

Criminal Law Policy Regarding Criminal Responsibility for Corporate Crime (WCC) in Indonesia



Johosua Amrosila¹, Pujiyono²

^{1,2}Master of Law at Diponegoro University Jl. Prof. Sudarto No.13, Tembalang, Kec. Tembalang, Semarang City, Central Java 50275

ABSTRACT: White collar crime generally refers to crimes that are financially motivated and are usually committed by business professionals and government officials. White collar crime cases are difficult to track because they are usually committed by officials who have power, have the power to produce laws and play a role in making various vital decisions. White collar crime is also very difficult to be touched by the law because it occurs in a closed environment.

In connection with the issues raised and researched, the method that the author will use in the context of this research is Normative Juridical which examines the issue of norms including their contradictions. In research, a distinction is generally made between data obtained directly from the public and from library materials.

The regulation of corporations as subjects of criminal law is motivated by different histories and experiences in each country, including Indonesia. However, in the end there is a common view, namely that the development of industrialization and progress in the fields of economics and trade have encouraged the idea that the subject of criminal law is no longer limited to natural humans (natuurlijke person) but also includes corporations. That, as explained above, corporate crimes or also categorized as white collar crimes should be able to be held responsible for the crimes they have committed. Either use the rules of the articles in the Criminal Code or laws outside the Criminal Code as mentioned above.

KEYWORDS: Criminal Liability, Corporate Crime, White Collar Crime

A. INTRODUCTION

White collar crime or what is usually called WCC is a crime that is classified as serious because it is carried out in a systematic, massive manner and also involves authorities who have extraordinary powers. In Indonesia, criminal law policies regarding criminal liability for corporations must be seen through the Criminal Code (KUHP) and statutory regulations outside the Criminal Code. The fact is that criminal liability for corporate criminal acts as a legal subject is not regulated in the Criminal Code expressly, considering that the National Criminal Law is designed to deal with individual human behavior (natuurlijk person). The Criminal Code is based on the principle that only humans can be prosecuted as responsible makers or perpetrators (daders) of an offense, whether in the form of a crime or violation. This can be seen through the formulation of articles in the Criminal Code, including:¹

- 1) The method of formulating an offense always begins with the words "whoever" which is generally meant or refers to a person or humans;
- 2) The criminal system adopted, especially the criminal loss of liberty which can only be imposed on humans and not legal entities;
- 3) According to the principles of Indonesian criminal law, legal entities cannot commit offenses because Indonesian criminal law is formed based on individual mistakes; And
- 4) There are no special procedures in criminal procedural law for corporations.

Corporate crime is a new dimension of crime, very dangerous and causes far greater and more widespread victims. Such as crimes that threaten environmental sustainability, energy sources, crimes in the economic sector such as money laundering crimes, banking crimes, computer crimes, fraud against consumers, illegal cheating, fraud and deception against consumers through high

¹I Dewa Made Suartha, I Dewa Agung Gede Mahardhika Martha, *Criminal Law Policy in Accountability for Corporate Crime in Indonesia*

Criminal Law Policy Regarding Criminal Responsibility for Corporate Crime (WCC) in Indonesia

advertising and other crime patterns. such as tax evasion in the form of violations of tax regulations, criminal acts in the labor sector, illegal price fixing of goods, false advertising, smuggling, environmental crimes and so on.²

Jonkers quoted the High Court decision dated 5 August 1925, writing that according to the principles of our (Dutch, pen.) criminal law, legal entities cannot commit offenses. The reason is, because our criminal law is based on the doctrine of personal guilt which is only directed at a person (individual), so that the provisions regarding basic crimes also have a personality character, especially the crime of liberty. Likewise with fines, because according to the Dutch East Indies criminal law system, corporations cannot be sentenced to fines, because people who are sentenced to fines can choose to serve a substitute prison sentence in addition to paying the fine. According to Jonkers, although corporations cannot be held accountable under criminal law, in reality corporations often commit criminal acts.³

