



Corporate Crime in Indonesian Criminal Law System

Eka Ardianto Iskandar

Lecturer of Faculty of Law, University of Pakuan, Bogor, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i5.1889>

Abstract

The Criminal Code (KUHP) has not listed corporations as legal subjects that can be held criminally liable. This is because the description of the perpetrators of crimes is still often associated with acts that are physically carried out by perpetrators while in the socio-economic environment, a criminal offender does not always need to physically commit a crime. Corporate actions are always manifested through human actions that are normally carried out by administrator or management. Therefore, the delegation of management responsibility can become corporate actions (Legal entity) if the act in the socio-economic environment acts as a corporate act. Specific to economic crimes in their efforts to solve them are still using Emergency Law Number 7 of 1955 on Economic Crimes, where corporations can be imposed criminal sanctions when committing economic crimes that fall within the scope of their business activities, theoretically and practically, criminal law subjects that can be accounted for criminally are humans (*natuurlijke persoon*) and legal entities (*rechtspersoon*).

Keywords: *Corporate Crime; Criminal Law; Indonesia*

Introduction

In an effort to fill independence, we embrace the ideology welfare state, which mandates state administrators and governments to actively realize welfare for their people. This is in accordance with the objectives of the state as intended in the fourth paragraph of the Preamble of the 1945 Basic Law (1945 Constitution) which shows the ideals and objectives of the state to achieve prosperity for its people.

The Preamble to the 1945 Constitution in which contains four main points, which are (1) first point of thought: Unity; (2) second point of thought: Social justice; (3) third point of thought: Democracy; and (4) the fourth point of thought: Deity of the Almighty and just Humanity and civilized. These four points of thought are the philosophy of the Pancasila which then set forth in the Body of the 1945 Constitution in the form of Articles. The management in the economic field depart from the thought to realize the welfare of the people. The arrangements are contained in Chapter XIV under the heading National Economy and Social Welfare, which includes 2 (two) articles, namely Article 33 and 34 of the 1945 Constitution.

Considering that efforts to realize welfare for the people cover a wide range of aspects of life, which includes the field of IPOLEKSOSBUD HANKAMAG (Ideology, Politics, Economy, Social, Culture, Defence-Security, and Religion). Therefore, in order to achieve maximum results the Government requires participation or the role of civil society / private sector in various aspects of activities that can be reached, the instruments of which are included in the 1945 Constitution of the Republic of Indonesia are also regulated and further elaborated in various laws and regulations below, which may take the form of: Resolution of the People's Consultative Assembly, Laws/Government Regulations Substituting Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Regency / City Regulations (Republik Indonesia, 2011).

The development of the world in the era of globalization and digitalization at this time brings us the need to adjust to the demands of people's lives as well as the demands of the nation and state. Therefore, our national law which (must) be enacted must not only have internal dimensions (but only as a member of the world community), inevitably Indonesia will be very influential and influenced by everything that happens outside Indonesia.

Globalization and liberalization as well as the development of science and technology have also encouraged the growth of various new crimes in the sectors of economy, business, and finance, including corporate crime where the impacts and victims resulting from these criminal acts are far more dangerous compared to criminal acts or conventional crimes such as robbery, extortion, fraud or ordinary theft. It is said so because new crimes in the sector economy, business and finance have their own characteristics such as: white collar crimes, transnational crimes, organized crimes, transnational organized crimes, extra ordinary crimes, criminal acts or structured crime, business crimes, international criminal acts and new dimension of crimes or even the author considers that in certain cases, crime in the economic field can be categorized as crimes against humanity. Therefore, new crimes in the sectors of economy, business and finance can potentially undermine the financial system and the economy in a country or even the world economic system (Kristian, 2016, p. 3).

Community participation in economic activities can be realized by establishing business entities and legal entities such as *Commanditer Venonschaft* (CV), Firms, *Limited Liability Companies* (PT), Foundations and others. Theoretically, in civil law, legal subjects are divided into two, namely human legal subjects (*naturlijke persoon*) and legal subjects that are not human but carry out their functions as practiced by humans in the form of legal entities (*recht persoon*). Meanwhile, in criminal law, legal subjects other than person are also known as other legal subjects in the form of legal entities (corporations).

