

The Shift in the Existence of Legal Subjects and Corporate Criminal Liability as a Result of the New Indonesian Criminal Code

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ABSTRACT: Since their inception, corporations were not recognized as independent legal entities capable of bearing criminal liability, based on the principle *societas delinquere non potest* (a corporation cannot commit a crime). Criminal responsibility was traditionally imposed only on individuals within the corporation, such as its management. However, globalization and advances in finance, economics, and trade have complicated this view. The rise of organized domestic and transnational crimes involving corporations necessitated legal reforms. The new Indonesian Criminal Code (Law No. 1 of 2023) addresses this by explicitly recognizing corporations as subjects of criminal offenses under Article 45. This provision allows corporations to be held criminally liable similarly to natural persons, enabling direct prosecution and sanctions against corporate entities. This study employs qualitative analysis to explore these legal changes, highlighting the shift towards holding corporations accountable for their criminal acts, reflecting modern economic realities and aligning Indonesia's legal framework with international standards.

KEYWORDS: Corporation; Legal Subject; Criminal; Liability.

I. INTRODUCTION

In the era of globalization, the establishment of cooperation between countries is believed to influence the international political-economic structure, so that sometimes the existence of a country seems to have reduced or eroded its sovereignty. One of the actors of globalization is corporations (Jamilah, Disemadi, & Jaya, 2020). All components of the world, including Indonesia, are experiencing an era of globalization that strengthens the role of corporations. Corporations have a position as strong global economic subjects and have more pressure than individuals because corporations have the potential to cause far greater losses than individuals (Anjari, 2016). The emergence of corporate crime has been recognized by the international community, as marked by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1975 and reaffirmed in the Seventh United Nations Congress in 1985, which showed that there were new forms of crime committed by corporations (Febriyanti, 2023).

A corporation is a type of organization whose main activity is conducting business. In its early stages of development, a corporation was an organization or business entity that aimed to generate profits for its owners, with the financial risks also borne by the corporation itself (Widyo, 2012). Corporations themselves have a significant existence for the interests of humans and for the interests of the state. This is because corporations cannot be separated from social life and play a very important role in the national economy in order to increase a country's growth (Akbar & Fatahillah, 2021).

On the one hand, corporations play a very important role in driving the economic growth of a country, even at the global level. However, on the other hand, corporations are also often the main perpetrators behind various crimes. Crimes committed by corporations are known as White Collar Crime. The term White Collar Crime was first introduced by Sutherland with the aim of distinguishing between crimes committed by professionals and people with high social status from ordinary street crimes such as robbery, murder, or assault. In this context, white-collar crime refers to criminal acts committed by corporate officials or management, either for personal gain or for the benefit of the corporation itself.

In the case of criminal acts committed in the activities and business run by a corporation, these criminal acts are committed for the benefit of a corporation, to fulfill the aims and objectives of a corporation, and so on. It should also be noted that crimes committed by a corporation are not carried out using physical violence such as intimidation or robbery, but are carried out under the guise of Legitimate Economic Activities. This type of crime can be referred to as Economic Crimes. This situation also causes the public to be unaware that corporations have committed crimes (and that the public are the victims), making it difficult to hold corporations accountable (both civilly and criminally) due to the diffusion of responsibility, the invisibility of crimes committed by corporations, the widespread distribution of victims, the uncertainty of the victims of corporate crimes, and various other factors.

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In the old Indonesian Criminal Code (Law No. 1 of 1946), Article 59 states that only individuals in the biological sense (naturlijkee person) are considered subjects of criminal law. The old Indonesian Criminal Code (Law No. 1 of 1946) adhered to the principle of *sociates delinquere non potest*, whereby legal entities or corporations cannot commit criminal acts. In the explanatory memorandum of the old Indonesian Criminal Code, which came into effect on September 1, 1886, it is stated that a criminal act can only be committed by an individual (natural person). The fictional idea of the nature of legal entities does not apply in the field of criminal law (Sutrisno, Abbas, & Badaru, 2020).

