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Corporate Criminal Liability in Corruption Crimes Based on Positive Law and Developments in Indonesian Regulations

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Abstract

Corruption involving corporations is a crucial issue in law enforcement because corporations can be used as a means to commit crimes while simultaneously benefiting from the proceeds of crime. This study aims to analyze the status of corporations as subjects of criminal acts, the basis for corporate criminal liability, and the application of sanctions against corporations in corruption cases under Indonesian positive law. This study uses a normative juridical method with a statutory and conceptual approach through an analysis of relevant laws and regulations and legal literature. The results show that Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, particularly Article 20, provides the legal basis for the prosecution and criminalization of corporations and/or their managers. This accountability is strengthened by Supreme Court Regulation No. 13 of 2016, which provides parameters for assessing corporate culpability, and Law No. 1 of 2023 concerning the Criminal Code, which affirms corporations as subjects of criminal acts. The study concludes that effective corruption eradication requires the consistent application of corporate accountability, taking into account the benefits obtained, the involvement of controllers, and the corporation's failure to prevent criminal acts.

Keywords

Corporation; Corruption; Criminal Act; Criminal Liability; Law Enforcement.

1. Introduction

Corruption is a form of crime that has a serious impact on national life because it not only causes losses to state finances but can also disrupt governance, national development, and public trust in public institutions. Developments in economic activity and the business world have meant that corruption is no longer solely committed by individuals but can also involve corporations as means, beneficiaries, or parties directly benefiting from a crime. This situation demonstrates that eradicating corruption requires a legal approach that focuses not only on individual perpetrators but also on corporations as subjects of criminal law (Abidin et al., 2023). Research on corporations as perpetrators of criminal acts also shows that complex corporate activities can create difficulties in determining the relationship between individual actions and corporate interests and policies (Mahardhika, 2021).

In the Indonesian legal system, the position of corporations as subjects of criminal acts of corruption has obtained a legal basis through Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001. Article 1 number 1 of the Corruption Law defines a corporation as a group of people and/or organized wealth, whether in the form of a legal entity or not a legal entity. Furthermore, Article 20 paragraph (1) provides the possibility of prosecution and criminal penalties against corporations and/or their administrators if the criminal act of corruption is committed by or on behalf of the corporation. Article 20 paragraph (2) also emphasizes that criminal acts of corruption can be categorized as corporate crimes if they are committed by people based on work relationships or other relationships who act within the corporate environment, either individually or together.

These regulations demonstrate that Indonesian criminal law has developed a concept of criminal liability that extends beyond individuals directly committing acts to corporations. However, its application faces theoretical and practical challenges, particularly regarding proving corporate wrongdoing, the relationship between the actions of management and the corporation, and determining who should be held accountable for criminal acts. In this context, several approaches to corporate liability, such as the doctrine of identification, vicarious liability, and strict liability, can be used to explain the basis for imposing criminal liability on corporations (Pratama & Januarsyah, 2020). Other research also indicates that the application of corporate liability in corruption cases remains problematic because not all provisions of the Corruption Law explicitly explain the limits and mechanisms of corporate liability (Wardhani & Suartha, 2020).

In addition to the Corruption Law, the mechanism for handling criminal cases involving corporations is strengthened through Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. These regulations provide guidelines for law enforcement officials and courts in handling cases involving corporations, ensuring that corporations' status as subjects of criminal law extends beyond normative recognition and can be applied in law enforcement processes.

Furthermore, the reform of criminal law through Law Number 1 of 2023 concerning the Criminal Code further strengthens the position of corporations as subjects of criminal acts. The provisions regarding corporations in the new Criminal Code provide a more systematic basis for corporate criminal liability, including crimes committed within the scope of corporate activities. This development demonstrates a paradigm shift in Indonesian criminal law from accountability that focuses on individuals as perpetrators to a system that also recognizes the liability of corporate entities.

Thus, the issue of corruption and corporate accountability is important to study, especially regarding the legal basis that places corporations as subjects of criminal acts, the mechanism for imposing responsibility on corporations and their management, and the forms of punishment that can be applied. A study of these aspects is needed to determine the extent to which Indonesian legal regulations are able to provide legal certainty while simultaneously encouraging the effectiveness of eradicating corruption involving corporations. From this argument, three questions arise: 1. What is the position of corporations as legal subjects in criminal acts of corruption based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001? 2. What is the form and basis of corporate criminal responsibility in criminal acts of corruption based on Article 20 of the Corruption Law and PERMA Number 13 of 2016? 3. How is the application of punishment to corporations that commit criminal acts of corruption and the problems of law enforcement in the Indonesian legal system?

