



Application of Republic of Indonesia Supreme Court Regulation No. 13 of 2016  
Concerning Procedures for Subscribing to Criminal Cases by Corporations in  
Corporate Criminal Responsibility in Indonesia Based on the Decision of the  
Central Jakarta District Court Number: 94 / Pid.Sus-TPK / 2017 / PN. Jkt.Pst

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**Abstract**

Corporations at this time are no longer just subjects of ordinary law, but corporations are now a forum for corruption. Corporate criminal sanctions in Decision Number Number: 94 / Pid.Sus-TPK / 2017 / PN.Jkt.Pst the judge imposes criminal sanctions not only on the accused individual but also imposes criminal sanctions on the corporation PT. Duta Graha Indah (PT.DGI). In 2009-2010 PT. DGI through its main Director at that time made an agreement in the arrangement of the development projects for special infection hospitals and tourism at Udayana University in the 2009 and 2010 fiscal years in order to win PT DGI as the implementation of work (partners). Problems in ensnaring corporations against cases of corruption committed by corporations are still difficult to implement in Indonesia. So that the judge's consideration in the decision becomes the basis for making a decision for the judge in imposing criminal penalties on the corporation PT. DGI. The research method used is normative juridical. From the results of the study, it can be concluded that judges based on vicarious criminal liability assess the existence of a working relationship in which the mens rea drawn in the defendant knows corruption but is passive with actus reus drawn from the actions of the head of the PT. Other DGIs to coordinate with other parties for and on behalf of corporations that cause illegal acts. The judge considered the mistakes imposed on the corporation were mistakes made by the management so that the corporation could be held responsible for criminal acts of corruption that had been committed.

**Keywords:** Corporate Criminal Liability; Corruption and Corporation

**Introduction**

At this time the law is considered to have to go forward to overcome any public distrust of the state that continues to be controlled by the authorities to reap the maximum possible profits, usually known as Corruption. Andi Hamzah said, that the literal meaning of corruption is decay, ugliness, depravity, dishonesty, can be bribed, immoral and deviations from holiness.<sup>1</sup>

In the social sense it seems that the community indeed associates corruption as embezzlement of money (state or office) and accepts bribes in relation to position or occupation, even though from the legal

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<sup>1</sup> Imam Syaukani dan Ahsin Thohari, *Dasar-Dasar Politik Hukum*, (PT. RajaGrafindo, Jakarta, 2004), 1.

standpoint it is not exactly the same. Given that from a legal standpoint many conditions / elements must be fulfilled for a behavior so that it can be qualified as one of the acts of corruption as defined in the law.<sup>2</sup>

Corruption is also interpreted as behavior that deviates from the official duty of a state office because of personal status or money benefits (individuals, close family, own group) or violates the rules of implementing some personal behavior, including ethical and moral issues in the general view. So that corruption is currently in a very alarming phase in Indonesia.<sup>3</sup> The definition of corruption is clearly stipulated in Law Number 20 of 2001 concerning Amendment to Law No. 31 of 1999 concerning Eradication of Corruption Crime said that every person (individual or legal entity) who enriches himself or others is against the law, and harms state finances. Especially for Indonesia, the approach of criminal law as an instrument in combating corruption is still the main choice.<sup>4</sup>

The progress of globalization now causes corruption to continue and is increasingly difficult to stem. The effects of the progress of globalization have made progress from various sectors including technology, communication, transformation and informatics, especially in the economic, trade and investment sectors. However, it must be realized that globalization and the development of science and technology, of course, besides creating benefits for humans, of course must be aware of negative side effects, namely "globalization of crime" and increase the quantity (amount) and quality (modus operandi) of criminal acts in various countries and between countries.