The regulation of corporations as subjects of criminal law is motivated by different histories and experiences in each country, including Indonesia. However, in the end there is a common view, namely that the development of industrialization and progress in the fields of economics and trade have encouraged the idea that the subject of criminal law is no longer only limited to natural humans (natuurlijke person) but also includes corporations, because certain crimes can also be committed. carried out by corporations. The role of corporations as non-state actors, whether in the form of national or trans or multi-national corporations (MNC's), in modern society has a strategic function not only in the economic field, but also has a significant influence on political and defense policies. Corporate crime is a complex crime, besides its character as a crime by the powerful because it is committed by perpetrators who have financial and political power, corporate crime is also a form of "white collar crime "⁴

Based on this background description, this research will answer the problem of what is meant by white collar crime, and what is the criminal responsibility?

RESEARCH METHODS

In this case, what is meant by research methods are the main parts for finding and discussing everything that is related to the data in research, and is a way of solving problems in research. In the process of finding a solution through collecting data which aims to discuss a problem in terms of writing this research, an approach is needed with several specific methods.

In connection with the issues raised and researched, the method that the author will use in the context of this research is Normative Juridical which examines the issue of norms including their contradictions. In research, a distinction is generally made between data obtained directly from the public and from library materials. What is obtained directly from the public is called primary data (or basic data), while what is obtained from library materials is usually called secondary data.

DISCUSSION

White collar crime

The term white collar crime was first proposed by a criminologist from the United States named Edwin H. Sutherland in 1939. Sutherland defined White Collar Crime as " a crime committed by a person of respectability and high social status in the course of their occupation. " believes that white collar crime is a crime committed by someone who is very honorable and has a high social status in his work. These criminal acts can occur in companies, professional circles, trade or political life. White Collar Crime is typologically different from Blue Collar Crime . Usually the term White Collar Crime is intended for officials and high-ranking state officials, while Blue Collar Crime is used to refer to crimes that occur in the lower social classes with a lower quality and quantity than the crimes produced by White Collar Criminals .⁵

White collar crime generally refers to crimes that are financially motivated and are usually committed by business professionals and government officials. White collar crime cases are difficult to track because they are usually committed by officials who have power, have the power to produce laws and play a role in making various vital decisions. White collar crime is also very difficult to be touched by the law because it occurs in a closed environment.

Crimes committed by corporations have wider consequences and more victims, even though sometimes they are not directly victims. The impact of forest fires carried out by corporations is clearly extraordinary. People are hampered by their activities because of the smoke which disturbs their eyesight and breathing. Not only experienced by one country, the forest fires that occurred in Indonesia caused smoke to reach neighboring countries. Not to mention the environmental damage that occurs because of it. Flights were disrupted and resulted in trillions in losses. It is impossible for the impact to be very broad if it is only carried out by one person. According to Gottfrdson and Travis Hirchi, the concept of white collar crime has two desired consequences. The first is the denial of the theory that crime occurs due to poverty, namely that crime can also be committed by the upper class and is immune from the law. Furthermore, white collar crime is an important area of development for criminology

²Pujijono and Rahmi Dwi Sutanti *Alternative Models of Corporate Criminal Responsibility Through a Restorative Justice Approach*, p. 23

³Jonkers, *Handbook of Dutch East Indies Criminal Law*, Bina Aksara, Jakarta, 1987, 289-290

⁴*Op . cit* , Pujijono, p.24

⁵https://www.ppatk.go.id/siaran_pers/read/970/keberadaan-kerah-putih-diklik-kas-pencucian-uang.html

Criminal Law Policy Regarding Criminal Responsibility for Corporate Crime (WCC) in Indonesia

research and now a lot of research and thought is being devoted to this field. In subsequent developments, white collar crime tends to become organized and transnational in nature. Corporate crime then falls into this category of white collar crime .⁶

In the development of crime carried out in an organized manner in the form of corporations, many terms or definitions of corporate crime often cause confusion in distinguishing what is actually a corporate crime, both from the perpetrator and the characteristics of the crime. So, to clarify this problem, it can be explained with several definitions of crime related to corporations, including:

