

CRIMINAL LAW FORMULATION POLICIES RELATED TO CORPORATE CRIME

I Kadek Darma Santosa

Ganesha University of Education

Singaraja, Indonesia

Email : santosadharna13@gmail.com

Abstract

The role of corporations today dominates daily life, especially with the increasing needs of the community. It's no longer a country that provides needs, but corporations. Corporations can increase state wealth and labor, but the revolutionary economic and political structure has caused great corporate power, so that the state can be influenced in accordance with its interests. Based on this background, a problem arises namely how the policy of formulation of criminal law enforcement so far for corporations that commit criminal acts as well as how the policy of formulation of criminal law in dealing with corporate criminal acts in the future. The research method used in this study is normative juridical using secondary data. Data collection is done by collecting and analyzing relevant library materials. Furthermore, the data are analyzed in a qualitative normative manner by interpreting and constructing statements contained in documents and legislation. The conclusion of this research is the regulation of sanctions regarding inconsistent corporate criminal acts. Inconsistencies in determining or imposing maximum fines imposed on corporations, there is no uniformity in determining when a corporation can be said to have committed a crime, regarding who can be held accountable or prosecuted and convicted, and the formulation of types of criminal that can be imposed on the corporation that commits criminal act.

Keywords: Corporate Crime, Formulation Policy, Criminal Law

Introduction

The corporation has been known in the business world since the last century. In the beginning, the corporation was a cooperative medium of several people who had capital, to gain mutual benefits, and were not as exclusive as today's corporations. Corporations contribute a lot in the development of a country, especially in the economic sector, for example state revenues in the form of taxes and foreign exchange, so that the impact of the corporation looks very positive. But on the other hand, corporations also often create negative impacts, such as pollution, depletion of natural resources, fraudulent competition, tax manipulation, exploitation of labor, produce products that endanger the user, and fraud against consumers.¹

The revolutionary economic and political structure has caused corporate power to become large and the state to be too dependent on corporations. Giant companies not only have such great wealth, but also have social and political strength, so the operations or activities of these companies greatly affect the lives of everyone. The work life and health and safety of a large portion of the population are controlled by large companies. It has been proven that multinational corporations have exercised political influence both on the government in the country and abroad where the company operates.

¹ Setiyono, *Kejahatan Korporasi (Analisis Viktimologis dan Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia)*, Bayumedia Publishing, Malang, 2005, hal. 1

Losses due to corporate crime are often difficult to estimate because the consequences are multiplied, while penalties in the form of prison or confinement and court fines often do not reflect the level of crime they have committed. Corporate crime is usually in the form of white collar crime, which is generally committed by a company or legal entity engaged in the business field with a variety of actions that are contrary to applicable criminal law. Based on experience from various developed countries, it can be stated that identification of corporate crimes can include criminal acts such as violations of monopoly laws, computer fraud, payment of taxes and excise, violations of price provisions, production of goods that endanger health, corruption, bribery, administrative violations, labor, and environmental pollution. Corporations can increase state wealth and labor, but the revolutionary economic and political structure has grown a great corporate power so that the state is too dependent on corporations so that the state can be dictated according to its interests. Therefore corporations must have responsibilities. Various attempts to hold corporate responsibility underway, but full of obstacles, were not touched by the law. In order to avoid repeating the weaknesses of the legal instruments, comprehensive corporate responsibility rules that cover all crimes should be made.

Regarding corporate criminal acts regulated in a variety of special laws outside the Criminal Code that governs corporate criminal liability which aims to hold corporations accountable for their actions that result in losses from corporate crime. These rules are formulated in such a way as to be able to ensnare corporations who commit criminal acts, but the criminal provisions in the laws and regulations have so far been placed as ultimum remedium. But at the practical level not at the policy level. So that discrimination can easily occur in law enforcement even though it is proven to violate a statutory regulation, the criminal action against the corporation can be ignored if the court's decision states that other legal fields function better than the criminal. In other words, corporations have impunity, that is, legal immunity for various crimes committed so that even though corporations have committed crimes, there is no attempt to process them to the fullest.²

The inadequacy of law enforcement officers in taking decisive action against various crimes committed by corporations is very worrying because the impact of crimes caused by corporations is very large. Therefore, efforts to reform the Criminal Code that emphasize the perpetrators of crime are not only people (natural person), but also legal entities (legal person). Through the renewal of the Criminal Code there is an opportunity to expand the types of crimes that constitute crimes that can also be committed by corporations, ascertain which criminal acts a corporation must be criminally responsible for, and choose the most appropriate types of punishment for corporations in order to provide a sense of justice for victims and cause a vibrational effect (deterrent effect). From this the authors tried to analyze it in the form of articles entitled "Criminal Law Formulation Policies Related to Corporate Crime"

Based on the description above, the problem formulation is stated as follows: What is the current policy formulation of criminal law related to corporate criminal acts? How is the implementation of criminal law up to now on corporate criminal acts? and How is the formulation of criminal law policies related to corporate criminal acts going forward?