The current situation of corruption is no longer talking about individuals but has also ensnared into the corporation. Corporations in Indonesia today must continue to be monitored to what extent there has been a situation where making profits is no longer from their business but has harmed the state. The effect is not directly felt by the community because of the ignorance of the community on the development and every corporate activity, especially in developing the country's infrastructure, but the fact is that people feel the impact of the economic situation that continues to increase in Indonesia

Corporations according to Satjipto Rahardjo are bodies created and composed of corpus, which in its law include animus elements that make the body have a personality. Because this legal entity is a legal creation, then except for its creation, the death is also determined by law.<sup>5</sup> In addition, corporations according to criminal law are a group of people who are organized and have leaders and carry out legal actions, such as making agreements in the context of business activities or social activities carried out by the management for and on behalf of the associations.<sup>6</sup>

National and transmultinational corporations have important and strategic roles in modern life in the era of globalization. However, the important and positive role of the corporation in economic growth of a country is often followed by violations of criminal law,<sup>7</sup> accommodating the proceeds of crime, and as a means of committing crimes,<sup>8</sup> as well as obtaining profits from criminal acts through the collective decisions of its managers. For various crimes, the corporation was then criminalized. Corporations are subjected to criminal law because they are considered to carry out legal acts or actions, including violating or against the law.<sup>9</sup> The consequence of corporations as the subject of criminal law means that

<sup>2</sup> Adami Chazawi, *Hukum Pidana Korupsi di Indonesia*, (PT. RajaGrafindo Persada, Jakarta, 2016), 2.

<sup>3</sup> Widyo Pramono, *Pemberantasan Korupsi dan Pidana Lainnya Sebuah Perspektif Jaksa dan Guru Besar*, (PT. Kompas Media Nusantara, Jakarta, 2016), 42.

<sup>4</sup> Ismansyah, 'Penerapan dan Pelaksanaan Pidana Uang Pengganti Dalam Tindak Pidana Korupsi', (2007) 2 *Jurnal Demokrasi*, 2.

<sup>5</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Citra Adi Karya, Bandung, 2014), 13.

<sup>6</sup> Jan Rimmelink, *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Pidananya dalam Kitab Undang-Undang Hukum Pidana Indonesia*, Jakarta : Gramedia Pustaka Utama, 2003, hal. 97 dalam Eva Syahfitri Nasution, "Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Pencucian Uang", (2015) 2 *Marcatoria*, 137.

<sup>7</sup> Levina Yutitiantingtyas, 'Pertanggungjawaban Pidana oleh Korporasi dalam Tindakan Pelanggaran HAM di Indonesia', (2016) 1 *Novelty*, 25.

<sup>8</sup> Budi Suhariyanto, 'Urgensi Pembedaan terhadap Pengendali Korporasi yang Tidak Tercantum dalam Kepengurusan', (2017) 2 *Yudisial*, 240.

<sup>9</sup> Tjandra Sridjaja Pradjonggo, 'Alternatif Sanksi Pidana dalam Kejahatan Korporasi', 80 *Yustisia*, 70

corporations can commit criminal acts or what can be done can fulfill the objective elements of offenses,<sup>10</sup> which can then be prosecuted for criminal liability. Corporate criminal liability based on the existence of a corporation is not formed without a purpose and in achieving corporate objectives it is always realized through natural human actions, therefore the ability to take responsibility for those who act for and on behalf of the corporation is transferred to corporate responsibility as criminal subjects .<sup>11</sup>

In 2009-2010 PT. Duta Graha Indah (PT. DGI) through the main Director at that time made an agreement in the arrangement of the development projects for special infection and tourism hospitals of Udayana University in the 2009 and 2010 fiscal years in order to win PT DGI as the executor of the work (a partner) which is contrary to Presidential Decree Number 80 of 2003 concerning the Guidelines for the Implementation of Government Goods /Services Procurement as amended several times and the latest Presidential Regulation Number 95 of 2007 along with the Technical Guidelines for Implementation, doing actions enriching oneself or others or corporations namely enriching PT. DGI in 2009 was at least Rp. 6,780,551,865 (Six Billion Seven Hundreds Eighty Five Five Hundreds Fifty One Thousand Eight Hundred Sixty Five Rupiah) and in 2010 at least Rp. 17,998,051,740 (Seventeen Billion Nine Hundred Ninety Eight Million Fifty One Thousand Seven Hundred Forty Rupiahs).<sup>12</sup>