In criminal law, the description of the perpetrators of a crime is still often associated with acts that are physically carried out by the perpetrators (*fysieke dader*). In a socioeconomic environment or in economic traffic, a criminal offender does not always need to physically commit the crime. Because corporate actions are always manifested through human actions (directors; management), the delegation of management responsibilities (human, *natuurlijke persoon*) to become corporate actions (legal entity; *recht persoon*) can be done if the act in public traffic acts as a corporate act. This is known as the legal concept of functional actors (*functionele dader*).

The Criminal Code (KUHP) still do not accept the idea that the management (directors) of corporations that can be held liable under criminal law (criminal liability). However, in its development, corporations can also be held liable. In Article 46 paragraph 1 of the Draft Law (RUU KUHP) it is stated that corporations are subject to criminal acts. Corporations as referred to in paragraph (1) include legal entities in the form of limited liability companies, foundations, cooperatives, State Owned Enterprises (BUMN), Regionally Owned Enterprises (BUMD) or the equivalent, as well as associations of both legal

entities or business entities in the form of firms, partnerships limited partnership, or the equivalent, in accordance with statutory provisions.

The settlement of criminal cases in the socio-economic field or economic crimes involving corporations as the perpetrators still refers to Emergency Law Number 7 of 1955 concerning Economic Crimes and in its application in the field, it turns out that there are still many obstacles encountered, especially difficulties in terms of proof and qualification of types of acts criminal, public prosecutors often have difficulty in preparing their indictments in corporate crime cases. Based on this background, the writer tries to raise the issue with the title "Philosophical Aspects of Corporate Crime".

Research Method

This study employs the normative legal research method. This method is used because this research is related to and depart from positive or current legal aspects, in the form of statutory provisions and other provisions which are then linked to practices occurring in the field.

Research approach is a way of conducting research (Arikunto, 2002, p. 23). This type of research is a logical consequence of Legal Studies which is classified as a normative science that is *sui generis* (Marzuki, 2008, p. 24). With empirical juridical research (juridical law research), more than one approach can be used (Ibrahim, 2012). This study utilizes both statutory approach, comparative approach, and philosophical approach.

Analysis and Discussion

Concept of Corporation in Criminal Law

The concept of corporation in criminal law is closely related to the definition of "legal entity" in the field of civil law. This is because the term "corporation" is related to the term "legal entity" (rechtspersoon) as recognized in civil science. According to Subekti and Tjitrosudibio (as cited in Priyatno, 2020, pp. 1-2), in their legal dictionary, it states that a corporation is a corporation which is a legal entity.

Rudi Prasetyo (as cited in Priyatno, 2020, pp. 1-2) in his article entitled Corporate Development in the Process of Modernization and Deviations, states that the word corporation is a term commonly used among criminal law experts to refer to what commonly used in other fields of law, especially in the area of civil law, as 'legal entities', or what in Dutch is called *Rechtspersoon*, or which in English are called legal entities or corporations.

According to Satjipto Raharjo (1986, p. 10), a corporation is a body of legal creation. The created body consists of "corpus" that is the physical structure and the depth of the law incorporates the element of "animus" which makes the body have a personality. Because the legal entity is a legal creation, so except for its creation, its death is also determined by law.

Corporate Crime and Philosophical Aspect

The term corporate crime or corporate crime is often used in the context of white-collar crime, organizational crime, organized crime, *georganiseerde misdaad*, *groepsriminaliteit*, *misdaad onderneming*, business crime, and syndicate crime. Even Simon and Eitzen (as cited in Sahetapy, 1994, p. 1), do not use

the term crime, but use 'elite deviance' which explained as "... elite Deviance may be either criminal or non-criminal in nature."

