

Criminal Law Policy Related to Corporate Criminal Liability in Facing the Challenges of Globalization



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ABSTRACT: The acceptance of corporations as the target of crime, thus raising the issue of criminal policy in the prosecution of corporate crime. There are two main topics in this research, namely (1) how is the current criminal law policy towards criminal liability? (2) How is the criminal policy of criminal liability in the problem of globalization era in review of *ius constituendum*? The research method uses normative jurisprudence research method with law making, comparison and analysis of legal concepts. The results of the research are: (1) Criminal law does not regulate society as an object of criminal offense has regulated society as an object of crime. (2) economic life between countries is increasingly dependent on each other, therefore international trade regulations are increasingly needed. There used to be a saying that the poorer a country is, the higher the crime is, now the saying only applies to ordinary crimes such as theft, robbery, fraud and embezzlement.

KEYWORDS: Policy on corporation, Criminal act, globalisasi and Responsibility

1.0 INTRODUCTION

Corporation is a term often used by criminologists to refer to what in other fields of law, especially civil law, is called a legal entity or "rechts" in Dutch or "law" in English. Sociologically, the role of companies in economic activities is unquestionable. With the dynamic of the economy, in the early 1960s, companies that are now commonly known as multinational companies began to attract the attention of socio-economic experts. The phenomenon and activities of corporations predate the Second World War, but systematic and comprehensive investigations only began in the early years of the same period. At the same time, criminologists began a critical examination of the role of corporations in 1939 with Edwin H. Sutherland's historic speech to the American sociological association. He introduced the term "white collar crime" (WCC), which was defined as "a crime committed by a person who had a respectable and high social standing at the time the crime was committed" (Shofie & Yusuf, 2002).

The Sutherland study, which used data from government agencies, courts and commissions, found that 70 of the industrial and commercial companies it examined violated at least one law and engaged in unlawful practices. Such as misleading advertising, patent abuse, wartime trade violations, price fixing, fraud, and product recalls (selling defective products). On the one hand, the role of the company drives the wheels of the domestic economy even across national borders, but on the other hand, whether we realize it or not, it creates distortions and injustices in society. But almost imperceptibly, the international community's attention to corporate crime is evident in international efforts to combat the negative behavior of multinational companies. This business is the result of international cooperation in the form of a code of conduct for transnational corporations (ucesoe, 1997) which regulates, among others: (1) activities of transnational corporations (TNCs), (2) activities of transnational corporations / Treatment of TNCs, (3) cooperation between governments (Muladi, 1995). The development of human civilization in the fields of science, information technology, communication and transportation has affected almost the entire world and made planet Earth smaller, because with the development of technology, especially information, almost all events on earth quickly occur in one place and in a short time can even be felt in other parts of the world at the same time. Globalization is very rapid in all fields, therefore it is impossible for a country to be isolated politically, socially, culturally and economically. Economic life between countries is increasingly dependent on each other, therefore international trade regulations are increasingly needed, there used to be a saying that the poorer a country, the higher the crime rate, now the saying only applies to ordinary crimes such as theft, robbery, fraud and embezzlement. Crimes that occur today show that economic development has also given rise to new forms of crime that are no less dangerous and the number of victims caused.

With the understanding that the corporation is a legal subject, it means that the corporation as a form of business entity must be held accountable for all its actions. In addition, it is also possible for the responsibility to be shared by the corporation and the management or only the management. The purpose of this research is to describe and analyze in depth the current criminal law

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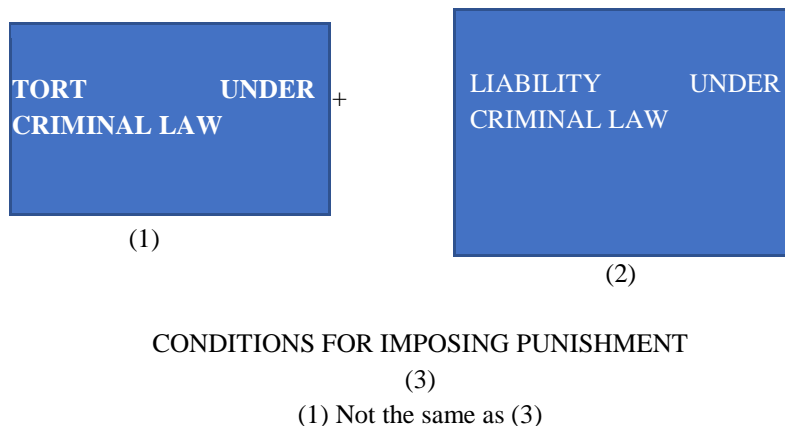
policy in corporate criminal liability, as well as criminal law policy in *ius constituendum* and the relevance of acceptance of corporate criminal liability in Indonesia.