In addition, it also enriched M. Nazarudin and the Corporation under his control of Rp. 10,290,944,000 (Ten Billion Two Hundred Ninety Nine Hundred Forty Four Rupiahs) so that this caused a loss of Rp. 25,953,784,580 (Twenty-Five Nine Hundred and Fifty Tida Million Seven Hundreds Eighty Four Thousand Five Hundred Eighty Rupiahs) as in the audit report in the context of auditing the calculation of state losses in cases of alleged corruption in infection and tourism special education hospital work Udayana University 2009-2010 fiscal year .<sup>13</sup>

The imposition of sanctions on corporations can be through 2 (two) ways, namely principal and additional criminal. This is confirmed based on the provisions of Article 25 PERMA No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, judges impose criminal penalties against corporations in the form of additional principal and / or criminal penalties. The principal crimes can be imposed on the corporation are criminal penalties and additional criminal sanctions imposed on the corporation in accordance with statutory provisions. This is a new thing in Indonesia in criminal prosecution of corporations after the issuance of Supreme Court Regulation No. 13 of 2016 concerning Procedures for Subscribing to Criminal Cases by Corporations because corporations also feel the benefits of actions taken by the President Director of PT.DGI in making agreements that in fact contradict existing provisions. Based on this background, problems can be formulated as to how the application of Regulation No. 13 of 2016 in terms of corporate accountability in corruption based on the Decision of the Central Jakarta District Court Number: 94 / Pid.Sus-TPK / 2017 / PN.Jkt.Pst?

This study aims to find out, describe and analyze recognizing the application of Regulation No. 13 of 2016 concerning Procedures for Subscribing to Criminal Cases in the account of corporations based on the Decision of the Central Jakarta District Court Number: 94 / Pid.Sus-TPK / 2017 / PN.Jkt. As for practically, this research can be used as input for law enforcement officials, judges and advocates in handling criminal cases of corruption committed by corporations.

## Research Methods

This study uses a normative juridical legal research method. In accordance with the problems studied, the approach used is the statute approach and the conceptual approach. the nature of this research

<sup>10</sup> M. Haryanto, 'Pertanggungjawaban Pidana Korporasi dan Individualisasi Pidana', (2012) *Refleksi Hukum*, 203.

<sup>11</sup> Ridwan Rangkuti, 'Pertanggungjawaban Korporasi dalam Tindak Pidana Lingkungan Hidup menurut UU No. 23 tahun 1997', (2014) 2 *Justitia*, 263.

<sup>12</sup> Dakwaan Penuntut Umum pada Komisi Pemberantasan Korupsi dalam Putusan PT DKI Jakarta Nomor: 3/Pid.Sus-TPK/2018/PT.DKI.

<sup>13</sup> *Ibid.*

is descriptive, which means describing data about a situation or social symptoms that develop in the midst of society so that with the existence of this research is expected to obtain a comprehensive, complete and systematic picture of the object of research.<sup>14</sup> After all the data is collected, both primary and secondary data as well as legislation so that the authors conduct a qualitative analysis of how to analyze data sourced from legal materials collected through data collection techniques used based on concepts, theories, theses, legal principles, expert opinion or the views of the researchers themselves.<sup>15</sup>

## **Discussion**

### **Application of Republic of Indonesia Supreme Court Regulation Number 13 of 2016 concerning Procedures for Subscribing to Criminal Cases by Corporations on Legal Considerations by judges against the Decision of the Central Jakarta District Court Number: 94 / Pid.Sus-TPK / 2017 / PN.Jkt.Pst**