The interesting thing from the many terms associated with corporate crime shows that this type of crime has special characteristics and when considered in terms of the perpetrators, these are:

- a) The perpetrator is classified into the elite;
- b) Performed by an organization or in an organized manner;
- c) Being in the area of business or economic scope.

Criminal acts by corporations within the scope of economic crimes lead to the existence of victims, such as competitors, state, employees, consumers, consumers, the shareholders or investors, shareholders (Koesoemahatmadja, 2011, p. 2).

In order to understand the philosophical aspects of this corporate crime, the writer departs from the analysis that is related to these special characteristics. In relation to this, it turns out that corporate crime is, by its nature and nature, not a new item, what is new is its packaging, form, and appearance. Its nature is basically the same, even the worrying impact and felt by community have been known since long ago.

In his book *Occupational Crime*, Gary S. Green (1990) states that symptoms with various names are not a new phenomenon, because more than three thousand years ago, a Pharaoh or king in Egypt named Horemheb in the 14th century before AD has banned what is now called corruption (Judicial Bribe-taking). He issued a decree with the threat of capital punishment against those who commit corruption, which at that time was called crime against justice (Noonan, 1984, p. 11); and it turns out that the practice of corruption as practiced today by using different quality materials, is not a new phenomenon either. Such ancient times in the Greek era there is a family known as the Alkmaenoids, who were given the trust to build houses of worship with marble, turned out to use cement with a layer of marble, and not only by building buildings people do dirty practices, but also in food, as now entrepreneurs often use quality materials that are prohibited. In England, when King Henry III (1216-1272) ruled, he put threat against those who stockpiled food ingredients so that they controlled the price of the goods (Geis, 1988, p. 10). Whereas in 1890, the United States Congress had enacted the "Sherman Antitrust Act" which prohibits unfair competition through what is Price-Fixing funeral (Koesoemahatmadja, 2011, p. 5).

In the economic sphere, Simon and Eitzen (1982, p. 3) write that "The senate has revealed that between 1945 and 1976 approximately 350 corporations have admitted to making bribes of some 750 million dollars to official of foreign governments." These corporations in doing bribery did not notify the shareholders, while the leaders of the companies involved in bribery, the leaders in the country, were also not charged or jailed (Koesoemahatmadja, 2011, p. 6).

Here it seems clear, that fraud in various forms is done in the business community. Simon and Eitzen (1982, p. 4) stated in this connection that "advertising is also full of examples of fraudulent claims for products. And the stock market has been manipulated to defraud clients ... ". In addition, the most disliked of this big business is that "corporations are guilty of what we might call chemical crimes."

An example in this context is the case of *The infamous Love Canal* where between 1942 and 1953, the Hooker Chemical Company dumped 20,000 tons of toxic chemical waste into the *Love Canal* near Niagara Falls, New York. Then in 1953, the waste disposal site was sold for one dollar to an education agency. Hooker Chemical Company did not inform of the place where the toxic waste was dumped. In 1977 high toxic black sludge began seeping into the cellars of the school and nearby residences. Tests showed the excellence of eighty-two chemicals in the water, water, and soil or Love

Canal, among them twelve known carcinogens including dioxin, one of the deadliest substances ever synthesized. It turns out that this toxic waste disposal site brings consequences such as high rates of birth defects, miscarriages, chromosomal abnormalities, liver disorders, respiratory and urinary diseases, epilepsy, and suicide. It turns out that it is not easy to deal with large corporations through legal channels (Koesoemahatmadja, 2011, p. 7).

One of the characteristics of corporate crime that has been mentioned above, is that the perpetrators are classified as the elite, namely in the term sociologist Edwin Sutherland called as "White Collar Crime". In a term also used as the naming of the book Sutherland defines that white-collar crime as "crime committed by a person of respectability and high social status in the course of his occupation" (Podgor, 1999, p. 1).

