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Criminal Liability of Political Parties in Corruption Offenses

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Abstract

Political parties play a strategic role in advancing democracy; however, they face various issues that negatively impact these organizations. The primary issues include, first, the involvement of political parties in various corruption cases, which diminishes their public image and trust; second, the legal debates surrounding the criminal liability of political parties implicated in corruption; and third, the challenge of imposing criminal sanctions on political parties or corporations recognized as legal entities involved in corruption offenses. Establishing political parties or legal entities as legal subjects provides a foundation for categorizing them as liable under the Anti-Corruption Law and the National Criminal Code. Philosophically, the justification here is the concept of legal personality that validates political parties or corporations as legal subjects. Sanctions may be imposed if a political party is proven guilty of corruption, referencing Articles 46 and 47 of the National Criminal Code. Article 20(7) of the Anti-Corruption Law also supports the imposition of fines as a primary punishment with an additional one-third increase on the maximum penalty. This responsibility is grounded in Article 20 of the Anti-Corruption Law, which specifies the accountability of corporations and/or their management. The findings suggest that judges should consider the trial's legal evidence, demonstrating the benefits political parties gained from the crime, to justify their criminal liability. Additionally, legislators should revise current laws related to the criminal liability of political parties as corporate entities.

Keywords: *Criminal Liability; Political Parties; Corruption Offenses*

Introduction

The existence of political parties plays a strategic role in the development of democracy, but the nation is facing several issues that give a negative impression of these organizations. These issues include, first, the involvement of political parties in various corruption cases, which has led to a decline in public image and trust in these organizations; second, the controversy surrounding the criminal liability of political parties involved in corruption cases in the legal system; and third, the issue of imposing criminal sanctions on political parties/corporations as legal entities known to have committed corruption offenses.

Criminal Responsibility of Political Parties in a Philosophical study restructuring or reforming of political parties in terms of criminal liability for corruption is an effort to strengthen political parties as corporations, which not only play a central role in democratic life but also serve as instruments for economic, political, social, and cultural growth, contributing to societal welfare. This restructuring must be rooted in the traditional values unique to each nation that has existed for centuries (Fukuyama, 2005).

According to Barda Nawawi Arief (2006) the process of criminal law reform is inseparable from the policies of the national legal system based on Pancasila, as the core values of national life, which include a balance of values: (a) Divinity, (b) Humanity, (c) Nationality, (d) Democracy/Deliberation, and (e) Social Justice. A similar view is expressed by Sajipto Rahardjo, who argues that when a legislative product produced decades after the Constitution encounters problems in its formulation or application, there must be moral guidance from the Constitution to restore the coherence of the legal system. The moral guidance referred to is that which is emphasized in the fourth paragraph of the Preamble of the 1945 Constitution:

Criminal Responsibility of Political Parties in a Legal Review: Political Parties as Corporations: The legality of political parties as corporations under criminal law can also be observed in various regulations concerning corporations as legal subjects of criminal offenses. Legally, this perspective is derived from various criminal law regulations concerning the existence of corporations and their relationship with political parties as entities required by law. The legal basis for the view of political parties as corporations can be found in the Anti-Corruption Law (UU Tipikor) and the National Criminal Code (KUHP).

The regulation of corporations as subjects of criminal offenses can be understood through the provisions of Article 1, point 1 of the Anti-Corruption Law, which states that a corporation, under this law, refers to a group of people and/or organized wealth, whether it is a legal entity or not. The phrase "and/or" in this provision indicates that a corporation R.Wiyono, 2009) can be understood as:

A. A group of organized people and wealth that forms a legal entity;
B. A group of organized people and wealth that does not form a legal entity;
C. A group of organized people that forms a legal entity;
D. A group of organized people that does not form a legal entity;
E. Organized wealth that forms a legal entity.

This requirement offers a broad and diverse understanding of what constitutes a corporation under the Anti-Corruption Law. Concerning political parties, according to the definition provided in the Law on Political Parties, they are national organizations formed by a group of Indonesian citizens voluntarily based on the same will and ideals to advocate for and defend the political interests of their members, society, the nation, and the state, as well as to maintain the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution. According to this definition, there is a similarity between political parties and the concept of corporations as defined in the Anti-Corruption Law, as both are organizations or groups of people. This characteristic explains that political parties, indirectly, are separate entities from the groups formed by individuals as legal subjects.