Corporations as perpetrators of criminal offenses are no longer new in crime prevention in Indonesia. Corporate crime refers to crimes committed by corporations, for company interests by company officials such as bribery, illegal rebates, fraudulent competition, tax evasion, environmental pollution, discriminatory practices towards employees, political contributions, product piracy and counterfeiting, and sales dangerous products.<sup>16</sup>

In the process of modernization and economic development, reality shows that the development of corporations as actors of development increasingly plays a role in the past in order to suit corporations as subjects of criminal law who can commit crimes and be accounted for in criminal law, now shifting. Determination of corporate responsibility as the maker of criminal acts in criminal law seems to have become an inevitable demand of the times to increase the responsibility of the state to manage increasingly complex people's lives. This is evident in the making of the Indonesian Criminal Code, because the drafters of the draft KUHP have arrived at the stage of accepting and formulating corporations as subjects of criminal law and those responsible.<sup>17</sup>

The things that are justified in being able to ask for accountability to corporations are First, because in a variety of economic and fiscal crimes, the profits obtained by the corporation or the losses suffered by the community can be so large that it will not be balanced if the criminal is only imposed on the management. Second, by just convicting the management, there is no or no guarantee that the corporation will not repeat the crime again, thus memidana corporations can comply with the relevant regulations.<sup>18</sup>

The formulation of the subject of corruption by using the words "people" as stipulated in Article 7 paragraph (3) can be interpreted that including in the sense of the perpetrator is a corporation, because of the concept of people according to Satjipto Rahardjo, in law people have a very central position, because all other concepts such as rights, obligations, mastery, legal relations, etc., ultimately center on the concept of people. This person is the bearer of rights and can also be subject to obligations and so on.<sup>19</sup>

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<sup>14</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Universitas Indonesia Pers, Jakarta, 1986), hlm. 10.

<sup>15</sup> Program Magister Ilmu Hukum, *Pedoman Penelitian dan Penulisan Tesis*, (Universitas Andalas, Padang, 2012), hlm.8.

<sup>16</sup> Muladi, *Pertanggungjawaban Pidana Korporasi (Corporate Criminal Responsibility)*, (PT. Alumni, Bandung), 21.

<sup>17</sup> Widodo Tresno Novianto, 'Korporasi sebagai Subjek Tindak Pidana Korupsi dan Prospeknya bagi Penanggulangan Korupsi di Indonesia', (2007) 70 *Majalah Yustisia*, 4.

<sup>18</sup> Rony Saputra, 'Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi yang Merugikan Negara terutama terkait dengan Pasal 2 ayat (1) UU PTPK)', (2015), 2 *Jurnal Cita Hukum*, 278.

<sup>19</sup> Satjipto Rahardjo, *Ilmu Hukum*, (PT. Citra Aditya Bakri, Bandung, 2014), 67.

The main purpose of corporate criminal responsibility is <sup>20</sup>

1. Effective prevention of deterrent effects;
2. Characterizing (just retribution);
3. Rehabilitation, both for corporations and criminal acts;
4. A symbolic message that no crime is free from punishment;
5. The moral condemnation of society;
6. Efficiency, predictability, and consistency with the principles of criminal law;
7. Justice

In criminal acts of corruption, corporations as perpetrators of crimes, both acting as themselves and together. These people have something to do with the corporation either as shareholders, financiers or to receive a salary or wage from the corporation. Furthermore, the management is chosen which is part of a whole unit within the corporation. If the corporate management carries out deviant acts and rules and raises state or regional finances, then qualifying as a criminal act of corruption. Furthermore, if carried out on behalf of a corporation, criminal penalties can be imposed on the corporation and / or its supervisor and can be represented by its management.<sup>21</sup>