1. Crime for Corporations ; It is a corporate crime committed for the benefit of the corporation itself, not for the benefit of the individual or perpetrator. This is done by corporate organs (management) solely for the benefit of the corporation.
2. Crime Against Corporation ; Crimes committed for individual interests are often committed by corporate workers (employee crime) against the corporation, for example embezzlement of company funds by officials or employees of the corporation itself.
3. Criminal Corporation ; Corporations are deliberately controlled to commit crimes, the corporation's position here is only as a means to commit crimes, the corporation is only a mask for its evil goals.⁷

The distinction above increasingly shows that crimes are not only committed personally but also professionally within an organizational context. Crime for corporation is a crime committed by a corporation with the sole aim of seeking economic profit. Based on this economic motive, the corporation often violate the law.⁸

Theory of criminal responsibility

According to Roeslan Saleh,⁹ criminal liability is a disgraceful act committed by society which must be held accountable to the perpetrator for the act committed. Not all perpetrators of criminal acts must carry out criminal responsibility, this depends on the element of fault of the perpetrator. By holding responsibility for the disgraceful act on the person who made it, whether the person who did it was also blamed or whether the person who did it was not blamed. In the first case, the maker will of course be punished, while in the second case the maker cannot be held criminally responsible.

Identification Theory (Identification Theory)

Identification theory is one of the theories used in imposing criminal responsibility on corporations that commit crimes. In general, this theory states that in order for a corporation to be subject to criminal liability, the person who committed the criminal act must be identified first. directly. According to this theory, corporations can commit a number of offenses directly through management who are closely connected to the corporation. Criminal liability can only truly be imposed on a corporation if the criminal act is committed by a person who is a corporate policy maker to carry out the activities of the corporation.

Vicarious Liability Theory

Vicarious liability is a criminal liability imposed on a person for a criminal act committed by another person. “ a vicariously liable person is one person, even without personal fault, is more liable for the conduct of another” . According to the doctrine of vicarious liability , a person can be held responsible for the actions and mistakes of others. Such liability is almost all aimed at statutory offenses. In other words, not all offenses can be replaced by liability. This form of responsibility can be applied to parents or guardians for criminal acts committed by children in the context of criminal prosecution.

The courts have developed a number of principles regarding this matter, one of which is the employment principle. In the employment principle, the employer is the main party responsible for what the worker does where the action is carried out within the scope of his work. According to Marcus Fletcher, there are two important conditions in criminal law that must be fulfilled in order to implement criminal acts with vicarious liability. These conditions include the following:

First , there must be an employment relationship, such as the relationship between employer and employee/worker. Second , the criminal act committed by the employee or worker must be related to or still within the scope of their employment. Apart from the two conditions mentioned above, there are two principles that must be fulfilled in implementing vicarious liability, namely the principle of delegation and the principle that the worker's actions are the employer's actions.

Theory of absolute liability according to law (strict liability)

Absolute liability is accountability without error. This means that the maker can be punished if he has committed a criminal act as formulated in the law without looking at his inner attitude. This principle is termed liability without fault. So the main element in

⁶In Arief Amrullah, 2006, *Corporate Crime the hunt for mega profits and attack on democracy* , Bayumedia Publishing, Malang. Pg. 21

⁷H. Setiyono; 2002, *Corporate Crime-Analysis of Victimology and Corporate Responsibility in Indonesian Criminal Law* , Averroes Press Publisher, Malang. matter. 16-18.5

⁸Rodliyah, Any Suryani and Lalu Husni *The Concept of Corporate Criminal Responsibility (Corporate Crime) in the Criminal Law System*, Legal Compilation Journal Volume 5 No. 1, June 2020, p. 195-196

⁹Roeslan Saleh, 1983, *Crime and Criminal Responsibility* , Jakarta: Aksara Baru, pp. 75-76.

Criminal Law Policy Regarding Criminal Responsibility for Corporate Crime (WCC) in Indonesia

strict liability is *actus reus* (a person has committed an act) not *mens rea* (the perpetrator is guilty or not). This strict criminal liability can also only be based on law, namely in the case of a corporation violating or not fulfilling certain obligations/conditions/situations determined by law. In this case the law establishes criminal offenses for:

First, corporations that run their business without a permit.

Second, the corporation holding the permit violates the conditions (conditions/situations) specified in the permit.