Criminal Responsibility of Political Parties in a Philosophical Review The restructuring or reform of political parties in terms of criminal liability for corruption offenses is an improvement effort aimed at strengthening political parties as corporations, which not only play a central role in democratic life but also serve as a means for economic, political, social, and cultural growth that enhances societal welfare. This restructuring must be rooted in the traditional values that are unique to each nation, values that have existed for centuries (1 Francis Fukuyama, Memperkuat Negara, Tata Pemerintahan dan Tata dunia Abad 21, Gramedia Pustaka, Jakarta, 2005, hlm.34-37)

Legally, Political Parties' Corporations' legitimacy as corporations under criminal law can also be observed from various regulations regarding corporations as legal subjects of criminal offenses. Legally, this is a legal perspective derived from various criminal law regulations concerning the existence of corporations and their relationship with political parties as entities required by law. The legal basis for viewing political parties as corporations can be found in the Anti-Corruption Law (UU Tipikor) and the National Criminal Code (KUHP).

Method

This study used normative juridical legal research approach by analyzing library resources and legal principles, including ideal elements that made legal norms through legal philosophy and factual elements that establish a specific legal order. This study examined the systematic structure of law by identifying fundamental concepts such as legal subjects, rights and obligations, and legal events. The study aimed to analyze and justify whether political parties can be categorized as corporate criminal entities in corruption and money laundering cases, identify obstacles hindering criminal sanctions against political parties, and develop concepts for criminalizing political parties in corruption cases. Legal research is discovering legal rules, principles, and doctrines to address relevant legal issues (Mahmud, 2016, p. 35).

Research Finding and Discussion

Criminal Liability of Political Parties for Officials Engaging in Corruption

1. Philosophical Perspectives on the Criminal Liability of Political Parties

Enhancing political parties' criminal liability for corruption is an effort to strengthen political parties as corporations that not only play a central role in democratic life but also serve as instruments for advancing economic, political, social, and cultural growth to improve societal welfare. Thus, this regulation must be rooted in each nation's traditional values of which have endured for centuries (Fukuyama, 2005, p. 37).

Barda Nawawi Arief (2006) pointed that criminal law reform cannot be separated from the national legal system policy based on Pancasila, the philosophical foundation for Indonesian values. Pancasila contains balanced principles: (a) Divinity, (b) Humanity, (c) Nationalism, (d) Democracy/Deliberation, and (e) Social Justice. A similar idea is expressed by Sajipto Rahardjo, who argues that if legislation created decades after the constitution encounters issues in formulation and implementation, there shou,ld be moral guidelines derived from the constitution to ensure coherence in building Indonesia's legal system (Rahardjo, 2007).

Socioeconomic life is marked by various social disparities, cooperative competition based on kinship, and state control over key sectors and essential resources, such as land, water, and natural resources, all managed for the people's welfare. Economic actors are encouraged to foster a sense of kinship in achieving social justice. While each individual plays a role, the state maintains a crucial position in providing legal frameworks, regulations, facilities, social engineering, and social guarantees (Latief, 2017, p. 46).

According to Pancasila, all moral values and national directives, whose principles are interconnected, must serve as guiding practices in religious, cultural, social, economic, and political fields and in the legal sphere. According to Kuntowijoyo (Latief, 2017), the term "radicalization of Pancasila" means elevating Pancasila as a guiding framework for nation and state management. This radicalization includes:

a. Restoring Pancasila as the state ideology;
b. Developing Pancasila as both an ideology and a scientific discipline;
c. Ensuring Pancasila’s consistency with laws, coherence between its principles, and correspondence with social realities;
d. Extending Pancasila’s purpose beyond vertical (state) interests to serve horizontal interests;
e. Making Pancasila a critical measure for the state.
f.

2. Criminal Liability of Political Parties as Corporations in the Political Party Law

Law No. 2 of 2008, as amended by Law No. 2 of 2011 concerning Political Parties, stipulates both prohibited and mandatory conduct for political parties. Violations of these provisions result in sanctions imposed on party officials and the political party. As corporate entities, political parties are subject to accountability provisions outlined in Law No. 2 of 2008, as amended by Law No. 2 of 2011, concerning Political Parties. These provisions address various prohibitions and obligations for political parties, with sanctions applied upon violations.

The Political Party Law outlines two primary categories of sanctions: administrative sanctions directed at the political party entity and criminal sanctions imposed on party officials.

a. Administrative sanctions imposed on political parties include:

1. Refusal of legal registration by the Ministry;
2. Official warnings from the government;
3. Suspension of state funding (APBN/APBD) until financial reports are submitted for the relevant fiscal year;
4. Official warnings from the General Election Commission (KPU);
5. Administrative sanctions imposed by bodies tasked with upholding the dignity and integrity of political parties and their members;
6. Suspension of party management by the District Court;
7. Temporary suspension of the political party at its respective level by the District Court, for up to one (1) year;
8. Dissolution by the Constitutional Court;
9. Dissolution as a sanction imposed by the Constitutional Court.

