Corporate Crime and Corporate Criminal Liability in Indonesia Positive Law

Zulkarnain¹, I Nyoman Nurjaya², Bambang Sugiri³, Ismail Navianto⁴

¹Widyagama University, Malang, Indonesia
²,³,⁴Brawijaya University, Malang, Indonesia

Email: zulkarnain@widyaagama.ac.id

Abstract

Corporate crime is a unique crime against which excellent deterrence should be combated. However, these efforts are inversely proportional to the criminal law policies that serve as the basis for their implementation. The KUHP, the key pillar of the statute, merely acknowledges natural persons as subjects of criminal law. And they do not regard companies as criminal law topics. Crime laws must also be renewed. On this basis, a criminal policy will be discussed in Indonesia about the criminal liability scheme. The results of studies indicate that criminalization of all types of corporate crime was regarded as a crime according to positive criminal law in Indonesia. The relationship between one and the other criminal code differs however. The Criminal Code notes that the crime modes sometimes perpetrated by the companies were considered a criminal offense but should be performed by a normal individual. In other words, it may be claimed that companies have not been considered subjects of criminal law by the Criminal Code. However, in some criminal law laws out of the Criminal Code, companies have been treated as targets of criminal legislation and should be responsible for their acts. In Indonesia, the criminal liability scheme introduced by the Positive Legislation seeks to identify and delegate hypotheses where the errors and the source of authorities they have are assessed. The requirements in one criminal law and the other, however, are comprehensively different. For instance, a criminal must not be the manager, but someone who does anything in or for the sake of a company and the act is carried out within the framework of a corporation. It is not, however, expressly specified by the draft Law on the Criminal Code that the criminal is convicted so as to understand that the criminal is not liable for the crime he commits because criminal liabilities were transferred to the company. The draft Criminal Code Act (RKUHP) has accommodated companies as subjects of criminal law and arranged procedures for criminal liability. It can be seen from the principle of the renewal of criminal law that future criminal law would regard business offences as criminal actions and that penal penalties will be imposed on the company. The established provisions clearly show that the model and philosophy embraced are the doctrines of vicarious responsibility, even though there are shortcomings in the model.

Keywords: Corporate, Entrepreneurial, Corporate Crime, Corporate Criminal Liability.
A. INTRODUCTION

There has been an evil company with the emergence of crime and the growth of enterprise which has spread in economic activity (Sinaga, Wirawan & Pramugar, 2020). Corporate crime is a huge crime. The effect is not only a one-time loss, but also a long-term impact. Soesanto (1998: 5) found that criminal policy punishment of the company was more vital and crucial.

Although certain codes of criminal law other than the Criminal Code govern corporate criminal activity (recognizing businesses for criminal offenses), it is not expressly held accountable for the scheme. The laws of the Criminal Code which do not regard a firm as a criminal offense should also be restored.

Therefore, efforts must be made to refresh the criminal law policy framework in relation to corporate crime based on theoretical-empirical research in Indonesia to counter corporate crime. This is done through a series of studies and scientific reviews on the basis of scholarly articles on the renewal of national criminal law policy definitions in the areas of organized crime and transparency (Rahmadia, Disemadi & Jaya, 2020).

This author's research stemmed from a lack of penal law policy in Indonesia on corporate crime. Several questions that were subsequently based on analysis are formulated in various ways: How do the effectiveness of enforcement corporate governance and corporate crime impact positive law? How are corporate responsibilities doctrines available? And what about the notion of criminal policy on corporate crime reduction in Indonesia? In the framework of normative legal studies, these three issues are examined by comparing existing criminal law (ius constitutum) policy to a definition of criminal law (ius constituendum) in the future.

This study was carried out by integrating two models of research recognized in the fields of legal analysis; legal and empirical law studies. This study was carried out as a study sample in several eastern Java towns. Some police officers, some practitioners and academics/experts are qualified legal actors as key informants in this report. This work, of course, focuses on qualitative legal analysis in a study assessing the application of criminal law in society and systemic interpretation of law.

B. LITERATURE REVIEW

Criminal law and criminology experts generally use the company to refer to the legal entity in other fields (especially civil law) (Recht persoon). The company as the legal entity is specified by Satjipto Rahardjo (1986: 110). The committee is made up of the "corpus" design, the physical structure and the "animus" rule, which gives the body
its personality. Consequently, it is a law-built legal body and death is decided by statute until it is established (Dewi & Iryanto, 2018).

