

CORPORATION CRIME LIABILITY OF PERSPECTIVE PENAL REFORM

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Abstract

The setting of the responsibility criminal against corporations in Indonesia starting from the inception of the emergency law number 7 of 1955 on Economic Crime, then followed by some of the last act is Act No. 8 of 2010 on prevention and eradication of the crime of money laundering. In the framework of the renewal of national criminal law and the draft law on The Criminal law (Criminal Code) systematically have set the criminal liability of corporations, whether incorporated corporation law and Corporation who is not a legal entity. Although there have been laws governing corporate crime responsibility about but are still have problems in its application. It can be seen from the lack of a corporate criminal sentenced by the Court.

Keywords: Criminal Liability of corporations

I. Introduction

Criminal acts of corporations in Indonesia is not new. New is the packaging, its shape and its realization. Its nature be fundamentally say is the same, even contentious, and their impact is felt detrimental to society. According to J.E. Sahetapy (1995: 204) that corporate crime like a cancer which if not treated early will ruin the whole framework and structure as well as the morality of a society.

Criminal liability of corporations in Indonesia was first regulated in the law on emergency number 7 in 1955 about Economic Crime. Article 15, paragraph (1) which reads:

If a criminal act done by an economy on behalf of a legal entity, a company, a corporation, or a Foundation, then criminal charges as well as criminal penalties and measures of conduct was dropped, both of a legal entity, the company Corporation or Foundation, both of those commands do the economic criminal act or that act as a leader in any act or omission of that, or to both.

Further legislation governing the criminal liability of corporations, among others, is Act No. 23 of 1997 of The management of the environment, Act No. 5 of 1997 on psychotropic drugs, Act No. 31 of 1999 regarding the eradication of criminal acts of corruption, Act No. 25 of 2003 about the criminal offence of money laundering, Act No. 21 of 2007 about the eradication of criminal acts of trafficking persons, Act No. 44 of 2008 about Pornography, and Act No. 35 of 2009 about narcotics. However, the existence of legislation in question turns out to have not been able to provide satisfaction for seekers of Justice. Moreover, corporations as non-state actors have enjoyed impunity, namely, impunity of various crimes including criminal acts of corruption that they do and there is no attempt to process it to the maximum by law enforcement agencies.

Consequently, Community law has made efforts on corporate crime by filing a class action lawsuit or legal standing through the civil suit or claim to judicial administration felt unsatisfactory. In fact, if done criminal then deterrent effects is assessed to be more effective. The reason: the first criminal liability has a stronger protection procedures. Second, the criminal law enforced by law enforcement officials more power and resources

than the plaintiff (Civil Code). Third, criminal penalties provide stigma and slur to the perpetrators. Fourth, criminal law has a role to deliver the message to the community about the perpetrators.

One form of crime that can be committed by a corporation is the crime of corruption. This criminal offence carries a very adverse impact for the nation and country, so countermeasures should be done both in preventive and repressive basis.

The Government's anti-corruption efforts have continued Military Rule began with the Ruling on April 9, 1957 Number Prt/PM/06/1957, on 27 May 1957 Number Pn/PM/03/1957, and on 1 July 1957 The Prt/PM/011/1957 until the promulgation of law number 3 of 1971 on the eradication of criminal acts of corruption.

At the end of the reign of BJ. Habibie, was the ACT Number 31 of 1999 regarding the eradication of criminal acts of Corruption (law PTPK) which mandated the establishment of a joint Commission on the eradication of criminal acts of Anti-Semitic corruption (TGTPK), chaired the former Adi Andojo Soetjipto Chief Justice. This team later became the embryo of the corruption eradication Commission (KPK) which was established under law No. 30 of 2002 concerning the criminal offence of corruption eradication Commission. The last because it is reasonably adequate, yet President Bambang Yudhoyono through the presidential decree number 11 in 2005 formed a team coordinating the eradication of criminal acts of Corruption (Tim Tastipikor) under the leadership of Hendarman Supandji

Although there are laws that govern the criminal liability of corporations in Indonesia, but in reality many cases conducted by the Corporation but not criminal liability can be requested. The Court only tends to apply the civil liability, such as the case of Lapindo in East Java has caused considerable casualties on the community

To avoid confusion going on with various terms that are closely related to the Corporation, it must distinguish: (1) crimes for the corporation, (2) crimes against the corporation, and (3) criminal corporations'.

