

Criminal Fines For The Offender of The Criminal Offence of Corruption by Corporations (Opportunities and Challenges According To The Indonesian Criminal Law)

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Abstract—Criminal acts of corruption made in a structured not only by individuals, but also carried out also by the Corporation. Based on the provisions in the criminal law in Indonesia, the Corporation is the subject of the law can be punished when performing a criminal act. The problem is there are limitations in the exercise of criminal threats in corporate corruption proven. Criminal sanctions fines with the paradigm of profit concerns the calculation of the profit and loss statement between is the most common type of sanctions applied against the Corporation primarily profit oriented corporations. As with the overthrow of law subject to criminal sanction of human beings, the purpose of criminal sanctions to a corporation, is to prevent those corporations do the same crime later in life. This is in line with the objectives of the overthrow of the existing criminal according to criminal law.

Index Terms— Criminal Fines, Criminal Acts of Corruption, Corporations, Indonesian Criminal Law.

I. INTRODUCTION

The existence of the Corporation penetrated into almost all areas of life such as social, economic, environmental and so on. The Corporation currently has legal capacity in almost all areas of the law, has a wealth of its own separate from the wealth of its administrator. It also has a number of rights and obligations.

Anca Iula Pop posited it as follows:

“similar to individuals, corporation have an identifiable persona and the capacity to express moral judgements.

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¹ Suhariyono, Op.Cit., page 351

Corporations have an identifiable persona in the sense that they have a unique presence in the community, different from that of their owners or managers; they have ‘ethos’ that makes them unique and different from the individuals controlling or working for the corporations. The ethos can be derived from the corporation’s dynamic, structure, monitoring system, aims, policies, promotion of compliance with the laws and discipline of the employees”.

Corporation as the subject of the criminal law in doing the crime, can only be threatened and was sentenced to a criminal fine. Besides that, it can also be subject to additional criminal, such as freezing or revocation. Criminal fines specified in criminal legislation or determined by the judge in court, as long as it hasn’t gotten the attention to criminal law experts. This type of crime is not as attractive as the criminal agency as criminal lost independence in the form of imprisonment or criminal for life that is considered the most effective deterrent effect.

Criminal acts of corruption made in a structured not only by individuals, but also carried out also by the Corporation. Based on the provisions in the criminal law in Indonesia, the Corporation is the subject of the law can be punished when performing a criminal act, so also in the criminal acts of corruption.

The problem is there are limitations in the exercise of criminal threats in corporate corruption proven. The focus in writing this is to see how the opportunities and the challenges against the corporations who do the criminal offence of corruption according to law criminal Indonesia. People have yet to count and yet many law enforcement agencies consider how efficiently and effectively the criminal fines if applied in a fair and decent to the defendant.

Criminal sanctions fines with the paradigm of profit concerns the calculation of the profit and loss statement between is the most common type of sanctions applied against the Corporation primarily profit oriented corporations.

As with the overthrow of law subject to criminal sanction of human beings, the purpose of criminal sanctions to a corporation, is to prevent those corporations do the same crime later in life. In addition, to prevent other corporations do the same mistakes. If possible, it would be the subject of corporate law are better later in the day. This is in line with the objectives of the existing pemidanaan according to criminal law.

II. THE CORPORATION AS A SUBJECT OF LAW

A. *Subject of Law in Criminal Law*

The development of the concept of the Corporation as a subject of criminal law are the result of changes that occurred in the running of community activity efforts. In the context of corporate in economic life can be seen data on the growth of transnational corporations. Corporate recognition as a subject delik criminal law already underway since 1635 when the United Kingdom legal system recognizes that corporations can be held accountable in criminal over the criminal acts of light.

America recognizes the existence in 1909 through the Court ruling. After that, the Netherlands, Italy, France, Canada, Australia, Switzerland and some other European countries to follow the trend, including Indonesia also recognizes corporations as perpetrators of a crime.

In the development of the system of criminal liability and pembedanaan in Indonesia, provisions on the subject of the criminal law which only committed against an individual, it is not considered adequate again.