Whereas the US Attorney General in its 1983 annual report defines white collar crime as:

illegal acts that use deceit concealment rather than the application or threat of physical force or violence to obtain money, property, or service; to avoid the payment or loss of money; or to secure a business or professional advantage. White collar criminals occupy positions of responsibility and trust in government, industry, the professions, and civic organization (Podgor, 1999, p. 2)

In the November 1986 report, the US Department of Justice's statistics bureau on the level of legal violations provided the brief definition, that is "White collar crime as nonviolent crime for financial gain committed by deception" (Podgor, 1999, p. 2). The bureau then provides five crime categories for statistical comparison, which includes fraud, forgery, embezzlement, counterfeiting, and certain regulatory offenses.

In relation to this White Collar Crime (WCC), in his paper entitled Corporate Criminal Liability in Corporate Criminal Acts, Mardjono Reksodiputro (2007), by quoting Sutherland's opinion that limits the WCC as "a violation of criminal law by the person of the upper socio-economic class in the course" of his occupational activities", suggests that the WCC concept was initially limited to criminal acts that existed in criminal law. However, later by criminologists, the conception of WCC was expanded beyond the limits of criminal law. Debate on this subject (a.l. by Paul W. Tappan, "Who is the Criminal", Amer. Socia, Rev, Vo. 12, 1974) concerns Sutherland's writing of *Is White Collar Crime Crime?* (1945) and later *Crime of Corporations* (1948). From this debate it becomes clearer that the notion of "person" in the previous WCC formula is associated with those who run the corporation. This corporate crime is basically a crime by humans (*naturlijke persoon*) which has a "high social status", and from the debate it was concluded that Sutherland's formula still needs to be added by one more element, namely "violation of trust". Other elements are:

- a) it was a crime;
- b) Committed by a person of respectability;
- c) Of high social status;
- d) In the course of his occupation;
- e) In carrying out his position or duty.

It is important to distinguish WCC from "ordinary crimes committed by upper class people" (murder, robbery, rape, ordinary theft, etc.). Meanwhile, the element of "violation of trust" is important in understanding what is meant by "corporate crime" as part of the WCC (Reksodiputro, 1994, pp. 66-67).

Furthermore, Mardjono Reksodiputro (1994) stated that corporate crime as part of the WCC still needs to be differentiated between "corporate crime" and "small business offences" (crimes committed by companies or commercial businesses that have a small or limited scope of activities). In other words, the conception of corporate crime is only aimed at crimes committed by "big business" and should not be

linked to crimes by "small scale business" such as fraud committed by stalls or shops in our neighborhoods or by motor vehicle repair shops and other (Reksodiputro, 1994, p. 67).

Corporate crime is always related to economic activities or activities related to the business world (business related activities). Joseph F. Sheley (1987, p. 108) gives example as follow:

- a) Defrauding stockholders (e.g. false reporting company profits);
- b) Defrauding the public (e.g. fixing prices and misrepresenting products);
- c) Defrauding government (e.g. avoiding taxes);
- d) Endangering the public welfare (e.g. causing industrial pollution);
- e) Endangering employees (e.g. not caring about work safety);
- f) illegal interventions in the political process (e.g. making unlawful campaign contributions).

Such crimes are very difficult to be identified and even if they are known to be proven before a court there remains many legal problems. It is difficult to be identified because it is always done in secrecy and often victims of crime do not know the losses they have experienced. It is difficult to find evidence based on law, because the formulation of offenses specifically for corporate crimes is indeed difficult to make (and will remain problematic), and it is also difficult to determine who should be responsible for this corporate crime (Reksodiputro, 1994, p. 68).

The losses caused by this corporate crime for individuals, society and the state are enormous. What is usually seen is only the "tip of the iceberg", such as a conspiracy in fixing prices for basic food items or misleading advertisements of household goods will cause huge financial losses to the income of citizens. Items that are not safe to use can cause bodily harm to the wearers. Environmental pollution and environmental damage cause losses that are not only experienced in the present, but are also felt in the future (Reksodiputro, 1994, p. 68).