Crimes for corporations is a corporate crime (corporate crimes). Corporate crime is carried out for the benefit of the Corporation. Corporate crimes (crimes against corporation), which is often called employee crimes, i.e. crimes committed by employees of the Corporation. For example, the embezzlement of funds by company officials or employees. The community could widely be perpetrators of crimes against Corporations. As for the latter, i.e. criminal corporations are Corporations that deliberately formed and controlled to do evil. The position of the Corporation in criminal corporations as a mask to hide the real face of evil. In the event the corporations as perpetrators of corruption, then it can be categorized into Crimes for corporations as well as Criminal corporations. (Setiyono, 2003: 21 – 22)

II. The Concept of Criminal Liability of Corporations

There are 7 (seven) concept that is the development of the doctrines of the discourse regarding the criminal liability of corporations. These concepts are contextually referable to the formulation in article Corporation criminal-article Draft Criminal Code. Seven of those concepts are; identification doctrine, aggregation doctrine, reactive corporate fault, liability, management type failure model, corporate means real doctrine, and specific corporate offenses. (Barda Nawawi Arif, 2002: 161)

1) Identification Doctrine

According to this doctrine, that deeds and inner attitude of certain people who are closely connected with the Corporation and the management of the Affairs of the Corporation, is considered to be the inner attitude and behavior of corporations. These

people can be referred to as the ' senior officers ' of the company. This is the basis of accountability of corporations toward criminal action.

More specifically it can be said that the Act/crime and mistakes/inner attitude of senior official (not as workers or employees) is seen as an inner attitude and actions of the company. Therefore, the Corporation can be requested direct liability (direct corporate liability).

In English law, only the actions of senior officials (the board of directors) can be attributed to the Corporation blamed in/involved in doing crimes means real. Even in cases that deal with law containing strict liability standard, English law permits the Corporation filed a defense (criminal reason for deletion) that the agent acts contrary to corporate policy and therefore not justified or is not valid. Contrary to that, according to American law, corporations can be held responsible for acts committed by agents in even its deepest level down (see case Tesco Supermarkes).

American courts responded by expanding corporate responsibility at crimes means read an irrelevant by making the levels or positions in the hierarchy of a company agent. In contrast, the English Court has narrowly theory ' alter ego ' or ' organ ' theory (i.e. the theory of corporate liability at crimes means real) stating that the deeds of senior officials (which is the ' brain ' of corporations) that can be responsibility to the Corporation.

However in the results of the discussions, there were objections that Elsam quite significantly over the identification doctrine, particularly with regards to corporate-large corporations where the probability is very small, a senior manager will perform an act directly (actus reus) of a criminal offence means rea with (containing the intention). Therefore, the identification doctrine still need to be complemented by other doctrines.

2) Aggregation Doctrine

In order to solve a number of problems that arise in the identification doctrine, an alternative basis for the establishment of criminal liability is aggregation doctrine known in America as the Collective Knowledge Doctrine.

According to this approach, the crime cannot only known or done by one person but by some. Therefore, the need to gather all the actions and intentions of a variety of relevant people in the Corporation, to ascertain whether the overall actions will constitute a crime or worth in deeds and intentions were done by one person.

However this doctrine also has a number of shortcomings, because the structure of a large and complex corporations, the doctrine is not effective in terms of deterrence. That is, as the identification doctrine, the doctrine is also ignoring the mythical personification of Corporation. Although Aggregation doctrine currently used widely in America, but declined in the United Kingdom law.

3) Reactive Corporate Fault

A different approach about the criminal liability of corporations was proposed by Fisse and Braithwaite, suggested that an act which is a criminal act done by or on behalf of a corporation, the Court should be given the authority to order the Corporation to conduct its own investigation to ensure the person responsible and take the appropriate disciplinary action for the blunders of that and take corrective measures to ensure the mistake does not happen again.

