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The Essential of Public Punishment Against Corporations Conducting Criminal Acts as a Form of LawEnforcement and Justice in the Indonesian Court System

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Abstract: The main objective of this study is 1) to find out the nature of corporate accountability in criminal law 2) to find out the regulation of criminal sanctions in the criminal justice system 3) to find out about law enforcement against corporate criminal acts. The study was conducted by utilizing the availability of good references in the form of literature in the form of laws, books, court decisions to information on social media combined with conducting a series of interviews with competent parties for the purpose of this study. This research was conducted in Jakarta and Makassar. This research is a legal research study that will examine Rechtsdogmatiek (dogmatic law). Rechtstheorie (legal theory), and Rechtsfilosofie (legal philosophy).

Keywords: Nature of Corporate Accountability, Criminal Sanction, Criminal Acts, Law Enforcements

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I. INTRODUCTION

Corporation is a term commonly used by criminal law and criminology experts to refer to what is in other fields of law, especially in the field of civil law as a legal entity, or in Dutch is called rechtpersoon or in English with the term legal person or legal body. Definition of legal subjects is basically human beings and everything that is based on the demands of the needs of society, which by law is recognized as a supporter of rights and obligations. This second definition, according to the author, is called a legal entity. According to the Criminal Law terminology, that ‘a corporation is a body or business that has its own identity, wealth itself is separate from the wealth of members. ‘‘

The interpretation of the corporation as a legal subject in the field of civil law has long been recognized that a legal entity (as an independent legal subject; persona standi in judicio) can commit acts against the law (onrechtmatighandelen; tort). This interpretation is carried out through the principle of propriety (doelmatigheid) and justice (bilijkheid). Therefore, in a civil law a legal entity (legal person) can be considered guilty of acting against the law, in addition to the members of the board of directors as natural persons.[1]

According to Bismar Nasution[2], at first there were many legal practitioners who did not support the view that legal entities as a corporation (a company) whose form is pseudo can commit a crime and have a criminal intent which gives birth to criminal liability. In addition, it is impossible to be able to bring a corporation physically in the courtroom and sit in the seat of the defendant to undergo a judicial process. Moreover, we cannot meet the regulation regarding the punishment of legal entities as legal subjects in the Criminal Code.

In the context of corporate crime, studies related to the *white collar* crime themselves began to be popularized by Edwin H. Sutherland in 1939, while speaking before the 34th annual American Sociological Society meeting in Philadelphia on December 27, which he termed a crime by people honorable and high status and related to his job. [3]

[1]“Metamorfosis Badan Hukum Indonesia.” https://www.hukumonline.com/berita/baca/hol17818/metamorfosis-badan-hukum-indonesia. Accessed Wednesday, October 17, 2018.
[2]Nasution, Bismar. “Kejahatan Korporasi Dan Pertanggungjawabannya.” https://bismar.wordpress.com/2009/12/23/kejahatan-korporasi/. Accessed Wednesday, October 24, 2018.
[3]Marzuki, Suparman. “Dimensi Kejahatan Korporasi Dan Reaksi Sosial.”*USU Law Journal* 1, no. 2 (1994), p. 1.

Corporate crime is a crime committed by a collective or group of individuals with different fields (jobs). In essence, to be referred to as corporate crime if the corporation's officials or officials violate the law for the benefit of the corporation.[4]

"Res Ipsaloquitor" has proven that corporations often play a role and take advantage of various criminal events that harm society so that they are rational and fair if the corporation is responsible for crimes committed in the interests of the corporation. This view overrides the old doctrine that corporations cannot be punished, "non-potent delinquere universities".[5]

By the way in which the corporation's criminal responsibility can be requested, this is the main focus of this research, because upholding the law must obey the law itself. It is inevitable that criminal imposition must have implications for the perpetrators and the public. If a crime is imposed on a person, the family and all relations in the life of the convict will be affected. Likewise for corporations, the punishment of corporations must be considered by the legislators and decided by the judges in a measurable manner to achieve criminal objectives.

II. STATEMENT OF THE PROBLEM

1. What is the nature of corporate responsibility in criminal law?
2. How are criminal sanctions for corporations regulated in the criminal justice system?
3. How is law enforcement against corporate crime?

