International Journal of Social Science and Human Research

ISSN (print): 2644-0679, ISSN (online): 2644-0695

Volume 07 Issue 08 August 2024

DOI: 10.47191/ijsshr/v7-i08-62**,** Impact factor- 7.876

Page No: 6331 - 6337

Application the Theory of Identification in Corporate Accountability to Corruption Crimes Based On the National Criminal Code and the Corruption Crime Law

Reswanto Adi Nugroho[1], Yunanto[2]

[1,2] Faculty of Law, Diponegoro University, Semarang, Indonesia

ABSTRACT: The purpose of this study is to find out how the provisions regarding corporate accountability in corruption crimes according to the Corruption Law and to analyze how the role of identification theory in the event of corruption violations co mmitted by corporations. This research uses normative juridical research methods with a statutory approach and a conceptual approach. Based on the results of this study, after the National Criminal Code was passed by the President, it has provided a positive impact on the law in Indonesia, one of which is the inclusion of corporations as subjects of criminal law. So that corporations if they c ommit criminal acts can be held accountable. In determining corporate liability, several theories are known, one of which is identi fication theory. Identification theory is a theory that allows corporations to have a criminal liability on the basis of an act commit ted by an individual identified as a corporate action. The theory also holds that certain agents in a corporation are cons idered "direct minds" or "alter egos". According to this theory, a corporation can commit a number of offenses directly through administrators who are closely related to the corporation, acting for and on behalf of the corporation so that it is seen as a corporation itself.

KEYWORDS: Accountability; Corporation; Corruption.

I. INTRODUCTION

Indonesia is a country of law based on Pancasila and the 1945 Constitution, which regulates all the lives of the people of Indonesia. The law here has a very important meaning in the aspect of life as a guideline for human behavior in relation to other human beings (Fatimah, Fines & Arief, 2012). Pancasila is the foundation of democracy in legal life in Indonesia, Pancasila is the Grand Design of the constitution itself. The values of Pancasila as the foundation of the Constitution are explicit contained in the Preamble to the 1945 Constitution. According to M. Isnaeni Ramdhan regarding the relationship between Pancasila and the 1945 Constitution can be examined in several paradigms, including the Juridis-Philosophical paradigm, Pancasila is the result of a noble agreement as the basis of the State formulated into the 1945 Constitution, while in the Juridis-Constitutional paradigm, the 1945 Constitution is the ideal of the struggle of the warriors and national figures, and in the Juridical-Political Paradigm, the 1945 Constitution is a means of restriction for the rulers (Saputra, 2015).

The problem of corruption is no longer a new problem in legal and economic problems for a country because the problem of corruption has existed for thousands of years, both in developed countries and in depveloping countries including Indonesia. In fact, the development of the corruption problem in Indonesia today is so severe and has become a very extraordinary problem because it has infected and spread to all levels of society. If in the past corruption was often identified with officials or civil servants who have misused state finances, in its current development the problem of corruption has also involved legislative and judicial members, bankers and conglomerates, as well as corporations (Akbar, 2021).

Corruption is one of the diseases of society (Ramdhan, 2009) that is the same as other types of societal diseases such as theft, which has existed since humans have been living on this earth. In Indonesia, there are many corruption cases that have occurred, but if we look at today, there are also many government efforts to eradicate the perpetrators of these corruption crimes (Puspitawati, & Devintawati, 2018). Corruption is a global problem. There are no longer regional or national problems, because corruption is a threat that can result in the fragility of stability and security of society, state institutions, democratic values, ethical values and justice and hinder sustainable development and law enforcement (Hamzah, 2006).

Corruption never brings positive consequences (Gunnar Myrdal), therefore the crime of corruption is classified as an extraordinary crime, so extra efforts are needed in terms of dealing with it (Ibsaini, & Syahbandir, 2018). In line with the development of society, the Laws and Regulations on Corruption continue to change until the latest Law, namely Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Saputra, 2015).

