
The Urgency of Corporate Criminal Liability in Criminal Law in Indonesia

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Abstract

This research will describe the urgency of corporate criminal responsibility in Indonesian criminal law. This research is normative legal research that uses secondary data, which consists of primary, secondary and tertiary legal materials. Based on the research results, it is known that crimes committed by corporations can be prevalent, threaten the stability of the national economy, endanger the integrity of the national financial system, damage the foundations of the nation's life and corporate crimes are committed by people who have expertise or position (white-collar crime) so that not easy to prove. By using existing theories such as Vicarious Liability, Strict Liability, and Identification of corporate criminal liability, it can be constructed more accurately against criminal offences that harm the state.

INTRODUCTION

Indonesia is a developing country, and even on February 10, 2020, the United States of America through its policy Indonesia was one of the countries that were issued in the list of Developing and Least-Developed Countries. With the issuance of the Indonesian State as a developing country and becoming a developed country, it is evident that the development of Indonesia's development is developing rapidly.¹ Indonesia's rapidly developing development is not only in the economic field, but in the social, political, and even legal fields also develop simultaneously. The development of a country arises not only because of that country but is also driven by the influence of globalization which forces a country to develop into a developed country. However, these developments not only have positive impacts that can benefit the national and global community, but also have negative impacts, namely the existence of crimes on a globalization scale, the number of various types of crimes, and the increasing quality of crimes.²

¹ "Amerika Masukkan Indonesia Dalam Daftar Negara Maju, Ini Kata Menko Airlangga", *Kontan.co.id.*, diakses 3 September 2020, <https://nasional.kontan.co.id/news/indonesia-masuk-daftar-negara-maju-ini-kata-menko-airlangga>>

² Heni Siswanto. "Memaksimalkan Prolegnas dan Prolegda dalam Politik Hukum Nasional (Politik Hukum Penanggulangan Kejahatan Perdagangan Orang di Era Globalisasi)". *Fiat Justitia Jurnal Ilmu Hukum* 5, no. 2 (2012): 193.

This globalization causes the people and countries in the world to become as if there are no boundaries, the advancement of technology, information brings changes in the field of trade.³ The existence of information technology has opened up opportunities for trade not only between communities in the local sphere but also trade between people in the international sphere. This can hurt crime which increases both in quality and quantity. With the intention, ambition for the perpetrator, and the tools to commit criminal acts that are increasingly sophisticated, the perpetrator of the criminal commits the crime easily. With the emergence of criminal acts that are increasingly developing and complex, of course, a State must make instruments or laws that are not inferior to the times.

Facing the development of times accompanied by negative impacts, namely the existence of crimes on a transnational scale and global scale crimes as well as the development of crimes both in quantity and quality, the law must also go hand in hand with these developments to establish laws. The purpose of establishing the law is a tool to put society in order and the establishment of the goals of a country as stated in the 4th paragraph of the 1945 NRI Constitution, namely to protect, educate the nation's life and participate in implementing world order. The main actor in driving the economy in the era of globalization is a corporation.⁴ The existence of a corporation is closely related to community life. Many people feel that their affairs are facilitated by the existence of a corporation, even from a person waking up to a person sleeping again cannot be separated from an item produced by the corporation.⁵ So that for the life of a person today it cannot be separated from the corporate element, apart from having an impact on society, the existence of a corporation also has an impact on the State. The existence of corporations to the State has an impact on the economy of a country, to be precise the growth of a country's economy, such as tax collection, job creation, and technology.⁶

The negative impact, due to the existence of a corporation for a country, namely the emergence of violations committed by corporations and even resulting in committing a criminal act. The consequences of violations committed by a corporation are different from those committed by people. Violations caused by corporations have an impact on society at

³ Kornelius Benuf and others. "Pengaturan dan Penguasaan Bisnis Financial Technology di Indonesia". *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 11, no. 2 (2020): 50.

⁴ Hartanto. "Strategi Perusahaan Multinasional di Era Globalisasi (Studi Kasus Glokalisasi Dalam Ekspansi "Indomie" ke Pasar Timur Tengah dan Afrika)". *Jurnal Populis* 3, no. 5 (2018): 684.

⁵ Erdiana Devintawati Ikka Puspitasari. "The Urgency Of Regulating Corporate Crimes Under Corporate Crime Liability According To Draft Of Criminal Code Procedures". *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018): 239.