Relevant to this, the seventh UN Congress in Milan in 1985 discussed several types of crimes with the theme *New Dimensions of Crime in Development Contexts*, and differed from the old opinion which used an approach with a negative relationship, which saw crime as one of the consequences of adverse conditions the economy (which means also when the economic situation improves crime will decrease). Therefore, the approach with a positive relationship (direct relationship), see that the phenomenon of crime is also a continuation of economic activity and growth. Described by the congress, for example that "a new dimension of criminality is the very substantial increase in the financial volume of certain conventional economic crimes", such as tax violations, capital transfers that violate the law, insurance fraud, invalidation of invoices, smuggling and others, while the perpetrators are in the form of "legal entities" or in the form of entrepreneurs who often have a respected position in society, their crimes are not or are rarely carried out with physical violence (such as robbery or robbery), but more often they are carried out under the guise of "legitimate economic activities". This crime can be called economic crime (economic crimes). Thus, it has become a reality today that legal entities or corporations increasingly play an important role in people's lives, especially in economic law (Muladi & Priyatno, 1991, p. 6).

In relation to business crime, Conklin (as cited in Arief, 1990) formulates and identifies the elements as follows:

1. An illegal act, punishable by a criminal sanction;
2. An illegal which is committed by an individual or corporation in the course of a legitimate occupation or corporation or pursuit in the industrial or commercial sector for the purpose of:
 - a. obtain money or wealth;
 - b. avoid payment of money or avoid loss / loss of wealth; or;
 - c. obtain business or personal gain for the purpose:

- obtaining money or property;
- avoiding the payment of money or the loss of property; or
- obtaining business or personal advantage.

Regarding the term economic crimes, Sunaryati Hartono (1990) believes that the term and definition of economic crimes is broader than business crimes. He (Sunaryati Hartono, 1990) stated the opinion of Finn and Alan R. Hoffman, that the consequences of economic crimes against the community were huge, not only socially and even had a political impact. Regarding the actions that are categorized as business crimes, he (Sunaryati Hartono, 1990) stated Hoeber's opinion which categorized the actions as follows:

- a. Bankruptcy frauds (al. concealment or transfer of property; false statements in proceedings, false claims of creditors, planned bankruptcies);
- b. Bribery;
- c. Computer crimes;
- d. False claims against the government;
- e. Food, Drug and Cosmetics act Offences;
- f. Violations of Securities Laws;
- g. Monopolies and Antitrust Offences;
- h. Embezzlement and theft.

In addition to business crimes, the term business tort is known, which according to Sunaryati Hartono is an act against the law in the field of business, namely the dishonorable actions of the businessmen which is a violation of the rights of other companies. Some examples taken / sourced from Hoeber (as cited in Arief, 1990), include:

- a. Opening a business against the law, for example opening a company solely for the purpose of killing other entrepreneurs who are enemies;
- b. Prevent or interfere with the contract;
- c. Humiliation or defamation of someone or another company (defamation) or "slander of quality or trade libel); and
- d. Fraudulent / dishonest trading practices, including:
 - fraudulent marketing;
 - infringing a trademark or trade name;
 - infringing a patent or copyright; and
 - violating trade secrets.

According to Koesoemahatmadja (2011, p. 2), To formulate economic crimes / economic crimes must consider the following elements:

- a. Economic criminal offenses are carried out in the context of legal business activities.
- b. Economic crimes are crimes that violate the interests of the state and society in general, not just individual victims.
- c. It also includes criminal offenses in the business environment against other companies or against individuals.

From the opinions and forms of economic crime mentioned above, according to Barda Nawawi Arief (1990), it is very reasonable if there are stated two main features of economic crime, which are "white collar crimes" and "organized crime", even though these two terms or labels are closely related. Therefore, Koesoemahatmadja (2011, p. 2) groups three main types of economic crime as follows:

- a. Property crimes: actions that threaten property held by private persons or by the state;
- b. Regulatory crimes: actions that violates government regulations;
- c. Tax crime: violations of the liability or reporting requirements of the tax law.