Application the Theory of Identification in Corporate Accountability to Corruption Crimes Based On the National Criminal Code and the Corruption Crime Law

The perpetrator of the criminal act referred to here is any person who commits a criminal act of corruption or an act of corruption that can harm the country's finances or economy, while what is meant by each person according to the provisions of Article 1 point 3 of the Corruption Crime Law is an individual person or including a corporation. Thus, it is clear that the element of anyone in this case as a perpetrator of corruption according to the Corruption Law is in the form of individuals or corporations that have harmed the state's finances. Black's Law Dictionary defines a corporation as an authorized corporation created by or under the legal authority of a country or nation, which consists of, in some instances, a single person being a successor, being an official of a particular office, but usually consisting of an association of many individuals (Toruan, 2014).

In Indonesia, corporations are known as the subject of criminal law. However, currently there is uncertainty about the concept of corporations as the subject of criminal law and what entities can be accounted for in criminal law. In addition, the regulation regarding the imposition of criminal liability for corporations is still very minimal, especially regarding the separation of criminal liability of corporations and administrators when a criminal act occurs in the corporation. In the Dutch civil law system, which is still embraced by the legal system in Indonesia, it is known as a legal subject divided into two forms, namely first, human (*person*) and second, legal entity (*rechtperson*). From the division of legal subjects mentioned above, if this corporation is a legal subject that can carry out legal relations, then the corporation is included in the qualification of a legal entity (*rechtperson*). A legal entity (*rechtperson*) is a legal subject that has its own rights and obligations even though it is not a human (*person*), in this case it is in the form of a body or organization consisting of a group of people who join for a certain purpose and have certain wealth. To act in legal traffic, the legal entity (*rechtperson*) is represented by people who act for and on behalf of and for the benefit of the legal entity (Suhariyanto, 2017).

In Indonesia, the regulation of criminal liability for corporations is only known directlyanjar in regulations outside the Criminal Code. The first law that made it possible to hold corporations criminally accountable was Law Number 7 of 1955 concerning the Investigation, Prosecution, and Trial of Economic Crimes. The Economic Crimes Law is an adoption of the Wet Op de Economische Delicten in the Netherlands in 1950 which has introduced the position of corporations as the subject of criminal law. Observing the development of methods of formulating accountability in criminal law, there are three (3) systems of corporate position as makers and corporate accountability in criminal law, namely: (a) Corporate administrators as makers and managers are responsible; (b) The corporation as the responsible maker and administrator; (c) Corporations as makers and responsible (Muladi and Dwidja Prayitno, 2010).

Law Number 31 of 1999 jo Law Number 20 of 2001, namely Article 20, regulates corporations as perpetrators of corruption crimes, including: (1) In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties can be made against the corporation and/or its management. (2) The crime of corruption is committed by a corporation if the criminal act is committed by persons either based on employment relations or based on other relationships, acting within the corporate environment either alone or together. (3) In the event that a criminal prosecution is made against a corporation, the corporation is represented by the management. (4) The management representing the corporation as intended in paragraph (3) may be represented by another person. (5) The judge may order the corporate management to appear in person in court and may also order the management to be brought to the court hearing. (6) In the event that a criminal prosecution is made against a corporation, the summons to appear and the submission of the summons shall be submitted to the management at the place of residence of the administrator or at the place where the administrator has an office. (7) The principal penalty that can be imposed on a corporation is only a fine, with a maximum penalty plus 1/3 (one third) (Anjari Warih, 2016).

In imposing liability on corporations, there are 3 (three) main conditions that must be met, namely: 1) agents commit criminal acts; 2) the criminal act committed is still within the scope of his work; 3) It is carried out with the aim of benefiting the corporation. The three conditions are cumulative, meaning that the three conditions must be met. However, of the three conditions, the third condition is a condition that is quite difficult to meet. So that to fulfill it, the cooperation of various parties is needed (M. Ali, 2018).

Previous research serves to analyze and enrich research discussions, as well as to distinguish it from the research being conducted. This study focuses on corporate accountability in corruption crimes by using identity theory and using the National Criminal Code as a legal basis. Based on the research that the author has done, there have not been many studies that discuss corporate accountability using the National Criminal Code. So far, research has only been guided by the old Criminal Code or the Netherlands Criminal Code, for example, research by Lamhot Erik Butarbutar, Rr Dijan Widijowati, Agung Makbul (2022) on the role of identification theory in corporate accountability in consumer protection crimes or research by Yudi Krismen (2014) on corporate criminal liability in economic crimes. This research discusses the criminal system for corporations from the perspective of the National Criminal Code where there is a novelty of the old Criminal Code that still makes the subject of criminal acts only natural humans. It is hoped that this research will further add insight into legal science, especially related to corporate accountability in corruption crimes in the National Criminal Code.

