Corporate Criminal Responsibility for Corruption Crimes in Perspective Perma No. 13 of 2016

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Abstract
Corporations as perpetrators of criminal acts can be criminally charged, because corporations are legal subjects and therefore can be held criminally responsible. PERMA Number 13 of 2016 dated December 21 2016 concerning Procedures for Handling Criminal Cases by Corporations, regulates matters namely corporate and management criminal liability, corporate group accountability, corporate responsibility in mergers, consolidations, separations and dissolution of corporations, corporate audit procedures, procedures for examining management, procedures for examining corporations and management, claims for compensation and restitution, handling of corporate assets, abolition of the authority to prosecute and carry out crimes, sentencing, criminal decisions, implementation of decisions and implementation of additional crimes or regulations against corporations.

Keywords: Corporate Criminal Liability; Corruption Crime

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia (UUD 1945) is the state constitution as the constitutional foundation of the Indonesian nation which is the basic law for every statutory regulation under it based on the constitution.

The definition of criminal law in an objective sense or known as is poenale is criminal law seen from the aspect of prohibitions on acts, namely prohibitions accompanied by criminal threats for those who violate these prohibitions. So the definition of criminal law in an objective sense has the same meaning as the notion of material and formal criminal law. As formulated by Hazewinkel Suringan, is poenale are a number of legal regulations that contain prohibitions and orders or obligations whose violations are punishable by punishment for those who violate them.

The definition of criminal law in a subjective sense or called is poeniendi as a subjective aspect of criminal law, is a rule that contains or concerns the rights or authorities of the state: 1) To determine prohibitions in an effort to achieve public order; 2) To enforce (force) criminal law in the form of imposing a penalty on the violators of the prohibition; and 3) To carry out criminal sanctions that have been imposed by the state on the violators of the criminal law.

Legal subject (rechtssubject) is something that according to law has the right or authority to carry out legal actions, or anything that can have rights and obligations according to law. According to Prof. Chainur Arrasjid, S.H. Legal subject is everything that according to law can be a supporter (can have) rights and obligations. According to Dr. Soedjono Dirdjosisworo, S.H. Legal subject or subject van een recbt, namely "people" who have personal human rights or legal entities who are entitled or who carry out legal actions. From the definitions of the legal subject above, it can be concluded that the legal subject is every being authorized to own, obtain, and use the rights and obligations in legal traffic. Humans in a biological sense are phenomena in nature, biological phenomena are living things that have five senses and have culture, while humans in a juridical sense are symptoms in social life.

In the association of law in the midst of society, it turns out that humans are not the only legal subjects (supporters of rights and obligations), but there are still other legal subjects which are often called "legal entities" (rechtspersoon). As for what is meant by legal entities are associations that can bear rights and obligations. Have their own assets and can participate in legal traffic, can sue and be sued before the court. In short, it can be a legal subject.

Etymologically the word corporation (Dutch: corporate, English: corporation, German: corporation) comes from the Latin word corporation. Corporate itself comes from the word "corpus" (Indonesia: body), which means giving body or distinguishing. Thus, the corporation means the result of the work of distinguishing, in other words, the body that is made a person, and the body that is obtained by human actions as opposed to the human body, which occurs according to nature. In terminology, corporation has an understanding that has been formulated by several legal figures. For example, according to Subekti and Tjitrosudibo what is meant by a corporate or corporation is an individual which is a legal entity.

Whereas corporations as an entity or legal subject whose existence makes a major contribution in increasing economic growth and national development, however, in reality corporations sometimes also commit various criminal acts (corporate crimes) which have a detrimental impact on the state and society. Whereas in reality corporations can become a place to hide assets resulting from criminal acts that are not touched by the legal process in criminal liability.

That many laws in Indonesia place corporations as legal subjects of criminal acts that can be held accountable, but cases with corporate law subjects that are filed in criminal proceedings are still very limited, one of the reasons is that the procedures and procedures for examining corporations as perpetrators of crimes are still not yet established. clear, therefore it is seen as necessary to have guidelines for law enforcement officials in handling criminal cases committed by corporations. Article 1 In the Supreme Court Regulation Number 13 of 2016 what is meant by a Corporation is an organized group of people and/or assets, either a legal entity or a non-legal entity.