The administrative penal provisions establish six justifications for dissolving a political party:

a) The political party is involved in activities that violate the 1945 Constitution;
b) The political party is involved in activities that contravene laws and regulations;
c) The political party involves in activities that endanger the unity and security of the Unitary State of the Republic of Indonesia (NKRI);
d) political party adopts communist or Marxist-Leninist ideologies;
e) The political party promotes communist or Marxist-Leninist ideologies;
f) The political party disseminates communist or Marxist-Leninist ideologies.

The administrative penal provisions relevant to dissolving a political party involved in corruption are specified in Article 40(2), which prohibits political parties from activities inconsistent with the 1945 Constitution and applicable laws and regulations. According to Zainal Arifin Mochtar, these violations of specific statutes, such as the Anti-Corruption Law, serve as grounds for dissolving a political party (Mochtar, 2019, p. 169). Additionally, Mochtar argues that dissolving a political party can be based on breaches of specific statutes, provided the language in Article 40(2) of the Political Party Law is updated accordingly (Mochtar, 2019).

Jimly Asshiddiqie posits that evidentiary support for dissolving political parties implicated in legal violations should include the party's charter and bylaws, activity reports and correspondence, witness testimonies, statements from the party itself, and other relevant evidence (Asshiddiqie, 2005, p. 113).

b. Criminal sanctions imposed on political party officials include:

1. Imprisonment for two (2) years and a fine double the amount of funds received by officials;

2. Imprisonment for one (1) year and a fine double the amount of funds received by political party officials;
3. Imprisonment for one (1) year and a fine double the amount of funds received by political party officials;
4. Imprisonment for one (1) year and a fine double the amount of funds received by political party officials;
5. Imprisonment for one (1) year and a fine double the funds received by political party officials.

The prohibitions and mandates in the Political Party Law reflect provisions found within administrative or administrative penal law, which consists of statutes, regulations, directives, and decisions issued by administrative authorities to regulate the conduct of specific institutions (Arief, 2006, pp. 62-63). Therefore, political parties are still subject to criminal liability under Law No. 31 of 1999, as amended by Law No. 20 of 2001, concerning the Eradication of Corruption Crimes.

Political parties meet the statutory criteria for a corporation, defined as an organized group of individuals and assets, whether incorporated or unincorporated, as stipulated by the Anti-Corruption Law. Therefore, the primary sanction for political parties is corporate dissolution, which serves as the institutional equivalent of deprivation of liberty. As Barda Nawawi Arief notes, just as imprisonment is the primary sanction for individuals, dissolution or revocation of political rights constitutes the primary sanction for corporations (Arief, 2007, p. 152).

This analysis is grounded in two expert legal perspectives. First, Sudarto's affirmative view asserts that criminal law must address societal harm as part of a broader national development strategy (Sudarto, n.d., p. 4). Criminal policy and social defense initiatives should be integrated into national development goals, as outlined in the Preamble of the 1945 Constitution, which prioritizes the protection and welfare of all Indonesians, the advancement of public prosperity, and global order based on independence, enduring peace, and social justice. Second, Arief's (2015) perspective on criminal law includes not only its norms (law in books and law in action) governing social behavior but also its ideological, conceptual, and value-based foundations, known as "law in mind."

3. Criminal Liability of Political Parties in Corruption Cases Committed by Party Officials with Final Legal Force

Article 20 of Law No. 31 of 1999, as amended by Law No. 2 of 2001, governs the criminal liability of political parties as corporations in corruption cases, and this article is further interpreted in corruption cases. Firstly, in the case of the additional beef import quota corruption involving Lutfi Hasan Ishaaq, a DPR (House of Representatives) member and President of PKS (Partai Keadilan Sejahtera), with Decision No. 1195K/PID.SUS/2014. Secondly, in the Hambalang corruption case, involving Anas Urbaningrum, a member of the House of Representatives and Chairman of the Democratic Party faction, with Decision No. 1261K/Pid.Sus/2015. Thirdly, E-KTP corruption case involving Setya Novanto, Golkar Party Chairman and Golkar faction in House of Representatives with Decision No. 130/PID.SUS/TPK/2017/PN. JKT. PST.

