
THE DEVELOPMENT OF CORPORATE REGULATION AS A SUBJECT OF CRIMINAL LAW IN INDONESIA

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Abstract

The development of science and technology brings social changes, one of which is in the economic field, which requires the development of economic actors, from individuals to corporations. This gives rise to crimes committed by individuals or corporations. Individuals who commit crimes will face criminal penalties, but the Criminal Code does not establish criminal penalties for corporations that commit crimes. The concept of the corporation as a subject of criminal law is unclear. For this reason, this article aims to determine the basis for corporations to be subject to criminal law and to discover the development of corporate regulations as legal subjects in Indonesia. The research method used in this research is doctrinal, namely, normative legal research methods using secondary data. As criminal law subjects can be equated to human beings, the results include companies. Because it has rights and obligations imposed by the law, and because corporate talents are equated with human skills. The Draft Criminal Code, which will eventually be applied to the entire criminal law system, identifies corporations as legal subjects of criminal conduct. Consequently, any legislation outside the Criminal Code is no longer required to precisely regulate, unless the legislation outside the Criminal Code decides otherwise or deviates.

Keywords: *Corporations, Legal Subjects, Criminal Law.*

A. INTRODUCTION

Social change is caused by the development and modernization that occurs in a country. These changes are changes that are made intentionally that will bring the community to the changes that have been planned and desired. Development is a natural process that cannot be separated from human relations in a society that is accelerating in the current era of globalization, where the physical boundaries of a country are no longer an obstacle. The rapid development of information technology greatly influences the progress of society in various parts of the world (Wibeck et al., 2019).

The Republic of Indonesia is a country that intensively carries out development in various sectors. Several forms and developments in multiple sectors can be seen in the economic, technological and social sectors. The form of economic growth and development in Indonesia will have various impacts, both positive and negative impacts (Hangabei et al., 2020).

The rapid development in the economic sector, especially in the business world, where the community in carrying out business activities is no longer straightforward. For example, previously, it has expanded to conducting business activities independently (Zhuang et al., 2019). A form of cooperation carried out by individuals will give birth to a new order, namely an association, by combining their respective capital into one significant capital to carry out business activities to obtain the maximum profit. This association is known as a Business Entity or Company (Mensah, 2019).

The development and development above will not be separated from the development of science and technology, which will have a positive or negative impact. The positive impact is that we can take advantage of the development of science and technology for the welfare of

the people, while the negative impact is that the use of the development of science and knowledge is misused, which makes people miserable. In economic development, business entities have a huge role in achieving the nation's ideals, namely realizing prosperity for all Indonesian people (Raisch & Krakowski, 2021).

Today, business entities or corporations in the community are categorized as either business entities with legal entities or business entities without legal entities. The Commercial Code governs the regulatory structure of various commercial entities (KUHD). All business entities, whether legal or not, are referred to as corporations (Achmad, 2022).

Corporation in Latin, substantially (substantivum), is derived from the word "corporare," which is composed of the word "corpus," which in Indonesian means body or gives body or body. A corporation is an entity created by law, Satjipto Rahardjo states this. According to him, the created body consists of a corpus, or its physical structure, and the law includes an animus element that needs the body to have a personality; hence, the legal entity is a legal creation, and its death is likewise governed by the law (Rahmadia et al., 2020).

The globalization era experienced by all world components, including Indonesia, strengthens the corporation's role. As the subject of a strong global economy compared to individuals, corporations have stronger pressure than individuals because the potential for losses is more significant (Liao & Wang, 2021).

In various fields of business in the economic sector, the existence of corporations has a negative impact, as well as business activities carried out by individuals. Corporations as social actors have a vast and essential role in the increasingly complex and advanced people's lives (Murdifin et al., 2019). The phenomenon of globalization and the extraordinary development of information and communication technology, especially "cyber" technology such as the internet, has become a factor in the development of new types of business transactions and the abandoning of primitive ways. Advances in information and communication technology also impact the development of crime, especially in the economic or business fields, whether carried out by individuals or corporations (Sima et al., 2020).

The development of crimes committed by individuals or corporations can be seen in the Criminal Code (KUHP), where it has been regulated that individuals who commit a crime will certainly get criminal sanctions for them. However, the criminal sanctions for corporations if they commit a crime in the Criminal Code, have not regulated it (Situng et al., 2022). Judging from the aspects of civil law regulated in the Civil Code (KUHPer), corporations have been mentioned as legal subjects like individuals. This is because corporations also have rights and obligations in carrying out legal actions like individuals (Fauzan & Permana, 2022).

