RECONSTRUCTION OF TECHNOLOGY LAW ENFORCEMENT ON CORRUPTION CRIMINAL ACTION PLANTS

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ABSTRACT

This study aims to analyze criminal liability with regard to criminal liability of corporations or companies "or other social organizations that commit criminal acts of corruption. The research method used is a normative legal research method. The problem is focusing on how law is enforced against the perpetrators of corruption committed by corporations. After the birth of Perma No. 13 of 2016 Article 23. The results of the study indicate that law enforcement against perpetrators of criminal acts of corruption committed by corporations can be imposed with criminal sanctions and administrative sanctions. Criminal sanctions namely Criminal Sanctions with the Multiple system and Criminal Sanctions Deprivation of corporate profits from criminal acts, while administrative sanctions in the form of closure of all or part of the corporation and dismissal of the Company's Management.

Keywords: Law Enforcement, Corruption Crime, Corporations.


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1. INTRODUCTION

The presence of this corporation has positive and negative impacts on people's lives. As a positive impact for the community, including corporations trying to meet the needs of the community, opening up jobs, increasing the welfare of people's lives. However, the presence of corporations also has a negative impact on people's lives, the impact is caused by the emergence of corporations that carry out their business consciously or unconsciously commit crimes that threaten the safety of the nation, caused by the emergence of many corporate behavior deviations that are detrimental to society in various forms For example, tax crimes, environmental crimes, energy source crimes, banking crimes, computer crime, consumer fraud, and even corruption [1] [2].

Corruption cases committed by corporations have entered the Police, Attorney and Medan District Courts in the Investigation Stage that ensnare the Management (people) of the Corporations not as legal entities and while the allegations of crimes committed by
corporations as entity entities many laws are free from lawsuits because there are a number of reasons, among others, that procedures and procedures for examining corporations as perpetrators of crime are still unclear, therefore it is deemed necessary to have guidelines for law enforcement officers in handling criminal cases carried out by corporations [3] [4].

This is due to the weak rule of the Criminal Code and the Criminal Procedure Code regulating corporate criminal acts wherein the Criminal Procedure Code only contains the subject of criminal law against human subjects, does not determine the corporation as a legal entity entity as a subject of criminal law.

Because of this, the Supreme Court Regulation No. 13 of 2016 concerning the Procedure for Handling Criminal Cases by Corporations was born. After the birth of the S

upreme Court Regulation No. 13 of 2016 concerning the Procedure for Handling Criminal Cases by Corporations, there will be guidelines for law enforcement, especially for judges who handle corporate criminal acts committed by corporations (companies), so that punishment against corporations as legal entities as legal subjects can be done, especially in the jurisdiction of the Medan District Court in the corporate conviction mentioned above [5] [6].

However, in reality the implementation of Supreme Court Regulation No. 13 of 2016 as a temporary guideline until now there are pros and cons in law enforcement which are based on Regulation No. 13 of 2016 among legal experts and law enforcers, where there are those who appreciate hoping that good corporate will be realized in Indonesia but there are also criticizing the application of Regulation No. 13 of 2016 from the side of investors who are worried that they will be criminalized and afraid of the escape of investors (corporations) who will invest their capital in Indonesia in addition to the many weaknesses of Perma itself, especially when it is associated with how to regulate accountability corporate crime in criminal acts of corruption and how forms of criminal acts of corruption committed by corporations and how law enforcement in labor crimes committed by corporations after the birth of the Supreme Court Regulation Number 13 of 2016 Procedures for Handling Criminal Cases by Corporations (Perma No.13 Year 2 016) [7] [8].