Supreme Court regulations are established with the aim of streamlining the course of the judiciary. This can be seen from a number of judges' decisions which turned out to use the Supreme Court Regulation of the Republic of Indonesia as a basis in its legal considerations when there was a vacuum or lack thereof in the procedural law. The Republic of Indonesia Supreme Court Regulation Number 13 of 2016 concerning Procedures for Subscribing to Criminal Cases by Corporations is formed based on the authority granted by the Republic of Indonesia Constitution namely the 1945 Constitution and Law No. 10 of 2004 as amended by Law No. 12 of 2011 concerning the Establishment of Laws and Regulations to the Supreme Court of the Republic of Indonesia as the highest institution in the judicial environment is present in order to fill the legal vacuum and make law enforcement effective in Indonesia Article 3 PERMA No. 13 of 2016 describes when and in terms of how a crime committed by a corporation can be categorized into an act against the law. The provisions of Article 3 state the following:

"Criminal acts by Corporations are criminal acts carried out by people based on employment, or based on other relationships, both individually and jointly acting for and on behalf of Corporations within and outside the Corporate Environment."

In Article 20 the Law to eradicate corruption acts reads as follows:

"Corruption is carried out by corporations if the crime is carried out by people both based on work relations, as well as relationships based on other relationships, acting within the corporate environment both together and together."

The formulation of the word "Represents" in PERMA shows directly when and in terms of how a crime is categorized as a corporate crime. So that it does not require causal consequences and tempus consequences (time) between one act and the other. It is different from what was formulated with the term "if" contained in Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Eradication of Corruption Crimes where there is a lack of clarity on when and how the actions taken by corporations so that criminal penalties committed by corporations are still difficult to implement. Furthermore, actions carried out by the corporation as stipulated in Article 4 paragraph (2) PERMA RI No. 13 of 2016 can be used as the basis for imposing criminal sanctions on corporations, judges can assess corporate errors as follows:

<sup>20</sup> Muladi, Seminar Pertanggungjawaban Pidana Korporasi (*Corporate Criminal Responsibility*) dalam kerangka "*The Legal Environmnet of Business*", hlm. 1.

<sup>21</sup> Chaerul Anwar, *Kejaksaaan Memberantas Korupsi*, (Dealeder, Jakarta, 2014), 148.

1. The corporation can get the benefit or benefit from the crime or the crime is carried out for the benefit of the corporation;
2. The corporation allows for criminal acts; or
3. Corporations can take the steps needed to take precautions, prevent greater impacts and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts.

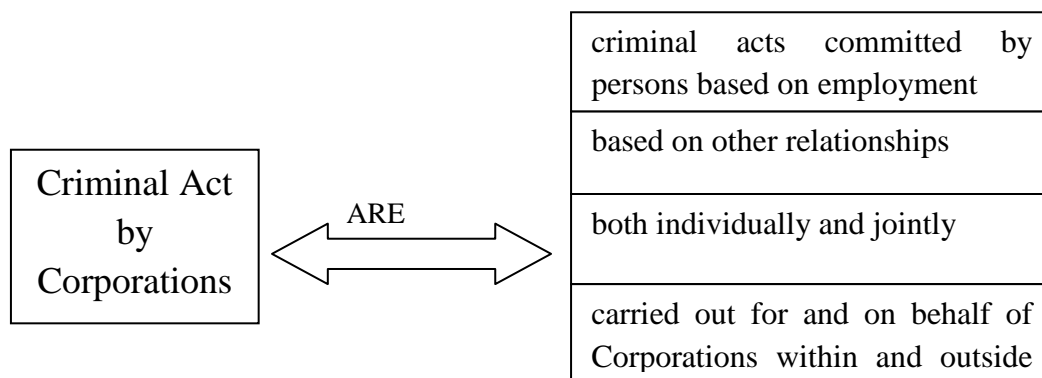
The element of error (Mens Rea) which is subjective is usually found in the offender. PERMA does not associate the attitude of the heart of the corporation with certain individuals within the corporation but rather looks at the organizing system and its own corporate management. So PERMA imposes criminal liability where actus reus and mens rea are not associated with actus reus and errors from certain human subjects within the corporation, but corporations are considered to have an independent system that can have errors of its own.