⁶ Bayu Kharisma. "Good Governance Sebagai Suatu Konsep Dan Mengapa Penting Dalam Sektor Publik Dan Swasta: Suatu Pendekatan Ekonomi Kelembagaan". *Jurnal Buletin Studi Ekonomi* 19, no.1 (2014): 23.

large and are systematic and can harm a country.⁷ Examples of these violations include economic crimes, business fraud, environmental destruction, corruption and money laundering. Criminal acts committed by these corporations can also be transnational, organized. This is because the form of this corporation is structurally shaped and consists of a group of people who join forces with common interests, politics, social, or others. The crimes committed by the corporation are the work of the corporate brain, namely the masters of the corporation, for or for the benefit of the corporation.⁸

The general term for economic crime or business crime or corporate crime is “white collar crime”, which is actually the opposite of the term “street crime”.⁹ White-collar crime, or so-called white-collar crime, is different from other ordinary crimes. Economic crime is a crime committed by people who have the power to move an organization, namely a corporation to commit crimes for the benefit of the corporation and the rulers of these crimes take cover behind the corporation.¹⁰ By Prof. Muladi said that crimes committed by respectable people are usually committed non-violent (non-violent) but always accompanied by deceit, misrepresentation, concealment of facts, subterfuge, manipulation. (manipulation), or circumvention of regulations (illegal circumvention).¹¹

With the development of laws along with new types of crimes, their consequences, and efforts to respond to such crimes, we accommodate all laws and regulations that pertain to the proportion of corporate criminal liability. However, there are symptoms in society that arise regarding corporate criminal responsibility. Corporate criminal liability has characteristics that are not much different from the criminal liability of people in general. So the use of criminal law, even though the law has included the regulations, its application in enforcing the law must be careful, because the penalties of the crime are so harsh and in the operation of criminal law it requires enormous costs from investigations, investigations, prosecutions, and tortures in court and legal remedies. If it is possible to use a tool other than a crime then that tool is used, because the punishment is *ultimum remedium*.¹²

⁷ Yudi Krismen. “Pertanggungjawaban Pidana Korporasi dalam Kejahatan Ekonomi”. *Jurnal Ilmu Hukum* 4, no.1 (2014): 136.

⁸ Eddy Rifai. “Perspektif Pertanggungjawaban Pidana Korporasi Sebagai Pelaku Tindak Pidana Korupsi”. *Mimbar Hukum* 26, no.1 (2014): 87.

⁹ Nyoman Serikat Putra Jaya. *Hukum Dan Hukum Pidana Di Bidang Ekonomi*. Edisi Revisi (Semarang: Badan Penerbit Universitas Diponegoro, 2018), 2.

¹⁰ Supriardoyo Simanjuntak and Kornelius Benuf. “Relevansi Nilai Ketuhanan Dan Nilai Kemanusiaan Dalam Pemberantasan Tindak Pidana Korupsi”. *Diversi Jurnal Hukum* 6, no.1 (2020): 31.

¹¹ Nyoman Serikat Putra Jaya, *Op Cit*: 17.

¹² Afni Zahra and RB. Sularto. “Penerapan Asas *Ultimum Remedium* Dalam Rangka Perlindungan Anak Pecandu Narkotika”. *Law Reform* 13, no. 1 (2017): 20.

Corporate action in running its business can result in an act that is against the law,¹³ namely, such as inappropriate taxes, corruption, money laundering, or other illegal actions, it is very difficult for a corporation to be held accountable criminally. Also, the development in the world of the economy is very fast, it can be used by perpetrators to take advantage of the legal exhaustion and vacuum to commit criminal acts. The problem of criminal acts committed by corporations in Indonesia has been going on for a long time and when viewed from Indonesia's positive law, we already have regulations regarding corporations starting from Law Number 7 of 2005 concerning economic crimes, this positive law regulates corporate crime, although less effective because it cannot stand alone. Apart from being specifically regulated, economic crime is also regulated in general through article 59 of the Criminal Code. Article 59 of the Criminal Code emphasizes that "In cases where due to a violation it is determined that criminal offences against the management, members of the management body, or commissioners, then the management, members of the board of directors or commissioners who did not interfere committed the violation, shall not be convicted". This Article only regulates the management of the corporation or members of the corporation who can be convicted, what about the corporation? As we know, if the management or its members are convicted, it is easy for the corporation to find a replacement, and after that, it commits another crime.

This study uses a normative juridical research method. Research that examines and examines legal norms, especially regarding corporate crime in Indonesia.¹⁴ The data used are secondary data consisting of primary legal materials, namely regulations on corporate crime in Indonesia, and secondary legal materials in the form of literature related to research problems and this study also use tertiary legal materials to explain and assist in analyzing primary and secondary legal materials, which then analyzed qualitatively.¹⁵

THE URGENCY OF CRIMINAL LIABILITY AGAINST CORPORATIONS COMMITTING CRIMINAL ACTS

The use of the word "Urgency" because this word is considered capable of representing the meaning in this section of the discussion. The word Urgency comes from the word "Urgen" which means something very important, or something necessary, urgent,

¹³ Hariman Satria. "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Sumber Daya Alam". *Mimbar Hukum* 28, no.2 (2016): 294.

