

Criminal Law Politics in The Economic Field

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^{1,2,3}Perkumpulan Peneliti Hukum



ABSTRACT: One of reason the emergence crime is the bad condition economy. Actors' crime economy No only originate from people with status social economy low, but also people who have social status economy high. Crime economy has impact negative to economy national, while the perpetrator often in the form of a legal entity (corporation). Development very fast economy causes the occurrence crime economy and deviation in other forms. Updates to Constitution law related crimes about crime economy need done remember crime economy have very diverse and developing forms very quickly. The need for improvement skills and knowledge apparatus enforcer law in various field in accordance with progress knowledge knowledge and technology for to overcome crime economy.

KEYWORDS: Crime economy, Actor crime economy, Renewal law criminal law in the field of economy.

A. INTRODUCTION

One of reason the emergence crime is the bad condition economy. It means if condition economy getting worse so level crime will high, on the contrary if condition economy get better so level crime will low. The perpetrator crime economy No only originate from people with status social economy low, but also carried out by people who have social status economy tall as well as have position dear in society. Crime like This categorized as *white-collar crime*. One of the forms from *white collar crime* is *economics crime* (crime) economy).

Crime economy has impact negative to economy national, while the perpetrator often in the form of a legal entity. The crime seldom done with violence physical, but more often done with undercover activity legitimate economy. In addition to causing loss material, crime economy also gives rise to harm to health and safety distant soul bigger when compared to with crime conventional. In terms of this, sometimes the victim is not realized that they are a victim of crime That so that crime in progress in a relatively long time.¹

Crime economy can in the form of misleading advertising, inappropriate labeling fit, sell products that are not through testing, selling harmful products to soul and health or sell product with excessive prices (monopolistic). Also, a result competition between actors very tight economy, can cause action spy on manufacturers others, hijacking patents, smuggling, committing bribery and corruption to official in frame acquire and expand marketing new.²

B. RESEARCH METHODS

Writing article This use method study legal normative, namely covers study inventory law positive, research principles law, research law clinical, research law to study systematics legislation, research law synchronization regulation legislation, research comparison law, and research history law.

C. FORMULATION OF THE PROBLEM

Face fact said, then There is a number of things to do questionable for overcome crime economy.

1. What problems arise in crime? economy?
2. How efforts made in to overcome crime economy?

¹ Yudi Krismen, 'Corporate Criminal Liability in Economic Crimes', *Journal of Legal Studies*, 4.1 (2014), pp. 23–41.

² John E. Conklin, *Criminology*, Macmillan Publishing Company, New York, 1986, p. 167-169.

D. LITERATURE REVIEW

For equalize perception, it is better understood moreover formerly What do you mean with crime economy. Another term that is often used for to mention crime economy is action criminal economy or act criminal economy. In language foreign often used term *Economic Crime*, *Corporate Crime*, or *Organized Crime*.

Economic Crime defined as " *criminal activity with significant similarity to the economic activity of formal, non-criminal business* ", ³which means a activities that have similarity certain with activity economy in general that is visible activities *non-criminal*.

Economic Crime Committee of the Criminal Justice Section of the American Bar Association use term *economic crime* for to mention crime economy. Explained that understanding *economic crime* is:

"An *economic offense* any non-violent, illegal activity with principally invoking *deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge or illegal circumvention* ".⁴

Apart from *Economic Crime*, another term for to mention crime economy that is *Business Crime*. What is meant by with *Business Crime* is:

"An *illegal act, punishable by 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 obtaining business or personal advantage* ".⁵

From the definition they can take conclusion about the elements contained therein, among others other:

1. An action fights the law that is threatened sanctions with criminal (an *illegal act punishable by criminal sanction*);
2. What someone does or corporation in his legitimate job or in his efforts in the field industry or trade (which is *committed by an individual or a corporation in the course of a legitimate occupation or pursuit in the industrial or commercial sector*);
3. For for purpose of:
 - a. earn money or wealth (obtaining *money or property*)
 - b. avoid payment of money or avoid lost or loss wealth (avoiding *the payment of money or the loss of property*)
 - c. to obtain profit business or profit personal (obtaining *business or personal advantage*).⁶

E. DISCUSSION

1. Problems in Economic Crime

Notice room scope crime economy as has described in the section previously, there was various possible problems will arise as consequence the speed development crime economy mentioned. The following problem crime economy.

1) Characteristics and Consequences

Crime economy more Lots done in a way organized in legal entity form (corporation). The perpetrator are people who have social status economy high and honorable who does crime the in connection with his job (*crime committed by a person of respectability and high socio-economic status in the course of his occupation*).⁷

The consequences of crime economy in the form of corporation This No only nature economy as assumption common in society. However, there are aspect violence especially if seen from the impact to society. Disturbance health even death is one of the form impact negatives from crime type This.⁸

Beside befell the workers, crime economics carried out by corporations This also affects consumers. In harming the victim, people can be a victim anywhere they are. Viewed from aspect economics, the consequences of crime economy This there are so many of them.