METHOD

This research uses a normative juridical approach in the form of literature, namely by inventorying and reviewing or analyzing secondary data in the form of primary legal

² A.H. Semendawai, *Tanggung Jawab Pidana Korporasi Dalam RUU KUHP, Position Paper Advokasi RUU KUHP Seri #6*, ELSAM, Jakarta, 2005, hal. 3.

materials and secondary legal materials by understanding the law as a set of rules or positive norms in the legislation system that regulates life human. This kind of legal research does not recognize field research (field research) because what is studied is legal materials.³

The collection of legal materials in normative legal research is to use documentary techniques that are collected study of archives or literature studies such as books, papers, articles, newspapers and also the writings of experts.

In normative legal research, library materials are the basic ingredients in general research science, namely legal materials. Legal material consists of primary and secondary legal materials. Primary legal material, namely research material derived from legislation relating to the formulated title and issues such as: 1. Criminal Law Book (KUHP); 2. Act Number 23 of 1997 concerning Environmental Management as amended by Act Number 32 of 2009 concerning Environmental Protection and Management; 3. Law Number 8 of 1999 concerning Consumer Protection; 4. Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning Eradication of Corruption; 5. Law No.8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. Meanwhile, secondary legal materials are supporting legal materials or helping primary legal materials in research that will strengthen their explanations such as: books; thesis; journals; and documents reviewing corporate criminal offenses, specifically the draft Criminal Code (RUU KUHP).

The method of data collection is done through literature study and document study by collecting and analyzing library materials and related documents. Secondary data both concerning primary, secondary and tertiary legal materials were obtained from literature studies and document studies.

Data analysis in this study was carried out qualitatively which is a way of research that produces descriptive analysis data, that is what was stated by respondents in writing or verbally and also their actual behavior was researched and studied as a whole.

Validation in this study will use a triangulation approach, research methods with triangulation techniques are used in the presence of two assumptions, namely, first, at the approach level, triangulation techniques are used because of the desire to conduct research using two sacligus methods namely, quantitative research methods and qualitative research methods . This is based because each method has certain strengths and weaknesses, and has different opinions and assumptions in viewing and responding to a problem.

Results And Discussion

Current Criminal Law Formulation Policy Regarding Corporate Criminal Acts

The Criminal Code (KUHP) currently does not adhere to or recognize corporations as subjects of crime, but legal developments outside the Criminal Code in the form of specific criminal acts have embraced corporate principles as subjects of crime, this of course has consequences that can liable corporate criminal liability for victims of corporate crime. These developments also affect the development of corporate criminal liability in terms of corporate crime. Legislation that adheres to the principles of corporation as a criminal offense, the author focuses his research on Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 8 of 1999 concerning Consumer Protection, Law Number 31 of 1999 Jo Law Number 20 of 2001

³ Soerjono Soekanto dan Sri Mamudji, 2006, *Penelitian Hukum Normatif Tinjauan Singkat*, Rajawali Press, Jakarta, hal. 23

concerning Eradication of Corruption and Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

1. Law Number 32 of 2009 concerning Environmental Protection and Management

The formulation of a corporation as the subject of a crime is found in Article 116, which states :

- 1) When an environmental crime is committed by, for, or on behalf of a business body, criminal charges and criminal sanctions are dropped :
 - a. Enterprises; and / or
 - b. The person who gives the order to commit the crime or the person who acts as the leader of the activity in the crime.
- 2) If an environmental crime as referred to in paragraph (1) is committed by a person, based on a work relationship or based on other relationships acting within the scope of work of a business entity, criminal sanctions are imposed on the issuing order or leader in the crime without regard to the criminal act carried out alone or together.

In the formulation of the provisions above it can be seen that the mention of a corporation uses the term business entity in the form of a legal entity or not a legal entity, corporation, association, foundation or other organization..

2. Law Number 8 of 1999 concerning Consumer Protection

The Consumer Protection Act is essentially a form of protection for consumers who use products and services produced by corporations, which can be victims of crime committed by corporations. The mention of a criminal offense in this law is to use the term "business actor", as stated in Article 1 number 3 which states :

“Business actor is every individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, both individually and jointly through agreements to carry out business activities in various economic fields.”.

Furthermore, Article 61 stipulates that "Criminal prosecution can be carried out against business actors and / or their managers".