The policy provisions in Article 20 of Law No. 31 of 1999 on the Eradication of Corruption Crimes have been effectively applied in these three corruption cases committed by members of political party leadership in the DPR. Party officials, as senior party leaders and representatives of the party's parliamentary factions, committed acts of corruption within the scope of their roles and responsibilities, as outlined in the party's statutes (Articles of Association (AD) / Bylaws (ART)), enabling the political party itself to be held criminally accountable.

4. Criminal Liability of Political Parties under the National Penal Code

In criminal law, the concept of corporate liability can be found in the National Penal Code through a policy approach. Muladi and Nyoman Sastra Putra Jaya argue that once corporations are

included as subjects of criminal offenses in the Penal Code, it will apply to all offenses (Muladi and Diah Sulistyani, p. 41). The Penal Code, as an *ius constituendum*, contains provisions, including:

Article 45:

- Clause (1) states that corporations are subjects of criminal offenses.
- Clause (2) states: Corporations, as referred to in clause (1), include legal entities such as limited liability companies, foundations, cooperatives, state/region-owned enterprises, and associations, whether incorporated or not, as well as business entities such as firms and partnerships, according to applicable regulations.

Corporations are identified as subjects under Article 45, they can be held criminally liable. Clause (2) lists the types of corporate bodies as:

1. Legal entities such as Limited Liability Companies, Foundations, Cooperatives, State/Region-Owned Enterprises, or equivalent;
2. Associations, whether incorporated or not;
3. Business entities such as Firms, Partnerships, or their equivalents according to the law.

Based on the above explanation, political parties, whether legally incorporated or not, are categorized as associations.

Article 46 states:

- Crimes by a corporation are defined as acts committed by officials holding functional roles within the corporation's organizational structure or by individuals acting on behalf of or for the corporation's interests within its business or activities, whether individually or collectively.

The term "other relationships," for example, includes temporary employment contracts, while Article 46 stipulates corporate liability if someone within the corporation commits an offense, whether within or outside its authority. Under Article 46 of the Penal Code, a corporation can be held criminally liable for offenses committed by representatives or those acting on its behalf.

The term "person" refers to individuals acting on behalf of or for the corporation's benefit, based on employment or other relationships, with a functional role in the corporate organization. According to Article 46, functional roles are broadly defined, encompassing representation, decision-making authority, and corporate oversight.

Corporate criminal liability can also arise if actions are conducted by someone giving orders, acting jointly, or with persuasion or assistance representing the corporation's mindset. Article 46 exemplifies the application of the identification theory for corporate accountability.

Article 47 states:

- In addition to Article 46, corporate crimes may involve orders issued by controllers or beneficiaries outside the organizational structure who can control the corporation.

Article **48** states: Crimes by corporations, as outlined in Articles 46 and 47, are accountable if:

a. They fall within the scope of business or activities as defined by the Articles of Association or other corporate policies;
b. They unlawfully benefit the corporation;
c. They are accepted as corporate policy.

Based on the above, the corporate criminal liability model under Article 48 of the National Penal Code is:

1. Officials are the offenders and are criminally responsible.
2. The corporation is the offender, and the officials are responsible.
3. The corporation is the offender and is itself held criminally liable.

Article 49 states that criminal liability for corporate crimes, as referred to in Article 48, applies to the corporation, officials with functional positions, those giving orders, controllers, and/or beneficiaries of the corporation.

The National Penal Code broadly defines corporations, encompassing legal and non-legal entities. Corporate crime involves offenses committed by those with functional roles within the organizational structure, acting on behalf of or for the corporation, based on employment or other relationships within the scope of corporate business. The Penal Code further stipulates that corporate crime may involve parties issuing orders or controlling the corporation from outside its organizational structure.

Corporations are held criminally accountable if:

a. The offense is committed within the corporation's business activities or scope as defined in the Articles of Association or relevant corporate policies;
b. It provides unlawful benefits to the corporation;
c. It is recognized or adopted as corporate policy.

As *an ius constituendum,* the National Penal Code also covers penal objectives and guidelines for sentencing corporations. It includes provisions for installment payments of criminal fines. If fines cannot be paid within a specific period, the corporation's assets or income can be seized and auctioned by the prosecutor to settle the unpaid fines. If assets or income are insufficient to cover the fine, substitute penalties apply, including partial or total suspension of the corporation's activities.

5. Criminal Liability of Political Parties in Corruption Offenses

a. Offense Qualification (Delict)

Law No. 31 of 1999, as amended by Law No. 20 of 2001 on the Eradication of Corruption, must address the legal qualification (criminal offenses and violations). As previously explained, establishing a legal qualification carries legal consequences, both materially (in adherence to the general rules in the Penal Code) and formally (within the Criminal Procedure Code) (Barda Nawawi Arief, 2008, p. 153).