¹⁴ Kornelius Benuf & Muhamad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer". *Gema Keadilan* Vol. 7, No. 1 (2020) : 24.

¹⁵ Diantha & I. Made Pasek. *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media, 2016), 37.

requires immediate action so that "urgency" is an urgent necessity or something very important or important.¹⁶ This word is considered very appropriate to describe the failure of the Indonesian criminal justice system to enforce its criminal law against corporations that perpetrate criminal acts of bribery, a weakness of the Indonesian legal system which adheres to civil law, as a result, the current criminal law substance has not been able to optimally process corporate criminal liability.¹⁷ Corporations themselves are individuals or associations that carry out business activities.¹⁸ Regulations regarding corporate criminal liability have been progressing very slowly, even though the dimensions and derivations of corporate crime are increasingly diverse. As a result, the constitution which states that Indonesia is a rule of law appears paradoxical, the law hobbles in following the development of various forms of corporate crime.¹⁹

Satjipto Rahardjo said that a corporation is a legal copyright body. The body that is created consists of a corpus, namely its physical structure and into the law incorporates the animus element that makes the body have a personality, so that the legal entity is a legal creation, so except for its creation, its death is also determined by law.²⁰ Corporations according to Soetan K. Malikoel Adil, as quoted by Muladi and Dwipa Priyatno Corporation, mean the result of physical work, in other words, a body made into a person, a body obtained by human actions as opposed to a human body, which occurs according to nature as it is.²¹

With the development of laws along with new types of crimes, their consequences, and efforts to respond to such crimes, we accommodate all laws and regulations that offend corporations where there is corporate criminal liability. However, there are symptoms in society that arise regarding corporate criminal responsibility. Corporate criminal liability has characteristics that are not much different from the criminal liability of people in general. So the use of criminal law, even though the Law has included the regulations, its implementation in law enforcement must be careful, because the penalties of the crime are so harsh and the operation of criminal law requires enormous costs from investigations, investigations,

¹⁶ Pusat Bahasa Departemen Pendidikan Nasional. *Kamus Besar Bahasa Indonesia* (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008), 1789.

¹⁷ Rony Saputra. "Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi". *Jurnal Cita Hukum* 3, no.2 (2015): 273.

¹⁸ Nyoman Serikat Putra Jaya Ratna Kumala Sari. "Kebijakan Formulasi Pertanggungjawaban Pidana Korporasi Terhadap Perbuatan Trading In Fluence Sebagai Tindak Pidana Korupsi". *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 13.

¹⁹ Timbo Mangaranap Sirait. "Urgensi Perluasan Pertanggungjawaban Pidana Korporasi Sebagai Manifestasi Pengejawantahan Konstitusi". *Jurnal Konstitusi* 13, no. 3 (2016): 578.

²⁰ Satjipto Rahardjo. *Ilmu Hukum*. (Bandung, Alumni, 1986),110.

²¹ Muladi dan Dwidja Priyatno. *Pertanggungjawaban Pidana Korporasi*. (Jakarta: Kencana Prenada Media Group, 2012), 23-24.

prosecutions, and torture. court and legal remedies. If it is possible to use a tool other than a crime then that tool is used, because the punishment is *ultimum remedium*.

The acceptance of a corporation in the sense of a legal entity or the concept of a functional actor (*functional daderschap*) in criminal law is a very advanced development by shifting the doctrine that characterizes *Wetboek van Strafrecht (KUHP)*, namely "non potest delinquent university" or "societal delinquent non-potest", namely legal entities cannot committing a criminal act.²² Criminal law is a response from a larger social system, so criminal law cannot stand alone. Therefore, there are limitations to criminal law. This limitation is the same in the limitation of corporate criminal liability.

To determine an act as a criminal act, it is necessary to pay attention to the statement from Satjipto Rahardjo which states that to determine an act as a crime it is necessary to observe the following general criteria:²³

- a) Is the act recognized by the community because it is detrimental or can cause harm or cause a victim;
- b) Is the cost of criminalizing balanced with the results to be achieved. This means that the costs of making laws, monitoring and enforcing the law, the burden borne by victims and perpetrators of crimes must be balanced with the orderly situation to be achieved;
- c) Will the law enforcement apparatus increase the burden so that there is an imbalance in the capabilities and duties of the law enforcement officers, or if the capabilities of the law enforcement officers actually cannot be carried out;

Does this act hinder or hinder the ideals of the Indonesian people, namely the creation of a just and prosperous society so that it is a danger to the safety of the community? Walker also emphasizes crime solely for retaliation, if the consequences are not so threatening or the danger is not very great and if there are other, more effective ways, then don't use punishment.