When the Corporation taking a proper handling, no criminal liability can be brought against the Corporation. Criminal liability can only be applied against the Corporation when the Corporation fails to comply with a court order in earnest. Thus, the Corporation is not an

error the error at the time the crime occurred but the error because the Corporation fails to make appropriate action for the blunders committed by the workers.

This approach has the advantage that obliges corporations that own the appropriate investigations, instead of the State apparatus to do it. This will not only save time and public money, but, often, the Corporation itself has the best ability to understand and penetrate the complex organization structure. This is also the approach that recognizes that one of the main goals of corporate criminal liability is to ensure that corporations improve the policies and practices of those who are less well so prevent such mistakes repeated. However, the lack of reactive fault doctrine is also quite a lot. In brief, the reactive fault doctrine has a time frame that is entirely incorrect. Malpractice is the original Act or omission which gives rise to a loss. The error must be judged with reference to the Act or omission.

4) Vicarious Liability

In the United States, the very public way in asking the corporations responsible for the criminal is the doctrine of respondent superior or through type liability. According to this doctrine, if an agency or corporate workers, acting within the scope of its work, and with a view to favoring corporations, did a crime, the responsibility of crime can be charged to the company. Not a problem if the company significantly gain or not or whether such activities have been prohibited by the company or not.

This doctrine has been run well in United Kingdom law, in relation to crimes of strict liability with regard to such issues as corruption, food and medicine, health and job security. It has also been applied to crimes of mixed (hybrid) are the main crimes of strict liability but allow the Defense two diligence. Nevertheless, it is clear that a type liability should not be applied to all crimes of strict liability. Whether to apply or not is a matter of interpretation of the laws relating to the policy of the Act and whether the use of a type liability will help the implementation of the Act.

However there are a number of major problems related to this doctrine, especially when applied to crimes involving mens rea (containing the intention).

First, there is no empirical evidence that supports the claim that this is the most effective way to achieve prevention. This is equivalent to the claim that the crime of strict liability can be justified in terms of prevention. To respond to the times, it has been shown that the company would or at least just do what goes in makes sense to prevent losses and strict liability type and can really operate as a dis-insetif for the company to participate in the activities of social benefit.

Second, type liability may be too inclusive in terms of an enterprise can be are convicted to the fault of a worker to whom the Corporation should not be accounted for, in terms of the Corporation could have done everything in his power to prevent the occurrence of crime. The Corporation may be made clear and set policy command to avoid mistakes. When a worker corporations decide to "do it yourself", it seems difficult to process errors in corporations do or do not do.

Third, this doctrine, instead it could be not very inclusive in terms of policies and practices of a company may be bad and perhaps encourage evil behavior. Indeed, citing a ruling from the US where the company had been prosecuted and punished, despite the fact that shows all of the Corporation's employees have been exempt from the charge.

The idea of criminal liability for corporations based on the type of liability, got the criticism that:

- a. A type just right as the principle of liability for legal damages (tort law) because the truth lies in the sharing of losses on the data more bears (or at least more entitled to

load it), but he is not related to the purposes of the criminal (retribution, deterrence, prevention, rehabilitation).

- b. Type liability unfairly because the load falls on the innocent, the penalty (penalty) borne by shareholders and others who have an interest in the Corporation, rather than charged to the individual is guilty.
- c. Liability resulting disparity between the Types of business carried out in the form of a corporate ownership (proprietorship), because the owner of the individual cannot be accountable for the actions of his officers.
- d. A type of corporate liability for can open doors in the days to come for the expanded Type liability also for individuals.

5) *Management Failure Model*

The company can do, for example: crime conspiracy, criminal libel, contempt of court, tax evasion, black market, aiding the cause of death from crime driving hazardous (dangerous driving). There are boundaries of the relevant company does crime as criminal issues normally, the criminal may be subject to criminal fines, are therefore in a crime only threatened with imprisonment may not be to the company.

In the United Kingdom Law Commission has proposed a single crime of murder without a plan (manslaughter) made by the Corporation when the Corporation management mistakes led to someone's death.