Barda Nawawi states that establishing a legal qualification is necessary to facilitate the application of general provisions in the Penal Code to matters not regulated by specific laws outside the Penal Code (Barda Nawawi Arief, 2008). This qualification bridges the application of general Penal Code rules to special laws, fostering system harmonization. Defining a legal qualification of an act as a corruption offense also carries legal implications, whereby, if a law outside the Penal Code (e.g., the Corruption Eradication Law) identifies or declares an offense as corruption, then the provisions of Article 14 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, shall apply.

Barda Nawawi further asserts (Barda Nawawi Arief, 2003, p:79) that the qualification of violations (delicts) is not defined in Law No. 31 of 1999, as amended by Law No. 20 of 2001, as a criminal offense because lawmakers have not differentiated between legal consequences/punishment for attempts and assistance, as both are penalized the same as the principal offender. The distinction in legal consequences between offenses and violations impacts not only attempts and assistance but also other aspects such as agreement, termination of prosecution and execution, and the application of the active nationality principle in Article 5, clause (1), item 2 of the Penal Code.

b. Subjects of Corruption Offenses

When examining the formulation of corruption offenses in Law No. 31 of 1999, as amended by Law No. 20 of 2001, it is clear that the phrase “every person” is consistently used. This suggests that legal subjects are limited to individual persons. However, Article 1, item (3) specifies that the term "person" refers to individuals or corporations.

Law No. 31 of 1999, as amended by Law No. 20 of 2001 on Corruption Eradication, includes corporations as legal entities that may bear criminal liability. Article 1, item (1), defines a corporation as: “A group of people and/or wealth that is organized, either as a legal entity or not.”

Under the Corruption Eradication Law, a corporation is not merely a group of individuals but also a collection of assets, whether incorporated or not. A political party is defined as a corporation, as it constitutes a group of citizens, where Article 1, clause (1) of the Political Party Law states that a political party is: “A national organization established by a group of Indonesian citizens voluntarily based on common goals and ideals to pursue and defend the political interests of its members, society, the nation, and the state, and to maintain the unity of the Republic of Indonesia, based on Pancasila and the 1945 Constitution of the Republic of Indonesia.”

Based on this definition, the reformulation of the Corruption Eradication Law should not only include corporations as subjects of corruption but also hold political parties criminally accountable.

c. When Political Parties Commit Corruption Offenses

Article 20, clause (2) of the Corruption Eradication Law states that a corporation commits an offense when it is committed by a person based on employment or another relationship, acting within the corporation’s business environment, individually or collectively. Criminal liability of political parties as corporations in corruption cases involves criminal acts by individuals based on employment or other relationships defined in the party’s bylaws.

The Corruption Eradication Law does not clarify “employment” or “other relationships.” Employment is defined in Article 1, item (15) of Law No. 13 of 2003 on Employment as a relationship between an employer and a worker based on a work agreement that involves work, wages, and orders. Here, employment refers only to business employment relationships for profit, where the structure includes an employer and a worker. Political party relationships are not profit-based but are instead delegations of authority as regulated in a political party’s bylaws. Scholars have explored the meaning of when a political party, as a corporation, engages in a criminal act.

D. Schaffmeister stated that it is challenging to determine when a legal entity has what is called intentionality. Decision-making within a legal entity arises when it is aligned with corporate policy or the actual state of a particular corporation (Muladi & Dwidja Priyatno, 2015, p. 102). Schaffmeister further suggests that the issue is resolved through attribution, where the intent of an individual (natural person) acting on behalf of the organization or legal entity can generate the intent of the legal entity itself (Muladi & Dwidja Priyatno, 2015).

In the National Penal Code, Corporations are held criminally accountable if:

a. The offense is committed within the corporation's business activities or scope as defined in the Articles of Association or relevant corporate policies;
b. It provides unlawful benefits to the corporation;
c. It is recognized or adopted as corporate policy.

d. Corruption Offenses Committed by Political Parties

Political parties are considered corporations and are criminally liable under the normative provisions of Article 20 of Law No. 31 of 1999, in conjunction with Law No. 20 of 2001. Based on various explanations, political parties should be held criminally accountable for corruption offenses, whether regulated or not in Law No. 31 of 1999, as amended by Law No. 20 of 2001.