2. Methods

This research uses a normative juridical method oriented towards the study of norms, principles, doctrines, and legal provisions governing corruption and corporate criminal liability. The research was conducted through a statute approach, a conceptual approach, and a case approach. The statutory approach was used to analyze the provisions of Law Number 31 of 1999 concerning the Eradication of Corruption, as amended by Law Number 20 of 2001, specifically provisions concerning corporations and their criminal liability, as well as Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. This PERMA specifically provides guidelines for handling criminal cases involving corporations as perpetrators and regulates parameters that can be used in assessing corporate culpability.

The conceptual approach was used to analyze the concept of corporate criminal liability, the relationship between individual culpability and corporate culpability, and the doctrines developing in corporate criminal law, including the identification doctrine, vicarious liability, and corporate culture. A case study approach is used to examine the application of corporate accountability norms in corruption cases that have been decided by the court. Case studies are aimed at identifying the relationship between the actions of management or authorized parties and the interests of the corporation, the benefits derived by the corporation, and the judge's considerations in determining whether or not the corporation can be held accountable. The use of a case study approach is crucial because research on corporate accountability requires more than simply assessing the existence of norms; it also requires examining how these norms are applied in judicial practice.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and court decisions, while secondary legal materials include books, scientific journals, legal articles, and research findings on corruption and corporate criminal liability. Tertiary legal materials are used as supporting material to provide an understanding of the legal terms and concepts used. All legal materials were obtained through library research and analyzed qualitatively.

The legal analysis was conducted in a descriptive-analytical and prescriptive manner, namely by outlining the applicable legal provisions, comparing them with doctrine and previous research results, and then assessing their application to the issue of corporate accountability in corruption crimes. This analysis was used to identify patterns of accountability that can be imposed on corporations and/or their managers and to identify legal issues in the application of sanctions to corporations. Thus, the legal analysis and case study methods in this research are expected to provide a deeper understanding of the complexity of corruption crimes committed within the corporate environment while also assessing the effectiveness of the Indonesian legal framework in imposing criminal liability on corporations.

3. Results and Discussion

3.1. The Position of Corporations as Legal Subjects in Corruption

Developments in Indonesian criminal law indicate a paradigm shift regarding the subject of criminal acts. Corporations, previously viewed primarily as objects of civil and economic law, are now recognized as subjects of criminal law. In the context of corruption, this position is specifically regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001. Article 1, number 1 of the Corruption Law defines a corporation as an organized group of individuals and/or assets, whether in the form of a legal entity or not.The most important provision is contained in Article 20 paragraph (1) of the Corruption Law, which stipulates that if a criminal act of corruption is committed by or on behalf of a corporation, prosecution and criminal charges can be brought against the corporation and/or its management. Furthermore, Article 20 paragraph (2) explains that a criminal act of corruption is committed by a corporation if the act is committed by individuals with employment or other relationships acting within the corporate environment, either individually or collectively. Thus, Indonesian positive law allows for accountability not only to be directed at individuals but also to entities benefiting from the crime.

Pratama and Januarsyah (2020) explain that the recognition of corporations as subjects of criminal acts indicates the development of the criminal liability system from a concept initially oriented toward individuals as perpetrators to the recognition of legal entities as perpetrators of criminal acts. This is in line with research by Wardhani and Suartha (2020), which shows that corporate liability in corruption can be analyzed through the doctrine of identification, although the application of this provision still requires interpretation because not all provisions of the Corruption Eradication Law can automatically be applied to corporations.

This position of corporations is further strengthened through Law Number 1 of 2023 concerning the Criminal Code, specifically Article 45, which expressly states that corporations are subjects of criminal acts. Articles 46 and 47 further expand the scope of actions that can be categorized as criminal by corporations, including actions by managers, those giving orders, those in control, and certain beneficial owners. Thus, these regulations demonstrate that corporate criminal liability has gained a stronger normative basis in the Indonesian criminal law system.

3.2. The Position of Corporations as Legal Subjects in Corruption

Corporate criminal liability cannot be based solely on the fact that the crime was committed by an individual working within a company. There must be a connection between the act and the corporation's activities, interests, or profits. In this context, Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations provides important guidance for law enforcement officials and judges. This regulation was established, among other things, to serve as a guideline for handling criminal cases involving corporate actors and/or managers and to fill gaps in procedural law related to corporate investigations.

Article 4 paragraph (2) of PERMA No. 13 of 2016 provides indicators for judges in assessing corporate culpability. This culpability can be seen, among other things, in conditions where the corporation gains profits or benefits from the crime, the corporation allows the crime to occur, or the corporation fails to take the necessary steps to prevent the crime and ensure compliance with the law.