So the use of criminal law instruments must have a solid and strong foundation so that it is selective and limitative, this concept must be implemented in corporate criminal liability. For the use of a corporate PJP, it must have a prior purpose, not merely the act fulfils an article only. Because the impact that is caused by the implementation of corporate criminal responsibility involves the corporation being unable to move anymore, the economic impact,

²² Abdurrakhman Alhakim1 & Eko Sopyono. "Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi". *Jurnal Pembangunan Hukum Indonesia* 1, no.3 (2019): 327.

²³ Satjipto Raharjo. *Hukum dan Perubahan Sosial*. (Bandung: Alumni, 1983), 62.

and even the impact of termination of employment from the corporation. When adjudicating a corporation, it does not merely apply criminal law but must pay attention to other matters and considerations such as those concerning social, political, economic impacts and so on.

In this global era, the role of corporations has the role of economic and even political power. In the history of the formation of this corporation, it was an association for gaining profit, but in its development, the corporation was not only used for economic gain but also a for-profit motive. Both on a national and global scale. Such development has a tremendous impact, both positive and negative. The positive impacts we have experienced every day from primary, secondary and broadcast needs have not been spared from corporations. Whereas in the negative impact, namely the priority to seek profit from ambitions to justify any means by corporate leaders, weak law enforcement, lax legal supervision, the existence of an immoral subculture that motivates to commit criminal acts through corporations in modern society. this. Also, new crimes can emerge in corporations that have the impact of causing large and widespread victims such as corruption, money laundering, environmental crimes, and so on related to the economy. The mode of operation of corporate crime is carried out covertly in an organized manner and based on certain skills possessed by a person.²⁴

Corporate crime is closely related to economic crimes, such as banking crimes, corruption and money laundering. The irony is that this is a real quality criminal act in corporate crime, there is not much law enforcement against these corporations, even though if we look at positive law in Indonesia, both criminal law and civil and administrative law, many of which place corporations as legal subjects and can also be accounted for in a manner. alternative, cumulative and cumulative alternatives. Therefore, if it is in the form of cumulative, it is not only the criminal responsibility of the person, but the corporation can also be responsible for the crime, but if it is an alternative or cumulative alternative then only one. The development of law in Indonesia demands that corporations can also be used as legal subjects.²⁵

When we talk about legal subjects and corporate criminal liability issues, namely those related to ultra vires. It is often asked how a corporation is responsible? Namely when people in the corporation take actions that exceed the limits of authority that exist within the corporation. This is not a problem when the formulation of the law always requires when a

²⁴ Ikka Puspitasari dan diana Devintawati. "Urgensi Pengaturan Kejahatan Korporasi Dalam Pertanggungjawaban Tindak Pidana Korporasi Menurut RKUHP". *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018): 243.

²⁵ Yatini. "Reformulasi Konstruksi Pidana Dalam Menjerat Pelaku Tindak Pidana Korporasi". *Jurnal Hukum dan Pembangunan Ekonomi* 7, no. 1 (2019): 150.

corporation can be held criminally liable. If we look in the Corruption Act, the TPPU Law, it states when a corporation can commit a criminal act and can be criminally liable, that is, if it commits a criminal act, which is committed by people who are masterminds. from a corporation, namely a functional officer in the corporation where the actions taken by that person are for and in the interest of the corporation. This is what concerns the issue of corporate criminal responsibility regarding the position of the corporation as a legal fiction, the existence of the ultra vires doctrine, and the issue of men's rea. Also, in the problem of men's rea, there are also different opinions, namely identification and vicarious liability.

Because it concerns criminal liability against corporations experiencing a dilemma, on the one hand, it is necessary to support economic growth, social growth, related to taxes, and on the one hand, it has an impact on the economic decline if a corporation is penalized with its license revoked and the corporation is dissolved so that it has a very broad impact, not only losses. the economy only, but there will be layoffs everywhere, for which these people are not guilty. Therefore, from these problems, criminal law formers in Indonesia must find an effective and appropriate model for corporate criminal liability.