III. THEORETICAL FRAMEWORK

A. Criminal Philosophy

1. Criminal Law

Criminal law is part of the whole law that applies in a country, which holds the basics and rules for: [6]

a. Determine which actions should not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain crimes for those who violate the prohibition;
b. Determining when and in what matters to those who have violated the prohibitions may be imposed or punished as criminalized;
c. Determine how the imposition of criminal acts can be carried out if someone is suspected of violating the prohibition.

The definition of criminal law was also stated by Poernomo[7] that criminal law is a sanction law based on the characteristics of criminal law that distinguishes it from other laws, namely that the criminal does not establish its own norms, but rather lies in other legal fields and criminal sanctions are held to interpret the norms outside the law criminal. Traditionally the definition of criminal law is considered true before the development of criminal law rapidly.

2. Definition of Criminalization

Criminalization as an action against a criminal, can be justified normally not primarily because the punishment contains positive consequences for the convicted person, the victim is also someone else in the community. Therefore this theory is also called the theory of consequentialism. Criminal charges are not for having committed evil but so that the perpetrators of crimes will no longer do evil and others are afraid to commit similar crimes.

The statement above shows that the punishment is not intended as an attempt at revenge but as an effort to foster a perpetrator of crime as well as a preventive effort towards the occurrence of similar crimes.

3. Purpose of Criminalization

The criminal system generally covers 3 (three) main problems, namely the type of criminal (transportation), the length of the criminal threat (mandatory), and the implementation of the criminal code (protocol).

Sudarto[8] stated "The nature and what is the purpose of the sentence, it should be stated again that criminal law is a special sanction law, or according to Sudarto, is a negative sanction system. The criminal law is applied if other means are inadequate, so criminal law is also said has a function or nature that subsidizes water. "

[4]Ariawan, I Gusti Ketut. "Pertanggungjawaban Pidana Korporasi."*Majalah Ilmu Hukum Kertha Wicaksana*, 2009, p. 1.
[5]Aritonang, Rasamala. "Memidana Korporasi."*Kompas*, Saturday, January 12, 2019, p. 7.
[6]Moeljatno. *Asas-Asas Hukum Pidana*. Jakarta: PT. Rineka Cipta, 2008, p. 1.
[7]In Thalib, Hambali. *Sanksi Pemidanaan Dalam Konflik Pertanahan, Kebijakan Alternatif Penyelesaian Sengketa Pertanahan Di Luar Kodifikasi Hukum Pidana*. Jakarta: Kencana Prenada Media Group, 2009. pp. 15-16.
[8]Sudarto. *Hukum Dan Hukum Pidana*. Bandung: PT. Alumni, 1981, p. 30.

Regarding the nature of the criminal, in general the authors call it a suffering or sorrow. In Bonger's opinion as quoted by Roeslan Saleh stated that:[9]

"A criminal is wearing a suffering, because that person has committed an act that is detrimental to the community."

Likewise Herbert L. Packer[10] argues that the difference between "punishment" (criminal) and "treatment" (the act of treatment) must be seen from the purpose, how far the role of the perpetrator's role in the presence of criminal or acts of treatment.

Furthermore H.L. Packer explains, the main purpose of treatment is[11]"To provide benefits or to improve the person concerned. The focus is not on past or future actions, but on the purpose of giving help to him. So, the justification of" treatment "is on the view that the person concerned will or may to be better. Thus the main objective is to improve the welfare of the person concerned. "

While "punishment" according to H.L. Packer, the justification is based on the following objectives:[12]

a. To prevent the occurrence of crime or unwanted conduct or the wrong conduct;
b. To impose appropriate suffering or revenge on the offender

4. Criminal Types

Regarding the Indonesian criminal system, it is basically regulated in Book I of the Criminal Code in Chapter 2 from Article 10 to Article 43, which is further regulated on certain matters in several regulations, namely:[13]

1. Prison Regulations (Stb 1917 No. 708) which were amended by LN 1948 No. 77).
2. Conditional Release Ordinance (Stbl 1917 No. 749).
3. Forced Education Regulations (STB 1917 No. 741).
4. Law No. 20 of 1946 concerning Criminal Coverage.