From this provision, it can be seen that the Consumer Protection Act has determined that corporations are subject to criminal acts. This Law provides guidelines for consumers and business actors to create a relationship that runs well and is mutually beneficial between business actors and corporations..

3. Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning Eradication of Corruption Crimes

The definition of corporation is contained in Article 1 number 1 which states that "Corporations are a group of people and or assets that are organized, whether they are legal entities or not legal entities". The formulation of a corporation as the subject of a criminal offense is strictly regulated in Article 20 paragraph (1), where it is determined that "In the event that a criminal act of corruption is carried out by or on behalf of a corporation, criminal charges and convictions can be made against the corporation and / or its management".

From these provisions, it is clear that corporations can be prosecuted and convicted if proven guilty of corruption. The Corruption Eradication Act has explicitly determined a criminal act that can be said to be a criminal offense committed by a corporation. This is regulated in Article 20 paragraph (2), which

states "Corruption is committed by a corporation if the crime is committed by people both on the basis of work relations or other relationships, acting within the corporate environment both alone and together".

Corporations can be liable for criminal liability if the individual committing the crime of corruption has a work relationship or other relationship besides the employment relationship with the corporation. Regarding crimes that can be imposed on the corporation itself is in the form of criminal fines as regulated in Article 20 paragraph (7), which states "The principal crimes that can be imposed on corporations are only criminal with a fine, with a maximum criminal provision plus 1/3 (one-third) ".

- 1) Corporations may also be subject to additional penalties as provided for in Article 18 which includes:
 - 2) confiscation of tangible or intangible immovable property or immovable property that is used and obtained from a criminal act of corruption, including a company owned by a convicted person where a criminal act of corruption was committed, as well as the price of the item replacing the object;
 - 3) payment of compensation in the maximum amount with assets obtained from a criminal act of corruption;
 - 4) closure of business or part of the company for a maximum period of 1 (one) year;
 - 5) revocation of all or certain rights or the elimination of certain benefits, which have been or can be given by the government to the convicted person.
4. Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes

The formulation of a corporation as the subject of a criminal offense is contained in Article 6 paragraph (1), which states "In the event of the crime of Money Laundering as referred to in Article 3, Article 4, and Article 5 committed by the Corporation, the crime is imposed on the Corporation and / or Corporate Controlling Personnel".

These provisions indicate that the Money Laundering Act has determined corporations as subject to criminal acts and may be subject to criminal sanctions. This law has also determined when a crime can be said to be a criminal offense committed by a corporation. This provision is regulated in Article 6 paragraph (2), where it is determined that:

"The criminal sentence is imposed on the Corporation if the crime of Money Laundering:

- 1) carried out or ordered by Corporate Control Personnel;
- 2) carried out in the context of fulfilling the aims and objectives of the Corporation;
- 3) carried out in accordance with the duties and functions of the offender or the giver of the order; or
- 4) done with the intention of providing benefits to the Corporation. "

Thus, corporations can only be liable for criminal liability if the crime of money laundering committed by management is included in the scope of their business, in accordance with the articles of association of the corporation

Implementation of Criminal Law Enforcement So far Against Corporate Criminal Acts

The principle of no criminal without error need not be too rigidly enforced in corporate responsibility given the widespread victimological aspects of coping crime. The application of criminal liability for corporations in a rigid manner can be a criminogen factor that will add to the rise of corporate crime. Subjective conditions in criminal liability will include the ability to be responsible, intentional / negligence and there is no reason for forgiveness. If this will continue to be used, then: First, in criminal liability, the concept of functional behavior must be accepted. The distinctive feature of functional behavior is that the physical actions of one (which actually do) result in functional actions against the other. Thus the ability to be responsible for those who act for and on behalf of the corporation is transferred to the ability to be responsible for the corporation as the subject of a criminal offense. In other words, if the prohibited conduct of the responsibility will be borne by the company, then the act must be carried out in the framework of carrying out the tasks and / or achieving the objectives of the company..

Second, the problem of corporate willfulness and neglect can be covered by company politics or the actual activities of a company. Can also be explained by looking at the deliberate or negligence of corporate management in company politics, or being in the real activities of a particular company. So the deliberate or negligence of the corporation must be detected through the psychiatric atmosphere that applies to the corporation as well as to managers who act on behalf of the corporation.

Third, the issue of forgiving reasons for corporations still applies by adopting forgiving reasons for natural persons. This is as a consequence of the mistakes of management who act for and on behalf of the corporation is attributed to corporate mistakes, so that the removal of the management's mistakes due to forgiving reasons becomes also corporate mistakes.