2. LITERATURE REVIEW
The dissertation theoretical framework contains a detailed explanation of the theory used in dissertation research as a knife of analysis answering dissertation problems with systematic theory and supporting theories that are highly dependent on the title of dissertation research. Based on this the theoretical framework used in this dissertation research is as follows:

2.1. Theory of Welfare State as Grand Theory

Grand Theory (Basic Theory), which is used in writing this dissertation, is the Theory of Welfare States. The founders of the state in formulating the ideals of statehood in the 1945 Constitution made choices in the welfare state. The concept of the welfare state is contained in the Preamble to the 1945 Constitution the fourth paragraph stating: "The state protects the entire Indonesian nation and all spilled Indonesian blood, promotes public welfare, educates the nation's life and realizes social justice ...". Then the concept of the welfare state is reflected in Article 33 paragraph (3) of the 1945 Constitution, which states: "The earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people [9].

There are several reasons why a government views the welfare state system. These reasons are both a goal and a measure of success in running the welfare state system. There are 6 (six) things raised as a reason why choosing a welfare state. First is to promote economic efficiency; second to reduce poverty; third, promoting social equality; fourthly
promoting social integration or avoiding social exclusion; fifth promotes social stability; and the sixth promotes individual autonomy or independence [10].

The Welfare State Theory is in line with the concept of a modern rule of law where modern state law is the antithesis of the classical rule of law, where the state’s duty is no longer solely to maintain the country’s defense and security but also to realize the welfare of society. Public welfare as welfare that must be sought by the state, must be formulated as welfare that supports the achievement of the welfare of members of the community. Thus public welfare is defined as the number of terms and conditions that need to be available so that community members can prosper.

General well-being can be formulated as a whole of the social prerequisites that make it possible or easy for humans to develop all of its values, or as the sum of all the conditions of social life that are needed so that each individual, family, and community groups can achieve their wholeness or development. more intact and faster.

The welfare state basically refers to the active role of the state in managing and organizing and managing the economy which includes the state’s responsibility to guarantee the availability of basic welfare services to a certain degree for its citizens. The main characteristic of a welfare state is the emergence of a government obligation to realize public welfare for its citizens.

BUMN or State-Owned Enterprise is one form of business entity in the economic world. Business entities that operate in the form of BUMN are usually the ones that control the potential sectors that are processed to meet the lives of many people. Because the capital is largely controlled by the state, the existence of BUMN is protected by the state. In Law No. 19 of 2003 there are mentioned two forms of BUMN namely Perum and Persero. These two forms are the result of economic development adjusted to the times. In the pre-reform era, there was another form of BUMN which has now been abolished. Namely BUMN with the type of service company.

Processing of the main sectors in society is the main focus of BUMN. Now BUMN is not fully controlled by the state. Several types of BUMN in our country have opened up to private parties who want to invest for the development of the company. All levels of society expect tangible benefits from state-owned BUMN. Another form of business entity that is also controlled by the government is a Regional-Owned Enterprise (BUMD), which in fact is controlled by the regional government [11] [12].

As a state-owned company, of course BUMN stands and operates by holding important objectives. This objective is contained in: Article 33 specifically paragraphs (2) and (3) of the 1945 Constitution which states that the branches of production are important for the State which controls the livelihoods of the public is controlled by the State. Then the earth, water, and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.

2.2. Legal Entity Theory as Middle Theory

Middle Range Theory used in writing this dissertation is Legal Theory. In the beginning in history, which can be held legally responsible is only a private person, not including a legal entity. Then, even if it takes the form of a legal entity, the association cannot be held legally responsible. In addition, with regard to the actions carried out by the association, a private party (founder, owner, or member) is also difficult to obtain a legal responsibility. This is what happened in the past history of law in the early days when the existence of an association as a legal entity was not clearly responded to by law [9].
The next development is the emergence of the concept of assigning responsibility to legal entities in principle, but limited by opening opportunities for certain individuals to take responsibility, for example through the theory of piercing the corporate veil, ultra vires, or fiduciary duties. In fact, the development of legal responsibility of a legal entity is an act of imposing criminal liability on that legal entity, certainly with very limited models of criminal penalties, such as fines, revocation of licenses, announcements to the public, and so on [5].