The Criminal Code as the main or main source of criminal law has specified the types of criminal acts, as formulated in Article 10 of the Criminal Code. According to the Criminal Procedure Code, criminal is divided into 2 groups, between principal and additional criminal:[14]

Main Crime consists of:

1. Death penalty
2. Prison criminal
3. Criminal cage
4. Penalty fine
5. Criminal cover (added based on Law No. 20 of 1946)

Additional Criminal consists of:

1. Revocation of certain rights.
2. Deprivation of certain items.
3. Announcement of judge's decision.

5. Principles of Penalty Imposition

The principle of imposition of a criminal against a common crime is that:

a) Cumulative principal penalties must not be imposed
b) The principal crimes are imperative while the additional criminal is optional (optional).
c) Basic crimes can be imposed without additional criminal penalties
d) Additional crimes are *acecoir*, meaning that they can only be imposed along with principal punishment.

The principle of imposition of criminal offenses as mentioned above is often deviated from the application of criminal acts to special crimes outside the Criminal Code. This can be seen in the statutory provisions that regulate the Eradication of Corruption Crime (Law No. 31 of 1999 Jo Law No. 20 of 2001), Narcotics (Law No. 35 of 2009), Eradication of Crime in Trafficking in Persons (Law No. 21 Year 2007) and several other special legislation, the imposition of basic penalties is possible (in the form of criminal penalties "imprisonment and / or fines" in certain articles) to be dropped cumulatively it is even determined to be cumulative (in the formulation of criminal threats "prison and fine "in certain articles).

[9]Saleh, Roeslan. *Stelsel Pidana Indonesia*. Jakarta: Aksara Baru, 1978, p. 5.
[10]Muladi, and Barda Nawawi Arief. *Bunga Rampai Hukum Pidana*. Bandung: PT. Alumni, 2007, p. 5.
[11]*Ibid.*
[12]*Ibid.*, p. 6.
[13]Chazawi, Adami. *Pelajaran Hukum Pidana*. 1 ed. Jakarta: Rajawali Pers, 2002, p. 25.
[14]*Ibid.*

B. Corporation

1. Definition of Corporation

Etymologically, the notion of corporations in other terms is known as corporatie (Dutch), corporation (UK), corporation (Germany), derived from Latin, namely "corporatio". "Corporatio" as a noun (subatantivum) comes from the verb "coporare" which is widely used by people in medieval times or after that. "Corporare" itself comes from the word "corpus" (body), which means giving a body or impersonating. Thus, finally "corporatio" means the result of embodiment work, in other words the body that is made into person, the body obtained by human actions as opposed to the human body, which occurs according to nature.[15]

Based on this explanation, the corporation has been known from the beginning in civil law and has been placed as a legal subject. There are two kinds of legal subjects in the sense of civil law:

a) Natuurlijke Persoon (natural person) is a personal human (Article 1329 of the Civil Code).
b) Natural Person is a personal human (Article 1329 of the Civil Code).

2. Corporations in the perspective of the subject of criminal law

Corporate recognition (rechts persoon) as the subject of law in criminal law is full of theoretical obstacles, not like the recognition of criminal law subjects in humans. There are two reasons why these conditions occur. First, because of the spark of the fictional theory put forward by Carl Von Savigny, namely the personality of the law as units of humans is the result of an illusion.[16]Personality actually only exists in humans. States, corporations, or institutions cannot be subjects of rights and individuals, but are treated as if they are human. [17] All laws exist for the sake of independence inherent in each individual, therefore, the original conception of personality must be in accordance with human ideals. [18]

Second, the dominant principle of non-potency delinguere universities means that legal entities cannot commit criminal acts in the criminal law system in many countries. This principle is the result of thinking from the 19th century where errors according to criminal law are always required and actually only errors from humans, so that it is closely related to individualization in the Criminal Code.[19]

Since the Criminal Code of 1886 was formed, the legislators have begun to include prohibitions and orders on responsible administrators in the form of obligations in certain specific laws and regulations, with the intention that they are responsible for implementing the regulations - these regulations for the agency or company they lead.[20]

3. Corporate criminal liability

In criminal liability, the principle of error is an absolute principle for imposing criminal penalties. As already stated that the wrong elements consist of "being able to be responsible", having "intentional or negligent" and "no forgiving reasons". The problem is whether in determining corporate errors as legal subjects who have criminal liability, these elements of error are needed.