RESULTS AND DISCUSSION

Corporations as Legal Subjects

A limited liability company is a legal subject that holds the rights and obligations of an object or wealth, in which the wealth originates from the assets of individuals deemed worthy of being defended. As a legal subject, a limited liability company acts like an

individual because it can carry out its own legal actions, can sue and be sued on its own behalf before the court, and has its own assets that are separate from its shareholders. In the legal system in Indonesia, company law is not the most important law, because there are other legal principles that come into contact with company law, namely partnerships and associations, all of which are regulated in the Civil Code. Apart from associations and associations, there are also Firms and Limited Partnerships regulated in the Book of Commercial Law.

If you pay attention to the meaning of the existing agreement, which is a legal act to bind yourself with the aim of causing certain legal consequences that are mutually desired, then it is clear that here a company can be established by more than two people or at least there must be two parties to bind themselves to each other. Specifically in the establishment of a limited liability company, previously regulated in the Criminal Code did not determine how many people must be present in establishing a limited liability company, but so that there is a legal relationship and it is linked to the meaning of the agreement, it can be concluded that a limited liability company can be established by at least two people.

However, in the Law on Limited Liability Companies, there is an exception to the provision of two or more founders. Regulated in the Capital Market Law. What is meant by "Persero" is a State-Owned Enterprise in the form of a company where the capital is divided into shares as regulated in the Law on State-Owned Enterprises.

Arrangements regarding limited liability companies were initially regulated in Law Number 1 of 1995 concerning Limited Liability Companies. The formation of this special arrangement regarding the Company is due to be able to protect the interests of shareholders and creditors, as well as other related parties as well as the interests of the company itself, while in the Criminal Code the position of the company is still narrow, and not in accordance with the rapid development of the economy and business world and only creates legal entity in a company in the form of a legal entity, and does not include a protection for shareholders.

Law Number 40 of 2007 concerning limited liability companies has been adapted to various developments that occur in business activities in the form of adding new provisions, repairing, perfecting or maintaining the provisions in Law no. 1 of 1995 which is considered still relevant to the current situation.

Apart from being a capital partnership with a legal entity, a limited liability company is also a place for parties to cooperate, namely to carry out contractual relations. This cooperation creates a legal entity that is deliberately created, namely the company as an "artificial person". In business activities, in general, this form of business entity is in great demand and well-known, due to several considerations, namely: 1) There is limited accountability to shareholders. 2) There is a mobility characteristic of participation, meaning that there is a possibility of moving or changing its participation. 3) There is management through company organs.

According to Soedjono Dirjosisworo Limited Liability Company or PT is a legal entity established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares, and fulfilling the requirements stipulated in Law no. 40 of 2007 as amended with its implementing regulations.

According to H.M.N. Purwosutjipto, a limited liability company is a partnership in the form of a legal entity. This legal entity is not called a "partnership", but a "company", because the capital of the legal entity consists of the holdings or shares it owns. According to Zaeni

Asyhadie Limited Liability Company is a form of business with a legal entity, which was originally known as Naamloze Vennootschap (NV). The term "limited" in a limited liability company refers to the responsibility of shareholders which is limited to the nominal value of all the shares they own.

Corporate Crime

In the literature it is often said that this corporate crime is a form of white collar crimes. In a broad sense, corporate crime is often confused with corporate crime, because a combination of the two often occurs. The forms of criminal acts that can be committed are very diverse, and often have economic value (taxes, the environment, violations of consumer rights, bribery, and so on) with a very wide scale and scope of victims. Victims can include consumers, the economic system, the environment, labor, and the government itself. For clarity, a distinction must be made between: 1) Crimes for corporation; 2) Crimes against corporations, and 3) Criminal corporations.

The first one above is actually a corporate crime. In this case it can be said that corporate crimes are clearly committed to the corporate, and not against. The second is often called employee crimes, while the third is a corporation that is deliberately formed and controlled to commit crimes.

The economic consequences cannot be doubted, considering that profile is the main motivation for corporate crime, while social losses can be studied from the statement of Conclin, retired President on Law Enforcement and Administration of Justice of the United States of America that "such offenses are the most threatening of all-not just effect on the moral standards by which American business is conducted". That these violations are the most threatening of all, affects not only moral standards but also the business that America does.

Based on experience in various developed countries, the identification of corporate crime can include criminal acts including violations of antitrust laws, computer fraud, payment of taxes and excise, price violations, production of goods that endanger health, administrative violations, environmental pollution, corruption (bribery), and labor and so on.

Corporations as perpetrators of criminal acts, in positive law it has been recognized that corporations can be held criminally accountable, and can be subject to criminal sanctions. Whereas, a corporation as a legal entity, then that also means a corporation is a legal subject. Therefore, it can be held criminally responsible. In the Netherlands, determining corporations as perpetrators of crimes is based on the Arrest "Kleuterschool Babbel", which states that actions of individuals/private persons can be borne by legal entities/corporations, if these actions are reflected in social traffic as acts of legal entities. Such actions must be part of the policy of a legal entity or corporation.