2.0 LITERATURE REVIEW

2.1 Corporate Criminal Liability

Moeljatno can be considered as a technique of judging by a jury, this statement can make it easier for judges to give appropriate qualifications to criminals who cannot be punished. If one of the characteristics of an act against the criminal law is not proven, the verdict is *free vrijspraak* compare with article 191 of the Criminal Code, Law no.8 of 1981. Meanwhile, to prove all the characteristics of the act, it is known that a crime has occurred and the perpetrator is not immediately punishable, while the perpetrator of the act, the person who committed the act is declared incapable of responsibility, is declared released from all charges (compare with Article 191 paragraph (2) of the Criminal Code) (Moeljatno, 1955).

If formulated in a simple way, the following chart can be made:



According to Simons, responsibility can be defined as a psychological state justifying the application of a criminal act from a general individual point of view. Regarding the word responsibility, the Criminal Code does not provide words, and only when we find it in the *memorie van toelichting* of explanatory memories is the notion of responsibility negatively mentioned.

2.2 Corporate Policy

Considering the quality, impact and methods of corporate crime, it is best not to do all the efforts to solve corporate crime, preferably, in certain cases it is necessary to continue to criminalize the company and not apply the criminal approach of mainstreaming criminal sanctions, if the crime itself is not prohibited by *mala prohibita* and has the characteristics of a real crime, bad attitude in connection with it *muladi*. Not giving discretion to new offenders and those who commit fraud, deception, misrepresentation, forgery, counterfeiting, illegal evasion, concealment of facts and manipulation of a journalistic nature *Mulad's* position is in line with the 1976 American Bar Association concept of economic crimes, which emphasizes the following: "Economic Crimes as any non violent, illegal activity which principally involves deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention". Crimes that do not prioritize the formal channels of the criminal system but through restorative approaches, mediation through official channels often gives a neutral feeling to the victim, justice is considered achieved if it follows the procedures of two processes. In the restorative approach, the concept of justice is fulfilled by creating harmony between the perpetrator and the victim, which is a win-win solution (Muladi and Sulistyani, p-100).

2.3 Challenges of Globalization

There are other positive changes in globalization and trade, such as the acceptance of free markets, increased employment opportunities and promotion potential and the creation of a valuable Asian middle class. At the same time, however, corporations can also have negative impacts on society, the environment and the economy, especially for the poorest countries that face corporate exploitation. When discussing the negative impacts of corporations, the question is who is responsible? Almost invariably, a survey of social attitudes in the UK found that 88% of respondents believed that corporations have the resources and influence to make changes at international, national and local levels, while 78% believed that they should do so and take responsibility for the harms and benefits experienced. On the possibility of making powerful changes for the greater good of society (Friedman, M. (1962).

3.0 RESEARCH METHODS

The research used includes normative legal research, namely legal research conducted during the study of library materials, namely research and study of legal principles and positive legal rules arising from literature and laws. The approach to the problem is an approach determined by law, namely the search for formulations of criminal norms related to the regulation of an act of the same

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or higher law, a comparative approach, namely (commercial) criminal law. The relevant, as well as analytical and conceptual approach is to find the formulation of criminal law norms (commercial companies) that develop equal or higher laws that can be used as legal expressions according to the subject.

4.0 DISCUSSION RESULTS

4.1 Indonesian Criminal Law Policy Related to Corporate Criminal Liability in Facing the Challenges of Globalization

The fifth UN convention on crime prevention and treatment of criminals in 1975 was confirmed by the seventh UN congress in 1985, which showed the existence of new forms of crime. From companies controlled by wellknown entrepreneurs that have a very negative impact on the country's economy (Andi Hamzah, 1994). Corporate crime that continues to grow both in terms of form, type and mode of operation often crosses national borders (cross-border crime) and due to the era of globalization often also has an impact on other countries. For example, in the early 1990s, international attention to corporate crime was partly due to the increasingly intense war on drugs in developed countries (led by the United States). This war also targeted the financial resources of the international drug trade and therefore included the struggle of countries around the world to create anti-theft laws, this of course applies to the banking world and therefore the problem also extends to international economic crime the problem of money laundering is not only limited to drug trafficking, as it has long been suspected that this illegal money is also used in the illegal arms trade and the promotion of terrorism. This position was endorsed by, among others, the Center for the Study of International Financial Crime, University of Florida College of Law, USA, which organizes international money laundering, asset forfeiture, and white-collar crime. Conference in New York in February 1994 (Mardjono Reksodiputro, 1994). Even the practice of money laundering has a negative impact. According to John McDowell & Gary Novis (Legal Re- Sebastian Pompe dk, 2011).