The negligence as an element of errors in corporate accountability according to Jan Remmlink[21] is that it depends on the internal organizational structure of the corporation. It is said, that the intentions of individuals attributable to the corporation in which they work will depend on (the structure) of the corporation / company internal organization on the duties and responsibilities of lower employees in one case can be considered decisive whereas in other cases it does not depend on and responsibilities in (structure) corporate organizations.

Corporate responsibility can be seen from a perspective:

a. Strict Liability

Strict liability or absolute liability or without fault liability is interpreted by Black's Law Dictionary[22] as:"Liability that does not depend on actual negligence or intend to harm, but that is based on the breach of an absolute duty to make something safe. Strick liability most often applies either to ultra hazardous activities or in products liability case"

[15]Soetan. K. Malikoel Adil in Muladi, and Dwidja Priyatno. *Pertanggungjawaban Pidana Korporasi Dalam Hukum Pidana*. Bandung: Sekolah Tinggi Hukum Bandung, 1991, p. 83.
[16]"Module on Criminal Law Principles No. 8." Jakarta: Badan Diklat Kejaksaan Republik Indonesia, 2010, p. 35.
[17]Ali, Mahrus. *Asas-Asas Hukum Pidana Korporasi*. 2 print. Jakarta: Rajawali Pers, 2015, p. 64.
[18]Hatrik, Hamzah. *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana (Strict Liability Dan Vicarious Liability)*. Jakarta: Rajawali Pers, 1996, p. 30.
[19]*Ibid*., p. 31.
[20]Amrullah, M. Arief. *Kejahatan Korporasi*. Malang: Bayumedia Publishing, 2006, p. 75.
[21]Remmelink, Jan. *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dari Kuhp Belanda Dan Padanannya Dalam KUHP Indonesia*. Translated by Tristam Pascal Moeliono. Jakarta: PT. Gramedia Pustaka Utama, 2003, p. 108.
[22]Garner, Bryan A. *Black's Law Dictionary*. 7 ed. Minnesota: West Publishing, 2000, p. 934.

Hamzah Hatrik[23] defines strict liability as a liability without fault, in which case the creator can be convicted if he has committed an act that was banned before and has been formulated in the law, without looking further at the creator's inner attitude.

b. Vicarious liability

Furthermore, Vicarious liability, according to Barda Nawawi Arief[24], is defined as the legal liability of a person for wrongdoing done by another person, such as an action taken which is still within the scope of his work (the legal responsibility example, when the acts are done within the scope of employment).

Basically the vicarious liability doctrine is to answer the question of whether someone can be criminally accountable for a crime committed by another person. In other words, whether someone's actions and mistakes can be held accountable to others. This question arises because it is basically a private matter.[25]

Vicarious liability is a teaching derived from civil law in the Common Law system, which is a superior doctrine of respondeat wherein the relationship between the employee and the employer or between the attorney and the recipient of the authority applies the quasi facit per aliumfacit per se meaning as an act carried out by himself. In this case the employer is responsible for the mistakes made by the employee as long as the mistake is made in the context of his work.[26] The employer is deemed to be responsible for all actions taken by the employee in the course of his work because the employer is deemed to be able to take preventive or preventive actions so that the employee does not make mistakes that could cause harm to third parties. [27]

Based on the vicarious liability principle, business actors can be required to be held responsible for their actions, including those of others but still in the environment of their business activities or as a result of activities that can harm others. Corporate leaders or anyone who gives a task or order is responsible for actions committed by subordinates or employees. This responsibility is extended to include actions carried out by people based on work relationships and other relationships. Thus, anyone who works and in whatever relationship the work is done, as long as it is done in conjunction with the corporation, is the responsibility of the corporation. To be more able to determine what this corporate responsibility looks like, the doctrine that complements the vicaroius liability will also be presented below.