In order for various kinds of economic crimes can be encompassed by the provisions of criminal law, according to Barda Nawawi Arief (2005), it is necessary for the criminal law to function, operate or work and be realized concretely or, in other words, criminal law functionalization. The functionalization of criminal law, such as the functionalization or enforcement process of law in general, it involves at least 3 (three) interrelated factors, namely: legal factors, law enforcement agencies, and legal awareness factors. The division of these three factors can be related to the division of three components of the legal system, namely legal substance, legal structure, and legal culture.

The legislative factor that needs to be studied is the legislative policy factor that is related to the problem of economic crime. Reviewing this issue is very important because legislative policy is basically the most strategic initial stage of the overall planning of the criminal law functionalization process or the criminal law enforcement process. This stage is the "formulation" stage which forms the basis, foundation and guidelines for the next functionalization stages, namely the "application" and "execution" stages. The need for a "review" of economic crime is also confirmed in the decision of the seventh UN congress on "the prevention of Crime and the Treatment of Offenders" in one of the "Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a new International Economic Orders", among others, under the subtitles "Economic Crimes" stated: The laws governing the functioning of business enterprises should be reviewed and strengthened as necessary to ensure their effectiveness for preventing, investigating and prosecuting economic crime.

Koesoemahatmadja (2011, p. 7) explains the crime prevention plan or policy as outlined in the legislation, in general it covers:

- a. planning or policy regarding what prohibited acts will be dealt with as they are considered dangerous or harmful;
- b. planning or policy on what sanctions will be imposed on the perpetrators of the prohibited conduct (whether in the form of a criminal act or behavior) and the system of its application;
- c. planning or policy regarding procedures or mechanisms of the criminal justice system.

The existence of changes, developments, and new dimensions of economic crime require the need for a review, both in terms of reorientation, reevaluation, reorganization, reform and restructuring of the main ideas and types of actions that need to be declared as Economic Crimes. This review is more felt the need at this time given the increasingly rapid wave of advances in electronic technology and the globalization of the economy of the community or the world economy with a tendency to become a society that wants to be fast and practical.

In connection with Indonesian legislation, a review needs to be done to Emergency Law Number 7 of 1955 concerning Economic Crimes, and a review of criminal acts or offenses outside of the law which are also essentially economic crimes. This is intended so that there are similarities, unity, and integration in the legislative policy itself. It is feared to be a partial and fragmentary policy, so that it can lead to differences and ineptness in the response. This can occur in the policy of criminalizing or formulating criminal actions, as well as in the sanction policy and the accountability system, and even the policy in the law of the event.

In line with this review, according to Loebby Loqman (1994) said that so far, the legislation in the economy should be Emergency Law Number 7 of 1955 was corrected to be classified into: economic crime, corruption, besides general crime. Loqman (1994) also questioned whether all actions in the

economy must have criminal rule. According to Loqman (1994), even though the Indonesia adheres to the understanding of the welfare state, not all of these provisions must be from the government and should be returned to the people. The philosophy of making laws begins with determination of norms, existence of experts in each field, and then decision on classification.

As part of economic crime, difficulties in enforcing the law or controlling corporate crime can already be imagined. First, corporations (as potential criminals) generally have effective "lobby" in the formulation of offenses and ways to deal with corporate crime. Second, determining corporate criminal liability and determining corporate wrongdoing is not easy. The current understanding still held in Indonesian criminal law is "*physieke daderschapbegrip*" in which perpetrator is a person who carries out the act in a physically. Thus, for corporations, the principle that should be used is "*functioneel daderschap*" where the corporation is considered a "*functioneel dader*", because corporate actions are always manifested through human actions, and the devolution of responsibility from human actions into corporate actions can be done if the actions are in public traffic acts as a corporate act in question. Apart from that, it should also be noted that criminal prosecution and conviction are not only committed against the corporation or its management, but also against those who actually lead or give orders for the act. In corporate crimes as described above, it is very possible that the latter are carried out through people (*natuurlijke* or *rechtspersoon*) who have no organizational relationship with the corporation concerned. In this way they avoid criminal liability as perpetrators.