(2001, Consequences of money and financial crime), money laundering can harm the legitimate private sector. To hide and conceal the proceeds of crime, money launderers often use certain companies to mix illegal money with legal money. Businesses designed to launder money manage large amounts of money to support goods or services that are sold below market value. These companies can offer goods at prices even lower than the cost of production, undercutting legally operating companies. As a result, legitimate companies cannot compete with these companies, which can lead to the bankruptcy or closure of legitimate companies.

In addition, as a result of globalization, major corporate crimes include price-fixing (illegal price fixing), false advertising, advertising fraud, such as in the pharmaceutical industry, and environmental protection. Crime (environmental crime). The actual issue in the field of civil law is defined as a legal entity, rechtspersoon, legal entity or body. This concept of criminal law is expanded to become a collection of people or property, both legal entities and not, as seen in Law Number 7 Emergency 1995 paragraph 15.

Corporate crime is part of white-collar crime according to Edwin H. suthenland, professor of sociology at the university of Chicago in 1939 white-collar crime is defined as violations of criminal law committed by people with high socio-economic status higher socio-economic class the efficiency of your work of course, in professional activities or in crimes committed by honorary officials, speaking of corporate crime itself, must be distinguished: (a) Crime for corporation; (b) Crime against corporation; (c) Criminal corporation;

The first form is actually corporate crime. In this case it can be said that corporate crime is clearly committed on behalf of the company, not against the company. The second is often referred to as hired crime, while the third is a company that is deliberately created and controlled to commit crimes (Muladi and Dwidja Priyatno, 1990).

Corporate crime as part of white-collar crime only includes the definition of big business crime and not the definition of small businesses such as: (a) shareholders who commit fraud, (b) to prevent fraud on the part of the public, (c) treason against the government (Mardjono Reksodiputro, 2003).

Corporate crimes that stand out as an impact of the globalization era are (jubing kristianto, 1989): (a) Predition, for example: (a) Predition: large companies make agreements with each other to offer prices that are clearly lower than market prices with the aim of weakening their competitors, namely small companies. When their competitors fall, they start raising prices; (b) Geographical market sharing: Firms divide potential markets into regions where one member of the conspiracy can offer low prices. Offering low prices is possible because only one firm dominates a particular region; (c) Price linking; the firm secretly implements a rotation system among its members to win bids for commercial or government contracts, while coordinating who should bid a very high price (so as not to win the contract) and giggging those who win the contract (with a reasonable bid); (d) Same bid the firm offers the same bid for all types of contracts, although in fact they may offer different bids to ensure that all custodians receive a share of the available market without the risk of losing profits. (a) False advertising; The most serious fraud occurs in the pharmaceutical industry because companies producing similar products must convince the public that their products are better than other similar products in order to sell their products. Falsification of facts and illegal sales methods can have serious consequences, because medicine is closely related to public health. Although the pharmaceutical industry is particularly vulnerable to advertising fraud, this does not mean that other industries are not involved and non-medical chemistry is also noteworthy;

(b) Environmental crimes; Much attention has been paid to the many companies that neglect environmental protection by polluting the environment as a result of their production processes. Also pollution of the working environment, as some companies have shown not protecting their employees against the risk of an unhealthy working environment arising from the production process, an

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equally important development is the result of modern technological developments, such as nuclear reactor accidents that can cause environmental pollution;

In addition, corporate crime has also ventured into the areas of credit card banking crimes, oneman banking one person setting up a bank to defraud corporate crime relating to bank break-ins, forgery of papers and more.