Article 59 of the Criminal Code States that:

"in matters where a criminal offence is determined because of violation against the determined criminal against the Trustees, members of the Board or Commissioner who turned out not to intervene did not breach, are convicted."

B. *The Corporation in Indonesia's Criminal Law*

The term of Corporation in the Netherlands called the corporatie language, which in legal terms Dictionary Fockema Andreae is explained as follows:

"also known as a legal entity is a group of humans who are bound by law to have the same purpose, or based on a history of being United, which saw it as a subject of law itself and by law is considered as a whole".

The Corporation is the same as legal entities (legal entities; rechtspersoon; corporation). The Corporation derives from the corporate (from the middle ages), i.e. from the word ' cirpus ' which gives the agency or the body of. So corporare is the result of membadankan work, in other words the body of the person or entity which obtained with human action as opposed to the human body against (a fictional construction). Definiton of corporation by JC Smitch and Brian Hogan, states that:

" A corporation is a legal person but it has no physical existence and cannot, therefore, act or form an intention of any kind except though its directors or servants. As each director or servant is also a legal person quite distinct from the corporation, it follows that a corporation's legal liabilities are all, in a sense, vicarious. This line of thingking is epitomized in the catchphrase "Corporations don't commit crimes; people do".

III. CORPORATE RESPONSIBILITY

The pattern held to determine the case of corporations, in terms of who is responsible:

1. A criminal act committed by the Corporation if it is done by people who have a functional position within the organizational structure of the corporation acting for and on behalf of the Corporation or in the interest of corporations,

based on the working relationship or other relationship based, within the scope of the Corporation's business, either singly or together.

2. If the crime committed by corporations, criminal liability is imposed against the Corporation and/or its administrator.

3. The Corporation can legally accountable for criminal acts committed against an for and/or on behalf of the Corporation, if such deeds are included within the scope of his business as specified in the articles of association or other provisions that apply to the Corporation in question.

4. the criminal responsibility of corporate trustees limited all sysops have functionalposition in the organizational structure of the Corporation.

5. In considering a criminal charge, it should be considered whether the legal protection that has given other more useful than dropping a criminal to a corporation. These considerations must be stated in the ruling of the judges.

6. Reason for forgiving or pembednaan reasons that may be submitted by the manufacturer of that Act to and/atauatas the name of the Corporation, may be filed by corporations all those reasons directly related to the Act didakwakan to the Corporation.

7. corporate responsibility and individual responsibility its administrator was different that made possible the existence of two criminal charges the same i.e. to one sysop and one other to the Corporation.

IV. CRIMINAL FINES FOR CORPORATIONS

A. *Criminal Fines in Criminal Law*

Criminal fines as one of the principal criminal (criminal after confinement) is a criminal who can be used as an alternative to the criminal body. In the Criminal law (CRIMINAL CODE) Indonesia, a criminal fine of obeying the fourth place, after the third criminal types i.e. criminal death, imprisonment and criminal confinement, often made choices by shaper law outside the criminal code as an alternative or cumulative or both from imprisonment.

A criminal fine of not only diancamkan against individuals, but also to corporations. Criminal fines at most to korpororasi who did the crime that was threatened with imprisonment of not longer than 7 (seven) years up to 15 (fifteen) years is a criminal fine of category IV. If likened to a dead criminal, criminal life imprisonment, or imprisonment of not longer than 20 (twenty) years for people, then for corporate criminal fines associated with Category VI. Criminal fines of at least for corporations is a criminal fine of Category IV.

In the matter of the determination of the criminal for the corporations identified with a single criminal to everyone, then the criminal fines for corporations can be dilipatkan up to a maximum of 3 (three) times of threat to any person

B. *Criminal Fines In The Draft Criminal Code*

In The Draft Criminal Code, The Rule Generally Uses The Concept Of Maximum And Minimum Criminal Approach. With Regard To Criminal Fines, (Indefinite) Are Determined As Follows:

1. If Not Specified The Specific Minimum In Criminal Fines Of At Least Rp 100,000, 00 (One Hundred Thousand Rupiah)
2. Criminal fines most defined by categories, namely:

Category	Amount (IDR)
I	6.000.000
II	30.000.000
III	120.000.000
IV	300.000.000
V	1.200.000.000
VI	12.000.000.000

3. Criminal fines for the corporations most is the next higher category.

4. Criminal fines for most corporations that do a criminal act liable to a:

a. the longest imprisonment 7 (seven) years up to criminal fines of Category V;

b. Criminal criminal death, life imprisonment, or imprisonment of not longer than 20 (twenty) years is a criminal fine of Categories VI.