These crimes are defined with reference to the failure of management, for the United Kingdom Law Commission implicit see people in corporations who do evil and pre requisites of crime of which they are proposing, that "the murder of frivolity/negligence" inappropriately applied to corporations. Based on that, the crime was designed without reference to the classical concept of mens rea in order to ascertain the difference of malpractice by the Corporation.

From this view it may seem the concept of expansion of the identification doctrine. Rather than seeing the failure of the individual or group of individuals who occupied a high position, then that is a failure of management. In summary, the proposal of the United Kingdom Law Commission could help but not quite adequate.

6) *Corporate Mens Rea Doctrine*

It has often been suggested that the company itself cannot do evil, they can't think or has the will. Only people in the company who can do a crime. Nevertheless, one can accept that the whole notion of corporate personality is a fiction-but well-made and very useful – it looks like there is no reason why the law should develop an appropriate mens rea relating Corporation is fictional.

The idea of direct corporate responsibility (direct liability doctrine) of this kind (as opposed to the attributor doctrine), has been in the United States with advocacy using a variety of names such as the "corporate ethos standard" or "strategic mens rea". This idea was also introduced in Australia and the United Kingdom with the term "corporate mens rea doctrine". The basic idea of this doctrine is because all of the others have ignored the reality of complex corporate organization and dynamics of organizational processes, structures, goals, culture and hierarchy that can form and contribute to an ethos that allowed or even encouraged a crime.

Based on this view, the Corporation can be believed to be the agency that made the mistake, acting through their staff and mens rea his can be found in the practice and policies of the Corporation. For example, for murder without a plan (manslaughter), where a corporation has failed to hold a real security procedures and need the waiver requirements,

weight Lo crime can be found in the practice of this Corporation and the weakness of the safety policy.

he doctrine of direct liability (also refer to the alter ego/identification doctrine) in the case of D.P.P.V. Kent Aussex Contractr Ltd. and the Court ruling in English in 1944 accountable corporations the rules about distribution of gasoline crime which requires evidence of elements of a ' deliberately deceive ' (intent to deceive). Viscount Caldecott judges consider that the inner evil attitude from the manager that can be attributed to the company and is treated as an inner attitude of evil by declaring: ' although the General Director and Chairman of the company's agents, they are more than that. A company capable of doing, talking and thinking like that is made, discussed or thought of by her manager '.

The main objection against the doctrine of corporate mens rea is the difficulty in determining whether the necessary conditions for a degree policies and the practice of one company having a sufficient, so that weaknesses can be decided. For example, a corporation does not have the correct security procedures, there is not a Director who is responsible for safety and had received previous warnings and ignore. But for other cases, it would be difficult to identify policies and practices that meet the mens rea.

7) Specific Corporate Offences

United Kingdom Law Commission has proposed that a new crime, the murder by the corporations "corporate killing" has been introduced in the law of the United Kingdom. This crime would constitute a separate species of manslaughter that can only be done by the Corporation. In this case, issues relating to the assertion of the Corporation, such as evidentiary errors of intention or frivolity, above by making a special definition can only be applied to corporations.

When the arguments described above regarding the Corporation's intentions, of course no longer needed special corporate crime. Based on general principles can apply, there is indeed a strong argument that the law is public should be applied. The dangers of the legal Commission of the United Kingdom's proposals is that they can lead to the degradation of the value of murder due to negligence of the Corporation.

III. Corporate Criminal Liability According To the Bill of the Criminal Code (KUHP)

1. Formulation of Corporate Criminal Liability according to the bill of the Criminal Code

At first the application of the criminal liability of corporations are facing a number of legal issues, especially regarding the principle of no criminal without errors (without should genstrap). So, the basic existence of a criminal offence is the basis of legality, while base can be crime the crime was making basic mistakes. This means that the makers of the crime are convicted if he only had a mistake in doing criminal acts. Or, someone just have an error when at the time of doing the crime, seen in terms of the community he can be condemned for his actions. Thus, the principle of no criminal wrongdoing is fundamental basis without the maker's accountability (offender) a criminal offence.