By having the Deligeuere Non Potest University doctrine ruled out and accepting the concept of functional actors (*functioneel daderschap*), this means, in principle the corporation can be accounted for as well as natural human beings, but not without exception without an exception in corporate punishment. According to Hatik (1996, p. 185), there are two things that can be used as guidelines in determining corporate actions and liability in criminal law, namely:

- a. some criminal acts, according to their nature, cannot be committed by corporations, for example regarding the offense of persecution, bigamy, rape, and perjury;
- b. imprisonment, capital punishment that can be imposed on natural humans, may not be imposed on corporations.

In order to improve the functionalization criminal law against corporate criminal acts, if criminal witnesses are to be imposed on corporations, then criminal fines must be prioritized. It can even be said to be the only basic crime that can be imposed on a corporation. In addition, corporations may be subject to additional crimes or actions taking into account losses to employees or labor as a side effect arising from the sanctions applied. Because the action in the form of termination of company activities or the like, will be detrimental to employees or workers compared to employers (Hatik, 1996, p. 185).

According to Mulyana (2018, p. 51), the Indonesian Penal Code still adheres to the general principle that a crime can only be committed by humans (*natuurlijke persoon*), so that the physical legal entity (*rechtspersoon*) does not apply in criminal law. However, some of our statutory regulations that are outside the Criminal Code have begun to deviate from these general principles, such as those found in Article 15 of Emergency Law Number 7 of 1955 concerning Economic Crimes as amended by Laws and Regulations Number 36 of 1960 concerning Amendment and Additional Emergency Law Number 7 of 1955 concerning the Investigation, Prosecution and Judgment of Economic Crimes, Article 49 of Law Number 9 of 1976 concerning Narcotics, Article 35 of Law No. 3 of 1982 concerning Company Registration Obligation, Article 19 paragraph (3) of Law Number 6 of 1984 concerning Postal, Article 20 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2010 concerning Eradication Corruption Crime, Article 6 of Law Number 8 Year 2010 concerning Prevention and Eradication of Money Laundering, Forestry Law, Taxation Law and Law Number 23 of 1997 concerning Environmental Management as amended by Law Number 32 of 2009 concerning Environmental Protection and

Management and in the Criminal Code Article 135 paragraph (7) and paragraph (8) of the Criminal Code, namely:

- a. If the defendant is a corporation, then the summons will be delivered to the management at the corporate domicile as stated in the corporation's articles of association.
- b. One of the managements of the corporation must appear before a court of law representing the corporation.

Although it still requires various improvements in economic legislation, especially those related to corporations, this has reflected the development and dynamics of our laws and regulations. Development in the field of law, specifically the development or renewal of criminal law, must not only build legal institutions, but must also include the development of the substance of legal products which are the result of a legal system in the form of criminal and cultural legal regulations, namely the attitudes and values. values that affect the implementation of the legal system (Rahardjo, 1980, pp. 84-86).

The development of corporations as subjects of criminal law will certainly also affect the position of corporations as makers and the nature of corporate criminal liability in various laws and regulations governing corporations as legal subjects. In this regard, Priyatno (2020, pp. 13-14) outlines three corporate criminal liability models, namely:

- a. Corporate management as the maker and management must be responsible;
- b. The corporation as the maker and manager must be responsible; and
- c. The corporation as a maker and also as a party that must be responsible.

Finally, efforts related to changes and improvements to the applicable laws and regulations in the economic field, especially those relating to corporations, contain a philosophy as a preventive effort on the nature of "sense of killing", which generally occurs in the business world or the economy, so it is expected to be can limit or reduce the space for the emergence of crime or corporate crime, in order to create a more fair and transparent economy, which provides fair competitive business opportunities and supports the realization of the country's ideals in realizing the prosperity and welfare of the people.