The discussion in this study focuses on the National Criminal Code and the Corruption Crime Law. In line with the subject of the study, the problems raised are focused on the policy of the corporate criminal system in the National Criminal Code which has given a fresh start by including corporations as the subject of criminal law. Based on the research conducted by the author, there

have not been many studies that discuss corporations in the perspective of the National Criminal Code, considering that the National Criminal Code will take effect in 2026.

II. RESEARCH METHOD

This research is a normative legal research that leads to an understanding of the urgency and pattern of criminalization of environmental crimes by corporations. The analysis of this criminal pattern is more focused on the perspective of *ius constituendum*. This research uses two approaches, namely a case approach and a conceptual approach. The case approach is used to study the phenomenon of environmental crime cases committed by corporations. While the conceptual approach is to depart from the views and doctrines that have developed in legal science. The main material of this research is literature material consisting of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials consist of laws and regulations. Secondary legal materials consist of various references related to criminal law, various articles, scientific papers and journals, as well as research results related to this research problem. Tertiary legal materials consist of legal dictionaries, Crime and Justice encyclopedias and various relevant dictionaries.

This research is focused on the provisions of the criminal system for corporations that commit criminal acts built in the National Criminal Code. Data analysis begins with an inventory of various provisions related to the criminal system against corporations in the National Criminal Code, then an analysis of the legal materials used. The analysis technique used is qualitative normative. The use of qualitative normative analysis techniques is because this study is a normative juridical research, whose analysis is more oriented to testing secondary data on legal theories and rules in laws and regulations.

III. RESULT AND DISCUSSION

Corporations as the subject of criminal law

The emergence of corporations as perpetrators of criminal acts has also changed the criminal system that has been oriented towards people. The entry of corporations into the joints of human life, brings several consequences in various areas of life. As an entity that makes a great contribution to improving the economy and national and global development. Sometimes corporations commit acts that are detrimental to individuals, communities, or the state. This is in accordance with the fact that corporations have long committed various kinds of crimes. In 1932, based on the results of the study, it was indicated as many as 70 large corporations in the United States committed various crimes (Rodliyah, Suryani, & Husni, 2021).

The emergence of criminal acts by corporations cannot be separated from the fierce competition in seeking profits. According to I.S. Susanto, as quoted by Budi Suhariyanto, it states that the desire to control the market, makes corporations commit acts that are contrary to the law, such as spying on their rivals, imitating, forging, stealing, bribing, and holding conspiracies regarding prices or marketing areas. Thus, it can be said that criminal acts committed by corporations are carried out in order to fulfill the goals of the corporation (Suhariyanto, 2017).

Criminal acts committed by corporations can cause massive casualties. Therefore, criminal law as one of the instruments to maintain public order, establishes corporations as the subject of criminal acts. The juridical consequence is that if a corporation is made the subject of a criminal act, then the corporation can be subject to criminal sanctions. Romli Atmasasmita as quoted by Muhammad Fatahillah Akbar (2021), corporate crime often contains elements of fraud, misdirection, concealment of reality, manipulation, breach of trust, deception or circumvention of regulations so that it is very detrimental to society at large.

According to Muladi and Dwidja Priyatno as quoted by Kristian (2014), from an etymological point of view, corporations come from the terms corporatie (Netherlands.), corporation (United Kingdom), corporate (Germany), all of which refer to the Latin term corporatio. Corporatio itself comes from the word corporare which refers to the word corpus. In Latin, corpus means body (Muladi & Priyatno, 2010). In Indonesia, there has been a unity of view regarding the definition of a corporation. This can be seen from the definition of corporation in various laws in Indonesia.