In Indonesia, one of the ways that Corporations also may be subject to criminal liability is by implementing the theory/principles "no criminal without error". However, according to the BILL of the Criminal Code, this exception only for certain criminal acts, not for all criminal acts. For certain criminal acts, perpetrated the crime makers have been able to have the fulfillment everybody is liable only because the elements of a criminal offence by his actions. Here, the element of fault or an inner attitude of the author of the crime in doing

such deeds are no longer cared for. This principle is known as the principle of "strict liability" or (liability without fault).

Therefore, to request the criminal liability of corporations, of which represent it is the Board, then the criminal liability is taken over by the Board. This deviation is known by the term type liability or someone responsible for a criminal offence committed by another person. In the Bill KUH is said: "in terms of prescribed by law, every person can be held responsible for criminal acts committed by others". Because of the irregularities, then tried to this principle can only be applied in certain events and people replace them must be specified upon limitative laws.

In the explanation of the Draft Penal Code it says: "the birth of this exception is the refinement and deepening of the moral basis of juridical regulative, namely in certain things one's responsibility is seen to be extended to acts of his subordinates who did the work or works for him or within the confines of his order". The principle of responsibility which is an exception to this is known as the principle of absolute responsibility or "type liability."

Arrangement of Corporate Criminal liability in the Draft Criminal Code was placed on the book I section II, paragraph 6 of the Criminal Liability of corporations. In this paragraph, articles in its entirety as follows:

Article 47; The Corporation is the subject of a criminal offence.

Article 48; A criminal act committed by corporations when committed by persons acting for and on behalf of the Corporation or in the interest of corporations, on the basis of the working relationship or other relationship, based within the scope of business of the Corporation, either singly or together.

Article 49; if the criminal acts committed by corporations, criminal liability applies to the Corporation and/or its administrator.

Article 50; Corporations can be held responsible for criminal acts committed against an for and/or on behalf of the Corporation, if such works are included in the scope of its business as provided in the articles of association or other provisions that apply to the Corporation in question.

Article 51; Criminal liability of corporate officers is limited to all trustees have the functional position in the organizational structure of the Corporation.

Article 52; (1) in considering a criminal charge, it should be considered whether the other had given law the protection is more useful than dropping a criminal to a corporation.

(2) The consideration referred to in subsection (1) must be stated in the ruling of the judges.

Article 53; the reason or reasons for truth the forgiving can be filed by the author of that Act for or on behalf of the Corporation, may be filed by corporations all those reasons directly related to the Act indicted to the Corporation.

Listen to Chapter 48 s/d 52, then it can be concluded that corporate criminal liability can only be done if it meets the following elements:

First item: criminal acts committed by persons acting for and on behalf of the Corporation or in the interest of corporations, on the basis of the working relationship or other relationship, based within the scope of business of the Corporation, either singly or together.

Second element: the Works are included in the scope of its business as provided in the articles of association or other provisions that apply to the Corporation in question.

The third element: the Criminal Liability imposed on the Corporation and/or its administrator. The Corporation's Board of Trustees has restricted all functional position in the organizational structure of the Corporation.

The first element is confirmed about the perpetrators of the crime. From the first item it can be inferred that the perpetrator of a criminal offence should not be administrators of corporations but could be done by staff or people acting for the benefit of the Corporation.

People who act in the interest of the Corporation to be due to the relationship of work as staff or as contract workers, as well as other parties that based on an agreement commits an act for the benefit of the company. Whereas, the second element of the look of the criminal acts only as the scope of business of the Corporation. The scope of this effort can be seen from the articles of the Corporation or of any other provision.

The third element of the responsible party is a criminal of the crime that occurred. According to the third element there are two parties who could be subject to liability, the Corporation and its administrator. The Board here is limited to only those who have functional position in the organizational structure of the Corporation, not those who are on lower level (lower level officer).

According to the explanation of the Draft Criminal Code, there are three options of parties who are responsible for criminal acts of corporations, namely:

- a. The Officers of corporations as a criminal act and therefore the responsible.
- b. The Corporation as a criminal act and responsible officers; or
- c. Corporation as maker of the crime as well as responsible.