4. Modern Corporate Doctrines

a. Principles of Limited Liability

Before the 17th century the concept of unlimited liability (personal responsibility) in limited liability companies was known. This means that investors are responsible for reaching their personal assets if the company suffers a loss. However, as the amount of capital needed to finance business activities increases, the need to obtain large funds is increasingly felt. On the other hand, investors seem reluctant to invest and borrow money because the risk is too large, as a result of the principle of personal responsibility that requires shareholders in a limited liability company. Luckily, the shareholders are no longer personally responsible for an agreement made on behalf of a limited liability company and are not responsible for the loss of the limited liability company in excess of the value of the shares they have.[28]The principle of limited liability also applies to members of a limited liability company. He is not responsible for his actions, but is the responsibility that he represents, the limited liability concerned. In its development this principle is not absolutely valid, since the doctrine of Piercing Corporate Veil has been recognized, where in certain cases it is possible to remove the limited responsibility of limited liability company directors. This doctrine has begun to develop within the current legal system, in line with the need for justice to both good faith and third parties who have legal ties to limited liability companies. In this case the court will override the legal entity status of the limited liability company and impose responsibility on the organ of the limited liability company regardless of the principle of limited liability that is usually enjoyed by them. Immunity commonly possessed by shareholders, directors and commissioners, namely limited liability, opened and breached is unlimited responsibility to personal wealth in the event of violations, irregularities or errors in managing the company. In doing so, it is usually said that the court has torn / uncovered the curtain / veil of a limited liability company (to pierce corporate veil).

b. Fiduciary Duty

This doctrine is one of the most important areas in the law of the company, originating from its roots in Roman law, but it has been developed by the Anglo Saxon system, this infiltrated various fields of law,

[23]Hatrik, Hamzah. *Op.Cit.*, p. 10.
[24]Arief, Barda Nawawi. *Sari Kuliah: Perbandingan Hukum Pidana*. Jakarta: Rajawali Pers, 2006, p. 151.
[25]Padfield, Nicola. *Criminal Law*. New York: Oxford University Press, 2010.
[26]Sjahdeini, Sutan Remy. *Pertanggungjawaban Pidana Korporasi*. Jakarta: Grafiti Pers, 2006, p. 84.
[27]*Ibid*.
[28]Pramana, Githa Adhi. "Piercing the Corporate Veil." http://degitha.blogspot.com/2011/11/piercing-corporate-veil.html. Accessed Wednesday, October 17, 2018.

including company law by producing it as a fiduciary task of directors. Based on the word fiduciary (trust), the directors hold the trust given to him by the company. With a fiduciary mandate, directors must in good faith carry out their duties and functions, namely in management functions and representation functions. [29]

c. Derivative Action

The modern legal doctrine in the form of a derivative lawsuit which is a deviation from normal corporate law gives the right to represent the interests of the company to the shareholders without the need to formalize the corporation's legalization, but by the operation of law. A derivative claim is a claim based on the primary rights of the company, but is carried out by the holder for and on behalf of the company, which claim is made due to a failure in the company.[30]

d. Ultra Vires

Derived from Latin which means beyond or exceeds the power (outside the power), which is outside the power granted by law to legal entities. The term "ultra vires" is used specifically for company actions that exceed its authority as provided by its articles of association or by regulations that underlie the formation of the company. The next consequence of the importance of the intent and purpose of the company, the violator, such as through the ultra vires action will cause the deed to be invalid and null and void by law, and if there is a party who is harmed the party must be personally responsible.[31]

e. Liability of Promotors

This doctrine is the responsibility of the company's promoters. In general, it can be said that the promoter is each of those who perform the necessary formalities for company registration, get directors (and commissioners) and shareholders for new companies, obtain business assets for use by the company, negotiate contracts for and on behalf of new companies, and do other work similar to that.

f. Business Judgement Rules

This doctrine is one of the doctrines in corporate law which stipulates that the directors of a company are not responsible for losses arising from a decision making action, if the directors' actions are based on goodwill and caution. With this principle, directors get protection, so there is no need to obtain justification from shareholders or the court for their decisions in the management of the company.[32]Munir Fuady stated that this Business Judgment doctrine is a teaching that a director's decision regarding the company's activities must not be contested by anyone, even though later the decision of the board of directors turned out to be wrong and / or detrimental to the company. This applies as long as the decisions taken are in accordance with applicable law and have good intentions[33]