Generally, criminal acts can only be committed by humans or individuals. Therefore, criminal law has only known individuals or groups of people as legal subjects. This can be seen in the formulation of the articles of the Criminal Code which begins with the word "barangwho" which generally refers to people or humans. By looking at the symptoms of violations of the law committed by a legal entity that is detrimental to the community, the position of the legal entity begins to be considered not only as a subject of civil law, but also as a subject in criminal law, so that it can be prosecuted and sentenced punishment or criminal sanctions. Regarding the provisions of criminalization in positive criminal law, there is no uniformity of patterns between one law and another. Or in other words, each law has a different policy. There is a complete law in regulating criminal issues for corporations. But on the other hand, there are also A very simple law in formulating criminal provisions for corporations. It can be concluded that there is no uniformity in the criminal pattern in the law, even the criminal provisions for corporations in the law tend to be haphazard.

Corporate Accountability in Corruption Crimes According to the National Criminal Code and the Corruption Law

The emergence of corporations as perpetrators of criminal acts has also changed the criminal system that has been oriented towards

people. The entry of corporations into the joints of human life, brings several consequences in various areas of life. As an entity that makes a great contribution to improving the economy and national and global development. Sometimes corporations commit acts that are detrimental to individuals, communities, or the state. The emergence of criminal acts by corporations cannot be separated from the fierce competition in seeking profits. According to I.S. Susanto, as quoted by Budi Suhariyanto, it states that the desire to control the market, makes corporations commit acts that are contrary to the law, such as spying on their rivals, imitating, forging, stealing, bribing, and holding conspiracies regarding prices or marketing areas. Thus, it can be said that criminal acts committed by corporations are carried out in order to fulfill the goals of the corporation (Suhariyanto, 2017).

Criminal acts committed by corporations can cause massive casualties. Therefore, it is necessary to have laws and regulations that regulate criminal liability by corporations. However, in the Netherlands Criminal Code (*wetboek van strafrecht*), corporations are not recognized as subjects of criminal law. Where in the Criminal Code, the subject of criminal law is only a natural human being. This is because the Criminal Code is a legacy of the Netherlands Government. The acceptance of corporations in the sense of legal entities or the concept of functional actors (*functional daderschap*) in criminal law is a very advanced development by shifting the doctrine that colors the Criminal Code, namely "delinguere non potest university" or "*societas delinguere non potest*", namely legal entities cannot commit criminal acts (Padil, 2016).

Law Number 1 of 2023 concerning the Criminal Code, which was passed on January 2, 2023, is a milestone in changes to Indonesia's criminal law, one of which is related to the inclusion of corporations in the subject of criminal law. The affirmation of corporations being the subject of the National Criminal Code is contained in Article 45 paragraph (1). The acceptance of corporations as subjects of criminal law has the consequence that provisions related to criminal acts, criminal liability, and punishment, must be adjusted to the characteristics of corporations.

According to Jonkers as quoted by Pujiyono (2019), the principles of Netherlands criminal law, which are also in harmony with the principles of criminal law in Indonesia today, state that legal entities are considered unable to commit delix. The reason is that the Netherlands criminal law is based on the doctrine of personal responsibility which is only aimed at individuals/persons/natuurlijk persons. Consequently, the provisions regarding the principal crime also have personality traits (can only be imposed on people, pens), especially the crime of independence (imprisonment or confinement). Likewise with fines, because according to the penal system in the Netherlands (as well as WvSvNI), people who are sentenced to fines can choose to serve a substitute confinement sentence in addition to paying a fine. Thus, if the perpetrator is a corporation, it is impossible to impose a sentence of imprisonment in lieu of a fine (Pujiyono, 2019).

The National Criminal Code has formulated several provisions regarding corporations that are not regulated in the Criminal Code. There are 16 articles in the provisions of Book I of the National Criminal Code which contain corporate provisions. Broadly speaking, these provisions include: (a) the definition and affirmation of corporations as the subject of criminal acts (Articles 45, 165, and 182); (b) provisions regarding corporate crimes (Articles 46 and 47); (c) provisions regarding corporate criminal liability (Articles 48 and 49); (d) justification reasons for corporations (Article 50); (e) guidelines in imposing criminal penalties for corporations (Article 56); (f) provisions of the sanction system which include criminal and action for corporations (118, 120, 121, 122, 123, 124); and, (g) the provisions of the reasons for removing the authority to sue the corporation (Article 132).