Although Article 45 paragraph 1 of the new Indonesian Criminal Code (Law No. 1 of 2023) states that corporations are considered subjects of criminal acts, and Article 48 confirms that corporations can be held liable for criminal acts committed, the implementation of these provisions is not easy overall. The main difficulty arises because responsibility within corporations is spread across various parties and levels. Therefore, even though corporations legally commit criminal acts, responsibility is not fully accepted by the corporations themselves, but rather falls more on the shoulders of the directors or management within the corporation.

II. FORMULATION OF THE PROBLEMS

Based on the background description above, this study is designed to address two critical questions regarding the role of corporations in the criminal law system under the new Indonesian Criminal Code. First, how is the position of corporations as subjects of criminal law recognized in the new Indonesian Criminal Code (Law No. 1 of 2023)? Second, how does the mechanism for corporate criminal liability operate according to the provisions stipulated in the new Indonesian Criminal Code (Law No. 1 of 2023)?

III. RESEARCH METHOD

This research is a type of normative legal research that focuses on studying the normative aspects of the law itself. This study does not look at law based on facts or social events in the field, but rather delves into primary and supporting legal materials, such as legislation, legal doctrine, and court decisions (jurisprudence) and uses literature related to the topic being discussed (Marzuki, 2005).

IV. DISCUSSION

A. The Position of Corporations as Legal Subjects in the new Indonesian Criminal Code (Law No. 1 of 2023)

When discussing corporations, we cannot separate the concept from the aspects of civil law. Corporation itself is a term commonly used by criminal law and criminology experts to refer to something in other fields of law, specifically in civil law as a legal entity, or in Dutch referred to as *rechtspersoon*, while in English it is referred to as a legal person or legal body (Anton, 2016).

Etymologically, the word corporation (Dutch: *Corporatie*, English: *Corporation*, German: *Korporation*) comes from the Latin word "corporation." As with other words ending in "tio," corporation as a noun (substantivum) comes from the verb *corporare*, which was widely used in the Middle Ages and thereafter. *Corporare* itself comes from the word "corpus" (Indonesian: *badan*), which means to give body or to embody. Thus, *corporatio* means the result of embodying, in other words, a body that is made into a person, a body obtained by human action as opposed to a human body, which occurs according to nature (Muladi & Priyatno, 2012).

From a historical perspective, the recognition of corporations as subjects of criminal offenses has been around since 1635 when the English legal system recognized that corporations could be held criminally responsible for minor offenses (Weissmann & Newman, 2007). The United States only recognized its existence in 1909 through a court ruling (Bookman, 2008). After that, the Netherlands, Italy, France, Canada, Australia, Switzerland, and several European countries followed this trend. In Indonesia, the recognition of corporations as subjects of crime, thereby making them liable for criminal acts, is found in criminal legislation outside the Criminal Code, namely for the first time in Law No. 7 Drt of 1955 concerning Economic Crimes, and continues to this day (Hatrik, 1996).

The formulation of criminal acts in Book II of the New Criminal Code begins with the words "every person." This means that those who can commit criminal acts or be the subject of criminal acts are generally human beings. Also, from the criminal penalties that can be imposed in accordance with Article 65 of the New Criminal Code, which consist of imprisonment, confinement, supervision, fines, and community service, it is clear that those who can generally be punished are human beings or persons.

However, there is also a classical view that argues that the subject of a criminal offense is an individual, even if he or she holds the position of director or commissioner of a legal entity (Prasetyo, 2014). Thus, the new Indonesian Criminal Code, Law No. 1 of 2023, stipulates in Article 45 paragraph 1 that corporations are subjects of criminal acts. Paragraph 2 further states that corporations as referred to in paragraph (1) include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises or entities deemed equivalent, as well as associations with legal status, business

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entities in the form of firms, limited partnerships, or entities deemed equivalent in accordance with the provisions of laws and regulations.