g. Self Dealing

Self dealing transactions, namely transactions between the company and directors, which in legal history were originally prohibited by definition, then in its development began to be sorted to be assessed which are prohibited and which are allowed by the legal sector. Due to the existence of this self dealing, personal responsibility is imposed on the directors, because this transaction is fundamentally inappropriate and contrary to the fiduciary duty of the directors. In Indonesia alone there is no prohibition on directors to conduct self dealing, provided that it is carried out fairly, there is no element of fraud that can harm the company.[34]

h. Corporate Opportunity

The company's opportunity doctrine is one of the manifestations of the fiduciary duty principle, where the director must act and make decisions which contain conflict of interest. In principle, the company's opportunity is a doctrine that teaches that a director, commissioner or other company employee or major shareholder is not permitted to take the opportunity to seek personal benefits when the action taken is actually an act that should be carried out by the company in running the business. Therefore, directors must not take the opportunity for their own personal benefit, when in fact the company can take the opportunity to do business. The thing that is desired by the existence of this doctrine is that the parties in the company must not exploit and take personal advantage of the business run by the company, which should be the company's right

[29]Gede. "Doktrin-Doktrin Modern Hukum Perusahaan." Serba Serbi, http://9oro.blogspot.com/2011/02/doktrin-modern-hukum-perusahaan.html. Accessed Wednesday, October 17, 2018.
[30]*Ibid*.
[31]*Ibid*.
[32]*Ibid*.
[33]*Ibid*.
[34]*Ibid*.

5. Characteristics of Corporate Crime

There are two characteristics inherent in corporate crime. First, corporate criminal acts are always committed not by corporations, but by other people acting for and on behalf of corporations[35] Jan Remmelink stated as follows:

"Corporations will always be said to do or not do through or be represented by individuals. Therefore, the judge will always make a "leap of thought" and consider whether the actions taken by individuals can be held accountable to the corporation. In other words, the judge considers whether certain actions can be distributed to the corporation. Now the judge has often made a "leap" especially when the issue is individual behavior carried out in the context of the business world. In this case, it is worth noting that functional offenses, a form of criminal business that are suitable to be applied to the corporation"[36]

Based on these arguments, there are two things that allow corporations as perpetrators of criminal acts (pleger), namely:[37]

a) In non-vicarious liability crimes. In this connection the material actors are Corporate Leaders, namely those who have a position to determine policies in the corporation. Judging from the general participation as referred to in article 55 of the Criminal Code, the corporation is a maker of criminal acts.
b) In the case of Vicarious Liability Crimes. In this connection, the material actors are subordinates or executives or employees acting within the framework of their authority and on behalf of the corporation.

IV. DISCUSSION

The formulation of each law governing corporations as the subject of criminal law is indeed not the same, to know about this, the following will be presented for criminal sanctions contained in the distribution of laws.

Table 1: Disparity in Corporate Criminal Liability in various laws

ti	Constitution	Basic Criminal Case	Additional Crimes and Other Sanctions
1	Law No. 31 of 1999 concerning Eradication of Corruption Crimes jo Act No. 20 of 2001	A maximum fine of Rp. 1 billion plus one third of principal penalty	· Deprivation of goods used or obtained from criminal acts of corruption · Payment of replacement money · Closure of all or part of thecompany for a maximum of 1 year · Revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or can be given by the Government to convicts
2	Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes	A maximum fine of Rp. 100 billion	· Announcement of judge's decision · Freezing part or all of the corporation's business activities · Revocation of business license · Dissolution and / or prohibition of corporations · Deprivation of corporate assets for the country · Corporate takeover by the state
3	Law No.18 of 2013 concerning Prevention and Eradication of Forest Destruction	A maximum fine of Rp 1 trillion	· Closure of all or part of the companyIn addition to criminal sanctions, administrative sanctions can also be imposed: • Government coercion • Forced money • Revocation of permission

[35]Waller, L., and C. R. Williams. *Criminal Law: Text and Cases*. 7 ed. Britania Raya: Butterworth-Heinemann, 1993, p. 14.
[36]Remmelink, Jan. *Op.Cit*., pp. 106-107.
[37]Huda, Chairul. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana Dan Pertanggungjawaban Pidana*. Jakarta: Kencana Prenada Media Group, 2006, p. 100.