In the context of criminalization for corporations, the National Criminal Code provides two types of sanctions for corporations, namely criminal and action. Based on the provisions of Article 118 of the National Criminal Code, crimes for corporations are divided into two types, namely principal crimes and additional crimes. For the principal crime, the National Criminal Code is of the view that corporations can only be imposed the principal penalty in the form of a fine (Article 119). Meanwhile, the types of additional crimes are: (1) payment of compensation; (2) improvement due to criminal acts; (3) the implementation of obligations that have been neglected; (4) fulfillment of customary obligations; (5) job training financing; (6) the confiscation of goods or profits obtained from the Criminal Act; (7) announcement of court decisions; (8) revocation of certain permits; (9) permanent prohibition of performing certain acts; (10) closure of all or part of the business place and/or activities of the Corporation; (11) freezing of all or part of the Corporation's business activities; and, (12) dissolution of the Corporation. In addition to the type of crime, the National Criminal Code also provides sanctions for corporations regulated in Article 123, which include: (1) corporate takeover; (2) placement under supervision; and/or, (3) the placement of the corporation under the auspices.

Legal developments outside the Criminal Code have adhered to the principle of corporations as one of the subjects of criminal law, one of which is Law No. 20 of 2001 in conjunction with Law No. 31 of 1999 concerning the Eradication of Corruption. Article 20 Paragraph 2 of the Corruption Law reads "If the criminal act of corruption is committed by people who are based on employment or other relationships, act in a corporate environment, either individually or together". This affects the development of corporate criminal liability in corporate crime at this time (Padil, 2016).

The corporate criminal liability policy in corruption crimes in the current law will be described as follows:1). Elements of criminal acts in the Law on the Eradication of Corruption; 2). Corruption crimes committed by corporations; 3). The system of corporate criminal liability in corruption crimes which states when corporations commit corruption crimes, who is accountable and corporate

criminal liability in the UUPTPK compared to corporate criminal liability in several other countries; 4). The penal system is a type of criminal sanction against a corporation and the duration and severity of the crime (Sularman, Agus, & Ma'ruf, 2017).

Examined from a normative perspective, the forms of criminal acts that can be committed by corporations refer to Article 2 paragraph (1), Article 3, Article 5, Article 6, Article 7, Article 9, Article 10, Article 12a, Article 12b, Article 13, Article 15, Article 16, Article 21, and Article 22 of the PTPK Law. These provisions can in principle be carried out by a corporation through its management. However, when a corporation wants to be categorized as committing a criminal act, it must meet certain conditions. In addition, when a corporation gets profits or benefits from the criminal act, so that for its actions, the corporation can be held criminally liable.

The imposition of criminal sanctions committed by corporations or their managers if they unlawfully commit corruption crimes according to Article 2 Paragraph 1 of the Law is sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah) and Article 20 Paragraph 7 of the principal crime that can be imposed against corporations are only subject to fines, with a maximum penalty of 1/3 (one-third).

The recognition of corporations (*recht persoon*) as legal subjects in criminal law is fraught with theoretical obstacles. There are 2 (two) reasons why this condition occurs (Ramelan, 2019). First, the influence of Von Savigny's theory of fiction is so strong, that is, the personality of law as the unity of human beings is the result of an illusion. Personality actually exists only in humans. States, corporations, or institutions cannot be subjects of rights and individuals, but are treated as if they were human beings (Arofa, Yunus, Sofyan, & Borahima, 2015). Second, the principle of universality of delinguere non-potest is still dominant, which means that legal entities cannot commit criminal acts in the criminal law system in many countries. This principle is the result of thinking from the 19th century, where crimes according to criminal law are always hinted at and in fact only crimes from humans, so they are closely related to the individualization of the Criminal Code. In the context of the Criminal Code which is still enforced in Indonesia, this principle has apparently influenced the emergence of Article 59 of the Criminal Code which implies that the subject of the criminal act, namely a corporation, is not yet known and who is recognized as the subject of a criminal act in general is a person (Blanc, Islam, Patten, & Branco, 2017).

The Role of Identification Theory in Corporate Accountability in Corruption Crimes

The identification theory was first developed in the United Kingdom and this theory developed in the United States then currently many countries apply this theory in corporate criminal liability. This theory states that in order for a corporation to be burdened with criminal liability, the person who commits the criminal act must first be identified and then criminal liability can only be applied or charged to the corporation if the criminal act is committed by a person who is a corporate policymaker or corporate administrator to run the corporation.