The issue of money laundering of crimes as a continuation of drug crimes can even be a continuation of corruption and smuggling, if you want to know more about it, the form of laundering operations can be: (a) The placement: the conversion of unlawfully obtained cash into assets such as bank deposits, real estate or shares; (b) The layering: the creation of complex and multi-layered financial transactions, protected by various forms of anonymity and professional secrecy. This makes it difficult for law enforcement to detect money laundering networks. (Sebastian Pompe. On cit., pp. 10-11) In the case of layering, the party who deposits money in the bank the deposit customer or bank depositor is not the actual owner of the funds, the depositor is only acting as an attorney or executor of another party who ordered him to deposit his money in the bank. It also often happens that the other party is not the actual owner of the funds, but only receives power of attorney or authorization from one of the parties, who receives a power of attorney from the actual owner.

In other words, the depositor also does not know who the real owner is, because he can only trust the legal representative of the owner. In fact, it is not uncommon for someone who gets the trust of the depositor who uses the money in the bank to be layered before reaching the rightful owner, in other words, the relay occurs in layers. Usually the beneficiaries of the authorization to act as layer intermediaries are law firms. Law enforcement agencies often face difficulties. Uncovering the concealment of proceeds of crime through layering in this case, money deposited in one bank is transferred to another bank, either in the country or another country. This transfer is done several times making it very difficult to trace despite cooperation between national, regional and international law enforcement agencies. (c) Integration is a conspiracy to legitimize the proceeds of crime

This involves using money from bank deposits to finance loans to commit crimes;

From the above description, it appears that financial institutions, both in the form of banks and nonbanks, will play an important role, it should be noted that the target of "money laundering" perpetrators are countries that have not criminalized "money laundering", which allows for anonymous financial transactions and where strict bank secrecy is used as a shelter (Muladi, 1993).

It is also necessary to talk about "commercial crime" that has also occurred in Indonesia, the simplest example of "commercial crime" is imported goods whose L/C has been liquidated abroad, but the goods do not arrive in the importing country and deviate to other countries.

Often this is accompanied by insurance crimes, namely the imported goods are replaced with useless goods, then the ship is sunk into the sea, the ship has been insured, so that the perpetrator gets the L/C money redeemed and the insurance money at the same time usually the perpetrators of this crime are people from developed countries, while the victims are developing countries export fictitious export certificate (SE) is considered a commercial crime (andi hamzah, 2015).

It is possible that the mapping of corporate crime will continue to grow and develop in the future, since the development of crime has become globalized, such developments have become an integral part of the life of the international community in this century.

4.2 Criminal Law Anticipation

Corporate crime has become so serious in terms of its method of operation and the losses it causes that our country not only pays attention to it through organizing symposium seminars and panel discussions on corporate crime, but also receives attention from the international community. As stated by the VII Congress of Crime Prevention held in Kavana Cuba in 1990, it contains important resolutions regarding corporate crime, namely (Baharudin, 1992): (a) The Rule of Criminal Law Indonesia the Protection of Nature and the Environment (document A/CONF.144/L.4) which gathers member states to improve legislation to provide protection to nature and the environment, including providing protection to its population; (b) Organized Crime Illicit Trafficking of Narcotic Drugs and Psychotropic Substances (document A/CONF.- 144/L.8) which outlines the need for member states to improve legislation to provide protection to nature and the environment. 144/L.8) underlined that the increase in organized crime, and illicit trafficking in narcotic drugs and psychotropic substances would require greater international cooperation to combat the problem. (c) Organized Crime (document A/CONF.144/L. G/rev.1) stipulated the need to establish scientific and technical cooperation to overcome various kinds of crime. The crimes of "organized crime" have become increasingly dangerous, because they have used sophisticated equipment in addition to being neatly organized so that they must also be faced with sophisticated equipment and up to date methods of prevention and eradication; (d) For Computer Related Crime (document A/CONF.144/L.11), it is proposed that member states increase their efforts effectively to disrupt these crimes, among others, by increasing computer security efforts and increasing international efforts in handling computer-related crimes;

When looking at domestic criminal law, it must refer to the UN resolution on criminal law reform, especially domestic criminal law, in the future it must be able to adapt to new events, especially international developments that have been agreed upon by civilized society because corporate crime as the object of criminal acts has not been subject to the provisions of the Dutch Criminal Code which still applies to individuals as objects of criminal acts. It can be considered as a financial crime if the activities of the community can damage the environment, then the provisions of environmental law can be applied. If the target of the crime is a private person/individual/community and can cause losses to state finances, the corruption law can be applied. Law No. 8 of

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2010 can be applied to acts of money theft regarding the prevention and prevention of money theft crimes if the corporate crime involves people, then the provisions of the Criminal Code related to certain acts such as fraud, embezzlement, and forgery are still relevant and applicable.