4	Law No. 35 of 2009 concerning Narcotics	A maximum fine of Rp. 10 billion with three times the basic penalty	· Revocation of business license · Revocation of legal entity status
5	Perppu No.1 of 2002 concerning Eradication of Crime of Terrorism	A maximum fine of Rp 1 trillion	Corporations involved in terrorism can be suspended or revoked and declared as prohibited corporations
6	Law No. 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes	A maximum fine of Rp. 100 billion	· Freezing of part or all of corporate activities · Revocation of business license and declared as a prohibited corporation · Dissolution of the corporation · Deprivation of corporate assets for the country · Take over the corporation by the state · Announcement of court decisions
7	Law No.21 of 2007 concerning Eradication of Crime in Trafficking in Persons	A maximum fine of Rp. 5 billion with three times the weight of the principal	· Revocation of business license · Deprivation of wealth resulting from criminal acts · Revocation of legal entity status · Dismissal of management · Prohibition to management to establish corporations in the same business field
8	Law No.23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014 and updated with Perppu No.1 of 2016	A maximum fine of Rp.5 billion plus one third of basic penalty	Additional criminal penalties for corporations are not regulated
9	Law No.31 of 2004 concerning Fisheries as amended by Law No. 45 of 2009	A maximum fine of Rp. 20 billion plus one third of the principal penalty	Additional criminal penalties for corporations are not regulated
10	Law No. 7 of 1992 concerning Banking Jo. Law No. 10 of 1998 Remarks: This law does not clearly mention corporations but refers to the term "legal entity" article 26 paragraph (2)	A maximum fine of Rp. 10 billion	Revocation of business license
11	Law No. 32 of 2009 concerning Protection and Management of the Environment	A maximum fine of Rp. 15 billion is aggravated by one third of the principal penalty	· Deprivation of profits derived from criminal acts · Closure of all or part of the place of business and / or activity · Repair due to criminal acts · The obligation to do what is neglected without rights · Placement of companies under a maximum of three years of service
12	Law No. 36 of 2009 concerning Health	The maximum fine is Rp. 1.5 billion with three times the weight of the principal	· Revocation of business license · Revocation of legal entity status
13	Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation as amended several times, the	The provisions of criminal taxation are regulated in Articles 38, 39, 39A, 40, 41, 41A,	Additional criminal penalties for corporations are not regulated

	latest by Law No. 16 of 2009 (UUKUP) Remarks: This law does not specifically mention corporations, but "taxpayers". Article 1 number 2 UU KUP: Taxpayers are individuals or bodies, including taxpayers, cutters taxes, and tax collectors, who have tax rights and obligations in accordance with the provisions of tax laws and regulations	41B, 41C, 42, 43, 43 The criminal sanctions for fines in the KUP Law have a predetermined amount, some are only determined by the formula. For example in Article 38: "Fined at least one time the amount of tax payable that is not or less paid and at most twice the amount of tax payable that is not or less paid "	
14	Law No.5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition Remarks: This law does not specifically mention corporations, but "business actors". Article 1 number 5 of Law No.5 Year 1999: "Business actors are every individual or business entity, etc. ..."	A maximum fine of Rp. 100 billion	· Revocation of business license · Prohibition to business actors who have been proven to have violated this law to hold the position of directors or commissioners for at least two years and for a maximum of five years · Termination of certain activities or actions that cause losses to other parties.
15	Law No. 8 of 1999 concerning Consumer Protection Remarks: This law does not specifically mention corporations, but "business actors". Article 1 number 3 of Law No.8 of 1999: "Business actors are every individual or business entity etc."	A maximum fine of Rp. 2 billion	· Deprivation of certain items · Announcement of judge's decision · Payment of compensation · Orders for terminating certain activities that cause consumer losses · Obligation to withdraw goods from circulation · Revocation of business license.
16	Law No. 18 of 2012 concerning Food	A maximum fine of Rp. 100 billion with three times the weight of the principal	· Revocation of certain rights · Announcement of judge's decision
17	Law No.20 of 2002 concerning Electricity	A maximum fine of Rp. 1 billion plus one third of principal penalty	Article 62 paragraph (3) In addition to the criminal as referred to in paragraph (2), the holder of a Business License Electricity supply and operating license holders are also required to provide compensation.
18	Law No. 4 of 2009 concerning Mineral and Coal Mining	A maximum fine of Rp. 10 billion with weighting plus one third of the principal penalty	· Revocation of business license · Revocation of legal entity status · Deprivation of goods used in committing a crime · Deprivation of profits derived from criminal acts · Obligation to pay costs incurred due