Today, the concept of the corporation as a subject of criminal law is unclear. Regulations regarding criminal liability for corporations are still very minimal, especially regarding the separation of criminal liability of corporations and management (human subjects) when a criminal act occurs within the corporation. The unclear regulation of criminal liability for corporations has resulted in at least a few legal cases where corporations can be prosecuted for their behavior contrary to legal provisions (Schoultz & Flyghed, 2020).

Based on the brief explanation above, the researcher wants to know how the corporation's foundation is made a subject of criminal law and the development of corporate regulation as a legal subject.

B. LITERATURE REVIEW

1. Legal Subject

Utrecht defines a legal subject as a supporter of rights, namely humans or bodies which, according to the law, have the power to become supporters of rights. Then, Sudikno Mertokusumo explained that legal subjects are anything that can obtain rights and obligations

from the law. Furthermore, Subekti's opinion states that the subject of law is the bearer of rights or subjects in law, namely people (Mwanza, 2022).

Meanwhile, Purbacaraka and Soekanto explained that legal subjects are parties related to the legal system. The characteristics of legal subjects include the following:

- a. Independent because it has full ability to act;
- b. Protected because (considered) unable to act;
- c. An intermediary who, although fully capable, acts is limited to the interests of the mediated (arranged) party (Yubaidi, 2020).

Furthermore, Purbacaraka and Soekanto explain that the nature of this legal subject is distinguished between:

- a. The natural person/natuurlijk persoon is a human being without exception;
- b. Legal person/rechtpersoon, namely:
 - 1). The integrity of assets, for example, waqf and foundations
 - 2). A form of relationship structure, such as cooperatives, limited liability companies in the field of Civil and State Law and its part in the area of Tantra/State Law;
- c. Character or status: in this context, status can be used in various fields of law, for example, husband and wife in family law or heirs in inheritance law.

It is important to note that the term legal subject comes from the Dutch language, from the word *rechtssubject*, which means supporters of rights and obligations. Then, who is the legal subject? Those who are categorized as legal subjects are humans and legal entities. As legal subjects, from birth to death, humans act as carriers of rights and obligations (Oktavian & Suwono, 2018).

Then, as legal subjects, bodies or associations have rights and carry out legal actions like humans. C.S.T Kansil explained that bodies and associations could own their assets, participate in legal traffic through their management, and be sued before a judge. These bodies or associations are called legal entities (*rechtpersoon*), meaning people (*persoon*) created by law (Bafadhal, 2021).

Bryan A. Garner explained that a legal entity is often referred to as a legal entity, juristic person, or artificial person in English literature. In Indonesian law, as explained in Article 1654 of the Civil Code, a legal entity is defined as a legitimate association as well as private and influential persons to carry out civil acts without prejudice to the legislation if power has been changed, restricted, or subdued (Mullen, 2021).

Regarding legal entities as legal subjects, Hapsari explained that legal entities are equated with individuals. The implication is that legal entities can be sued or sued in court. Furthermore, this condition has the consequence that the existence or absence of a legal entity does not depend only on the will of its members but is also determined by law (Kurniawan et al., 2019).

Chidir Ali explained that every legal entity that can be said to be legally responsible must have the following four main elements.

- a. The assets are separated from other legal subjects.
- b. Having specific ideal goals that do not conflict with the laws and regulations.
- c. Has an interest in legal traffic.
- d. A management organization is organized according to the prevailing laws and regulations with internal restrictions (Nurhanifah & Kusdarini, 2022).

2. Criminal Law

Criminal law, as an independent part of Public Law, is one of the legal instruments whose existence has been very urgent since ancient times. This law is fundamental in ensuring public security from the threat of criminal acts, maintaining state stability and (even) being a

“moral institution” that plays a role in rehabilitating criminal offenders. This law continues to develop following the demands of criminal acts that exist in every era (Berg, 2018).

Criminal law governs activities that are prohibited by law and resulting in the imposition of sanctions for those who conduct them and meet the elements of the Criminal Law's prohibited actions. Such as acts prohibited by the Criminal Code, the Corruption Law, the Human Rights Act and so on (Koto, 2021). Criminal law regulates what actions are forbidden and provides punishment for those who violate them. Acts that are not permitted in criminal law are murder, theft, fraud, robbery, persecution, rape and corruption (Chuasanga & Victoria, 2019).