Third, corporations that operate uninsured vehicles.

Corporate criminal liability in Indonesia

In the Indonesian Criminal Code (KUHP), there is no known criminal provision that determines artificial legal subjects (*rechtspersoon*) or corporations, as subjects that can be subject to criminal charges. This can be seen in the general provisions of the Criminal Code which state that Indonesian laws and regulations apply to everyone. Another terminology used in the Criminal Code is "citizen" as mentioned in Article 5 of the Criminal Code, which essentially stipulates the application of Indonesian laws and regulations to Indonesian citizens who commit certain crimes, outside the territory of Indonesia.¹⁰

However, in its development, corporations later became legal subjects in the formulation of criminal provisions. The following is an example where a special law regulates corporations as the subject of criminal acts, but only the management can be held accountable:

- a. Law Number 1 of 1951 (Work Law);
- b. Law Number 2 of 1951 (Accident Law);
- c. Law Number 3 of 1951 (Labor Inspection Law);
- d. Law Number 12 of 1951 (Firearms Law);
- e. Law Number 3 of 1953 (Law on Opening Pharmacies);
- f. Law Number 22 of 1957 (Labor Settlement Law);
- g. Law Number 3 of 1958 (Law on the Placement of Foreign Workers);
- h. Law Number 83 of 1958 (Aviation Law);
- i. Law Number 5 of 1964 (Telecommunications Law; changed to Law Number 5 of 1989);
- j. Law Number 7 of 1981 (Law on Mandatory Employment Reporting);
- k. Law Number 2 of 1981 (Legal Metrology Law);
- l. Law Number 3 of 1982 (Compulsory Company Reporting Law).
- m. Law Number 7 of 1992 (Banking; replaced by Law Number 10 of 1998).

The provisions for holding corporations accountable in the form of accountability of their management can also be seen in the provisions of Article 46 paragraph (2) of Law Number 7 of 1992

From the formulation of this article, it is clear that the management has the authority to give orders to their subordinates in the banking corporation, who can later be held criminally accountable.

CONCLUSION

The regulation of corporations as subjects of criminal law is motivated by different histories and experiences in each country, including Indonesia. However, in the end there is a common view, namely that the development of industrialization and progress in the fields of economics and trade have encouraged the idea that the subject of criminal law is no longer limited to natural humans (*natuurlijke person*) but also includes corporations.

That, as explained above, corporate crimes or also categorized as white collar crimes should be able to be held responsible for the crimes they have committed. Either use the rules of the articles in the Criminal Code or laws outside the Criminal Code as mentioned above.

REFERENCES

- 1) Arief Amrullah, 2006, *Kejahatan Korporasi the hunt for mega profit and attack on democracy*, Bayumedia Publishing, Malang.
- 2) H.Setiyono; 2002, *Kejahatan Korporasi-Analisa Viktimologis dan Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*, Penerbit Averroes Press, Malang.
- 3) I Dewa Made Suartha, I Dewa Agung Gede Mahardhika Martha,, *Kebijakan Hukum Pidana Dalam Pertanggungjawaban Tindak Pidana Korporasi Di Indonesia*,
- 4) Jonkers, *Buku Pedoman Hukum Pidana Hindia Belanda*, Bina Aksara, Jakarta, 1987,
- 5) Pujiyono Dan Rahmi Dwi Sutanti *Alternatif Model Pertanggungjawaban Pidana Korporasi Melalui Pendekatan Keadilan Restoratif*

¹⁰ *Op.cit.*, Rodliyah, Any Suryani and Lalu Husn, p. 202

Criminal Law Policy Regarding Criminal Responsibility for Corporate Crime (WCC) in Indonesia

- 6) Rodliyah, Any Suryani Dan Lalu Husni Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana, jurnal Kompilasi Hukum Volume Volume 5 No. 1, Juni 2020, hal. 195-196 Roeslan Saleh, 1983, Tindak Pidana dan Pertanggungjawaban Pidana, Jakarta: Aksara Baru, https://www.ppatk.go.id/siaran_pers/read/970/keberadaan-kerah-putih-dibalik-kasus-pencucian-uang.html



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.