Conclusion

In the Criminal Code the recognition of legal subjects that can be convicted is *natuurlijke persoon* or a person because it still refers to the concept that acts that can be convicted are acts that are carried out physically by humans. However, in its development the legal entity (*rechtspersoon*) can also be held liable criminally this can be found in the articles that are scattered in several statutory provisions outside the Criminal Code. The regulation of corporate crime in the social / economic field in terms of investigation, prosecution and justice in the economic field still refers to Emergency Law Number 7 of 1955 which in practice in the field still encountered many obstacles in its enforcement so it needed to be adapted to the times in the era of globalization where corporations were considered as legal subjects and could be asked for legal accountability.

References

- Arief, B. N. (1990, December 7). Fungsionalisasi Hukum dalam Penanggulangan Kejahatan ekonomi [Functionalization of Law in Combating Economic Crimes] [Paper Presentation]. Seminar Nasional tentang Peranan Hukum Pidana Dalam Menunjang Kebijakan Ekonomi, FH-UNDIP, Semarang.

- Arikunto, S. (2002). *Prosedur Penelitian: Suatu Pendekatan Praktek* [Research Procedure: A Practical Approach]. Jakarta: Rineka Cipta.
- Hatrik, H. (1996). *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia: Strict Liability dan Vicarious Liability* [Principles of Corporate Liability in Indonesian Criminal Law: Strict Liability and Vicarious Liability]. Jakarta: Raja Grafindo Persada.
- Ibrahim, J. (2012). *Teori dan Metodologi Penelitian Hukum Normatif* [Theory and Methodology of Normative Legal Research]. Malang: Bayumedia Publishing.
- Kristian. (2016). *Kejahatan Korporasi di Era Modern & Sistem Pertanggungjawaban Pidana Korporasi* [Corporate Crimes in the Modern Era & Corporate Criminal Liability Systems]. Bandung: Refika Aditama.
- Koesoemahatmadja, E. U. R. (2011). *Hukum Korporasi Penegakan Hukum Terhadap Pelaku Economic Crimes dan Perlindungan Abuse of Power* [Corporate Law Enforcement of Actors against Economic Crimes and the Abuse of Power Protection]. Jakarta: Ghalia Indonesia.
- Marzuki, P. M. (2008). Karakteristik Ilmu Hukum. *Jurnal Media Yuridika*, 23(2), (hlm. 25).
- Muladi & Priyatno, D. (1991). *Pertanggungjawaban Korporasi Dalam Hukum Pidana* [Corporate Liability in Criminal Law]. Bandung: Sekolah Tinggi Hukum Bandung.
- Mulyana, A. N. (2018). *Pendekatan Ekonomi dalam Penegakan Hukum Terhadap kejahatan Korporasi* [Economic Approach in Law Enforcement of Corporate Crimes]. Jakarta: Gramedia Widiasarana Indonesia.
- Podgor, E. S. (1993). *White Collar Crime*. Minnesota: West Publishing.
- Priyatno, D. (2020). *Sistem Pertanggungjawaban Pidana Korporasi Ditinjau Teori dan Konsep, Pendapat para Ahli, Pertimbangan Hakim, dan Yurisprudensi* [Corporate Criminal Liability System Reviewed Theory and Concepts, Opinions of Experts, Judges' Considerations, and Jurisprudence]. Jakarta: Prenada Media Group.
- Rahardjo, S. (1980). *Hukum dan Masyarakat* [Law and Society]. Bandung: Angkasa.
- Rahardjo, S. (1986). *Ilmu Hukum* [Legal Studies]. Bandung: Alumni.
- Reksodiputro, M. (1994). *Kemajuan Pembangunan Ekonomi dan Kejahatan* [Economic Development Progress and Crime]. Jakarta: Lembaga Kriminologi UI.
- Republik Indonesia. (2011). Undang-undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-undangan [Law Number 12 of 2011 concerning Formation of Regulations and Regulations]. Jakarta: Republik Indonesia.
- Sahetapy, J. E. (1994). *Kejahatan Korporasi* [Corporate Crime]. Bandung: Eresco.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).