Therefore, if a criminal act carried out by and for the corporations, then demands can do and crimes can be brought against the Corporation itself, or corruptions and its administrator, or its administrator.

2. Corporate criminal offence according to the criminal law, draft legislation

The crime issue, the concept holds that the main source of law is the law (principle of legality). Yet described in article 1 paragraph (1) extends the basic formulation of the concept of legality in materiel by asserting that the provision in article 1 paragraph (1) it does not reduce the enactment of ' living laws ' in society.

It is thus with the introduction of the written law (law) as the first formal benchmark criteria, the concept also provides the opportunity to source the unwritten law that lives in a society as the basis set is worth a crimes deed. In other words, the concept in determining the criminal act, enacted a law that also ' life or unwritten law ' in society as a source of law (the principle of the legality of a sniper).

The problem is, what restrictions or guidelines to determine the source of the law where the sniper can be a source of law (the source of legality). In the development of the concept of December 2004 submitted to Minister of law and Human Rights and socialization, have been formulated, that is all in accordance with the values of Pancasila and/or principles of the common law recognized the community of Nations. Thus, restriction/guidelines dotted defends the values of national and international, and international signs are taken from article 15, paragraph (2) of the ICCPR (International Covenant on Civil Political Rights).

In line with the principle of legality of formal balance and sniper, the concept also confirms the balance the elements of a formal legal fight and sniper in determining whether there is a criminal offence. Affirmation of limitation sense about what is a criminal act, formulated in draft article 11 (2004, s. d 2008) full reads:

- (1) A criminal offence is the Act of doing or not doing something by legislation declared as prohibited acts and threatened criminal.

- (2) To be declared as a criminal offence, other than the prohibited act and threatened by criminal legislation, should also be against the law or contrary to the law society's consciousness.
- (3) Any criminal offence is always considered to be against the law, unless there is a reason truth.

The formulation of the General provisions of the understanding of the crime and the elements of affirmation against the law of nature of the sniper above, noteworthy as a new development because such conditions do not exist in the Criminal Code (WVS).

According to Moeljatno (1983: 153), that at the time discussed the notion of Criminal deeds, has proposed that in those terms do not include accountability. Criminal act only refers to the prohibited and threatened works with a criminal. If the person who committed the criminal act and then proceeded, as threatened, it depends on the question of whether in doing this he has criminal misconduct, because the principle of accountability in the criminal law is: not everybody is liable if there are no errors (Geen straf without schuld; Actus non facit reum nisi mens sit rea).

In the Draft Criminal Code are not mentioned expressly, a criminal act which is a criminal act Corporation. In article 50 of the Penal Code Bill said: "the actions included in the scope of its business as provided in the articles of association or other terms that apply to corporations concerned." However, there are a number of articles in the Penal Code Bill expressly mentions that corporations as perpetrators of criminal acts, such as some of the sections below:

Article 644; (1) are convicted with imprisonment of no longer than two (2) years or a maximum fine of Category III:

- a. the creditor who accepts the offer of the peace in court hearings since the approval has been held by the debtor or by a third party and the creditor asking for a special benefit; or
- b. Debtor who accept an offer of peace in a court hearing because the approval has been held by the creditor or by a third party and the debtor requesting a special advantage.

(2) If the debtor is a corporation, the Penal Code referred to in paragraph (1) was to the Board or Commissioner who held a consent referred to in subsection (1) letter b.

Article 737; Every citizen of Indonesia and/or corporate Indonesia, which is outside the territory of the Republic of Indonesia that provides help, opportunity, means or information to the criminal theft not money are convicted with the same crime as stipulated in article 735.

After browse Bill book II of the Criminal Code in its entirety, found only two kinds of criminal acts in which the culprit is the Corporation. There are also several criminal acts that did not mention corporations, but the culprit was the Board or Commissioner. Not so with his mention expressly other types of crime which is a corporate crime, the application of corporate liability is not easy even tend to be very limited.