If a legal entity is prosecuted for committing a crime, whether committed intentionally or negligently, the question will arise whether and how the legal entity/corporation does not have a human spirit (menselijke psyche), and elements of psychis (de psychics bestanddelen), can fulfill the elements of intentional or "iopzet" and negligence.

Corporate Criminal Liability

Accountability comes from the word responsibility. According to the Big Indonesian Dictionary, the definition of responsibility is the condition of being obliged to bear everything (if anything happens one may be prosecuted, blamed, sued, and so on). While accountability is an act (thing and so on) responsible for something that is accounted for.

In the legal dictionary there are two terms referring to accountability, namely liability (the state of being liable) and responsibility (the state or fact of being responsible). Liability is a broad legal term which contains the meaning that refers to the most comprehensive meaning, covering almost every character of risk or responsibility, certain, dependent, or possible. Liability is defined to refer to all the characters of rights and obligations.

In understanding and practice, the term liability refers to legal responsibility, namely accountability due to mistakes made by legal subjects, while responsibility refers to political responsibility. In the administrative encyclopedia, responsibility is a person's obligation to properly carry out what has been made obligatory for him. It is also stated that accountability implies that even though a person has freedom in carrying out a task assigned to him, he cannot free himself from the results or consequences of his freedom of action, and he can be required to carry out properly what is required of him.

The definition of responsibility can be divided into 3 (three) namely responsibility in the sense of accountability, responsibility, and liability. Accountability responsibility in the legal sense is usually related to finance. Responsibility in the sense of responsibility means "obliged to bear everything", if something happens you can be blamed, prosecuted, and threatened with criminal penalties by law enforcement before the court, accept the burden due to one's own actions or someone else's. Responsibility in the sense of liability means bearing all losses that occur as a result of his actions or the actions of other people acting for and on behalf of.

A concept related to the concept of legal obligation is the concept of responsibility (liability). Someone said to be legally responsible for a particular action is that he can be subject to a sanction in the case of the opposite act. Normally, in cases where sanctions are imposed on individual delinquents, it is due to their own actions that make that person responsible.

In criminal law the concept of "responsibility" is a central concept known as the teaching of error. In Latin, the teaching of error is known as mens rea. The doctrine of mens rea is based on an act which does not result in a person being guilty unless the person's thoughts are evil. In English the doctrine is formulated with an act does not make a person guilty, unless the mind is legally blameworthy. Based on this principle, there are two conditions that must be met in order to convict someone, namely that there is an outward act that is prohibited/criminal (actus reus), and that there is an inner attitude that is evil/disgraceful (mens rea).

Legal entities (rechtspersoon, legal person, persona moralis, legal entity) are legal subjects. According to Sudikno Mertukusumo, the legal subject is everything that can obtain rights and obligations from law, only humans. So, humans are recognized by law as the bearers of rights and obligations, as legal subjects or as people. Even a fetus that is still in the womb of a woman in various modern legal arrangements has been viewed as a legal subject as long as its interests require legal recognition and protection.

First of all, criminal responsibility is a condition that exists in the person who commits a crime and connects the state of the maker with the actions and sanctions that should be

imposed. In this regard, Sudarto stated that a person's sentence is not enough if that person has committed an act that is against the law or is against the law. Punishment still requires conditions, that a person who commits an act contrary to the law must have guilt or guilt. Apply the principle of no crime without fault "Green Straf Zonder Schuld" or nulla poena sine culpa.

The definition of error in criminal law has been interpreted by many legal experts. Mistakes are placed as one of the elements of criminal responsibility. Mistakes are very closely related to sentencing, in accordance with the adage that "no punishment without fault" is "Green straf zonder schuld" or actus non facit reum nisi mens sit rea. The principle of no crime without fault "Green straf zonder schuld" is a principle of criminal responsibility. Therefore, in terms of being convicted of someone who commits a criminal act, it depends on the existence of a mistake.

The application of the principle of no crime without error "Green straf zonder schuld", in criminal liability is essentially in line with the actus non est reus doctrine, the nis nis sit rea contained in the common law system, namely to be able to hold someone accountable for committing a crime is determined by the existence of mens rea on that person. Mistakes are conditions that are based on personal reproaches against the person who committed the deed. Simos argues, guilt is the presence of a certain psychological state in a person who commits a criminal act and there is a relationship between this condition and the act committed in such a way that the person can be reproached for committing the said act.