This regulation is important because corporate liability differs from individual liability. Corporations do not possess biological wills like humans, so corporate wrongdoing must be traced through organizational structures, policies, management decisions, the actions of authorized individuals, and the benefits received by the corporation. Istiqomah et al. (2024) emphasized that corporate criminal liability remains related to the existence of an unlawful act (actus reus) and the element of fault (mens rea), which is then linked to the corporation's position as the perpetrator.

In practice, this approach can be linked to several doctrines, such as the identification doctrine, vicarious liability, strict liability, and the corporate culture model. The identification doctrine views the actions and misconduct of parties in key positions as representing the corporation's will. Meanwhile, the vicarious liability approach allows corporations to be held accountable for the actions of parties in specific relationships with the corporation. Yonas et al. (2021) demonstrated that the directing mind approach can be used to link the actions of management to corporate liability in corruption cases.

Therefore, corporate liability should not stop at proving that the perpetrator is an employee or manager of the company. Law enforcement must prove the connection between the criminal act and the corporation's interests, the benefits obtained, the involvement of controllers, and the corporation's failure to establish prevention and compliance systems.

3.3. Corporate Criminalization and Law Enforcement Issues

Criminalization of corporations in corruption cases is an important instrument to provide a deterrent effect and prevent corporations from profiting from criminal acts. Article 20 paragraph (7) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 stipulates that the principal penalty that can be imposed on corporations is a fine, with a maximum sentence increased by one-third. This provision demonstrates that Indonesian positive law has provided a criminalization mechanism specifically targeted at corporations.However, the existence of this norm does not fully guarantee effective law enforcement. Nugraha et al. (2020) found that in practice, some corruption cases apply corporate liability, while others focus more on the accountability of management. This situation indicates a problem in determining when individual actions can be considered corporate actions. Yonas et al. (2021) also showed that in the PT Merpati Nusantara Airlines case, accountability was directed more toward management, who were seen as the directing mind, while the corporation as an entity was not fully burdened with criminal responsibility.

Another issue relates to proving the benefits or advantages received by corporations. In corruption, profits can be obtained directly or through complex business mechanisms, so law enforcement officials need to trace the relationship between the criminal act, corporate decisions, profit flows, and the company's control structure. In this regard, Supreme Court Regulation No. 13 of 2016 provides guidance that allows judges to consider whether a corporation benefited from the crime, allowed the crime to occur, or failed to take necessary preventative measures.This development is increasingly relevant in light of Law No. 1 of 2023 concerning the Criminal Code, which systematically regulates corporations as subjects of criminal acts. Article 45 recognizes corporations as subjects of criminal acts, while Articles 46–48 provide the basis for determining the actions and conditions that can lead to corporate liability. The provisions in the 2023 Criminal Code strengthen the position of corporations as subjects of criminal law and provide a more systematic framework for corporate criminal liability.

Therefore, the effective eradication of corruption involving corporations requires a balanced application of accountability to both the corporation and the individuals behind the corporate structure. Criminalizing management alone may be insufficient if the corporation benefits from the crime, while criminalizing corporations without revealing controlling actors also has the potential to neglect individual accountability. Therefore, the consistent application of Article 20 of the Corruption Law, supported by Supreme Court Regulation No. 13 of 2016, and the development of corporate regulations in Law No. 1 of 2023, must be implemented to ensure effective law enforcement and provide a deterrent effect.

4. Conclusion

Corruption crimes involving corporations demonstrate that corruption is no longer solely committed by individuals, but can also occur through the structures, policies, work relationships, and interests of a corporation. Therefore, criminal liability must be directed not only at the managers or individuals who commit the act, but also at the corporation if the crime is committed for the benefit of, on behalf of, or to benefit the corporation. Article 20 of Law Number 31 of 1999, as amended by Law Number 20 of 2001, provides the basis that corporations and/or their managers can be prosecuted and sentenced if corruption is committed by or on behalf of the corporation.Corporate liability is also strengthened by Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. This regulation provides parameters for judges in assessing corporate culpability, including when the corporation gains profits or benefits from the crime, allows the crime to occur, or fails to take necessary preventive measures and comply with the law.

Thus, the application of corporate criminal liability must consider the relationship between the criminal act, corporate interests, decision-making structures, benefits obtained, and the quality of internal governance and compliance.Furthermore, Law Number 1 of 2023 concerning the Criminal Code reinforces this development by positioning corporations as subjects of criminal acts. However, in corruption cases, the specific provisions of the Corruption Eradication Law remain the primary basis because corruption is a lex specialis. Therefore, the effectiveness of eradicating corruption involving corporations depends heavily on the consistency of law enforcement officials in implementing corporate liability provisions, uncovering those controlling the criminal acts, and ensuring that profits obtained from the criminal acts do not remain in the control of the corporation. This approach is necessary so that criminal sanctions not only impose sanctions on individual perpetrators but also prevent corporations from becoming instruments for committing and profiting from corruption.

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