Though Simpson claims that "company crime is a white-collar crime," corporate crime is a crime. Simpson then cites John Braithwaite who defines corporate crime as "company behavior or corporate employees who are prohibited and punishable by law." "Any act committed by a firm punishable by the State is a corporate offense, regardless whether it is punished by administrative law, civil law, or criminal law," Clinard and Yeager suggest (Veda, 1993: 3).

At first, the criminal law topic only natuurlijke persoon, while corporate / legal persoon is not a criminal law topic. This is because the theory of non-potential university criminals is applied (Projodikoro, 1986: 193). The possibility to prosecute a company is not only dependent on utility but also on theoretical and justified factors (Setiyono, 2003: 11).

It is no new thing that companies should be made subject to criminal law because they have long been subject to criminal law. The first village company, also in Indonesia, is subject to criminal punishment. Sahetapy (1994:32) claims the company can be justified by those who dismiss the company as a criminal law entity because it has maintained that a company is "persona ficta" (subject/human fiction). However, when taken into account in socio-economic life, corporate movements are governed by statute, and companies can then deviate (Lesmadi, 2021).

Criminal liability arising from the continuation of the (verwijbaarheid) purpose of the act shall be declared a criminal offense in accordance with applicable law and shall subjectively fulfill the necessity for actors subject to criminal liability for its behavior (Priyanto, 2004:30).

This is based on the theory 'actus non facit reum nisi mens sit rea;' if the individual is guilty (Ramelan, 2004:6). Sudarto (1988:85) says long before this that: "It is not enough to convict someone if that person has committed an act that is against the law or the law. So even though the show fulfills the formulation of the offense in the statutory regulations, for punishment, it is still necessary to revoke the requirements for a criminal, that the person who commits the act has a pang of guilt or guilt (subjective guilt)."

Reid (1985:7), writes: "the law requires criminal intent, or men’s rea, the element required to establish culpability. This element is essential, for in many cases, it will be the critical factor in determining whether and the act was or was not a crime”.

As mentioned above, criminal responsibility depends heavily on blame (liability based on guilt). The criminal liability for companies however, usually differs somewhat from the theory of criminal liability (Wijaksana & Najicha, 2021). Despite failures, the "fault" element of financial corruption was not implemented. In this
case, the principle of strict liability is known to take responsibility when an individual (corporation) carries out actions that can be categorized as additionally hazardous or abnormally harmful, even though he has to act with caution (Santosa, 1998:3). Most agree with Muladi & Priyatno (1991:87), that in this regard:

"On criminal liability the rule of the error continues to be upheld, but no offense without mistakes is "completely not valid" with innovations in the area of law and in particular criminal law involving corporate criminality. The fact that the survivor was using the statement "ipsa res loquitur" as the basis for prosecuting the perpetrators of criminal responsibility, is that the evidence speak for themselves".

The theory of civil responsibility, initially established, contains two sorts: a doctrine of strict responsibility and an assistant liability doctrine (Elpina & Purba, 2021). But, because the elements of the mistake must still be taken into account, a new hypothesis was developed by Haldane as stated by Muladi (2004:6) that "Theory of Primary Criminal Corporate Liability" is renowned because of its "Identification Theory".

C. RESULT AND DISCUSSION

1. Identifying theory doctrine

The doctrine considers that the act/offense and fault/inner behavior of senior officials are seen as acts and inner behavior of the organization. Criminal elements may be derived from high-level officers' behavior and mental attitudes. On the basis of this principle of identity, all actions by persons who may identify with a company or who are considered "who constitutes the direct mind of the company" may then be defined as actions or criminal acts committed by the company. Corporate responsibility is also not founded on the principle of replacement of accountability (vicarious liability).

2. The Vicarious Liability Doctrine

Liability involves an individual without personal blame being liable for the conduct of others (accountability substitute). These responsibilities are almost fully dedicated to the violation of the law (statutory Offenses). The legal obligation for the conduct of any person committed by another person is according to Arief (1996: 236) (the legal responsibility of one person for the wrongful acts of another). Under this doctrine, the principal worker/employee who conduct work within the framework of the task/job is the employer (employer). This was founded on the "job principle," which states that "the deed of the servant is the deed of the master."
3. The Strict Liability Doctrine

Responsibility should not be regarded as an error in the doctrine of strict liability. Since corporate accountability should not apply to an absolute mistake. In that individual / business, even if no mistakes, can be accounted for. This doctrine does not demand the blame of men or the producer (Atmasasmita, 2000: 79).