In order to hold corporations criminally responsible, in Anglo-Saxon countries such as England, the theory of direct corporate criminal liability is known. According to this theory, corporations can commit a number of offenses directly through people who are closely related to the corporation and are seen as the company itself. In such circumstances, they are not a substitute and therefore, corporate liability is not personal liability. This theory is known as the identification theory.

The theory of identification basically recognizes that the actions of certain members of the corporation, as long as those actions are related to the corporation, are considered as actions of the corporation itself. This theory also holds the view that certain agents in a corporation are considered as "directing mind" or "alter ego". The actions and mens rea of the individuals are then associated with the corporation. If individuals are authorized to act on behalf of and while running a corporation's business, the mens rea of the individuals is the corporation's mens rea. The actions taken by individuals are basically not representing the corporation, but are considered as the actions of the corporation itself. When an individual makes a mistake, that mistake is basically a corporation's fault. So, the individual is synonymous with the corporation.

In relation to the directing mind, Sutan Remy Sjahdeini, by quoting Little and Savoline's opinion regarding the adoption of the direct corporate criminal liability theory in the Canadian Supreme Court Decision in the case of Canadian Dredge and Dock vs. The Queen stated six principles. First, the directing mind of a corporation is not limited to one person. A number of officers (officers) and directors can be the directing mind of the corporation.

Second, geography is not a factor. In other words, the fact that a corporation has multiple operations (multiple operations) in various geographic locations (has various branch offices) will not affect the determination of who are the directing minds of the company concerned. Third, a corporation cannot evade responsibility by stating that the person or persons who committed the crime have committed the crime in question even

though there has been a strict order for them to only commit acts that do not violate the law. Officers and corporate directors have an obligation to monitor the actions of their employees who violate the company's general guidelines that prohibit them from committing criminal acts.

Fourth, in order for someone to be found guilty of having committed a crime, that person must have a guilty mind and/or criminal intent, which is known in criminal law as the mens area. In general, the wrong directing mind and heart are in the same person. However, according to the theory of identification (corporate criminal liability), the officer or director of the corporation who is the directing mind of the corporation cannot be held responsible for a crime if the crime is not realized.

Fifth, to apply the theory of corporate liability it must be shown that: 1) The actions of the personnel who are the directing mind of the corporation are included in the field of activity (operation) assigned to them; 2) The crime is not a fraud against the corporation concerned; and 3) The crime is intended to obtain or generate benefits for the corporation.

Sixth, corporate criminal responsibility requires contextual analysis (contextual analysis). In other words, the determination must be made case by case (on a case by case). A person's position or title in the company does not automatically make him or her responsible. An assessment of a person's authority to be able to determine corporate policies or to be able to make important decisions must be completed in carrying out this contextual analysis.

Strict liability is defined as a crime without requiring the perpetrator to commit one or more of the actus reus. This strict liability is liability without fault. With the same substance, the concept of strict liability is formulated as the nature of strict liability offenses is that they are crimes which do not require any mens rea with regard to at least one element of their "actus reus" (the concept of absolute liability is a form of violation/ crime which does not require an element of guilt, but only requires an act).

Another opinion regarding strict liability was put forward by Roeslan Saleh as follows: In practice, criminal responsibility disappears, if there is one condition that forgives. Practice also gives birth to various levels of mental states that can be a condition for the abolition of criminal imposition, so that in its development a group of crimes emerges which for handling punishment is sufficient with strict liability.

In a crime that is strict liability, all that is needed is the suspicion or knowledge of the perpetrator (defendant), and that is enough to demand criminal responsibility from him. So, there is no question of the existence of mens rea because the main element of strict liability is actus reus (actions), so what must be proven is actus reus (actions), not mens rea (mistakes).

Vicarious liability is commonly referred to as substitute liability, defined as liability according to one's law for wrongdoing committed by another person. Barda Nawawi Arief argues that vicarious liability is a concept of someone's responsibility for mistakes committed by other people, such as actions taken that are still within the scope of work (the legal responsibility of one person for wrongful acts of another, as for example, when the acts are done within the scope of employment).

In the event that the directors have carried out their actions in accordance with the articles of association or statutory provisions (intra vires), implemented fiduciary duties and implemented the business judgment rule, especially if the directors have received an Acquit et de charge statement from the GMS, then all consequences of their actions are the

responsibility of the corporation , unless it can be proven that the board of directors have taken actions that did not go through the procedures and procedures required by the corporation, were carried out fraudulently, had a conflict of interest, contained elements of illegal acts and were negligent weight (gross negligence).