In relations with the state, in Europe, in the Middle Ages, the theory of legal entities is also a heated debate, in relation to the nature of the state which is also a legal entity. Arguments and theories that were built at that time were good for maintaining the state / government authorities to remain in the leadership, as well as many theories that were built precisely to be able to bring down the ruling government regime. Legal entity theories, both of which assume that a legal entity (including the state) is a legal entity such as a person (natural personality theory), or as a group of people (group personality theory), so that both theories require the state / government and apparatus, the apparatus, must be legally responsible if there is a violation committed. These two legal entity theories contradict the legal theory of the personality of the state (state personality theory), which according to the theory of the personality of the state, that the state will not be responsible to humans, because no human person is above the state. In fact, the theory of legal entities as a collection of people given to corporations (corporate groups) for example, given to the group by law the status of legal entities, so they have authority and power. The expected consequence is that these groups become strong and dignified, which can offset the strength and dignity of the state which is also a legal entity [13].

2.3. Corporate Criminal Theory as Applied Theory

Applied Theory (Application Theory) used in writing this dissertation is Corporate Criminal Theory. The criminal theory against legal entities gave rise to the concept of corporate crime. Corporate crime is an act in the form of doing or not doing by an association or a legal entity through its organizations, which brings profit or is expected to bring profit to the legal entity or association, but is carried out in violation of the rule of law which belongs to the group of public order so that it can classified as a criminal offense, which results in a loss to another person or to society at large, and therefore, criminal penalties imposed on the association or legal entity, through an appropriate criminal procedure. Examples of these corporate crimes are environmental crime, money laundering, tax evasion, banking crimes, falsification of goods / documents, internet crime, financial engineering, crime in the field of intellectual property rights, consumer crime [14] [15].

Criminal acts committed by companies / corporations so that they are charged with criminal responsibility are new developments. In its development there are pros and cons among experts on criminal punishment of legal entities or corporations. Opinions that are pro to corporate criminal offenses present the reasons as follows:

- Just imprisoning company management is not strong enough to suppress this corporate crime.
- Because it turns out that corporations are increasingly playing an important role.
- To protect the public better by punishing companies.
- Criminal action against corporations is an effort not to convict weak parties such as management or employees of a company.

As for those who are against criminal prosecution of corporations, state the reasons, which are actually very technical in nature, including:

- The problem of error or will in a criminal act only exists in natural humans.
Material behavior as required by some crimes can only be done by natural humans, such as killing, stealing, persecuting.

Crimes which constitute deprivation of liberty of persons shall not be liable to a crime.

Criminal punishment against a corporation is tantamount to convicting an innocent party, because there is no element of criminal intent in a legal entity, and only in humans.

In practice, it turns out that it is not easy to determine the norms when the criminal responsibility is only the company, or the management only, or both.

Provisions of criminal acts of corruption in Indonesia adhere to the conviction of perpetrators of corruption crimes committed by corporations. In connection with the writing of this dissertation, the author uses the theory of corporate punishment to describe the criminal justice process in a Criminal Justice system to the proportionate and fair criminal sentences of corruptors with a relatively small state loss after going through the judicial process. As it is known that the essence of corruption is the loss of state money. As a result of the loss of state money will result in disruption of the country's economy and lead to hampered development and poor quality of development. Law enforcement efforts are carried out in a repressive manner in addition to imposing penalties to the perpetrators proportionately also directed towards the recovery of state financial losses [16] [17] [14].

3. METHODOLOGY

This research is a normative legal research because what is studied is the principle of justice in the moral system and legal norms in the system of legislation by focusing on the enforcement of perpetrators of corruption committed by corporations. The approach used is a philosophical, conceptual and statutory approach. Legal materials in this study were collected through literature studies on both books and research results in the form of journals that specifically discussed law enforcement against perpetrators of corruption committed by corporations. The legal material was then analyzed descriptively qualitatively. In qualitative analysis, there are three lines of activities that occur simultaneously, namely the reduction of legal materials, presentation of legal materials, and conclusions.