The reason why corporations must be designated as legal subjects is because it is also stated in the Explanation of the new Indonesian Criminal Code in Book I, specifically point 5, namely: "due to advances in the fields of finance, economics, and trade, especially in the era of globalization and the development of organized crime, both domestic and transnational, criminal legal subjects cannot be limited to natural persons, but also include corporations, which are organized groups of persons and/or assets, whether they are legal entities or not. In this case, corporations can be used as a means to commit crimes and can also profit from a crime. With the adoption of the concept that corporations are subjects of crime, it means that corporations, whether legal entities or not, are considered capable of committing crimes and can be held accountable under criminal law." This development certainly shifts the old paradigm which stated that corporations do not have feelings and factual organs like humans, as in the principle of *societas delinquere non potest* or *Universalitas Delinquere non potest* (Ali, 2013).

B. Criminal Liability of Corporations in the new Indonesian Criminal Code (Law No. 1 of 2023)

Corporate liability in criminal law did not emerge through in-depth research by experts, but as a result of the tendency toward legal formalism. The doctrine of corporate criminal liability has developed through the role of the courts without any theory to justify it. Judges in the common law system made an analogy with human legal subjects, so that corporations also have legal identity and control over the assets of the administrators who created them.

Judges at that time did not have many theories to attribute the actions of agents to corporations, so they grappled with the question of whether a corporation, as a legal entity without a clear psychological form, could also be required to have psychological actions for the existence of a prosecution, as is the case with other crimes that require this (Stern, 1987). Based on this thinking, it was finally "agreed" that corporations were also considered legal subjects responsible only for minor crimes. This concept persisted until the end of the 19th century.

Only then did experts seek justification for the need to hold corporations accountable under criminal law. First, corporations are major actors in the global economy, so criminal law is considered the most effective method of influencing the actions of rational corporate actors (Bucy, 2007). Second, the profits earned by corporations and the losses suffered by society can be so great that it would be impossible to achieve balance if corporations were only subject to civil sanctions (Ali, 2008). Corporate actions through their agents often cause enormous losses to society, so the presence of criminal sanctions is expected to prevent them from repeating such actions (Moohr, 2007).

Generally, corporate liability is based on the *respondeat superior* doctrine, which states that corporations themselves cannot commit wrongdoing. Only agents acting for and on behalf of the corporation can commit wrongdoing. Therefore, corporate liability is a form of vicarious liability, whereby the corporation is responsible for the wrongdoing committed by its agents. This doctrine is taken from civil law applied to criminal law. Vicarious liability usually applies in civil law regarding unlawful acts based on the doctrine of *respondeat superior* (Sjahdeini, 2006). There are three conditions that must be met for corporate liability to exist, namely: the agent commits a crime; the crime committed is within the scope of their work; and it is done with the aim of benefiting the corporation (Khanna, 2000).

The *respondeat superior* doctrine produces three models of corporate criminal liability, namely direct corporate criminal liability, strict liability, and vicarious liability. In direct corporate criminal liability, a corporation can commit a number of offenses directly through agents who are closely related to the corporation, acting for and/or on behalf of the corporation. The condition for direct corporate criminal liability is that the actions of these agents are still within the scope of the corporation's work (Reid, 1982). Direct corporate criminal liability is closely related to the doctrine of identification, which states that, in essence, recognizes that the actions of certain agents of a corporation, as long as those actions are related to the corporation, are considered to be the actions of the corporation itself (Colvin, 1995).

Strict liability is defined as a criminal act that does not require the perpetrator to be at fault for one or more of the *actus reus*. Strict liability is liability without fault. It can be asserted that in criminal acts that are strictly liable, only the suspicion or knowledge of the perpetrator (defendant) is sufficient to demand criminal liability from them. Therefore, *mens rea* is not an issue because the main element of strict liability is *actus reus* (the act), so what must be proven is *actus reus* (the act), not *mens rea* (fault) (Heaton, 2006).

Vicarious liability is defined as the legal responsibility of a person for the wrongful acts of another person. This theory is also limited to certain circumstances in which the employer (corporation) is only liable for the wrongful acts of employees that are within the scope of their employment. The rationale for applying this theory is that employers (corporations) have control and power over their employees, and the profits they earn are directly owned by the employer (corporation) (Clarkson, 1998).