While Dr Abdullah Mabruk an-Najar puts forward the definition of Criminal Law as “The collection of legal rules that determine criminal acts prohibited by law, the penalties for those who commit them, the procedures that the defendant and his court must pass, as well as the punishments set for the defendant” (Kartika, 2020).

Criminal law is a subset of a nation's general law, which offers the fundamental guidelines for:

- a. Determine which actions should not be carried out and are therefore prohibited, along with threats or punishments in the form of specific offenses for those who breach the prohibition.
- b. Determine when and under what circumstances people who have breached the restriction may be punished or condemned to the criminal punishment that was threatened.
- c. Determine the penalties that can be imposed if a violation of the restriction is suspected (Zulyadi, 2020).

According to Sudarto, the definition of crime itself is misery given by the state to someone who intentionally violates the law's provisions (criminal law) so that it is felt as misery (Putri, 2021).

C. METHOD

This research employs a doctrinal methodology, specifically the normative legal research method with a statutory approach. The data used in the writing of this research were acquired from secondary sources. This research is conducted by library researchers in order to acquire data for solving research issues. In this normative legal study, qualitative analysis is utilized to analyze the data, where the material or legal documents will be investigated in depth and will provide descriptions of the research topic to assist the author in drawing the correct conclusion.

D. RESULT AND DISCUSSION

1. Corporate Foundations as Subjects of Criminal Law

In light of the fact that corporations are legal entities, the issue of corporate criminal culpability is not straightforward. This issue arises from the principle that there is no crime without guilt. Due to the fact that mens rea or guilt is an attitude of the heart, which only occurs in natural beings, only natural humans can be held criminally liable.

Universities are the Roman legal treasures of corporate bodies, including governments, towns, and private associations or societies. *Societas delinquere non-potest* was known during a time when universities were not comparable to humans with a will and soul; universities were a fiction that lacked a body and soul and hence could not be punished.

The principle of *societas delinquere non-potest* explains why corporations are not recognized as legal subjects in the Criminal Code. Everything that potentially have rights and obligations is subject to law. The law grants legal subjects the right to exercise power and authority, whereas the law imposes legal subjects with obligations. Legislators can first

consider solely human behavior to be a topic of criminal law (individuals). Individuals are the subjects of criminal law as defined by the Criminal Code (KUHP). Prior to its creation, corporate thought has not been viewed as a subject of criminal law, but corporations have been viewed as a subject of criminal law. Where is the consideration by legislators of the reality that persons occasionally do illegal acts through organizations when creating offenses?

Today, corporations play a significant role in the nation's economy in accordance with economic development and growth in the face of an industrialization age being developed by the government. Concerning the renewal of criminal law in Indonesia and the growth of law as a vehicle of social reform, the law itself requires revision and direction. Reform of the criminal code is directly tied to its context and urgency.

Regarding the Draft Draft of the National Criminal Code, Pancasila ideals must permeate the notion of the National Criminal Code's articles. Therefore, companies are acknowledged as criminal law subjects in the Draft Criminal Code, considering the progress in finance, economy and trade and the development of organized criminal acts domestically and internationally. Currently, the subject of criminal law is not limited to natural persons but also includes corporations.

In Indonesian law, the term corporation, also known as a Civil Company, is exclusive to Civil Law and has been positioned as a legal topic. Article 1654 of the Civil Code states that a corporation can be defined as “a civil company is an agreement between two or more people, who promise to include something into the company with the intention that the profits obtained from the company are divided among them”.

According to E. Utrecht, companies are placed as criminal law subjects that are recognized in special criminal law (outside of the Criminal Code), but corporations are not recognized as legal subjects in the Criminal Code. According to him, the content of the threat of punishment against a corporation of a legal entity because it is suspected of committing an offense (criminal act) is only applicable in the event of a breach under Article 59 of the Criminal Code. E. Utrecht, who was punished in accordance with this article, was a member of the management or a commissioner of a corporation, not the collective responsibility (collectieve aansprakelijkheid) of members and commissioners of a company with a legal existence.

Despite not being a human (person), a legal entity (rechtsperson) is a legal subject with rights and responsibilities, in this case in the form of a legal entity or organization consisting of a collection of persons who join together for a certain purpose and possess certain assets. In legal traffic, the legal entity is therefore represented by an administrator who acts for and on behalf of and for the legal entity's interest (representing it).