4. RESULTS AND DISCUSSION

As a result of the lack of clarity of the Criminal Code and Criminal Procedure Code in regulating corporate criminal provisions, so Perma No. was born. 13 of 2016, where Article 4 states that corporations can be asked for criminal liability in accordance with the criminal provisions of corporations in laws governing corporations, and are assessed as having errors if:

- The corporation can get the benefit or benefit from the crime or the crime is carried out for the benefit of the Corporation;
- The corporation allows for criminal acts; or
- The corporation does not take the steps needed to take precautions, prevent greater impacts and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts.

In connection with this matter, law enforcement that can be carried out on corporate actors in the criminal corruption case will be described after the birth of Perma No. 13 of 2016 Article 23 states that those who can be convicted are Corporations or Managers, or Corporations and Managers, but do not rule out the possibility of imposing penalties on other actors based on the provisions of the law proven to be involved in the crime.
4.1. Penalty Fines

Criminal fines are the oldest type of criminal, older than imprisonment, perhaps as old as capital punishment. Criminal fines are a type of criminal law that requires convicts to pay a sum of money based on a court judge's decision to the state. The forms of criminal fines that can be imposed on the corporation are as follows:

**Criminal Fines with the Kalilipat System**

In criminal law outside the Criminal Code, criminal penalties are the most heavily threatened criminal to corporations that are proven to commit offenses and have offenses. It's just that the formulation of the criminal penalties referred to most is not by the system of moves, but by calling the maximum amount of fines that can be imposed on the corporation. This system is known as a maximum penalty criminal system that is of a special nature. Indonesian Criminal Code recognizes the minimum general and special minimum for penal penalties. This means that a judge can impose a fine of a corporation under a maximum amount of penalty in the threat of an offense. Additionally, the formulation of criminal penalties against corporations with a special minimum penalty penalties system. In this system, lawmakers determine the minimum amount of fines to be paid by corporations and judges, ideally, is not allowed to impose fines less than the minimum amount of fines found in the article formulation being violated.

Although it should be recognized, in judicial practice, judges do not always follow the lawmakers, in the sense that sometimes the law imposes a penalty under the minimum amount of the fine in the article formulation. The reason is, the judge is not a legal funnel so it has the freedom to determine the amount of fines the corporation has to pay in accordance with the burdensome and burdensome circumstances.

Formulation of criminal penalties for fines in criminal legislation outside the Criminal Code by explicitly mentioning the nominal amount of fines to be paid by the corporation, at least contains two fundamental weaknesses.

- Formulation of criminal penalties for fines which generalizes all corporate criminal acts. The thing that cannot be denied is that one corporate criminal offense with another corporate crime has different characteristics ranging from the type of crime committed, the seriousness of the crime, the amount of the profit earned, to the amount of the loss caused.

- The formulation of criminal penalties for fines with the exploration of nominal amounts of fines to be paid by corporations actually provides an opportunity for corporations, especially multinational corporations, to commit prohibited acts.

This is according to the author, the corporation itself can already predict how many fines will have to be paid if it commits a particular crime and how much profit will be gained. As a rational entity, the corporation will certainly calculate the amount that will be achieved if it commits a crime and the amount of loss that will be incurred if the loss will be incurred if the crime is committed.

In this context the corporation will calculate the amount of fine to be paid if committing a crime compared to the profit to be gained. If the fine is to be paid with a fixed nominal amount (special maximum) less than the amount of profit obtained, the corporation will commit a crime.

Based on the above configuration of thinking, so that a system of threatening criminal penalties to corporations can prevent it from committing criminal acts, it is necessary to stipulate the threat of criminal penalties with a multiplex system and not formulate nominal fines in the formulation of each article as in the special minimum and special maximum systems. It is often said that the principal criminal that can be imposed on a corporation is only a fine. In other words, the punishment of a corporation as a legal entity entity (which is
only a piece of paper) is through a criminal fine that is paid from the capital / profit of the corporation itself.