The principle of employment relations in vicarious liability is called the principle of delegation, which relates to granting permission to someone to manage a business. The license holder does not directly run the business, but instead gives full trust

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(delegates) to a manager to manage the corporation. If the manager commits an unlawful act, the license holder (the delegator) is responsible for the manager's actions.

As explained earlier, a corporation is a subject of criminal law or a perpetrator of a criminal act, so it is clear that the New Criminal Code states that a corporation can be held liable under criminal law in general. Before moving on to what kind of liability should be imposed on a corporation, we will first discuss what kind of criminal acts are committed by corporations. As stated in Article 46 of the new Indonesian Criminal Code, "a criminal act by a corporation is a criminal act committed by a manager who has a functional position in the corporate organizational structure or a person who, based on an employment relationship or other relationship, acts for and on behalf of the corporation or acts in the interests of the corporation, within the scope of the corporation's business or activities, either individually or jointly." Article 47 further states that "Criminal acts by corporations can be committed by persons who give orders, exercise control, or are beneficial owners of the corporation who are outside the organizational structure but can control the corporation."

In the context of criminal acts committed by corporations as described above, doctrines regarding corporate criminal liability have emerged. In the development of criminal law itself, there are three systems of corporate liability as subjects of criminal acts, namely 1) corporate officers as perpetrators and administrators are liable, 2) corporations as perpetrators and administrators are liable, 3) the corporation as the perpetrator and also as the responsible party, and 4) the management and the corporation as the perpetrators of the criminal act and both as the responsible parties (Kusumo, 2008).

Corporate officers are the perpetrators, so they are the ones responsible. This model is essentially inspired by the principle of "societas/universitas delinquere non potest", namely that a legal entity cannot commit a criminal offense. This system limits the nature of criminal offenses committed by corporations to individuals only (natuurlijk persoon). If a criminal offense is committed within a corporation, then it is the directors who have committed the criminal offense. Responsibility for criminal acts lies with the directors who commit the criminal acts (Kristian, 2016). This liability system is characterized by efforts to limit the nature of criminal acts committed by corporations to individuals. Regarding corporate officers as decision-makers and those responsible, officers are given obligations that are actually the obligations of the corporation. Officers who do not fulfill these obligations are subject to criminal penalties. This system has grounds for eliminating criminal penalties. The rationale is that corporations cannot be held responsible for violations; rather, it is always the officers who commit the offenses. Determining corporate criminal liability using this system can be illustrated as follows: 1) In relation to function, namely: acts committed on the orders of the perpetrator of the crime, but which are not related to the duties and work of the management, are not authorized to make binding decisions for the corporation in committing a crime. 2) Directors or employees of the corporation who are not related to the duties and work of the directors do not have the authority to make binding decisions for the corporation in committing or not committing the act to be carried out by others, which is not in accordance with the objectives and purposes of the corporation as stipulated in its articles of association, so the corporation cannot be held criminally liable (Tawalujan, 2012).

Corporations as perpetrators, therefore the management is responsible. This accountability system is characterized by the recognition in the formulation of laws that a criminal act can be committed by an association or business entity (corporation), but the responsibility for it falls on the management of the business entity (corporation). Gradually, criminal responsibility shifted from the members of the management to those who gave the orders, or with the prohibition of doing so if they neglected to lead properly. In this accountability system, corporations can be the perpetrators of criminal acts, but those responsible are the members of the management, as long as this is clearly stated in the regulations. This second accountability system is in line with the first accountability system, but the difference here is that the corporation as a business entity can be considered a perpetrator of a crime, but in the case of a corporation committing a crime, it is impossible without the will of its management. Here, it is emphasized that the corporation is the perpetrator, while the management is designated as responsible. This is in line with the view that what is done by the corporation is what is done by the corporation's apparatus according to its authority based on its articles of association. Criminal acts committed by corporations are criminal acts committed by certain individuals as managers of the legal entity. The nature of the act that constitutes a criminal offense is impersonal. The person who leads the corporation is criminally liable, regardless of whether he or she knew about the act being committed. This view is also in line with that of Roeslan Saleh, who agrees that this principle only applies to violations (Kartika, 2015).