Criminal law has limitations, so do not rape anything with a crime, especially if it is for the corporation. The cause of a crime to arise is outside the criminal law, and because it arises not a legal issue, but outside such as social, political, economic problems, and so on. Because the cause of the crime is outside the criminal law, the criminal law cannot reach it so that the crime does not occur again, because the cause of the occurrence of a crime is not a matter of criminal law. Then the criminal law is not the only means of punishing, many other means can be applied in a non-penal way. Then symptomatic treatment. Furthermore, the penal system is fragmentary or individual, in which there is no structural answer if a corporation commits a criminal act. Then the limitations on the types of sanctions. Penal sanctions that are contradictory or paradoxical, namely sanctions that cause when he is carrying out a sanction that is not by the criminal objective for the criminal offender not to repeat it but he learns to commit a criminal act. The formulation of rigid criminal sanctions, which is a Dutch legacy and in our current Criminal Code, there is no other alternative to imposing sanctions other than criminal sanctions so that the purpose of punishment is sometimes not achieved. Therefore, it requires a variety of supporters and high costs to form a positive law by the current situation in Indonesia.

CORPORATE CRIMINAL LIABILITY IN INDONESIA

Regulations regarding corporate criminal responsibility are currently outside the Criminal Code (KUHP). This is because the principle of the corporation as a subject of criminal acts in the current Criminal Code is not adopted, because the subject of criminal acts regulated in the current Criminal Code is only a human or an individual.²⁶ Regulations in criminal law in the criminal system in particular must adjust to the values contained in Pancasila.²⁷

Initially, the legislators were of the view that only humans (individuals or individuals) could become the legal subject of a criminal act.²⁸ Of course, criminalizing corporations is different from criminalizing people who have bodily organs, special rules are needed. Several doctrines consider a corporation to be a legal subject, recognize that a corporation can commit a criminal act, and be criminally responsible for its actions. These doctrines are:

1. *Identification Theory Atau Direct Liability Doctrine*

This theory is also called the theory or doctrine of "alter ego" or "organ theory" which can be interpreted narrowly or broadly, as stated by Barda Nawawi Arief, namely:²⁹

- a) Narrow meaning (English): Only the actions of senior officials or corporate brains can be accountable to the corporation. In narrow terms, the identification theory only imposes criminal responsibility on senior officials because senior officials are the brains or decision-makers or policies in the corporation so that it is the senior officials who determine the direction of corporate activities or in other words that generally senior officials are the people who control the company, either alone or jointly, which in this case is seen as controlling the company which consists of directors and managers.
- b) Broad meaning (United States): Not only senior officers or directors but also agents under them. But if interpreted broadly, criminal responsibility can not only be imposed on senior officials but also on those who are under him.

²⁶ Rully Trie Prasetyo, Umar Ma'ruf, dan Anis Mashdurohaturun, "Tindak Pidana Korporasi Dalam Perspektif Kebijakan Formulasi Hukum Pidana". *Jurnal Hukum Khaira Ummah*, 12. no. 4 (2017): 738.

²⁷ Fifink Praiseda Alviolita dan Barda Nawawi Arief. "Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik Dalam Pembaharuan Hukum Pidana Di Indonesia". *Jurnal Pembangunan Hukum Indonesia* 15, no. 1 (2019): 137.

²⁸ Budi Suhariyanto. "Pertanggungjawaban Pidana Korporasi Berdasarkan Corporate Culture Model Dan Implikasinya Bagi Kesejahteraan Masyarakat". *Jurnal Rechtsvinding* 6, no. 3 (2017): 446.

²⁹ Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana Cetakan Ke Dua Edisi Revisi*. (Bandung: Citra Aditya Bakti, 2002), 246.

In this principle of identification, corporations can be held accountable for their speech like people. For example, incorporate control, it can be assumed that the actions and inner attitudes of certain officials are seen as the manifestation of the corporation. The corporation, in this case, is not considered responsible based on responsibility for the actions of its officials, but the corporation itself is responsible as in violation of legal obligations it is deemed to have committed the criminal act personally.³⁰

In the end, in identification theory, criminal liability imposed on the corporation must pay close attention to who is the brain or the holder of the operational control of the corporation, who is authorized to issue policies and make decisions on behalf of the corporation.³¹ From the above opinion, according to the author, corporations are like humans who have an inner attitude, but the attitude of the corporation can be shown from the actions of functional officials, not from corporate members. The reason is that the officials who can determine the direction of the corporation are the officials, while the people under them, namely members, are only agents to move the corporate desires. Meanwhile, corporate officials, namely directors and commissioners, are the mental attitude or brain of the corporation.