Barda Nawawi Arief argues that corruption offenses encompass economic aspects that harm the state and national economy, as well as elements of self-enrichment, benefiting others or corporations, and include abuses of power, office, political corruption, and violations of democratic values (Barda Nawawi Arief, n.d., p. 86). He further emphasizes that Law No. 31 of 1999, as amended by Law No. 20 of 2001, should comprehensively cover all forms of actions defined as corruption offenses (Barda Nawawi Arief, 2017). However, certain corruption offenses outlined in the UN Convention against Corruption, enacted under Law No. 7 of 2006, have not yet been incorporated into Law No. 31 of 1999, as amended by Law No. 20 of 2001. Corruption offenses include:

a. Bribery and embezzlement in the private sector as corruption offenses;
b. Bribery of foreign public officials and international organization officials;
c. Trading in influence;
d. Illicit enrichment, indicating a significant increase in a public official's assets that cannot be reasonably explained about their lawful income

e. Criminal Liability of Political Parties

Under Article 20, Paragraph (1) of the National Penal Code states that if corruption is committed by or on behalf of a corporation, criminal prosecution and punishment can be imposed on the corporation and/or its officials. This framework outlines a model of criminal responsibility for political parties as follows:

1. As perpetrators, the political party's officials are personally liable for criminal accountability.
2. As the perpetrator, the political party makes its officials liable for accountability.
3. As the perpetrator, the political party bears corporate accountability.
4. The political party and its officials are jointly accountable for criminal responsibility.

Suppose only the officials are held liable for corruption within a political party. In that case, this may not fully satisfy justice, as officials often act on behalf of or in the party's interests. Similarly, justice may not be achieved if only the political party is held liable. Political actions must involve individuals with employment or other affiliations with the party.

Article 20, Paragraph (1) further clarifies that "officials" refer to corporate bodies who operate the organization by the Articles of Association and Bylaws (AD/ART), including those who hold authority and participate in corporate decision-making, potentially qualifying as corruption under criminal law. Political party corruption manifests through the actions, decisions, and intentions of officials or individuals with authority within the party's AD/ART framework. Sutan Remy Sjahdeini emphasizes that Article 20, Paragraph (2) of the Corruption Eradication Law embodies criminal accountability using the doctrines of identification and aggregation. The doctrine of identification doctrine applies when "an offense is committed by a person based on employment or other relationships." The doctrine of aggregation is reflected in the phrase "whether committed individually or collectively" (Sutan Remy Sjahdeini, 2017).

f. Criminal Sanctions Against Political Parties

Sudarto explains that crime involves suffering deliberately inflicted upon individuals who meet certain offense criteria (Muladi and Barda Nawawi Arief, 1998). Roeslan Saleh further notes that crime is

a reaction to an offense, resulting in suffering imposed by the state on the offender (Muladi and Barda Nawawi Arief, 1998). Sanctions for political parties should be both repressive and preventive. As Muladi states, punishment is integrative, helping parties adapt and improve in serving society. The primary penalties in the Corruption Eradication Law include fines up to Rp1,300,000,000 (one billion three hundred million rupiah), which is one-third higher than the maximum fine of Rp1,000,000,000 (one billion rupiah). However, this fine remains lower than penalties under other laws, such as the Economic Crime Law, which imposes fines four times the price of the goods involved, and the Anti-Money Laundering Law, which allows fines of Rp100,000,000,000 (one hundred billion rupiah) for corporations. Germany, for example, imposes administrative fines on corporations of up to EUR 10 million for criminal acts committed by legal representatives through wrongdoing, and EUR 5 million for acts through negligence.

Article 18 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, on Corruption Eradication, further stipulates additional structural or administrative sanctions applicable to political parties. These include (a) confiscation of assets, both tangible and intangible, or immovable property used or acquired from corruption, including companies owned by the convict and assets substituted by others; (b) restitution equivalent to the wealth gained from corruption; (c) partial or total suspension of company operations for up to one year; (d) revocation of certain rights or benefits held or granted by the government.

According to Muladi, if corporations, such as political parties, are considered criminal subjects with the same standing as individuals, additional penalties could be primary punishments. Therefore, criminal sanctions for political parties are essential in financial penalties and structural or institutional measures to strengthen their role as pillars of democracy. Proposed primary sanctions in this dissertation include financial penalties and structural sanctions such as restrictions on the party's freedom to operate for a specified period.

