective lobbies in formulating crimes and ways to deal with corporate crime. Second, determining corporate criminal liability or determining corporate wrongdoing is not easy (Campbell & Shang, 2022).

Given the above constraints, it is not surprising that to this day, many corporations continue to commit crimes that persist without anyone being able to stop them. Look at the increasing and worsening environmental pollution, the continued exploitation of workers to pay wages below the regional minimum wage (UMR), and so on.

It is noteworthy that to date, there is no criminal jurisprudence in Indonesia where corporations are defendants. There is also no economic crime involved, even though the possibility of prosecuting and punishing corporations has been possible since 1955. Should it be concluded that the face of corporate crime perpetrators in Indonesia has not undergone significant changes since 1955? Will the situation continue? Certainly not. The government has tried to renew criminal law, especially the Criminal Code (KUHP), by developing new concepts of the KUHP that also consider new crimes that have emerged as a result of technological developments that began in 1964. The new concepts of the KUHP that started in 1964 until now have undergone several changes. In 1981, the Criminal Law Study Team at the Department of Justice questioned whether corporations can be held criminally liable under general criminal law in the KUHP or whether liability is limited to specific offenses specified in certain laws, as it is today. In the development of criminal law, there are three systems of corporate accountability as a subject of crime, namely (Firdaus & Leviza, 2020): a). The management of the corporation as the maker and manager is responsible, namely: b). The corporation as the maker and manager is responsible; and c). The corporation as the maker and also responsible. If the management of the corporation is the maker, then the management is responsible. This system limits the nature of crimes committed by corporations to individuals only (*natuurlijk persoon*). If a crime is committed within the corporation, then the perpetrator is its management. The responsibility in case of a crime is the management that commits the crime. This system is adopted by our KUHP, as stated in Article 59 which reads: "In cases where a criminal offense is determined against managers, members of the board of directors, or commissioners, the manager, member of the board of directors, or commissioner who is found not to be involved in the offense shall not be punished." Apparently, the provision of the above article is influenced by the principle that developed in the 19th century, namely *societas delinquere non potest* or *universitas delinquere non potest*, that legal entities cannot commit crimes. Fault cannot be charged to the legal entity or corporation, but rather to individuals (individualization principle).

In the above article, it is also stated that criminal liability can be waived for managers, board members, or commissioners who did not participate in the criminal act. As the creator, the corporation is responsible, but the accountability is still borne by the managers. This system recognizes corporations as subjects of criminal law or perpetrators of criminal acts, but the responsibility still rests with the managers. In this system, it is possible to prosecute corporations and hold them accountable. The concept of functional perpetrator has changed the previous notion that corporations cannot commit crimes. This means that corporations can be held accountable for committing crimes. The issue of corporate liability as a subject of criminal acts cannot be separated from the main issue of accountability in criminal law or guilt. The principle of guilt is an absolute principle in criminal law, which is the basis

for imposing punishment. The question is how does the principle of guilt affect corporations as the creators of the offense? Can corporations have guilt?

Corporations can be held accountable if there is intentionality, negligence, or errors committed by those who are instruments of the corporation (Setyabudi, 2023). The error is not individual but collective (de la Sablonniere & Taylor, 2020). This is in line with the opinions of Van Bemmelen and Remmelink, who stated that corporations can still have guilt with the construction of guilt of managers or members of the board of directors. Regarding this matter, Roeslan Saleh argued that the principle of guilt in corporations is not absolute but is based on the adage *res ipsa loquitur* (the fact speaks for itself). Actually, this is not unfamiliar because in Anglo-Saxon countries, the principle of *mens rea* (state of mind) is known with exceptions for certain offenses, namely what is known as strict liability and vicarious liability. Strict liability is criminal liability without the obligation to prove guilt. The principle of liability considers guilt as something irrelevant to be questioned whether it exists or not.

According to this doctrine, a person can already be held accountable for certain criminal acts even if there is no guilt on the person. According to LB Curson, this doctrine is based on certain reasons, namely: 1. It is very essential to ensure compliance with certain important rules necessary for social welfare. 2. Proving *mens rea* will be very difficult for violations related to social welfare. 3. The high social impact of the act in question. Meanwhile, according to Ted Honderich, strict liability is used for reasons such as: 1. The difficulty of proving liability for certain criminal acts. 2. It is very important to prevent certain types of crimes to avoid very wide-ranging dangers. 3. The punishment imposed as a result of strict liability is very light. In countries that adopt the Common Law system, strict liability applies to three types of offenses, namely: 1. Public Nuisance, disturbance of public order, blocking roads, emitting unpleasant odors. 2. Criminal Libel, defamation, slander. 3. Contempt of court, violation of court regulations.

Most strict liability offenses are found in laws and regulations (statutory offenses, regulatory offenses, *mala prohibita*) that generally involve offenses against public welfare (Pillai, 2019). This includes regulatory offenses such as the sale of dangerous food or drugs, the use of misleading trademarks, and traffic violations. Vicarious liability is a criminal liability imposed on someone for the actions of another person. This type of liability usually arises in cases where the actions of another person are within the scope of their employment or position. It is generally limited to cases involving the relationship between an employer and their employees, servants, or subordinates.