Crime economy done without violence but always accompanied by with cheating, misdirection, manipulation, subterfuge, violation trust, concealment reality, or evasion to regulations. Disclosure to related crimes crime economy No easy Because crime economy usually done by people who are quite intellectual criminal.

2) The Lagging of Positive Law

Regulation legislation We Already left behind with development very fast economy. While that, deviation by the perpetrator economy in other forms such as crime banking, crime environment, crime computers, money laundering, piracy right create patent

³ Standford H. Kadish, ed, *Encyclopedia of Crime and Justice* , Collier Macmillan Publishers, London, 1983, p . 671.

⁴ Muladi and Barda Nawawi Arief, *Criminal Law Anthology* , Alumni, Bandung, 1992, p . 150.

⁵ Staven Box, *Power, Crime, and Mystification* , Tavistock Publication, London and New York, 1983, p . 20.

⁶ Muladi and Barda Nawawi Arief, *Op. Cit.* , p . 154.

⁷ Jay A. Sigler, *Understanding Criminal Law* , Little Brown and Company, Boston 1981, p . 115.

⁸ Agus Rahardjo, *Cybercrime: Understanding and Efforts to Prevent Technology-Based Crime* (Citra Aditya Bakti, 2002).

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trademarks, and fraud through advertisement No affordable by the provisions law. Likewise with protection consumer to fraud advertisement, goods that are not safe, action cheating, competition No healthy, and so on.⁹

With progress knowledge knowledge , technology, as well development community, perpetrators crime solely No Again human, but also can carried out by corporations as as it is with crime economy. The problem of accountability crimes committed by corporations is very crucial problem in to overcome crime economy, because action forbidden the done by one or more member corporations that get power for do However on behalf of the corporation.

3) The problem in the Judicial Process Criminal

In facing the crime economy, government more tend for finish in a way administrative. Settlement like This sometimes No give optimal results, because No No maybe on another occasion there will be repeat return.

Attitude government in to uphold law economy allegedly more Lots based on on scale priority development, often approach *non-penal* put forward than use means *penalty*.

A number of oddities in enforcement Constitution Number 4 of 1982 concerning Environment, in Article 22 if done enforcement law totally clear will cause destruction part big industry in Indonesia. Settlement acts criminal taxation more often use approach administrative. Moreover, protection weak consumer consequence aspects political embeddedness to him.¹⁰

Crime related economy with corporation once in a while use law criminal more reasonable remember impact its very broad victimology. The losses can arise against the state (act) criminal tax), society (action) criminal environment), Rival companies (competition) No honest), employee (act criminal labor), and consumers (fraud) through advertisement).¹¹

Problems faced in form crime economy at least There are 2 (two), namely:

- a. The difficulty determines the victim by clear, there is *abstract victims* and *collective victims*
- b. The difficulty does prosecution criminal to the perpetrators Because difficulties in collection goods proof

Fact This prove that structure economy that can bring prosperity for all inhabitant the community can also bring it misery for inhabitant others. The problem is, that the victims are generally No can organize and are the poor. The violators law like This often No feel as perpetrator frequent crimes occurs in the environment business. Actors' crime economy Still still considered as inhabitant public respected by his environment, even though loss has caused to victims due to his actions.¹²

Proof in the pre-trial process criminal to crime the economy is also experiencing obstacle remember crime This often disguised and done in a way careful. As a result, the cost prosecution Far more expensive and time-consuming time. Besides That, perpetrator crime economy often is at in strong position and can influence government or member legislative for make regulation appropriate legislation with will perpetrator crime economy. In fact, the courts can also influence so that the criminalization process Far from what was expected and far from justice.

Related with obstacle in enforcement law to crime economy Already allegedly when level success for punishment cases the Enough low. JoAnn Miller says that, " *the sanctions are actually imposed by sentencing about the severity of accusatory crime* ".¹³ Condition This like conditions in Indonesia.

2. Efforts to overcome Economic Crime

In overcoming crime economy required existence anticipation. One of anticipation that can done is with stage update to Constitution law criminal offences that can be in the form of update to principles, criminalization to a actions, and increase professionalism apparatus enforcer law along with progress in the field economy and technology. In addition, it is also necessary cooperation International and policy criminal remember crime economy Already nature transnational.

1) Updates Against the Principles of Criminal Law

The emergence problem crime economics carried out by corporations due to because the Criminal Code in Indonesia adheres to the only principle recognize people as subject and accountability criminal only can charged to the person who has error. With existence development Very fast society, basic the No Again can used as the only one principle in matter accountability criminal if face corporation as perpetrators. Corporations not a person and a corporation No have error, ok in form intentional or negligence. So that corporation No can accountable in law criminal.

⁹ Saleh Muliadi, 'Criminological Aspects in Combating Crime', *FIAT JUSTISIA: Journal of Legal Studies* , 6.1 (2015), pp. 1–11, doi:10.25041/fiatjustisia.v6no1.346.