The corporate criminal responses model cannot be removed from the two corporate crime criminal topics, the managing director and the company itself. There are three models of corporate liability relevant to the role of the company and the extent of corporate criminal liability in corporate crime, namely: (1) the Board of Directors and the Management Board, (2) the company as maker and the Management Board, as well as corporations as managers and leaders of corporate crime (Reksodiputro, 1994: 72).

4. Indonesia Positive Criminal Setting

Positive criminal law means that any criminal law in the academic study of criminal law has currently been declared legal or enforced. The Code of Penal Code was then adopted under Act No. 1 of 1946 and a number of changes were introduced and any penal legislation expressly applied beyond the Criminal Code is a good thing for Indonesia’s penal code.

The findings of a regulatory analysis into the structure of criminal justice and subsystems revealed that companies as subjects of criminal law are not controlled by the Criminal Code, which became a parent of any criminal law. The formulation, in which many of the papers use the sentence 'Who...,' 'Everyone' and 'Mother....' and others suggests the normal or natural individual (human) is recognized by the Criminal Code only as a criminal offense. The company or legal entity is not at the same time regarded as a matter of penal law in the Criminal Code. Despite provisions described in Article 59, the Board of Directors, a member of the Council or the commissioner shall determine the sanction for an infringement if the infringement is obvious outside of their employees. "Although this provision only applies to the crime of a breach, obviously it can be concluded that the Criminal Code does not recognize corporations as subjects that could be subject to criminal sanctions.

However, when seen papa provisions of law outside the Criminal Code, some corporation conditions were found. Of the many existing regulations, can be grouped in three models of regulation:

a. define the corporation as the subject of criminal law, but his criminal responsibility remains charged to the person as the subject of criminal law;
b. define the corporation as the subject of criminal law and imposes a criminal obligation to the corporation;
c. define the corporation as the subject of criminal law imposes criminal responsibility to corporations and threatens the corporation with illegal deprivation of liberty.

Other studies suggested that positive criminal law in force in Indonesia is still chaotic. This is related to the absence of consistency between the regulation set out in the Criminal Code with a setting outside of the Criminal Code. Where corporate locations outside the Criminal Code, some have recognized corporations as legal subjects. But setting it still tends to be in doubt because the recognition of the corporation's law as a legal subject is still denying liability corporation in law enforcement (Zulkarnain, 2007: 37).

What is presented above is justified by several research resource persons who also had conducted a similar study that the system of corporate criminal liability in the Indonesian criminal justice system still refers to a paradigm that puts people as criminals (Sunardi & Tanuwijaya, 2002). So even though the apparent offender is a corporation, but that is nature accountable.

5. Corporate Crime and Criminal Responsibility System in Indonesia Positive Law

Corporations are not recognized as subjects of criminal law in the Criminal Code. But in a positive criminal law outside the Criminal Code that regulates, many corporations are recognized as criminal law subjects. For example, Law No. 23 of 1997 on Environment, Law No. 20 the Year 2001 on Eradication of Corruption, Law No. 8 of 1999 on Consumer Protection, Law on Money Laundering, Broadcasting Act, and so on. Even since the anti-regime economic crimes in 1955, Emergency Law No. 7 of 1955 on the Investigation and Prosecution of Economics Crime (UUTPE) has been expressly acknowledging Legal Entity (in case: Corporations) as the subject of criminal law and accountability.

The experts who agreed to put the corporation as the subject of criminal law states the following reasons:

a. Punishment caretaker is not enough to hold the repression of offenses committed by or with a corporation. So it is also necessary corporate punishment, corporate and board, or the board alone.
b. In social and economic life, corporations increasingly play an essential role as well.
c. If the criminal law is only defined in terms of the individual, the community save goal was not practical. Therefore there is no reason to keep pressing and can oppose corporate penalty.
d. A punishment corporation is an effort to avoid criminal prosecution action against the corporation's own employees."

Sahuri research essay (2004) has indicated the need to address four key issues in the case of criminally responsible companies, namely (1) the problem-writing of illegal conduct; (2) corporate culpable issues; (3) penalties against the company. In deciding if anyone may commit crime or company liability the definition of prohibited actions and corporate social responsibility is less obvious. The determination of the company complicates mistakes in the area of criminal law because the mistake is not passed to a private company. After all, the person/committee who committed the crime is.

The findings above then suggest that no jurisprudence exists as either an accused or a prisoner, because it is unreasonable to examine the law, irrespective of what the law does. In order to identify legal questions relating to corporate liability, a study should also be conducted from the perspective of Indonesian criminal law policy.