Corruption Crime

In the Big Indonesian Dictionary, corruption literally means: bad, damaged, likes to use goods (money) entrusted to him, can be bribed (through his power for personal gain). As for the meaning of the terminology, corruption is misappropriation or embezzlement (state or company money) for personal or other people's interests.

Corruption is a crime that is carried out with full calculation by those who actually feel they are educated and educated people. Corruption may also occur in situations where a person holds a position that involves sharing financial resources and has the opportunity to misuse it for personal gain. Nye defines corruption as behavior that deviates from formal duties as a public servant to gain financial gain or enhance status. Apart from that, material, emotional, or symbolic benefits can also be obtained. Actually, the definition of corruption is very varied. However, in general, corruption is related to actions that are detrimental to the public interest or the wider community for personal or certain group interests.

According to Syed Husein Alatas, in general usage, the term "official corruption we call corrupt when a civil servant accepts a gift offered by a private person with the intention of influencing him to pay special attention to the interests of the giver. Sometimes the act of offering such gifts or other tempting gifts is also included in the concept. Extortion, namely the request for such gifts or gifts in carrying out public duties, can also be seen as corruption'. In fact, the term is also sometimes applied to officials who use public funds at their disposal for their own benefit; in other words, those who are guilty of embezzlement above the price the public has to pay.

David H. Bayley argues that Corruption is "an incentive (a government official) based on bad faith (such as a bribe) so that he violates his obligations". Then bribes (bribes) are defined as "gifts, awards, gifts or privileges that are conferred or promised, with the aim of damaging judgment or behavior, especially someone from a trusted position (as a government official).

So corruption, even though it is specifically related to bribery or kickbacks, is a general term that includes the abuse of authority as a result of consideration for the pursuit of personal gain. And not only in the form of money. This is splendidly demonstrated by an Indian government report on corruption: in its broadest sense, corruption includes the abuse of power and influence of a position or privileged position in society for personal purposes.

According to Sudomo, actually there are three definitions of corruption, firstly controlling or obtaining money from the state in various ways illegally and used for their own interests, secondly, abuse of authority, abuse of power. That authority is abused to provide other facilities and benefits. The third is extortion. Extortion is an interaction between two people, usually officials and local residents, which means the officials provide a facility and so on, and certain members of the community give rewards for what the officials in question have done.

Supreme Court Regulation Number 13 of 2016

Along with the increasing role of corporations in various fields, especially the economy and there is a tendency for corporations to commit crimes in achieving their goals. The very large role of corporations and the desire of corporations to obtain the maximum profit has the potential to pose a danger to society.

Corporations as a subject of criminal law are not recognized by the Criminal Code, this is because the Criminal Code is a legacy from the Dutch colonial government which adheres to the Continental European system (civil law). Continental European countries are somewhat behind in terms of regulating corporations as subjects of criminal law, when compared to Common law countries, where in Common Law countries such as the United Kingdom, the United States and Canada the development of corporate responsibility has started since the industrial revolution. Courts in England began in 1842 where a corporation was fined for failure to fulfill a legal obligation.

With the acceptance of corporations as perpetrators of criminal acts and can be punished, then an interesting thing to study is the issue of corporate criminal responsibility and criminal penalties imposed on corporations. The main principle in criminal responsibility is the principle of guilt (schuld) on the offender. Mistakes are at the heart of criminal responsibility. With the acceptance of corporations as subjects of criminal law, problems arise concerning corporate criminal liability in criminal law, namely whether legal entities (corporations) can have mistakes, whether intentional or negligent.

Because it is very difficult to determine whether or not there is a corporation's fault, it turns out that in its development, especially regarding corporate criminal liability, there is a "new view" or say a different view that especially for the responsibility of legal entities (corporations), the principle of guilt does not apply absolutely. , so that criminal liability which refers to the doctrines of "strict liability" and "vicarious liability" which in principle constitute a deviation from the principle of error, should be taken into consideration in the application of corporate responsibility in criminal law.

The development of the corporation as a subject of criminal law phase I. Where the drafters of the Criminal Code still accept the principle of "society/universitas delinquere non potest" (legal entities cannot commit crimes). This principle actually applied in the past century to all of continental Europe. This is in line with individual criminal law opinions from the classical school that was in effect at that time and then also from the modern school in criminal law.

The provisions in the Criminal Code that describe the acceptance of the principle of "society/university delinquere non potest" are provisions in Article 59 of the Criminal Code. This article also stipulates reasons for abolishing crimes (strafuitsluitingsgrond), i.e. management, board of directors or commissioners who are found not to have interfered in the commission of an offense shall not be punished.