This identification theory is based on the basic teachings of corporate law which states that the management is the organ of a corporation or organization, the management heart is the corporate heart, and the body of the management is the body of the corporation, but by corporate law the principle can be applied as long as: (1) The management in carrying out its acts or actions does not deviate from the purpose and purpose of the corporation as specified in its articles of association. (2) The acts or actions taken by the management must be in accordance with the authorities possessed by the management as stipulated in the articles of association of the corporation.

In legal terms, the actions of the administrators are acts that are intra vires (within their authority), not ultra vires (outside their authority). This identification theory teaches that in order to impose criminal liability on a corporation, the public prosecutor must be able to make an identification that the person who commits the criminal act (*actus reus*) is the administrator who is the controlling person (directing mind or controlling mind) of the corporation. If a criminal act or act is committed by or ordered by him to be committed by another person is by an administrator who is a controlling personnel (directing mind or controlling mind) of the corporation, then according to this identification theory, criminal liability for the criminal act can be imposed on the corporation.

To determine the management who is the controlling personnel (directing mind or controlling mind) of the corporation is not only based on the juridical formal, but also based on its practice in the operationalization of the corporate activities. If viewed based on the juridical formality of the management who are the controlling personnel (directing mind or controlling mind) of the corporation are the directors of the corporation as stated in the articles of association of the corporation but apart from the juridical formality as stated in the articles of association, it can also be known that the management who is the controlling personnel (directing mind or controlling mind) includes officials or managers in certain positions (including Head of Branch) who is given the authority to perform certain duties and obligations related to the position based on the decree, and the definition of the management is also explained in article 1 Paragraph 10 of the Supreme Court Regulation providing definition of Corporations which explains "Management is a corporate organ that carries out the management of the corporation in accordance with the articles of association or laws authorized to represent the corporation, including those who do not have the authority to make decisions, but in reality can control or influence corporate policies or participate in deciding policies in the corporation that can be qualified as a criminal act."

Application the Theory of Identification in Corporate Accountability to Corruption Crimes Based On the National Criminal Code and the Corruption Crime Law

The theory of identification basically recognizes that the actions of a particular member of a corporation, as long as the act relates to the corporation. Then this theory also holds that certain agents in a corporation are considered "direct minds" or "alter egos". According to this theory, a corporation can conduct a number of offenses directly through an administrator who is closely related to the corporation, acting for and on behalf of the corporation so that it is seen as a corporation itself. According to (Sjahdeini, 2017: 245), Law Number 20 of 2001 concerning the Amendment of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Corruption Law) contains an identification theory. This can be seen in Article 20 paragraph (2) of the UUTPK which reads "The crime of Corruption is committed by a corporation if the crime is committed by people either based on employment relations or based on other relationships, act within the corporate environment either alone or together". From this article, the identification theory can be used to determine the "directing mind" in the crime of corruption, so that corporations can be held criminally accountable.

A similar opinion on identification theory is also expressed by Muladi in his book. Muladi said that through the doctrine of identification, a company can carry out a number of offenses directly through people who are very closely related to the company and are seen as its own company. In this case, the act or mistake of the "senior officer" is identified as the act or mistake of the corporation. The definition of "senior officer" gives rise to several opinions. In general, what is meant by "senior officials" is the person who controls the company, either alone or jointly, who is generally directors and managers (Muladi, 2010).

Meanwhile, Lord Morris argued that a "senior official" is a person whose responsibility represents/symbolizes the executor of "the directing mind and the will of the company". Lord Diplock is also of the opinion that "senior officials" are those who, based on the memorandum and articles of the foundation or the results of the decisions of the directors or the resolutions of the general meeting of the company, have been entrusted to exercise the power of the company. However, from these opinions, it can be concluded that "senior officials" are individuals with high positions and have great authority.

Sutan Remy S. has his own views on determining the "directing mind". According to him, the way to determine an individual as a "directing mind" is to look at it in a juridical form, where one of them is through the articles of association of the corporation or decrees officially issued by the company. In addition, it is also necessary to see it in reality in the operation of the corporate activities, case by case. This is because, in some cases, it turns out that individuals who legally hold positions with authority as "directing minds" can still be influenced by other individuals with positions that do not have juridical authority, such as majority shareholders with certain proximity (Sutan Remy, 2017).