The research of Sunardi (2006: 139-140) also concluded that corporate law as a matter of criminal act must be transparent and clear so that the general provisions of the criminal code are included authentically and are being revised. Therefore, it is essential to comply with the provisions of the Criminal Code. In Zulkarnain's opinion however, in 2007: 38 Corporate accountability in the recent draft was not transparent and detailed both in the relevant legislation outside of the Criminal Code and in the Criminal Code. Practical and legal considerations and the public interest of corporate criminal proceedings have not been discussed with regard to social welfare policies.

The study has not yet completely recognized that the Indonesian criminal justice system is legally bound. While some products practices are governed by corporate responsibility outside the Criminal Code, corporate accountability remains the doctrine of vicarious liability. It is the same as the company was not recognized as a criminal law matter. The requirement is therefore that the corporate criminal liability strategy should be reformulated and a formula included in the Law Book of Criminal Law.

In relation to the reform of the criminal law on prevention of corporate crime, it should be noted in the book I, in its general outline, that: "Given the progress made in the field of economy and trade, the subject of criminal law can no longer be restricted only to human nature (natural person) but also includes human law (Juridical Person), commonly called the corporation. With espoused understand that the corporation is subject to the law, it means a corporation as a form of business entity is also possible liability should still be shared by corporations and trustees or administrators only".
It must also be remembered that political reforms of criminal law, particularly on the prevention of corporate crime, make the company responsible for the subject of criminal law. A further study was done of the definition of the new criminal code (Bill-Criminal code), ius constitution, as well as a positive analysis of the applicable penal law. The Criminal Code Bill (with several amendments) after 1964 was drafted and the last concept composed of the Criminal Code was composed in 2005. The definition of "The company is the victim of a criminal offence" was stated in Article 47 in 2004/2005 of the penal code. And Article 48 states that "the offences committed by a company, whether they are committed by persons, individually or together, who act for or on behalf of the corporation or on behalf of the corporate group based on work or other relationship".

In view of the favorable provisions in penal law and the above mentioned Indonesian Criminal Code definition, it is recognized as a subject of criminal law under the Indonesian judicial system despite the fact that it does not establish the Criminal Code. With respect to the perpetrator's functional philosophy founded upon doctrinal identification, the company accountability structure implemented by the criminal justice system establishes corporation and managers and corporate responsibility.

The doctrine considers that the act/offense and fault/inner behavior of senior officials are seen as acts and inner behavior of the organization. Some senior officials' acts of inner behavior will accumulate the elements of a criminal offense.

In that regard, the employees of the company may use the Delegation theory of the excuse as a basis for enforcing criminal responsibility, according to Sutan Remy Sjahdeiny (2006:97). The justification to place criminal liability on companies is, according to this doctrine, to delegate the authority to exercise their responsibility from one individual to another. In its application for corporate criminal liability, it appears that the definition of the criminal code still refers to this doctrine.

D. CONCLUSION

Some of the following can be concluded from an initial review of the Indonesian criminal law framework on the criminal liability system: 1) Corporate crime under Indonesian criminal law is already accepted as a type of positive crime. However, like most criminal legislation, the arrangements between criminal law (Criminal Code) vary. It is stated in the Criminal Code that a company often commits modus crimes as a crime, but is regarded as committed by a natural individual. This means that businesses do not consider themselves as victims of criminal law under the Criminal Code. 2) the scheme followed by criminal liability according to the positive indonean criminal law philosophy favors the principle of Recognition and
Delegation doctrine. In addition to the Penal Code it is recognized that the company is a subject of criminal law and thus imposes criminal liability on companies and may thus be jailed. The manufacturer also pays attention to the origin of the authority for acting as well as the position of the fault of the manufacturer. However, the rules of the criminal law, like most criminal laws, differ from the person who commits the crime to be the boss, for example where he or she is not responsible for the crime, but whoever does it for or in the name of a corporation. The provisions of the criminal law vary. It has been carried out within the jurisdiction.

In addition, the Environmental Code confirmed that the developer remains an offender, while the company was responsible for the conduct of the defendant. Although in the Draft of the Criminal Code, the offender was not confirmation for interpretation, because of criminal liability the offender is no longer responsible for the continuance of a criminal offense, and 3) the Draft Code of Criminal Code took the place of both the company and the criminal and criminal liability issues. It seems like the future of the judge of criminal law considers that corporate crime is a crime and that criminal penalties against a company can be imposed in the context of criminal justice reform. As seen in some of the laws that regulate them, the model and definition of vicarious liability seem to be the doctrine used.

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