2. *Strict Liability Atau Absolute Liability*

According to Barda Nawawi Arief, it is often questioned whether strict liability is the same as an absolute liability. Regarding this, there are two opinions which differ from one another. The first opinion states that strict liability is an absolute liability. So it can be said that the first group equates the definition of strict liability and absolute liability. The reason or rationale is that in a strict liability case a person who has committed an illegal act (*actus reus*) as formulated in the law can be convicted without questioning whether the perpetrator has a fault (*mens rea*) or not. So, someone who has committed a criminal act that fulfils the formulation of the law must or absolutely can be convicted.

Regarding the application of strict liability and vicarious liability (as explained in the next section), Muladi and Dwidja Priyatno argued that: in traffic offences and crimes requiring extraordinary treatment. Then according to the author's opinion, the doctrine is mainly related to legislation on public or community interests, for example, protection in the fields of food, beverages and environmental health. Based on this doctrine, the facts that tell

³⁰ Barda Nawawi Arief, *Op. Cit.*: 45-46.

³¹ Kristian. "Urgensi Pertanggungjawaban Pidana Korporasi". *Jurnal Hukum dan Pembangunan* 44, no. 4 (2013): 603.

the victim are used as a basis for demanding accountability to the perpetrator or victim according to the adage "res ipsa loquitur" or it can be said that facts have spoken for themselves".³²

In the context of the 2019 RKUHP, the strict liability doctrine has been adopted. This provision is regulated in Article 37a in the 2019 RKUHP, that "shall be punished solely because the elements of a Criminal Act have been fulfilled without regard to any mistakes; or". Through the explanation above, the author can conclude that strict liability can apply to an act that has been regulated in advance by law, then if the act has met the elements of an article, there is no need to prove the element of error (men's rea) when an actus reus is mentioned. already implemented. In the opinion of the author, the application of strict liability in our law is very appropriate, as long as its use is not haphazard and by the procedures stipulated by law, so that it still guarantees legal certainty. The problem is, is a certain crime that does not require an investigation of wrongdoing as formulated in this law must be able to accommodate the many crimes committed by corporations in various aspects of human life?

As a comparison, the Netherlands has not enforced the doctrine of absolute accountability. The term absolute responsibility in the Netherlands is known as *leer van het material feit* or *fait material* which is only applied to criminal acts in the form of violations. Along with the development of the law itself, the application of absolute responsibility was abolished by the arrest of *milieu* in 1916 from the Dutch Supreme Court (Hoge Raad Netherland).³³

3. *Vicarious Liability Doctrine*

According to this doctrine, the employer is the main person responsible for the actions of the workers who carry out actions within the scope of their duties / jobs.³⁴ Peter Gillies expressed several opinions in relation to vicarious liability, namely:³⁵

1. A company or corporation (like humans as actors or entrepreneurs) can be substituted for actions committed by its employees or agents. Such liability only arises for offences which are capable of being committed vicariously.

³² Muladi dan Dwija Priyatno, *Op. Cit.*: 107.

³³ Sutan Remi Sjahdeini, *Pertanggungjawaban Pidana Korporasi*, (Jakarta: Grafiti Pers, 2006), 80.

³⁴ Rony Saputra. "Pertanggungjawaban Korporasi Dalam Tindak Pidana Korupsi". *Jurnal Cita Hukum*. 3, No. 2 (2015): 280.

³⁵ Barda Nawawi Arief, *Op. Cit.*, hal. 236.

2. About the "employment principle", this crime is mainly or wholly a "summary offences" relating to trade regulations..
3. The position of the employer or agent in the scope of work is irrelevant according to this doctrine. It is not important that an employer, either as a corporation or naturally, has not directed or given instructions or orders to employees to commit violations of criminal law. (In fact, in some cases, vicarious liability is imposed on the employer even though the employee has committed acts contrary to the instructions because the employee's actions are seen as having committed the act within the scope of his job). Therefore, if the company is involved, responsibility arises even if the act is committed without referring to a senior person in the company.

The application of this doctrine can only be done after it can be proven that there is indeed a subordinate relationship between the employer, namely the person or corporation, and the person who committed the crime.³⁶ So it can be concluded that if a corporation commits a criminal act, the one who can be held accountable is the management of the corporation as the person who has power and is responsible for the corporation. Therefore, a person who has not committed a criminal act, but whose position is the person in charge of the person who has committed the criminal act, can be held accountable.