Thus, from a commercial law perspective, the rights and obligations of an agent can be equated with those of a power of attorney holder. Article 1800 of the Indonesian Civil Code (KUHPerdata) asserts that the duty of an agent is to execute the mandate, while the principal bears responsibility unless there is negligence. However, it is important to note that in this context, negligence cannot be accommodated if referring to the first perspective governing the responsibility of electronic agents.

Based on this identification theory, the fault of the members of the board of directors or the organs of the company/corporation who do not receive orders from a higher level in a company, can be imposed on the company/corporation. This theory adopted in the United Kingdom in 1915, i.e. in the case of Lennard's Carrying Co. Ltd v. Asiatic Petroleum Co., [1915] A.C. 705, at 713 (H.L.). A corporation is an abstraction that has no reason of its own mind and neither does its own body; His will must be sought or found in a person who has a certain purpose can be called an agent/intermediary, which is really the brain and will to direct (directing mind and will) of the corporation (Suhariyanto, 2016). If Mr. Lennard is the guiding brain of the company, then his actions must be the actions of the company itself.

CONCLUSIONS

The acceptance of corporations as subjects of criminal law in the National Criminal Code brings a breath of fresh air to law enforcement in Indonesia. So that there is a consequence that provisions related to criminalization must be adjusted to the nature and characteristics of the corporation. The imposition of criminal penalties on corporations that commit criminal acts in the National Criminal Code is based on three things, namely: (1) acts; (2) errors; and, (3) Criminal Guidelines. Elements of deeds and mistakes must exist in the corporation of the perpetrator. Then, the judge must pay attention to several things in imposing the severity/lightness of the crime, for example: the level of loss, the level of involvement of the people in it, the duration of the delix, the form of the error, the involvement of officials, the living law, the track record of the corporation, the impact of the crime on the corporation, or the level of cooperation of the corporation with law enforcement officials in handling the crime.

Article 20 Paragraph 2 of Law Number 20 of 2001 concerning the Eradication of Corruption is an example of the application of identification theory. Identification theory is a theory that allows corporations to have a criminal liability on the basis of an act committed by an individual who is identified as a corporate act. In order for the individual to be identified as a corporation, the individual must act as a directing mind. Determining the directing mind can be done by looking at the facts in the case such as the position of the individual or the authority possessed so that it can be considered that his actions are indeed the actions of the company. Such a large authority is generally held by administrators with high positions such as high level managers or directors. Therefore, this doctrine in its application does not accommodate acts committed by low-ranking employees.

ACKNOWLEDGMENT

Thank you to the Ministry of Education, Culture, Research and Technology, Diponegoro University, Faculty of Law, Master of Law Program, Economic and Business Law Concentration, as well as the entire research team who have helped and supported so that the research implementation and research results were as expected. the form of this article can be completed.