In relation to the prevention of criminal law, it is also necessary to consider the nature of punishment as an ultimatum subsidiarity according to which criminal law should not be used if other appropriate means are available. However, in the case of corporate crimes that can threaten the joints of the state economy, which can also have an impact on the crime of the nation and state, as a *primum medium* exception, criminal law must arise even though in the context of law enforcement, it is very rare to find perpetrators who have great power and greed where this crime includes corporate crime compared to perpetrators who have a large level of poverty such as theft, pickpocketing and others. Even after the criminal justice system is often unable to solve new criminal problems with the dimensions of corporate criminal power and greed in dealing with crimes, the settlement process is often time-consuming due to problems with investigative methods and experts related to economic law. Things a lot of money and a lot of time to summarize the evidence of the subject *mens rea* and the existing criminal subject (romli atmasasmita, 1996).

The rule of law in the era of globalization will be outdated much faster than the times before it, so it can no longer be said that a law that is only one, two years old does not need to be changed but if it is already outdated then the change must be made. The experience of law enforcers, in enforcing the law, should continue to be a reason for the legislature to fill the void of legislation in addition to creating new regulations and improving existing laws, it is no less important to improve the quality of law enforcers both morally and mentally as well as expertise in the field of law. The cultivation of patriotism for state apparatus needs to be done, so that they are not easily fooled by the seduction of lawbreakers, including corporate crime.

The development of crime including corporate crime as one of the impacts of the globalization era should not be avoided, but we welcome and welcome it with good laws and regulations, the toughness of law enforcement officials, state apparatus who are always devoted and loyal to the interests of the values and ideals of the struggle of the nation and state based on Pancasila and the 1945 Constitution and the support of all citizens, the government, then this can be a form of national resilience, especially in the field of law enforcement of corporate crime in the context of the globalization era. The Sembo-yan "fiat justitia pereat mundus" that justice must be upheld even until the end of the world, must still be held high.

4.3 The Relevance of Accepting Corporate Criminal Liability in Criminal Law.

To deal with the development of increasingly complex crimes, it seems that classical criminal law according to the principle of guilt is no longer able. Therefore, it is necessary to reform the field of criminal law, by realizing that the principle of guilt is not the only principle that can be used in modern criminal law criminal liability can also be imposed on a person, even though the person has no fault at all.

The main reason for the imposition of criminal liability for negligence is to protect the public, because negligence is very difficult to prove in certain crimes such as corporate crime in this case, the system of criminal liability for negligence has three forms of models:

(A). Strict liability; Innocent liability, where the guilty person is already punishable when he commits the crime formulated in the law, regardless of his internals. This principle is defined by the concept of production responsibility, the basic element of strict liability is the *actus reus*, so only the *actus reus* must be proven, not the *mens rea* Curzon L.B., gives three reasons for strict liability: (a) It is essential to ensure the observance of certain important regulations necessary for the welfare of society; (b) Proof of *mens rea* will be difficult for offenses related to the welfare of society; and (c) The high level of social harm caused by the actions concerned

(barda nawawi arif and muladi, 1992);

(B). Vicarious liability; Vicarious liability is one where in one person, though without personal fault, is more liable for the conduct of another. In criminal cases, there are two important conditions that must be met in order to apply criminal acts with vicarious liability, namely: (a) There must be a relationship between X and Y which is sufficient to justify the imposition of vicarious liability; (b) The criminal conduct committed by Y must be referable in some particular way to the relationship between X and Y (marcus fletcher, 1990);

In addition to the two conditions mentioned above, there are two principles that must be met in applying vicarious liability, namely the delegation principle and the principle that the servant's act is the master's act in law. (c). Corporate liability; Initially, people refused to hold corporations accountable in criminal cases. The reason is that corporations do not have feelings like humans so they are unlikely to make mistakes. In addition, imprisonment is impossible to apply to corporations. However, considering the negative impact caused by corporate activities, the thought arose to hold corporations accountable in criminal cases. It is said that the corporation is responsible for the acts committed by its members in relation to the scope of its work. Of course, the punishment that can be imposed on the corporation is usually a fine or other form of action, such as disciplinary action or administrative action (sue titus reid, 1978). There are two ways to be able to convict a corporation, namely: (1) the corporation can be subject to punishment based on the principle of vicarious liability for crimes committed by its employees, and (2) the corporation can be subject to punishment based on the theory of identification. The court recognizes the actions of certain members of the corporation, as long as those actions are related to the affairs of the corporation, are considered as actions of the corporation itself (Peter Siago, 1989).