However, in another article asserted that a person includes a corporation. Thus, each criminal offence may be subject to liability of corporations of origin meet the elements as mentioned in chapter II sub chapter 2, regardless of the type of crime. Thus, the type of crime that may be subject to criminal liability of corporations.

3. Corporate Criminal Sanctions according to the draft Bill of the Criminal Code

After getting an overview of the principal crime, the kind of crime that the culprit was the Corporation as well as the responsible party in a corporate criminal act done, then I need to know the type of criminal sanctions can be meted out to the Corporation.

The bill of the Criminal Code says that criminal sanctions can be dropped to the Corporation only subject to criminal fines. But the statements about this type of subject matter to criminal corporations is only loaded in the explanation of the Draft Criminal Code, not in the Trunk of the body. Although the subject matter is only a criminal penalty, but the threat of sanctions more severe than the maximum of the individual.

The maximum fine for corporations, the next highest categories as follows: "the criminal fine of at most for the corporations who do the crime are threatened with imprisonment of no longer than seven years up to 15 (fifteen) years is a fine Category V, that is Rp. 2,000 300,000,000 (three hundred million dollars), while the criminal to death, life imprisonment, or imprisonment of no longer than 20 (twenty) years is a fine Category VI, that is Rp. 3.000.000.000.00 (three billion dollars)."

In addition to the maximum fine, has also set minimum fines for corporations, namely a fine of Category IV Rp 75.00.000 rupiah (seventy-five million rupiah). Draft Criminal Code has also been anticipating when the Corporation is unable to pay the criminal sanctions fines, then the sanctions in Exchange for a replacement in the form of criminal revocation or dissolution of the Corporation's business.

In addition to criminal fines, against the Corporation may be subject to additional criminal sanctions, i.e. either all rights acquired Corporation, such as the right to perform certain activities in the field of business. Who asked for accountability for crimes committed by the Corporation?

Formulation of Corporate Criminal Liability on the basis of other laws in Indonesia

Corporate criminal liability is not a new thing in Indonesia. Various laws have recognized and set it. The laws in question are:

1. Act No. 23 of 1997 on environmental management

This legislation stated that the perpetrators of criminal acts in the field of environment are those individuals and/or groups, and/or legal entities. Criminal charges and criminal sanctions as well as the actions of conduct was dropped, both of a legal entity, the company's unions, foundations or other organizations as well as those who gave the order to conduct the criminal act or act as leaders in action or against both.

If a criminal act done by or on behalf of a legal entity, company, Corporation, Foundation or other organization, and is done by people, either on the basis of the working relationship or other relationship-based, acting within the legal entities, unions, foundations or other organizations, criminal charges and criminal sanctions imposed against those who gave the order or who acts as a leader without considering whether such persons, good working relationships and based on other relationship, do the crime by themselves or together.

If the demands were made to the legal entity, company, Corporation, Foundation or other organization, calls to surrender and call letters were addressed to the Executive Board at their residence, or in place of the Board doing the work that remains.

If the demands were made to the legal entity, company, Corporation, Foundation or other organization, which at the time the prosecution is represented by instead of the Board, the judge may order that the Board is facing himself in court. When a criminal act done by or on behalf of a legal entity, company, Corporation, Foundation or other organization, the threat of criminal penalties heavy by a third.

Criminal sanctions that may be imposed in addition to the provisions referred to in The criminal law criminal law and this law, against the perpetrators of the criminal act of the environment can also be punishable conduct include: forfeiture of the profits gained from criminal acts; and or entirely or partially Closing companies; and/or repair resulting from a criminal offence; and/or Require doing what carelessness without rights; and/or negate what carelessness without rights; and/or put the company under the longest remission in 3 (three) years. Thus, to be declared a criminal act as crime committed by corporations, according to this law, then

- a. Criminal acts must be made by or on behalf of a legal entity, company, Corporation, Foundation or other organization, and is done by people, either on the basis of the working relationship or other relationship-based, acting within the law.
- b. Criminal act committed constitutes a criminal offence in the field of the environment.
- c. criminal charges and criminal sanctions imposed against those who gave the order or who acts as a leader without considering whether such persons, either dance the working relationship or other relationship based, perform criminal acts on their own or together.