Legislative policies occupy a vital and strategic position in placing sanctions for certain crimes. If the legislative policy related to the placement of certain sanctions is not carried out rationally, it will lead to chaos in law enforcement practices, especially at the application and execution stages because the policy is not oriented towards the objectives to be achieved. Therefore, the placement of certain sanctions that are threatened for certain crimes must show the nature, purpose and function of these sanctions so that legislative policies will support the objectives to be achieved. This is where the importance of an understanding of the sanction system in criminal law because that's the only crime that occurs in the community will be overcome.⁴

Criminal Law Formulation Policy Regarding Corporate Crime in the Future

The regulation regarding corporate criminal liability is still outside the Criminal Code (KUHP). This is because the principles of corporation are not adhered to as subjects of criminal acts in the Criminal Code that are in effect now, because the subject of criminal acts regulated in the Criminal Code now is only humans or individuals. This kind of arrangement further brings legal consequences in the form of only individuals who can be charged with criminal liability and convicted, while the corporation does not.

⁴ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, Bandung, Citra Aditya Bakti, 2003, hal. 223

Along with the development of society, it is felt very necessary to place the corporation as the subject of a crime so that criminal liability can be charged when committing a crime, so that the corporation in conducting its business does not take actions that violate the provisions of the law and harm the general public. Therefore, corporate arrangements as subject to criminal acts and criminal liability are placed outside the Criminal Code in order to accommodate the above-mentioned arrangements, and of course by continuing to refer to the Criminal Code as a general guideline.

These laws and regulations have determined the corporation as the subject of a criminal offense. However, whether the formulation of the provisions in it can be used as a basis for the imposition of criminal liability to corporations, especially corporate liability for victims of corporate crime. The formulation of corporate criminal responsibility is certainly not enough just to mention the corporation as the subject of a criminal act, but also must determine the rules regarding the criminal system and its penalties, so that an effort is needed to reorient and reformulate criminal liability for victims of corporate crime in the future.

Reorientation and reformulation of criminal liability for victims of corporate crimes, including the provisions regarding:

1. Provisions regarding when a crime can be said to be a criminal offense committed by a corporation;
2. Who can be prosecuted and convicted for crimes committed by corporations;
3. Types of sanctions in accordance with the subject of a criminal offense in the form of a corporation oriented to granting compensation to the victim.

Formulations regarding these provisions must be strictly regulated to minimize the possibility of corporations freeing themselves from responsibility for crimes committed. It is impossible to provide fulfillment of compensation suffered by the victim by the corporation, if the corporation in question cannot be charged, prosecuted, and convicted based on existing laws and regulations.

Conclusion

From the description that has been stated, it can be obtained conclusions regarding the following:

1. Current criminal law formulation policies in enforcing corporate criminal acts are not regulated in the current Penal Code. The Criminal Code does not adhere to or acknowledge corporations as subjects of crime, but legal developments outside the Criminal Code in the form of specific criminal acts have embraced corporate principles as subjects of crime. Of the 4 (four) laws and regulations discussed, namely Law Number 32 of 2009 concerning Environmental Protection and Management, Act Number 8 of 1999 concerning Consumer Protection, Act Number 31 of 1999 Jo Act Number 20 Year 2001 concerning Eradication of Corruption and Act Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, it can be concluded that the regulation of sanctions regarding corporate criminal acts contained in the four laws is inconsistent,
2. The implementation of corporate criminal offenses so far, judges most often impose criminal fines, however, the legislative policy regarding fines criminal sanctions has so far been unable to support the effective implementation of criminal fines because in the statutory regulations outside the Criminal Code there are inconsistencies regarding the amount of fines worn.

3. The formulation of criminal law policies in dealing with corporate criminal acts is expected to be more uniform and consistent in determining when a criminal act is said to be a criminal offense committed by a corporation, who can be prosecuted and convicted in corporate crime, and what types of sanctions are appropriate for the corporation itself.

References

- Gobert dan Punch, *Rethinking The Corporate Crime*, <http://maswig.blogspot.com>, diakses pada tanggal 30 Mei 2019.
- Kejahatan Korporasi dan Hak Konstitusional*, <http://pithoyoadhi.wordpress.com>, diakses pada tanggal 31 Mei 2019.
- Kitab Undang-Undang Hukum Pidana.
- Nawawi Arief, Barda, 2003, *Kapita Selekta Hukum Pidana*, Citra Aditya Bakti, Bandung.
- Semendawai, A.H, 2005, *Tanggung Jawab Pidana Korporasi Dalam RUU KUHP, Position Paper Advokasi RUU KUHP Seri #6*, ELSAM, Jakarta.
- Setiyono, 2005, *Kejahatan Korporasi (Analisis Viktimologis dan Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia)*, Bayumedia Publishing, Malang.
- Undang-Undang Nomor 31 Tahun 1999 Jo Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi.
- Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.
- Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.
- Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.