In this accountability system there has been a shift in view, that corporations can be accounted for as makers, in addition to natural humans (natuurlijke person). So the rejection of corporate punishment based on the university delinquere non potest doctrine, has undergone a change by accepting the concept of a functional actor (functioneel daderschap).

As for the things that can be used as justifications that corporations as creators and at the same time responsible are as follows: First, because in various economic and fiscal crimes, the profits obtained by corporations or losses suffered by society can be so great that it will not be possible to balance them. If the punishment is only imposed on administrators.

Second, by only punishing the management, there is no guarantee that the corporation will not repeat the crime again. By punishing the corporation with the type and weight according to the nature of the corporation, it is hoped that the corporation will comply with the regulations in question.

The definition of criminal acts of corruption based on the law on eradicating criminal acts of corruption is even broader, namely by including corporations as legal subjects. The definition of the corporation itself is stated in Article 1 number 1 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which states that a corporation is an organized collection of people and/or assets, whether they are legal entities or not legal entities.

The definition of criminal acts of corruption based on Law Number 20 of 2001 concerning the eradication of criminal acts of corruption is broader as stated in Article 1 paragraph (1) of Law Number 3 of 1971 concerning Eradication of Corruption Crimes. Law Number 31 of 1999 states, convicted of criminal acts of corruption, namely:

Whoever unlawfully commits an act of enriching himself or a person or an entity which can directly or indirectly harm the state finances and or the state economy or he knows or should suspect that the said act is detrimental to the state finances or the state economy.

Whoever, with the aim of benefiting himself or another person or an entity, abuses the existing authority, opportunity or means or because of his position or position, which can directly or indirectly harm state finances and the state economy.

Whoever commits a crime listed in Articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420, 423, 425, and Article 435 of the Criminal Code.

Whoever gives a gift or a promise to a civil servant as meant in Article 2 bearing in mind a power or authority attached to his position or position or the one giving the gift or promise is deemed to be attached to that position or position.

Whoever, without a reasonable reason, within the shortest possible time after receiving the gift or promise given to him as referred to in Articles 418, 419 and Article 420 of the Criminal Code, does not report the gift or promise to the authorities.

Juridically, the definition of Corruption according to Article 2 of the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning the Corruption Eradication Commission. The definition of Corruption is explained, namely:

Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty)) years and a fine of at least IDR 200,000,000.00 (two hundred million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs).

In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, capital punishment may be imposed

The definition of corruption above is in accordance with the contents of Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which says: Everyone who with the aim of benefiting himself or another person or corporation, abuses his authority , the opportunity or means available to him because of his position or position which can harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1

(one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Article 3 of the Corruption Crime Act above implies that the perpetrators of corruption must hold a position or position. Then the position or position automatically has authority. Thus the abuse of authority, opportunity and existing facilities due to the position or position uses the authority, opportunity or means attached to the position or position occupied by the perpetrators of criminal acts of corruption for purposes other than the intent of the given authority, opportunity or means.

Article 20 paragraph (1) of Law No. 31 of 1999 stipulates that: "In the event that a crime is committed by or on behalf of a corporation, criminal prosecution and imposition can be made against the corporation and or its management." Based on these things it is clear that in the UUPTPK, the corporate criminal responsibility system has reached the third stage, namely that corporations can commit criminal acts and can be held accountable.

In Supreme Court Regulation Number 13 of 2016 Article 1 Paragraph 2 states that a Corporation is an organized collection of people and/or assets, whether they are legal entities or not.

The formulation of the subject of corruption by using the word "person" as stipulated in Article 7 paragraph (2) can be interpreted that included in the meaning of the perpetrator is a corporation, because the concept of person, according to Satjipto Rahardjo, in law people have a very central position, by because all other concepts such as rights, duties, tenure, legal relations and so on, are ultimately centered on the concept of person. This person is the bearer of rights and can also be subject to obligations and so on.

Against the law or against the law, is the translation of "Wederrechtelijk". In the doctrine of "Wederrechterlijke" there are 2 (two) major schools, namely: 1) the formal Wederrechterlijk school; and 2) Material Wederrechtrelijk flow

According to Vos, the nature of being against formal law is an act that is contrary to positive (written) law, while against material law is an act that is contrary to general principles or unwritten legal norms. Adherents of the formiel unlawful school, among others: Simons, Pompe and Hasewinkel-Suringa, said that an unlawful act means that the act is contrary to the law and exceptions must also be sought in the law. The consequence of such a perspective is that an unlawful element is only considered an element if it is clearly stated in the formulation of the offense in question. If it is not stated in the offense then it is not a crime.