Regarding corporations as legal subjects, corporations that have rights and obligations are capable of committing criminal acts that can be held accountable. On that basis, Muladi stated that several reasons justify why corporations are recognized as perpetrators of criminal deeds: 1). Based on an intergalactic philosophy, everything should be measured based on balance, harmony and harmony between individual interests and social interests; 2). Based on the principle of kinship in Article 33 of the 1945 Constitution; 3). To eradicate anomie of success (success without rules); 4). For consumer protection; and 5). For technological progress.

The scientific study of corporate responsibility as a legal entity in committing criminal acts has not only become a national issue but has become a global issue so that the regulation and placement of corporations as a subject of criminal law cannot be denied anymore. Apart from being a global issue, corporations are used as subjects of criminal law against the background of different histories and experiences in each country, including what happened in Indonesia. The development of industrialization and progress in the economic and trade fields have encouraged global thinking that the subject of criminal law is no longer limited to natural

humans but also includes corporations because corporations can also commit certain criminal acts.

On the basis of identification theory, it will be less difficult to determine whether or not a corporation has criminal liability. According to the identification hypothesis, board members and other corporate officers can only be held accountable for their errors. Several requirements must be completed in order to demand accountability from a company for the actions of its management or employees:

- a. The action is carried out by people who have the authority to do so or must be within the scope of their power;
- b. The action taken by the person does not exceed his authority;
- c. The action is carried out to fulfill the aims and objectives of the corporation and does not exceed the authority to act of the corporation;
- d. The action is for the benefit or benefit of the corporation.

With this, it can be said that a corporation has committed a criminal act if the crime is committed by the management or employee of the corporation, which is still within the scope of its authority and *intra vires* in the sense that it is still part of the goals and objectives of the corporation and the action is carried out for the benefit of the corporation. If not, then it is not a corporate crime.

2. The Development of Corporate Regulations as Subjects of Criminal Law in Indonesia

Academics and practitioners have welcomed improvements in criminal law relating corporate crime, a specific type of crime involving a corporation. Occasionally, corporate crime is also referred to as organized crime or corporate crime. In the Dutch civil law system, which is still adhered to by the Indonesian legal system, legal subjects are divided into two: humans (person) and legal entities (*rechtsperson*). Regarding the division of legal subjects, if the corporation is a legal subject that can carry out legal relations, then the corporation is a qualification of a legal entity (*rechtsperson*).

Today the term corporation continues to grow and can be found in various essays. Even in Indonesia, various legal provisions issued by the government also include the words corporation, for example, in Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law no. 20 of 2001 (Corruption Act), Law no. 32 of 2009 concerning Environmental Protection and Management (Environmental Law), Law no. 31 of 2004 concerning Fisheries (Fisheries Law) and other laws and regulations.

Various laws governing corporations have differences in terms of providing definitions, scope, procedural law, types of sanctions and forms of criminal liability. For example, in the Anti-Corruption Law, formulating a corporation is a group of people and assets that are organized, whether they are legal entities or not. Generally, a corporation is an association of a group of organized and wealthy people to seek profit, both legal persons and non-legal entities.

Thus, corporations, as the subject of criminal acts committed by legal or non-legal organizations, are deemed capable of committing criminal acts (corporate crime) that are capable of causing injury and are liable under criminal law. In corporate economics, all operations are geared toward maximizing profit. Therefore, the corporation can carry out actions that can harm others in achieving its goals.

Indonesia has rules regarding economic offenses that imitate Article 15 paragraph (1) WED (*Wet ob te Economische Delicten*) 1950 Netherlands, where criminal charges and criminal decisions are made against corporations. The management can be sentenced to remain in effect in addition to or regardless of the lawsuit against the corporation. In the Netherlands, 1976 the law dated June 23, 1976, which considers legal entities or corporations to be able to

commit criminal acts and can be responsible for all legal systems and place them in the General Section (Book I) of the Criminal Code, it also states that provisions outside the Criminal Code which contain criminal liability against corporations is abolished.