¹⁰ Muladi, The *Indonesian Concept of Action Criminal in the Field Economy* , Training Paper Action Criminal Law in the Field of Economics, Parahyangan University , Bandung, 26-27 August 1994, pp . 6-7.

¹¹ *Ibid* , p . 6.

¹² Marjono Reksodiputro , *Structure Economy Today and the Problems of Victims* , Paper on Victimology Seminar, Airlangga University, 28 October 1988.

¹³ JoAnn Miller, *White Collar Crime* , PAU Seminar Paper in the Field of Knowledge Social , University of Indonesia, 1991, p . 1.

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Remember crime economy have very diverse and developing forms very quickly, then beside corporation as subject and can accountable, it also needs to be expanded principal accountability This with principle *strict liability* and *vicarious liability*.¹⁴ *Strict liability* is accountability to make without notice more Far error maker in do act criminal the or in other words it is also called accountability without error. While *vicarious liability* is in things certain somebody responsible answer to the actions of others or also called accountability substitute. Both principle the originate from *common law*. Principles the can applied to offenses that are outside the Criminal Code if of course offense the want.

Provision laws of a nature specifically outside the Criminal Code, in frame follow development economy technology, has deviate from principle general. Regulations legislation that places corporation as subject and in direct can accountable in law criminal is Article 15 paragraph (1) of the Law Emergency Number 7 of 1955.

Temporary that, almost all related laws with economy, industry and trade can it be said Not yet confess in a way firm about can be held accountable corporation in law criminal, except Constitution act criminal economy.

2) Criminalization Against Actions Criminal in Economic Field

There are acts evil that is not accommodated in provision law crimes that have been there is, need responded to by the former Constitution with consider necessary or not criminalization. Development public influential strong to development law criminal, especially through paths development knowledge knowledge law crime and its correlation reciprocally with political law criminal.¹⁵

Updates law criminal law in Indonesia is not let go from influence development society also influences it development technology and science knowledge law criminal, political law criminal, and development crimes special.¹⁶

The Sudartos to argue that in face problem central that is criminalization, must be noticed things that are in essence as following:¹⁷

- a. Use law criminal must notice objective National development, namely realize public fair and prosperous evenly material spiritual based on Pancasila. In connection with this, then (use) of the law criminal aiming for to overcome crime and conduct measurement to action countermeasures That yourself, for the sake of welfare and protection public.
- b. The act of attempting for prevented or dealt with with law criminal must is an act that is not desired, namely act that brings loss (material and/ or spiritual) above inhabitant public.
- c. Use law criminal must also pay attention principal costs and benefits (*cost benefit principle*).
- d. Use law criminal must also pay attention capacity or ability Power Work from law enforcement agencies law, namely Don't until There is overkill burden task (*overbelasting*).

3) Increase Professionalism Apparatus Law enforcer

Crime economy more Lots carried out by people who have social status high economy, so crime This classified to in *White Collar Crime*. Crime done in a way disguised and using sufficient technology high. Crime done with undercover activity legitimate economy.

Therefore, it is necessary thought about for increase *skills* and knowledge apparatus enforcer law we are in various field in accordance with the progress that has been achieved by science knowledge and technology. Improvement *skills* and knowledge in the field banking, computers, environment, capital markets, rights create patent trademarks, etc. Already is demands for apparatus enforcer law if No want to left behind with perpetrator crime.

F. CONCLUSION

Crime economy No only done by humans, but it can also be done done in legal entity form (corporation) which is organized and more many. Perpetrators crime economy are honorable people who do crime the in connection with his job. Regulations backward legislation with development very fast economy cause the occurrence crime economy and deviation in other forms. Enforcement law to crime economy to cases crime sufficient economy low cause crime economy can repeat return.

Updates to Constitution law related crimes about crime economy need done remember crime economy have very diverse and developing forms very quickly through principle *strict liability* and *vicarious liability* for expand principal accountability. Actions evil that is not listed in provision law crimes that have been there is, need responded to by the former Constitution with consider necessary or not criminalization. Ability and knowledge apparatus enforcer law in various field need improved in accordance with the progress that has been achieved by science knowledge and technology for to overcome crime economy.

¹⁴Hanafi Amrani, *Strict Liability and Vicarious Liability in Criminal Procedure*, Research Results, UII Research Institute, Yogyakarta, 1997.

¹⁵ Dhini Hindria Restuti, 'Renewal Of Criminal Law In The Customary Law', *Indonesian Journal of Criminal Law Studies*, 3.1 (2018), pp. 61–70, doi:<https://doi.org/10.15294/ijcls.v3i1.17104>.

¹⁶ Dede Kania, 'Imprisonment in the Reform of Indonesian Criminal Law', *Yustisia*, 3.1 (2014), pp. 19–28.

¹⁷ Barda Nawawi Arief, *Criminal Law Policy (Penal Policy)*, Lecture Dictation, pp. 11-12.

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