5. Criminal fines of at least for corporations is a criminal fine of Category IV.

In the draft CRIMINAL CODE, execution of criminal dendadapat paid by way of mencicil in the period of time in accordance with the ruling of the judges. If a criminal penalty imposed cannot be paid in full within the period specified, then when a replacement for criminal fines not paid are can be taken from the property or income of the offender. In the case of corporations as perpetrators, then taking the wealth and revenue of the Corporation.

If the taking of wealth or income in mortgage payments to criminal fines could not be done for the Corporation, then it can be subject to a criminal's replacement in the form of revocation or dissolution of the Corporation's business license

V. CRIMINAL ACTS OF CORRUPTION BY THE CORPORATION

Criminal acts of corruption committed by corporations, diancamkan with criminal fines. In Act No. 31 of 1999 jo. Changes through Act No. 20 of 2001 about the eradication of criminal acts of corruption, there are classification and threat of Criminal Penalty committed by Corporations in the criminal acts of corruption.

In terms of criminal acts of corruption committed by or on behalf of a corporation, the claim and the overthrow of the criminal can be made against the Corporation and/or its administrator. This corresponds to the case was owned by the Corporation. Criminal acts of corruption committed by the Corporation when the crime was committed by people, either on the basis of the working relationship or other relationship based on that act in the corporate environment. The criminal act either done alone or together.

The provisions concerning the criminal threat of sanctions can be meted out against the Corporation in criminal acts of corruption is simply a staple form of criminal criminal fines, with the maximum criminal provisions plus 1/3 (one third). Categories of criminal acts of corruption committed by the Corporation with the threat of criminal penalty, namely:

No.	Corruption	The Threat Of Criminal Fines (IDR)
1	Conducted by corporations that enrich themselves, others, or the corporations are against the law so that it can be detrimental to the finances of the State or the	at least 200 million, maximum of 1 billion

	economy of the country	
2	Conducted by the Corporation with the aim of favouring yourself, others, or the Corporation, through abusing authority, opportunity or means are against the law, so that it can be detrimental to the finances of the State or the economy of the country	at least 50 million, maximum of 1 billion

VI. CONCLUSION

In the crime of corruption, not just committed by individuals but also by corporations. Criminal threats that can be dropped against corporations in the criminal offence of corruption is a criminal fine. Provisions on criminal fines in criminal acts of corruption in Indonesia is contained in legislation the eradication of criminal acts of corruption, which can only be brought down to a maximum of 1/3 (one third) of the criminal fine is specified. Criminal fines imposed against the Corporation with criminal payments of at least 50 million IDR and up to 1 billion IDR. This occurs when corporations do the crime with the menyalahgunaan authority. If the criminal acts of corruption committed result in profitable corporations, then the criminal fines that can be levied at least IDR 200 million and up to IDR 1 billion.

If viewed in terms of criminal fines imposed against the Corporation compared to the consequences arising from criminal acts of corruption committed, then these views have not been proportionately in the form of effective deterrent effect for the Corporation's principals. Category of criminal fines as sanctions on corporations is stillclassified as low.

Preferably, the threat of criminal penalty committed by corporations in the criminal offence of corruption is also worth considering the provisions contained in the draft Criminal Code. If the taking of wealth or income in mortgage payments to criminal fines could not be done for the Corporation, then it can be subject to a criminal's replacement in the form of revocation or dissolution of the Corporation's business license. This will be a threat to the expected deterrent effect can make for the perpetrators of the Corporation or in the future to not make a criminal offence of corruption..

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