Langemeyer, Van Hatum and Utrecht, adherents of the material nature of unlawful behavior, are of the opinion that an act that is contrary to the provisions of the law is not necessarily an unlawful act. The act can only be said to be against the law, if the act is indeed condemned by society. Or in other words: if the act is against an unwritten law. An act is contrary to the law, but is not deemed disgraceful or wrong or even proper by unwritten law, so it is not an unlawful act. According to Moelyatno, besides contradicting the legal awareness of society (called objective onrechtselemen), it must also conflict with individual legal awareness, or the mind of the person himself (called subjective onrechtselemen).

According to Moch Faisal Salam, that the expansion of the notion of against the law in the explanation of the UUPTPK also includes the notion of onrechmatige daad in civil law, coupled with other elements that are detrimental to state finances or the country's economy. That the legislature does not provide a clear definition of what is meant by enriching oneself or another person or a corporation. However, it is connected with Article 37 paragraph (4)

where the suspect/defendant is obliged to provide information about the source of wealth in such a way that wealth that is not equal to income or additions can be used as evidence. So the interpretation of the term "enriching" is indicating a change in a person's wealth or an increase in wealth as measured by the income he earns.

The element of "self-benefit" here, according to Martiman Prodjohamidjojo, is the same meaning as "self-benefit" which is stated in Article 378 of the Criminal Code. Even though there is no unlawful element, this element exists secretly, because in every delict act there is always an unlawful element. The element of "self-gaining against the law" means "self-benefit without rights". This unlawful element is not strictly regulated in Article 3, as regulated in Article 2 paragraph (1). This is what distinguishes Article 3 from Article 2.

According to Andi Hamzah, the element "with the aim of benefiting oneself ....," is one of the differences with the provisions of Article 2, apart from the element against the law above, Article 2 includes the element "enriching oneself ...,". In terms of proof, it is easier to prove the existence of the element "with the aim of benefiting oneself ……..," rather than "enriching oneself .....,", because the first element is an ordinary element in criminal law as stated in Article 378 of the Criminal Code and Article 423 of the Criminal Code .

What is meant by "abuse of authority" can be interpreted that the said person is an official who has power, whose act was committed against the law or in other words he with his authority "takes refuge" under the rule of law.

Based on the above understanding, it is connected with the subject of the perpetrator, namely the corporation. According to the author, this can be connected with the theory of corporate criminal responsibility, one of which is the identification theory. According to this theory, the action or will of the director is also the act or will of the corporation (the acts and state of mind of the person are the acts and state of mind of the corporation).

The issuance of Supreme Court Regulation (Perma) No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations needs to be used as a momentum to start targeting corporations which have been dragged into the vortex of corruption. Law enforcement officials no longer need to argue that the procedural law is not clear or the material law is contradictory. The Corruption Eradication Commission is the law enforcement agency most expected to carry out this mandate. In disclosing corruption cases at the KPK, a number of company names have been mentioned. At the time of drafting Perma No. 13 of 2016 was published, the Supreme Court has also coordinated with the KPK marked by the visit of supreme judge Surya Jaya, 8 September 2016. So far, corporations that have been charged with criminal offenses can still be counted on the fingers of one hand. Law enforcement officials, both police and prosecutors and judges, acknowledged this on several occasions. One of the reasons is the difference of opinion among law enforcers, especially with regard to procedural law.

PERMA Number 13 of 2016 dated December 21 2016 concerning Procedures for Handling Criminal Cases by Corporations, regulates matters namely corporate and management criminal liability, corporate group accountability, corporate responsibility in mergers, consolidations, separations and dissolution of corporations, corporate audit procedures, procedures for examining management, procedures for examining corporations and management, claims for compensation and restitution, handling of corporate assets, abolition of the authority to prosecute and carry out crimes, sentencing, criminal decisions, implementation of decisions and implementation of additional crimes or regulations against corporations.

CONCLUSION

Corporations as perpetrators of criminal acts, can be subject to criminal sanctions. Whereas, a corporation as a legal entity, it also means that a corporation is a legal subject. Therefore, it can be held criminally responsible. PERMA Number 13 of 2016 dated December 21 2016 concerning Procedures for Handling Criminal Cases by Corporations, regulates matters namely corporate and management criminal liability, corporate group accountability, corporate responsibility in mergers, consolidations, separations and dissolution of corporations, corporate audit procedures, procedures for examining management, procedures for examining corporations and management, claims for compensation and restitution, handling of corporate assets, abolition of the authority to prosecute and carry out crimes, sentencing, criminal decisions, implementation of decisions and implementation of additional crimes or regulations against corporations. The implementation of law enforcement by law enforcement officials must be carried out strictly, carefully, consistently and earnestly in accordance with the applicable laws and regulations, which of course the norms regulated between one article or paragraph and another article or paragraph do not become a space to create injustice.