The study recommends specific criminal liabilities for political parties, categorized as follows:

a. Primary penalties:

    1. Fines;

    2. Dissolution of the corporation.

b. Additional penalties:

    1. Announcement of the court's decision;

    2. Confiscation of profits gained unlawfully;

    3. Payment of compensation;

    4. Revocation of rights or restriction on carrying out certain activities or transactions (such as revoking rights or banning participation in elections for a specified period);

    5. Revocation of rights or restriction on transactions involving national budget benefits (such as prohibiting the receipt of APBN/APBD funds for a specified period);

    6. Revocation of rights or restriction on obtaining licenses, authorities, or concessions (such as revoking rights or restricting political activities for a specified period).

Dissolving a political party is a structural sanction suggested in this study. According to Article 24C of the Third Amendment of the 1945 Constitution, only the Constitutional Court holds the authority to dissolve political parties, which may occur when a party:

1. Involved in activities contrary to the 1945 Constitution;
2. Involved in violation of statutory regulations;
3. As threat to the integrity and security of the Republic of Indonesia;
4. Adopts or promotes communist/Marxist-Leninist ideology;
5. Propagates communist/Marxist-Leninist ideology;
6. Disseminates communist/Marxist-Leninist ideology.

The researcher suggests that the Corruption Eradication Law should provide grounds for dissolving political parties as corporations, as they meet the criteria of a corporation, defined as an organized group of people and assets, whether incorporated or not, as stipulated in Law No. 31 of 1999, amended by Law No. 20 of 2001.

Arief (2007) notes that if imprisonment (deprivation of freedom) is the primary penalty for individuals, an equivalent punishment for corporations, such as political parties, would be the suspension or dissolution of the corporation for a certain period or the revocation of its political rights. Furthermore, legal and political scholars, including Sudarto, argue that if criminal law is to address the negative impacts of political parties (e.g., corruption control), it must align with social defense and criminal policy, which should be integral to national development planning. The Preamble of the 1945 Constitution states that the purpose of national governance is to protect the people of Indonesia and the homeland, promote the general welfare, advance the nation's intellectual life, and contribute to world peace based on freedom, eternal peace, and social justice (Sudarto, n.d.).

According to Arief (2017), two primary national objectives exist: social welfare and social defense. In his view, criminal law extends beyond legal norms—law in books and law in action, regulating societal behavior—to encompass ideas, concepts, and values known as "law in the mind" (Arief, 2015). Pujiyono (2019) adds that criminal responsibility for political parties should include penalties that aim at deterrence and repairing the damage (negative impact) caused by the corporation's criminal acts. This view aligns with that of Seligson (2024), who asserts that the misuse of public office for corrupt activities constitutes an economic crime, resulting in reduced investment and slowed economic growth, as states lose tax revenue due to bribery, and public services are provided only to those who can pay. Bribery leads to lower service standards—such as poor infrastructure quality and substandard hospital services—while corruption undermines the rule of law and drives multiple negative societal impacts.

Conclusion

Criminal liability for political parties regarding officials who commit corruption offenses can be enforced when proven guilty, with sanctions based on Articles 46 and 47 of the National Penal Code. Additionally, Article 20, Paragraph (7) of the Corruption Eradication Law (*PTPK*) establishes the foundation for imposing a primary fine penalty, increased by one-third of the maximum punishment. This liability stems from the provisions of Article 20 of the PTPK Law, where Paragraph (1) specifies the responsibility that may be assigned to a corporation and/or its officials.

For legislators, this study recommends specific criminal liabilities for political parties, categorized as follows:

A. Primary penalties:

1. Fines;

2. Dissolution of the corporation.

B. Additional penalties:

1. Announcement of the court's decision;
2. Confiscation of profits gained unlawfully;
3. Payment of compensation;
3. Revocation of rights or restriction on carrying out certain activities or transactions (such as revoking rights or banning participation in elections for a specified period);
4. Revocation of rights or restriction on transactions involving national budget benefits (such as prohibiting the receipt of APBN/APBD funds for a specified period);
5. Revocation of rights or restriction on obtaining licenses, authorities, or concessions (such as revoking rights or restricting political activities for a specified period).

It is recommended that Article 41 of Law No. 2 of 2008 on Political Parties be revised to specifically address the dissolution and merger of political parties.

References

Sajipto Rahardjo, Mendudukan Undang-Undang Dasar Suatu Pembahasan Dari Optik Ilmu Hukum Umum (semarang: Badan Penerbit Universitas Diponegoro, 2007);31.

R.Wiyono., Pembahasan Undang-Undang Pemberantasan Tidak Pidana Korupsi, (Jakarta: Sinar Grafik, 2009); 21–22.