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The identification theory is one of the theories that justify corporate liability in criminal law. This theory states that "the act and state of mind of the person are the act and state of mind of the corporation". (the act and will of the director is also the act and will of the corporation).

Corporations have an independent nature in terms of criminal liability, so corporate liability (enterprise liability) cannot be equated with a vicarious liability model.

In relation to the above, the statement that arises is to what extent does the principle of fault in corporate criminal responsibility have relevance to be applied in Indonesia? In other words, to what extent is its relevance in the framework of reforming Indonesian criminal law? To answer this question, there are several benchmarks that can be used as justification basis, namely: (1) theoretical justification, (2) sociological justification, and philosophical justification.

4.3 Business crime

The definition of the term "business crime" was formulated by John.E. Conklin as: "Business crime is an illegal act, punishable by a criminal sanction, which is committed by an individual or a corporation in the course of a legitimate occupation or pursuit in the industrial or commercial sector for the purpose of obtaining money or property, avoiding the payment of money or the loss of property or personal advantage" (Conklin and John E, 1977). The formulation of "business crime" above shows one of the non-conventional crime patterns that is currently very prominent because it is a problem in almost all countries, especially developing countries that are very dependent on the development and growth of their economy and are closely related to transnational trade. In addition, the notion of "business crime" also contains philosophical, juridical and sociological meanings. Philosophically, business crime means that there has been a change in values in society when a business activity is operated in such a way that it is detrimental to the interests of the wider community.

The change in values illustrates that business people no longer value honesty in national and international business activities in order to achieve the goal of obtaining maximum profit. In short, it can be concluded that in business activities there is no order and legal certainty and therefore it is impossible to find justice for good faith business actors. The logical consequence of these circumstances and legal problems is that other legal instruments are needed, namely criminal law to help create order and legal certainty and to find justice for business actors who are in good faith and have been harmed. As for juridically, the definition of the term "business crime" shows that there are 2 (two) sides. On the one hand, there are aspects of civil law, and on the other hand, there are aspects of criminal law. The two aspects of the law have two diametrically different objectives and have characteristics that contradict each other. The civil law aspect is more concerned with peace between the parties, while the criminal law aspect is more concerned with protecting the public interest, the wider community and even the state. Sociologically, the notion of "business crime" indicates a real situation that occurs in activities in the business world. But on the other hand, it also shows that business activities are no longer 'friendly' (unfriendly business atmosphere) or as if there is no longer anyone who can be trusted among business actors. Business activities should run in a healthy manner even though they compete competitively. Substantially, according to Robintan Sulaiman, business crime contains factors, namely: (a) The nature of the corporation means that it is carried out in groups, each of which plays a role with their respective expertise to form synergies and strategic alliances that become an independent force and are very difficult to break through by the hands of the law. Business crimes are also organized crimes; (b) Business crimes in committing crimes use sophisticated instruments or equipment such as computers, satellites and others so that they can occur at any time, anytime and anywhere; (c) Multi-dimensional business crimes have an impact on not only the people or legal entities who are harmed but also harm the community and even the state;

Still according to Robintan Sulaiman, the factors that cause business crime include 3 (three) things, namely: 1). Business crime is already designed when the business is created, and that means there is a need for it; 2). This business crime arises because of the rapid development of business and creates an opportunity for the perpetrator. So when the business is created or started there is no plan to conduct business activities; 3). Business crimes committed by people outside the business actors who master technology and can utilize technology to commit crimes. These three things are all economically/commercially motivated (profit oriented) and the urgent need to get as much money as possible in a short time is the main motive in business crime (Robintan, S 2001).

This motive is also owned by corporations that justify all means to gain profits so that the investment that has been invested does not suffer losses (this is known in "Anomie Theory"). The scheme of business crime in the form of a chart is as follows:

<i>Monetary Crimes</i>	<i>Public affairs crimes</i>	<i>Banking crime</i>	<i>Services crime</i>	<i>Computer crime</i>
Capital market crime; Tax crimes;	money counterfeiting crimes; financial crimes;	a. crimes committed by the bank;	a. commodity futures crime; b. foreign vantage (forex) crimes;	a. cyber crime; b. internet crime; c. other crimes that use electronics
	c. the crime of counterfeiting securities;	b. crimes committed by organizations outside the bank;		

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In connection with the above description, it is interesting what Conclin said, which provides a view that: “one reason to limit the discussion to business crimes is that many of the elements of the commercial world which are conducive to business crimes are absent in other occupational settings. A number of elements of the business world which are conducive to business crime, such as the heavy emphasis on profits, the stress on open competition, the nature of the market structure, and the character of the large corporation as an institution are absent in other occupational settings.