2. Act No. 5 of 1997 on Psychotropic

According to the law on psychotropic drugs, which is a corporation is organized groups of people and/or wealth, either a legal entity or not. Crime here is a crime in use; producing and/or use in the production process; distribute psychotropic or import other than for the sake of science; or without the right features, store and/or carrying psychotropic group

If the crime is organized, are convicted by criminal to death or imprisonment for life or imprisonment for 20 (twenty) years and criminal fine of Rp 750.000.000 rupiah (seven hundred fifty million rupiah).

If the criminal offence in article is made by the Corporation, then in addition to the perpetrator of a criminal act, crime to corporations subject to criminal fines of Rp. 5 billion rupiah (five billion rupiah)

The Act is not described the conditions that must be fulfilled in order for the Corporation to criminal responsibility, for example, who was the culprit. Who is responsible for these crimes are criminal in corporate crime, if the sysop, who and on the level and what field?

But in the second Act, the Corporation is also a criminal offence provided for in other laws such as the Act No. 31 of 1999 regarding the eradication of criminal acts of corruption, Act No. 25 of 2003 about the criminal offence of money laundering, Act No. 21 of 2007 about the eradication of criminal acts of trafficking persons, Act No. 44 of 2008 about pornography, and Act No. 35 of 2009 about narcotics.

In the formulation of legislation, in particular for the management of the environment and money laundering laws there are indeed similarities in formulating the elements of corporate criminal liability. For example, about the Actors who do the crime do not have to take care of but anyone who on behalf of or do it for the benefit of the company. It was committed within the scope of the legal entity.

But there is a difference, such as in charge of the criminal. In Act environmental management is the one who ordered or the leader of a legal entity. Other differences are the maximum fines that can be imposed in environmental management is Rp. 5 billion rupiah (five billion dollars), while according to the Penal Code Rp. 2,000 3,000,000,000 (three billion dollars).

In addition, the Act environmental management asserted that the author remains sentenced to criminal even though corporations have been forced to take responsibility for actions of the offender. But in the Draft of the Criminal Code, concerning fixed in criminal the evildoers, is not asserted, so it can be interpreted, actors are no longer accountable criminal acts that he did because criminal liability have been transferred to the Corporation.

IV. Conclusions

The concept of corporate criminal liability consists, the Identification Doctrine, Aggregation Doctrine, Reactive Corporate Fault, type Liability. Management Failure Model, corporate Means Rea Doctrine, Specific Corporate Offenses.

The concept of the seven shared by draft legislation the Criminal Code Indonesia is a type Liability. The outline of the criminal liability of corporations Bill of the Criminal Code was placed on the book I section II which in essence have to meet the following elements:

First item: criminal acts committed by persons acting for and on behalf of the Corporation or in the interest of corporations, on the basis of the working relationship or other relationship, based within the scope of business of the Corporation, either singly or together.

Second element: the Works are included in the scope of its business as provided in the articles of association or other provisions that apply to the Corporation in question.

The third element: the Criminal Liability imposed on the Corporation and/or its administrator. The Corporation's Board of Trustees has restricted all functional position in the organizational structure of the Corporation.

In order to achieve legal certainty about the criminal liability of corporations in Indonesia then recommended to the President and the House of representatives (DPR) to immediately ratify the draft Bill of the Criminal Code and made changes to accommodate such things as follows:

1. The provisions contained in article 52 of the Penal Code Bill should be abolished to avoid the perception of a crime Corporation is a criminal offence that is not serious.
2. Criminal sanctions subject pure not only fines but also imprisonment for administrators who are responsible for these criminal acts in particular crimes committed by corporations.
3. The perpetrators of criminal acts, they should also be held responsible for the criminal and can be sentenced to imprisonment, therefore there needs to be an additional article in the Paragraph 6 part II book I of the Criminal Code, Bill to affirm this.
4. Not just basing on the doctrine of liability and strict liability type but also refers to the doctrines of other more recent and better able to deliver responsibility criminal corporations such as corporate mens rea or specific corporate offenses doctrine.

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