Seizing corporate profits from criminal offenses

With sanctions in the form of deprivation of profits derived by corporations from committing criminal acts is expected to prevent corporations from committing criminal acts, however, the confiscation of profits does not mean that they do not contain weaknesses, namely the difficulty of estimating the exact amount of profits actually obtained by corporations and the delay in handling cases. Judges will find it difficult to estimate the amount of profit a corporation makes from the proceeds of a crime committed (a crime), given the complexity of the problems related to corporate crime.

Corporations will use all means to escape from the bondage of law in the form of deprivation of profits obtained from criminal acts, especially if the corporation is a combination of several corporations, in addition to delays in handling cases from the level of investigation to the examination in court will make it difficult to implement sanctions the.

4.2. Criminal Administration

Closure of all or part of a corporation

The closure of all or part of a corporation is an action sanction imposed on a corporation which is proven to have committed a criminal act and caused a very wide casualty. The word victim is not only interpreted as a human being directly impaired directly by the crime, but also living beings in general.

Sanction in the form of corporate closure is one form of effective sanctions to tackle corporate crime, especially in the environmental field, because there is an element of corporate control and excesses in the eyes of the public. The control and public perception of a corporation has a far greater impact than criminal punishment, both of which contain dimensions of the means of punishment and non-punishment, namely the supervision and imposition of shame. A corporation that is sentenced in the form of the closure of a portion of the corporation especially if all of them will feel ashamed because of the action he is considered to have bad credentials, so that the public will always supervise their activities.

The importance of public control, especially in denouncing any crime committed by the corporation, if it is related to John Braithwaite's reintegrated shaming theory shows how important public control is. The basic assumption of this theory is that a society with a high crime rate is a society whose citizens are less effective in denouncing crime, whereas a society with a low crime rate is not a society that effectively suppresses a crime against (the perpetrators) of a crime, but a society whose citizens are effectively being intolerant of crime.

Dismissal of the Company's Management

In addition, as an alternative, there are sanctions in the form of dismissal from the management, prohibition from the management to establish and / or manage corporations in the same or other fields. Acts which are accountable to the legal entity can also be accounted to those who lead the actions of the legal entity. If a crime occurs in a corporate environment, then the crime is considered to be committed by the management.

Therefore, the occurrence of criminal acts of corruption committed by corporate management does not rule out the possibility of dismissal by shareholders or corporate owners. Dismissal is an administrative punishment that can have a deterrent effect on the perpetrators and prevent others from doing the same thing.

In practice, although there are already directors of the company that have been convicted, so far it has been hampered by formulating how corporate responsibility as perpetrators of
corruption even though certain laws have placed corporations as legal subjects that can be convicted because it harms the state and or the community [20].

However, it is very minimal to be processed in court for criminal corruption committed by corporations as a legal entity entity because there is no procedural law for investigation procedures, prosecution to court, especially in formulating indictments for corporate entities and when referring to the Criminal Procedure Code, specifically Article 143 paragraph (2) only regulate the formulation of charges for humans (people) in this case the management / directors of the company[21] [22].

5. CONCLUSION

Law enforcement against perpetrators of corruption committed by corporations can be imposed with two sanctions, namely criminal sanctions and administrative sanctions. Criminal sanctions are minimally processed to the court, because there is no procedural law for investigation, prosecution and trial especially in formulating indictments for corporate entities and if referring to the Criminal Procedure Code, specifically Article 143 paragraph (2) only stipulates the indictment for humans this is the management or director of the company. The Corporation Criminal Procedure contains the criteria for corporate errors as a legal entity that can be called a criminal act of corruption; anyone who can be held liable for corporate crime; procedures for inspection (prosecution) of corporations and or corporate administrators; corporate court procedures; type of corporate punishment; decision; and implementation of the decision.

REFERENCES