4.4 Corporate Criminal Liability in Facing the Challenges of Globalization.

Globalization is not a black and white phenomenon that can be understood easily and quickly, seeing the impact of problems that are so diverse but deep and specific according to the context of the problem. The general phenomena mentioned above are all around us, even inherent in various goods. Global governance, economic integration, regionalism, trade liberalization competitiveness, common market, international migration, political union, political unity, human security, etc. are some of the terms and topics that have evolved in the field of global governance. These are some of the terms and topics that have evolved in various fields that not only illustrate the complexity of the problem and its research, but also the different solution models to the problems related to the topic.

The regulation of corporations as subjects of criminal law is motivated by differences in the history and experience of each country, including Indonesia, but in the end there is a general assumption that the development of industrialization and progress in the field of economics and business encourages the assumption that the subject of criminal law is no longer limited to natural persons *natuurlijke person*, but also includes companies. Because companies can also commit certain crimes, the role of companies as non-state actors, both national and multinational or multinational corporations (MNCs), has a strategic role in today's society not only in the economic field, but also has an important influence in the political field, but also has an important influence in politics and defense (Rick Sarre, 2003).

Corporate crime politics is a complex crime in addition to basically being a crime committed by the powerful, because it is committed by criminals who have financial power and corporate crime politics is also a form of red-collar crime. The National Criminal Code has recognized and regulated corporations as legal subjects, precisely in Article 45 to Article 50 of Law Number 1 of 2023. The definition of corporation in Law No. 1 of 2023 is an organized collection of persons and/or assets, whether it is a legal entity in the form of a

limited liability company, foundation, association, cooperative, state-owned enterprise, regionally-owned enterprise, village-owned enterprise, or the equivalent, as well as an unincorporated association or business entity in the form of a firm, partnership, or the equivalent. With the adoption of the notion that Corporations are the subject of Criminal Offenses, it means that Corporations, both as legal entities and non-legal entities, are considered capable of committing Criminal Offenses and can be held accountable in criminal law. In addition, criminal liability is still jointly borne by the Corporation and its management who have a functional position in the Corporation or only the management can be held accountable in criminal law. With the inclusion of the criminal liability of the Corporation in Book I of this Law, the criminal liability of the Corporation which was originally only applicable to certain Criminal Offenses outside this Law, also applies generally to other Criminal Offenses, both within and outside this Law.

5.0 CONCLUSIONS AND RECOMMENDATIONS

From the results of the analysis, the following conclusions are obtained: (a) The corporate sector that is able to play a positive role in national development is the corporate sector that is a national asset and not a corporation that is only a burden and parasite of society. This corporate sector group is a group that complies with business ethics, such as complying with good corporate governance, obeying the rules of fair business competition, and applicable laws and regulations. In other words, this positive role towards national development refers to corporations that are able to practice the principles of business ethics and also the principles of good corporate governance in carrying out their business activities; (b) related to Indonesia's globalization position index, there is a real need to develop technology-related research to support the rules of the game and the availability of information related to future globalization. Because, the status of the state and society is still low in front of global forces, pitting Indonesia against competition that is not optimal even though many research institutions have succeeded in facing the threat of globalization, such as creating local competitiveness models against foreign company attacks, including the center for economic and political studies IPSK LIPI or the center for strategic and international studies CSIS, one of which can be done is a program to increase the capacity of government, society and market / economic actors. Political, security, economic, social and cultural issues are increasing and the pattern of relationships between actors at the global, national and local levels is becoming increasingly complex, so the ability of each actor must be increased by the ratio The main goal is to be able to understand every development, take advantage of existing opportunities, and most importantly to reorganize a more symmetrical relationship between the three main actors (State / Government, Society and Market); (c) strengthening economic diplomacy that must be supported by internal economic strength. Indonesia's role, position and strategy in international forums have also not shown maximum results. Therefore, capacity building must be done to build institutions and prepare strong cadres of leaders. The government can facilitate these efforts.

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