Law No. 31 of 1999 as amended into Law No. 20 of 2001 concerning the Eradication of Corruption Crime or in Law No. 08 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, corporations regulate corporations as legal subjects. This means that the corporation can be held criminally responsible if a criminal act occurs. The irony is that in the practice of law that is often accounted for as a criminal offence, people and corporations are never criminally responsible. Thus, even though a corporation has been properly regulated in several laws and regulations and it cannot be implemented in law enforcement if the rule is only a rule die. So in this case, the author argues that corporate rules as a legal subject and can be criminally responsible are very important to uphold justice, considering that the consequences of criminal acts committed by corporations are very large and widespread. And if we only criminalize the administrator it will be useless, and vice versa.

³⁶ Piatur Pangaribuan dan Muhammad Zamhuri. "Pertanggungjawaban Hukum Korporasi Terhadap Kebakaran Hutan Dan Lahan Yang Menyebabkan Kerusakan Lingkungan Hidup Di Kalimantan Timur Dan Kalimantan Utara". *Jurnal De Facto* 5, No. 2 (2019): 196.

The 2019 RKUHP that I see regulates corporations in a modern way. Not only regulating the corporation as a legal subject but also corporate criminal liability. Besides that, with the implementation of this RKHUP someday, indirectly all other special rules apply to corporations. The perspective of corporate criminal liability is to formulate corporate crime, corporate criminal liability and types of corporate criminal sanctions in the provisions of the Criminal Code so that it can be used for all laws and regulations outside the Criminal Code.³⁷

CONCLUSION

Crimes committed by corporations can be very widespread, threaten the stability of the national economy, and endanger the integrity of the national financial system, damage the foundations of the nation's life and corporate crimes are committed by people with expertise or position (white-collar crime) so that it is not easy to prove. The urgency of regulating corporations is very much needed amid economic growth and globalization.

Although there are many special rules outside the KHUP regulating the subject of corporate law and corporate liability, the formulation of criminal sanctions is rigid, which is a Dutch legacy and in our current Criminal Code, there is no other alternative to provide sanctions other than criminal sanctions so that the purpose of the punishment is sometimes not achieved. By using existing theories such as Vicarious Liability, Strict Liability, and Identification. In this way, corporate criminal liability can be constructed more accurately against criminal offences that are detrimental to the state, especially in Indonesia as a reference or guideline for future criminal law policies.

BIBLIOGRAPHY

- Alhakim, Abdurrahman, Eko Soponyono. "Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi". *Jurnal Pembangunan Hukum Indonesia* 1, no.3 (2019): 322-336.
- Benuf, Kornelius, dkk. "Pengaturan dan Penguasaan Bisnis Financial Technology di Indonesia". *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi* 11, no. 2 (2020): 46-69.
- Benuf, Kornelius, Siti Mahmudah, Ery Agus Priyono. "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia". *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 145-160.

³⁷ Rifai. "Prespektif Pertanggungjawaban Pidana Korporasi Sebagai Pelaku Tindak Pidana Korupsi". *Jurnal Mimbar Hukum* 26, no. 1 (2014): 95-96.

- Devintawat,i Erdiana, Ikka Puspitasari. "The Urgency Of Regulating Corporate Crimes Under Corporate Crime Liability According To Draft Of Criminal Code Procedures". *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018): 237-254.
- Hartanto. "Strategi Perusahaan Multinasional di Era Globalisasi (Studi Kasus Glokalisasi Dalam Ekspansi "Indomie" ke Pasar Timur Tengah dan Afrika)". *Jurnal Populis* 3, no. 5 (2018): 681-692.
- Kharisma, Bayu. "Good Governance Sebagai Suatu Konsep Dan Mengapa Penting Dalam Sektor Publik Dan Swasta: Suatu Pendekatan Ekonomi Kelembagaan". *Jurnal Buletin Studi Ekonomi* 19, no.1 (2014): 1-34.
- Krismen,Yudi. "Pertanggungjawaban Pidana Korporasi dalam Kejahatan Ekonomi". *Jurnal Ilmu Hukum* 4, no.1 (2014): 133-160.
- Kristian. "Urgensi Pertanggungjawaban Pidana Korporasi". *Jurnal Hukum dan Pembangunan* 44, no. 4 (2013): 575-621.
- Lasmadi, Sahuri. "Pengaturan Alat Bukti Dalam Tindak Pidana Dunia Maya". *Jurnal Ilmu Hukum* 5, no.2 (2014): 1-23.
- Manganap, Timbo Sirai. "Urgensi Perluasan Pertanggungjawaban Pidana Korporasi Sebagai Manifestasi Pengejawantahan Konstitusi". *Jurnal Konstitusi* 13, no. 3 (2016): 575-596.
- Muladi, Dwidja Priyatno. *Pertanggungjawaban Pidana Korporasi*. Jakarta: Kencana Prenada Media Group, 2012.
- Nasional Kontan, "Amerika Masukkan Indonesia Dalam Daftar Negara Maju, Ini Kata Menko Airlangga", Kontan.co.id., diakses 3 September 2020, <https://nasional.kontan.co.id/news/indonesia-masuk-daftar-negara-maju-ini-kata-menko-airlangga>.
- Nawawi, Barda Arief. *Bunga Rampai Kebijakan Hukum Pidana Cetakan Ke Dua Edisi Revisi*. Bandung: Citra Aditya Bakti, 2002.
- Pangaribuan, Piatur, Muhammad Zamhuri. "Pertanggungjawaban Hukum Korporasi Terhadap Kebakaran Hutan Dan Lahan Yang Menyebabkan Kerusakan Lingkungan Hidup Di Kalimantan Timur Dan Kalimantan Utara". *Jurnal De Facto*. 5, no. 2 (2019): 178-212.
- Praiseda, Fifink Alviolita, Barda Nawawi Arief. "Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik Dalam Pembaharuan Hukum Pidana Di Indonesia". *Jurnal Pembangunan Hukum Indonesia* 15, no. 1 (2019): 137.

- Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008.
- Puspitasari Ikka, diana Devintawati. "Urgensi Pengaturan Kejahatan Korporasi Dalam Pertanggungjawaban Tindak Pidana Korporasi Menurut RKUHP". *Kanun Jurnal Ilmu Hukum* 20, no. 2, (2018): 237-254.
- Rahardjo, Satjipto. *Hukum dan Perubahan Sosial*. Bandung: Alumni, 1983.
- Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: Alumni, 1986.
- Remi, Sutan Sjahdeini. *Pertanggungjawaban Pidana Korporasi*. Jakarta: Grafiti Pers, 2006.
- Rifai, Eddy. "Perspektif Pertanggungjawaban Pidana Korporasi Sebagai Pelaku Tindak Pidana Korupsi". *Mimbar Hukum* 26, no.1 (2014): 87-111.
- Rifai. "Prespektif Pertanggungjawaban Pidana Korporasi Sebagai Pelaku Tindak Pidana Korupsi". *Jurnal Mimbar Hukum* 26, no. 1 (2014): 87-101.
- Saputra, Rony. "Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi". *Jurnal Cita Hukum* 3, no.2 (2015): 269-288.
- Satria, Hariman. "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Sumber Daya Alam". *Mimbar Hukum* 28, no.2 (2016): 288-300.
- Serikat, Nyoman Putra Jaya, Ratna Kumala Sari. "Kebijakan Formulasi Pertanggungjawaban Pidana Korporasi Terhadap Perbuatan Tradingin In Fluence Sebagai Tindak Pidana Korupsi". *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 12-23.
- Serikat, Nyoman Putra Jaya. *Hukum Dan Hukum Pidana Di Bidang Ekonomi, Edisi Revisi*. Semarang: Badan Penerbit Universitas Diponegoro, 2018.
- Simanjuntak, Supriardoyo, Kornelius Benuf. "Relevansi Nilai Ketuhanan Dan Nilai Kemanusiaan Dalam Pemberantasan Tindak Pidana Korupsi". *Diversi Jurnal Hukum* 6, no.1 (2020): 22-46.
- Siswanto, Heni. "Memaksimalkan Prolegnas dan Prolegda dalam Politik Hukum Nasional (Politik Hukum Penanggulangan Kejahatan Perdagangan Orang di Era Globalisasi)". *Fiat Justitia Jurnal Ilmu Hukum* 5, no. 2 (2012): 190-208.
- Suhariyanto, Budi. "Pertanggungjawaban Pidana Korporasi Berdasarkan Corporate Culture Model Dan Implikasinya Bagi Kesejahteraan Masyarakat". *Jurnal Rechtsvindig* 6, no. 3 (2017): 130-148.
- Trie, Rully Prasetyo, Umar Ma'ruf, Anis Mashdurohatun. "Tindak Pidana Korporasi Dalam Perspektif Kebijakan Formulasi Hukum Pidana". *Jurnal Hukum Khaira Ummah* 12, no. 4 (2017): 727-741.

- Yatini. "Reformulasi Konstruksi Pidana Dalam Menjerat Pelaku Tindak Pidana Korporasi".
Jurnal Hukum dan Pembangunan Ekonomi 7, no. 1 (2019): 144-152.
- Zahra, Afni, RB. Sularto. "Penerapan Asas Ultimum Remedium Dalam Rangka Perlindungan Anak Pecandu Narkotika". *Law Reform* 13, no. 1 (2017): 18-27.