In its decision, the judge gives the following considerations:

"Considering, even though in the case of the defendant as the managing director of PT. DGI is not a person who directly commits irregularities, but deviations committed by the staff of PT. DGI Wisnu Handono as Branch Manager of PT. DGI coordinated with Clana Maureen from Anugerah Group, all of whom were known and desired by the defendant as the President Director as part of the defendant's agreement with M. Nazaruddin. Thus the defendant's role is Passive. That an evil agreement was made between the defendant and M. Nazarudin to obtain the project in exchange for a committee fee which was originally 22% to 15% carried out by means of illegal actions."

Associated with PERMA Article 3 that the Corporation commits a criminal offense committed by the President Director based on a work relationship, or based on another relationship, both individually or jointly acting on behalf of the corporation where the President Director wishes.

The judge argued that an action carried out by Directing Mind in this case the President Director as the defendant had acted for and on behalf of the company to win the construction project for the infection hospital and Udayana University Tourism Hospital. The judge in this case saw accountability as vicarious liability or substitute responsibility as the basis for ensnaring the corporation for illegal acts carried out by the corporate management so that the corporation must be held accountable for the crime. The author argues that judges' considerations are related to Article 3 of PERMA RI concerning Corporate Criminal Responsibility and Management where Article 3 adheres to the vicarious liability theory so that the defendant's act against the law based on work relations results in a profit for PT. DGI is quite large and detrimental to state finances. Untuk lebih jelas perhatikan diagram berikut:



**Figure 1.** Construction of Corruption Acts by Corporations According to Article 3 PERMA No. 13 of 2016

The formulation of the word "done by or on behalf of a corporation", "done by people based on other relationships" in Article 3 of the PERMA indicates that there is a vicarious liability theory. Furthermore, it states that criminal liability is carried out by organs or administrators for and on behalf of the corporation when fulfilled the following conditions:

1. Crime committed by the management;
2. Done within the scope of his work;
3. Crime with the aim of benefiting or providing benefits to the corporation and so forth.

So clearly PERMA can be applied as a basis for judges in imposing criminal sanctions on corporations due to illegal acts carried out by management for and on behalf of corporations because corporations cannot act directly on their own but the corporation is run by the management in every activity it does. Therefore, corporations can be held accountable for crimes due to acts of corruption that have been committed by corporate managers to benefit the corporation.

Based on Article 4 paragraph (2) passive actions taken by the President Director who in this case as a defendant are included in the act of allowing the occurrence of a criminal act. So even though the defendant did not commit acts of corruption directly but indirectly the attitude of the defendant had made the corporation take part in committing a criminal act of corruption.

According to the author, Article 3 of the PERMA draws mens rea in the President Director because he knows and there has been an intention to benefit the corporation by allowing criminal acts of corruption to occur and withdraw actus reus in the management under the defendant as in Article 4 paragraph (2) PERMA to conduct any acts against the law that cause state losses due to corruption committed by the corporation. So that PT.DGI can be held criminally accountable for illegal acts committed by corporate managers.

## **Conclusions**

Legal considerations by the Judge in making a decision stating that in this case PT. Duta Graha Indah who carried out corruption from the winning process of the Infection and Tourism Special Hospital project at Udayana University and the athlete's homestead project and multi-purpose building in the South Sumatra provincial government with the foundation of Hakim based on vicarious criminal liability. Mens rea is in the President Director because he knows and there has been an intention to gain profits for the corporation by allowing corruption to occur and Actus reus is in the management under the defendant to commit any act against the law which causes state losses due to corruption the corporation has done.

The absence of legal certainty regarding the application of vicarious liability to corporations due to the actions of the management in this case the President Director needs to be considered so that in the future the legislators can explain the application of substitute criminal liability in clearer rules so that the judges can be guided by how to apply vicarious liability to corruption cases committed by corporations in Indonesia.

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