Francis Fukuyama, Memperkuat Negara, Tata Pemerintahan dan Tata dunia Abad 21, Gramedia Pustaka, Jakarta, 2005, hlm.34-37

Peter Mmahmud M, Penelitian Hukum (Jakarta: Kencana Prenada Media Group, 2016):35.

Barda Nawawi Aief. (2017). *Tujuan dan Pedoman Pemidanaan (Perspektif Pembaharuan & Perbandingan Hukum Pidana)*. Pustaka Magister.

Barda nawawi Arief. (2003). *Kapita Selekta Hukum Pidana*. Citra Aditya Bakti.

Barda nawawi Arief. (2006). *Kapita Selekta Hukum Pidana, Citra Aditya Bakti, Bandung: 2003; 13, bandingkan dengan Sudarto, Kapita Selekta Hukum Pidana*. Penerbit Alumni.

Barda nawawi Arief. (2007). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*. Kencana Prenada Media Grup.

Barda nawawi Arief. (2015). *Ilmu Hukum Pidana Integralistik (Pemikiran Integratif dalam Hukum Pidana*. Penerbit Pustaka Magister.

Barda nawawi Arief. (2017). *Kebijakan Formulasi Hukum Pidana Dalam Penanggulangan Kejahatan (Tindak Pidana Korupsi*. materi kuliah Program Doktor Ilmu Hukum Universitas Diponegoro.

Barda Nawawi Arief. (n.d.). *Masalah Penegakan Hukum dan Kebijakan, Op,Cit.; 131, bandingkan dengan Barda Nawawi Arief, Kapita Selekta Hukum Pidana,;*.

Barda Nawawi Arief. (2006). *Materi Penataran Hukum Pidana dan kriminologi kerjasama ASPEHUPIKI dan Fakultas Hukum Universitas Diponegoro*. ASPEHUPIKI dan Fakultas Hukum Universitas Diponegoro.

Barda Nawawi Arief. (2008). *Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*. kencana prenada media group.

Fukuyama, F. (2005). *Memperkuat Negara, Tata Pemerintahan dan Tata dunia Abad 21*. Gramedia Pustaka.

Jimli Assiddiqi. (2005). *Kemerdekaan Berserikat ,Pembubaran Partai Politik Dan Mahkamah Konstitusi.* Sekretaris dan kepanetaraan MK RI.

Latief, Y. (2017). *Negara Paripurna Historistis, Rasionalitas dan Aktualitas Pancasila* (Cetakan ke). Gramedia Pustaka Utama,.

Mitchell A. Seligson. (2024). *The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries, The Journal of Politics, Vol. 64, No. 2 (May, 2002), pp. 408-433Published by: Cambridge University Press on behalf of the Southern Political Science Assoc*.

Mochtar, Z. A. (2019). Pertanggungjawaban Partai Politik Yang Melakukan Tindak Pidana Korupsi. *Jurnal Mimbar Hukum FH UGM*, *31Nomor 2*, 169.

Muladi & Dwidja Priyatno. . (2015). *Pertanggungjawaban Pidana korporasi, cetakan ke-5*. Prenadamedia Grup.

Muladi dan Barda Nawawi Arief. (1998). *Teori-Teori dan kebijakan Pidana,* (Edisi Revi). Penerbit Alumni.

Muladi dan Diah Sulistyani. (n.d.). *Pertanggungjawaban, Op.cit,:45, bandingkan dengan Nyoman Serikat Putra jaya, Hukum dan hukum Pidana, Op.cit*.

Peter Mmahmud M. (2016). *Penelitian Hukum*. Kencana Prenada Media Group.

Pujiyono. (2019). *Pembaharuan Pertanggungjawaban Pidana Korporasi Melalui Pendekatan Restoratif Justice Dalam Model Dual Track System Selective, Pidato Pengukuhan, disampaikan pada Upacara Penerimaan Jabatan Guru Besar Dalam Bidang Ilmu Hukum Pidana pada Fakultas hukum Uni*.

R.Wiyono. (2009). *Pembahasan Undang-Undang Pemberantasan Tidak Pidana Korupsi,*. Sinar Grafik.

Sajipto Rahardjo. (2007). *Mendudukan Undang-Undang Dasar Suatu Pembahasan dari Optik Ilmu Hukum Umum*. Badan Penerbit Universitas Diponegoro.

Sudarto. (n.d.). *Op.cit, hlm.104, bandingkan dengan Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana*.

Sutan Remi Sjahdeini. (2017). *Ajaran Pemidanaan Tindak Pidana korporasi & Seluk Beluknya,*. Kencana Prenada Media Group.

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