REFERENCE

1. Agus Budiarto. Kedudukan Hukum dan Tanggung Jawab Pendiri Perseroan Terbatas, Ghalia Indonesia, Jakarta. 2002
2. Andi Hamzah, Pengantar Hukum Acara Pidana Indonesia, Jakarta: Ghalia Indonesia, 1984
3. Barda Nawawi Arief, Sari Kuliah Perbandingan Hukum Pidana, Jakarta: PT. Raja Grafindo Persada, 2002
4. Binoto Nadapdap, Hukum Perseroan Terbatas, Jakarta; Permata Aksara, 2012
5. Dwija Priyatno, Kebijakan Legislatif tentang Sistem Pertanggungjawaban Korporasi di Indonesia, Bandung: CV. Utomo, 2004
6. E. Setiadi, Kriminalisasi Kebijakan dan Bekerjanya Hukum Pidana, Univeristas Islam Bandung, Bandung, 2010
7. Frans Satrio Wicaksono, Tanggung Jawab Pemegang Saham, Direksi dan Komisaris Perseroan Terbatas (PT), Jakarta : Visimedia, 2009
8. Gunawan Widjaja, Risiko Hukum Sebagai Direksi, Komisaris dan Pemilik PT, Jakarta: Forum Sahabat, 2008
9. H.M.N. Purwosutjipto,"Pengertian Pokok Hukum Dagang Indonesia,. Djambatan, Jakarta,1979
10. Habib Adjie, Status Badan Hukum, Prisip-prinsip dan Tanggung Jawab Sosial Perseroan Terbatas,Bandung : Mandar Maju, 2008
11. Hanafi, Strict Liability dan Vicarious Liability dalam Hukum Pidana, Yogyakarta: Lembaga Penelitian, Universitas Islam Indonesia, Yogyakarta, 1997
12. Jamin Ginting, Hukum Perseroan Terbatas (UU No. 40 Tahun 2007), Bandung: Citra Aditya Bakti, 2007
13. Jimly Asshiddiqie dan Ali Safa'at. 2006. Teori Hans Kelsen Tentang Hukum, Penerbit Sekretariat Jendral dan kepaniteraan Mahkama Konstitusi Republik Indonesia, Jakarta
14. Mahrus Ali, Kejahatan Korporasi, Kajian Relevansi Sanksi Tindakan Bagi Penanggulangan Kejahatan Korporasi, Yogyakarta: Arti Bumi Intaran, 2008
15. Moch Faisal Salam, Pemberantasan Tindak Pidana Korupsi , Bandung, Pustaka, 2004

16. Moelyatno, Asas-Asas Hukum Pidana, Cetakan Kedelapan, Edisi Revisi, Jakarta: Rineka Cipta, 2008
17. Muladi dan Dwidja Priyanto, Pertanggungjawaban Pidana Korporasi, Jakarta, Kencana, 2010
18. Pipin Syarifin, Pengantar Ilmu Hukum, Bandung, Pustaka Setia, 1999
19. Pusat Pembinaan dan Pengembangan Bahasa Depertemen Pendidikan dan Kebudayaan, Kamus Besar Bahasa Indonesia, Edisi Kedua,Jakarta,Balai Pustaka,1997,Catatan ke IX
20. Roeslan Saleh, Pikiran-Pikiran tentang Pertanggungjawaban Pidana, Jakarta: Ghalia Indonesia, 1982
21. Soedjono Dirjosisworo, "Hukum Perusahaan Mengenai Bentuk-bentuk Perusahaan badan usaha di Indonesia", Mandar Maju, Bandung, 1997
22. Sudikno Mortokusumo,Mengenal hukum suatu pengantar, Yogyakarta: Liberty,1999
23. Sutan Remy Sjahdeini, Pertanggungjawaban Pidana Korporasi, (Jakarta: Grafiti Pers, 2006
24. Yahya Harahap, Hukum Perseroan Terbatas, Jakarta : Sinar Grafika, 2009
25. Zaeni Asyhadie, "Hukum Bisnis Prinsip dan Pelaksanaannya di Indonesia", PT. Raja Grafindo Persada, Jakarta, 2005