The Indonesian Criminal Code, a relic of the Dutch administration, is still in use, but Articles 45 to 50 of the new Criminal Code Bill include the concept of businesses as criminal actors who can be held accountable. The presence of corporations that can be employed as criminal actors can be deduced from a number of clauses in the Criminal Code Draft, including:

- a. In principle, in the Draft Criminal Code, the concept of a corporation has been accepted as a legal entity that can be subject to criminal law.
- b. Thus, the corporation as a legal entity can be prosecuted and sentenced to criminal penalties.
- c. Corporations can account for criminal acts that include criminal acts committed by people who have functional positions (functioneel fathers) in the corporation who commit the act within the business environment of the corporation in accordance with its articles of association.
- d. Only some of the laws and regulations can be applied to corporations, for example, it is impossible to apply imprisonment or capital punishment to corporations.

The expansion of the subject of criminal law to include corporations was introduced in the Hoarding of Goods Act of 1951, which was then generally introduced in the Law on Economic Crimes of 1955. Now many laws include the economic field that determines corporations.

Today's legal products describe concerns involving persons who commit illegal activities and who can be held accountable under criminal law. For the aforementioned, there are three regulatory models. First, the model who commits crimes and those accountable under criminal law are also individuals (Article 59 of the Criminal Code). The two models who do it are individuals and businesses, but only individuals are held accountable under criminal law (Law No. 10 of 1998 concerning Banking). Lastly, the third model binds individuals and companies and may account for individuals and corporations (Law No. 7 of 1955 concerning Investigation, Prosecution and Judiciary of Economic Crimes).

In Indonesia, the development of laws and regulations governing criminal acts committed by individuals and corporations and which only people are responsible for are:

- a. UU no. 1 of 1951 concerning Manpower
- b. UU no. 2 of 1951 concerning Accidents
- c. UU no. 3 of 1951 concerning Labor Inspection
- d. UU no. 12 of 1951 on Firearms
- e. UU no. 3 of 1953 concerning the Opening of Pharmacies
- f. UU no. 22 of 1957 concerning Labor Settlement
- g. UU no. 3 of 1958 concerning the Placement of Foreign Workers
- h. UU no. 83 of 1958 concerning Aviation
- i. UU no. 5 of 1989 concerning Telecommunications
- j. UU no. 7 of 1981 concerning Mandatory Reporting on Employment
- k. UU no. 2 of 1981 concerning Legal Metrology
- l. UU no. 3 of 1982 concerning Compulsory Registration of Companies
- m. UU no. 7 of 1992, in conjunction with Law no. 10 of 1998 concerning Banking

Then, the creation of legislative regulations governing those who commit criminal crimes of individuals and companies and those responsible for them under criminal law, as well as persons, includes the following:

- a. UU no. 7 of 1955 concerning Economic Crimes
- b. UU no. 5 of 1984 concerning Industry
- c. UU no. 6 of 1984 concerning Pos

- d. UU no. 8 of 1995 concerning the Capital Market
- e. UU no. 5 of 1997 concerning Psychotropics
- f. UU no. 22 of 1997 concerning Narcotics
- g. UU no. 23 of 1997 concerning the Environment
- h. UU no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition
- i. UU no. 8 of 1999 concerning Consumer Protection
- j. UU no. 20 of 2001 concerning the Eradication of Corruption Crimes
- k. UU no. 25 of 2003 concerning the Crime of Money Laundering

In conjunction with the numerous particular regulations pertaining to corporations that commit crimes, these regulations contain criminal penalties for corporations. Because a business lacks a physical embodiment, the criminal punishments that can be imposed are limited to fines and penalties rather than traditional criminal sanctions.

In general, the imposition of fines on businesses will be optimal due to the relative simplicity of their execution, especially if there has been a previous confiscation of corporate assets that are deemed to be intimately related to the proven crime.

In addition to the implementation of the major punishment in the form of a fine, the corporation may get additional sanctions in various forms, such as temporary license revocation, prohibition from conducting specific enterprises for a period of time, or dissolution.

E. CONCLUSION

Based on the preceding description, it may be inferred that a corporation is an association of individuals with the intention of profiting, whose existence is legally recognized (legal entity). As subjects of criminal law, corporations are comparable to humans. Because the law establishes rights and responsibilities, corporate abilities are equated with human skills. The Criminal Code Bill establishes corporations as legal subjects of criminal activities, which will eventually be applicable to the entire criminal law system. Consequently, any legislation outside the Criminal Code is no longer required to regulate, unless the legislation outside the Criminal Code decides otherwise or deviates.

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