Corporate accountability based on these doctrines is essential in today's world because it is often difficult to obtain adequate evidence of wrongdoing by corporate owners, especially with the advancement of technology (Evans, 2020). In this regard, Barda Nawawi Arief stated that both of these doctrines need to be considered in terms of their applicability. This is particularly relevant in cases where current criminal activities are closely related to technological, economic, and trade advancements that often involve legal entities or corporations, especially if the resulting consequences affect public interests. It is difficult to prove corporate wrongdoing because it is typically individuals who are at fault. To simplify matters, a system of corporate criminal liability based on the principles of strict liability and vicarious liability should be considered (Sinaga et al., 2020).

However, although we do not officially adopt these doctrines, in practice, particularly in traffic law enforcement, we do follow strict liability without considering any form of wrongdoing. If a violation occurs, the individual is held responsible. Based on the above explanation, the doctrines of strict liability and vicarious liability can be used in cases involving corporate criminal offenses. The basis for holding them accountable is the fact of the victim's suffering. In the Draft Criminal Code (New Draft Criminal Code Concept 2006), both strict liability and vicarious liability are accepted. Strict liability can be seen in Article 35 (2), which states that for certain criminal offenses, the law can determine that a person can be punished solely because the elements of the offense have been met, without considering guilt. Furthermore, vicarious liability can be seen in Article 35 (3), which states that in certain cases, any person can be held accountable for a criminal offense committed by another person if determined by law.

In the new draft of the Criminal Code, corporations are regulated from Article 44 to Article 50. Article 44 states that corporations are subject to criminal acts (Davies & Ollus, 2019). Then, Article 46 states that if a criminal act is committed by or for a corporation, prosecution can be carried out and punishment can be imposed on the corporation itself, or the corporation and its managers, or only on its managers. Furthermore, the reasons for punishing corporations as perpetrators are included in the Collection of Criminal Law Assessment Results, namely (BPHN, 1986:34): a. In economic offenses, it is not impossible for the fines imposed on the managers to be smaller than the profits gained by the corporation from unlawful acts or the losses suffered by society or its competitors. The profits or losses are greater than the fines imposed as punishment. b. Punishing the managers cannot provide sufficient guarantee that the corporation will not repeat an unlawful act. The justification for holding corporations accountable as criminal actors can be based on the following reasons (Busuic, 2021): a. Based on the philosophy of integralism, everything should be measured on the basis of balance, harmony, and compatibility between individual and social interests; b. Based on the principle of kinship in Article 33 of the 1945 Constitution; c. To eradicate the anomie of success (success without rules); d. To protect consumers; e. For technological advancement.

Article 47 of the new Criminal Code states that corporations are not always accountable (in criminal law) for an act that must be done on behalf of or for the corporation. To be accountable, the act must have been specifically determined to be within its business scope, which is apparent from the articles of association or other provisions applicable to the relevant corporation. The responsibility of the implementer of the corporation's actions is limited as long as the implementer has a functional position in the corporation's organizational structure (Article 48 of the new Criminal Code).

Furthermore, not all criminal charges against corporations must be accepted by the court. The judge must specifically consider whether other legal provisions have provided more useful protection than the criminal prosecution of a corporation, and this consideration must be stated in the judge's decision (Article 49 of the new Criminal Code). For its defense, a corporation can present grounds for forgiveness or justification that can be presented by the maker who acted for and/or on behalf of the corporation, as long as these grounds are directly related to the act charged against the corporation (Article 50 of the new Criminal Code).

Regarding the accountability of corporations in criminal law, what sanctions/punishments are most appropriate to impose on corporations? In my opinion, the most appropriate punishment is a fine, in addition to other penalties such as revocation of the corporation's acquired rights, publication of the judge's decision, and civil sanctions in the form of compensation for the consequences of the corporation's crime.

Except for that, corporations can also be subject to disciplinary action, namely placing the company under the supervision of the authorities for a certain period of time. Regarding the revocation of corporate rights, there needs to be limitations. If the revocation is referring to the revocation of operational permits, then the consequences of such sanctions need to be considered. Revocation of an operational permit is equivalent to the closure of the company, which impacts employees or workers more than the entrepreneurs or owners of the company. Therefore, in the punishment of corporations, it must be done carefully or selectively because the impact is widespread. Those who suffer are not only those who commit wrongdoing, but other innocent parties such as employees or workers, shareholders, and the community or consumers also suffer.

4. CONCLUSION

The criminal law that we currently use does not recognize corporate responsibility in criminal law, meaning that criminal law only recognizes individual or human responsibility. Corporate responsibility is specifically regulated in several legal regulations outside of the Criminal Code. These legal regulations show inconsistencies in holding corporations accountable in criminal law, which has drawn

attention from the government, which is taking steps to renew criminal law, especially the Criminal Code, by drafting a new Bill of Criminal Law, known as the New Criminal Code Concept. However, this new concept, which began in 1964 and has undergone several changes, has not yet been passed into law.

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