REFERENCES

1) Muladi dan Dwidja Prayitno, Pertanggungjawaban Pidana Korporasi, (Jakarta, Kencana Prenamedia Group, 2010).
2) Sjahdeini, Sutan Remy, Ajaran Pemidanaan Tindak Pidana Korporasi dan Seluk Beluknya, (Depok, Kencana, 2017).
3) Alhakim, Abdurrakhman, and Eko Soponyono. "Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi." Jurnal Pembangunan Hukum Indonesia 1, no. 3 (2019): 322-336 .
4) Anjari, Warih. "Pertanggungjawaban Korporasi Sebagai Pelaku Tindak Pidana." Jurnal Widya Yustisia 1, no. 2 (2016): 247176.
5) Muhammad Iftar Aryaputra, Ani Triwati. "Arah Kebijakan Sistem Pemidanaan Bagi Korporasi Dalam KUHP Nasional".Masalah-Masalah Hukum, Jilid 52 No.2, Juli 2023, Halaman 208-216.
6) Akbar, M. F. (2021). Penerapan Pertanggungjawaban Pidana Korporasi Dalam Berbagai Putusan Pengadilan. Jurnal Hukum Dan Pembangunan, 51(3), 803–823. Retrieved from https://scholarhub.ui.ac.id/jhp/vol51/iss3/15/.
7) Putra, I. M. W., Gunarto, M. P., & Hasan, D. (2022). Penentuan Kesalahan Korporasi Pada Tindak Pidana Perpajakan (Studi Putusan Pengadilan Negeri Jakarta Barat No.: 334/Pid.Sus/2020/PN Jkt.Brt). Media Iuris, 5(2), 231–258.
8) Satria, H. (2018). Pembuktian Kesalahan Korporasi dalam Tindak Pidana Korupsi. Integritas : Jurnal Antikorupsi, 4(2), 25–53.
9) Hatrik, Hamzah. 2017 "Rasionalisasi Pengaturan Tanggung Jawab Pidana Korporasi Dalam Kitab Undang-Undang Hukum Pidana Indonesia Di Masa Datang", *Bengkoelen Justice: Jurnal Ilmu Hukum*, vol. 7, no. 1: 172–92.
10) L Erik Butarbutar, Rr Dijan Widijowati, Agung Makbul. " Peran Teori Identifikasi Dalam Pertanggungjawaban Korporasi Pada Tindak Pidana Perlindungan Konsumen". Jurnal Khenta Semaya Vol.10 No.7 (2022): 1677-1692.
11) Suhariyanto, B. (2017). Pertanggungjawaban Pidana Korporasi Berdasarkan Corporate Culture Model dan Implikasinya Bagi Kesejahteraan Masyarakat. Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional, 6(3).
12) Rodliyah, R., Suryani, A., & Husni, L. (2021). Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia. Jurnal Kompilasi Hukum, 5(1), 191–206.
13) Ramdhan, M. (2009). Kerangka Berpikir dalam Menentukan Model Pembentukan Suatu Konsep Nilai atau Norma. Jakarta : Rajawali Pers.
14) Suhariyanto, B. (2016). Progresivitas Putusan Pemidanaan Terhadap Korporasi Pelaku Tindak Pidana Korupsi. Jurnal Penelitian Hukum De Jure, Vol.16, (No.2),pp.201-213.
15) Padil. (2016). Karakteristik Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi. Jurnal IUS: Kajian Hukum Dan Keadilan, IV(1).
16) Saputra, R. (2015). Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi. Jurnal Cita Hukum, Vol.II, (No.2), pp.2.
17) Hamzah, A. (2006). Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional. Jakarta: PT. Raja Grafindo Persada.
18) Fatimah, Fines., & Arief, Barda Nawawi. (2012). Pertanggungjawaban Pengganti (Vicarious Liability) dalam Kebijakan Formulasi Hukum Pidana Di Indonesia. Jurnal Law Reform, Vol.7, (No.2), pp.
19) Ibsaini., & Syahbandir, Mahdi. (2018). Pertanggungjawaban Korporasi dalam Tindak Pidana Korupsi Pengadaan Barang dan Jasa Pemerintah. Jurnal Cita Hukum Universitas Islam Negeri Jakarta, Vol.2, (No.2), pp.67-89..
20) Toruan, Henry Donald L. (2014). Pertanggungjawaban Pidana Korporasi. Jurnal Rechtsvinding, Vol.3, (No.3), pp.397416.
21) Pujiyono, P. (2019). Pembaharuan Pertanggungjawaban Pidana Korporasi Melalui Pendekatan Restorative Justice dalam Model Dual Track System Selective. Semarang: Undip Press.
22) Sularman, Agus., & Ma'ruf, Umar. (2017). Pertanggungjawaban Pidana Korporasi Kepada Korban Tindak Pidana. Jurnal Hukum Khaira Ummah, Vol. 12, (No.2), pp. 387-396.
23) Ramelan, Y. (2019). Penerapan Saksi Pidana Korporasi pada Bank dan Implikasinya. Jurnal Masalah - Masalah Hukum, Vol.48, (No.1), pp.80-97.
24) Arofa, Endi., Yunus, Ahsan., Sofyan, Andi., & Borahima, Anwar. (2015). Corporate Criminal Liability for Corruption Offences in Indonesian Criminal Justice System. International Journal of Advanced Research, Vol. 3, (No.8), pp.246-250.
25) Blanc, Renata., Islam, Muhamad Azizul., Patten, Dennis. M., & Branco, Manuel Castelo. (2017). Corporate anti-corruption disclosure . Accounting, Auditing and Accountability Journal, Vol.30, (No.8), pp.1746-1770.