Corporations as perpetrators and responsible parties. The motivation behind this accountability model is to take into account the development of the corporation itself. It turns out that for certain offenses, it is not enough to only punish the management. In economic offenses, it is not impossible that the fines imposed as punishment on the management, when compared to the profits received by the corporation from committing the act, or the losses incurred by society or its competitors, are greater than the fines imposed as punishment. The punishment of the management does not provide sufficient guarantee that the corporation will not repeat the act prohibited by the law. Therefore, it is also necessary to punish the corporation and its management or the management alone (Ali, 2011).

The directors and the corporation are both perpetrators of the crime and both are responsible. The reasons for imposing criminal liability on corporations, particularly with regard to directors and corporations as perpetrators of crimes and also as responsible

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parties, can be applied to both. First, if only the directors are held criminally liable, it is unfair to the public who have suffered losses as a result of the actions of the directors acting on behalf of the corporation and intended to benefit the corporation. Second, if only the corporation is held criminally liable while the management bears no responsibility, this system will allow the management to take advantage of the situation (Reza, 2015).

This system of criminal liability for corporations can be seen in Article 49 of the new Indonesian Criminal Code: "Liability for criminal acts by corporations as referred to in Article 48 shall be imposed on the corporation, directors who have a functional position, those who give orders, those who exercise control, and/or the beneficial owners of the corporation." And what forms of criminal acts by corporations can be held accountable as in Article 48 of the new Indonesian Criminal Code, namely If "1) it is included in the scope of business or activities as determined in the articles of association or other provisions applicable to the Corporation, 2) it benefits the Corporation unlawfully, 3) it is accepted as Corporation policy, 4) the corporation did not take the necessary steps to prevent, mitigate the impact, and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts, and/or 5) the corporation allowed the criminal act to occur (Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code, 2023).

In addition to factual developments regarding the enormous impact of corporate crime (Kristian, 2014), theoretically, corporate criminal liability has been widely discussed by scholars and has been widely used by judges in deciding criminal cases committed by corporations (Kristian, 2018).

As a form of corporate criminal liability, the penalties that can be imposed on a corporation itself are set out in Article 118 of the new Indonesian Criminal Code, which consists of: principal penalties; and additional penalties. Article 119 of the new Indonesian Criminal Code states that the principal punishment is a fine. Article 120 paragraph (1) of the new Indonesian Criminal Code states that additional punishments for corporations consist of: payment of compensation; rectification of the consequences of the criminal act; fulfillment of neglected obligations; fulfillment of customary obligations; financing of job training; confiscation of goods or profits obtained from the criminal act; publication of the court decision; revocation of certain licenses; permanent prohibition from performing certain acts; closure of all or part of the corporation's business premises and/or activities; freezing of all or part of the corporation's business activities; and dissolution of the corporation.

V. CONCLUSIONS

The enactment of the new Indonesian Criminal Code (Law No. 1 of 2023) marks a fundamental change in the legal treatment of corporations. The new Indonesia Criminal Code, which will come into effect in January 2026, clearly states in Article 45 that corporations are subjects of criminal acts, meaning that corporations can act like humans and can also be held accountable for their criminal acts.

In addition, the new Indonesia Criminal Code (Law No. 1 of 2023) also regulates the criminal liability that corporations themselves can accept in Article 118 of the Criminal Code, which consists of: basic penalties; and additional penalties. Article 119 of the new Indonesian Criminal Code states that the principal punishment is a fine. Article 120 paragraph (1) of the new Indonesian Criminal Code states that additional punishments for corporations consist of: payment of compensation; rectification of the consequences of the criminal act; fulfillment of neglected obligations; fulfillment of customary obligations; financing of job training; confiscation of goods or profits obtained from the criminal act; publication of the court decision; revocation of certain licenses; permanent prohibition from performing certain acts; closure of all or part of the corporation's business premises and/or activities; freezing of all or part of the corporation's business activities; and dissolution of the corporation.

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