			to criminal acts
19	Law No.22 of 2001 concerning Oil and Gas	Maximum fine of Rp. 60 billion plus one third of basic penalty	Revocation of rights or seizure of goods used for or obtained from criminal acts in oil and gas business activities.
20	Law No.10 of 1995 concerning Customs as amended by Law No. 17 of 2006	Article 108 paragraph (4) For legal entities, companies or companies, associations, foundations or cooperatives convicted of crimes as referred to in this Act, the principal crimes imposed shall always be in the form of a fine of a maximum of Rp1.5 billion if the criminal act is punishable by imprisonment, by not abolishing fine if a criminal act is threatened with imprisonment and a fine	Additional criminal penalties for corporations are not regulated
21	Law No.11 of 2008 concerning Information and Electronic Transactions as amended by Law No.19 of 2016	A maximum fine of Rp. 12 billion plus two-thirds of principal penalties	Additional criminal penalties for corporations are not regulated

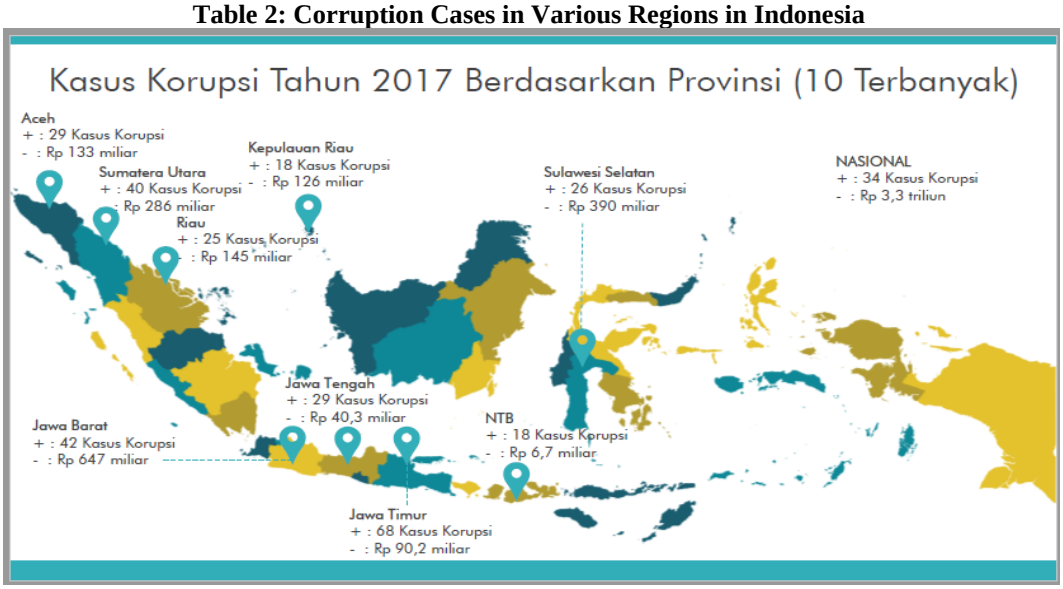
Data source: primary law, processed, 2018.

From the description stated in table 1 above, the distribution of corporate regulation as the subject of criminal law we will meet abstractly, the corporation has recognized its existence as the subject of criminal law, although concretely, the regulation of criminal sanctions is still varied, Arrangement of fines varies from the lowest Rp. . 1 billion to the highest of Rp. 1 trillion. According to the author, this can trigger injustice in terms of the application of the law later, it is necessary to have harmonization between laws that regulate corporate crime, so that the imposition of criminal sanctions can be more just. Therefore, it is important to present the use of criminal law in corporate crime, as ultimumremedium, criminal law should be used as a last resort in terms of law enforcement. This has meaning if a case can be resolved through other channels (mediation, negotiation, civil, or administrative law), let the route be passed first. In this case, criminal law is considered to complement the shortcomings that might occur from other parts of the law. Such statements are similar to Law No. 23 of 1997 management of the environment where criminal law should be utilized if other legal sanctions, such as administrative sanctions and civil sanctions, and ineffective alternatives to environmental dispute resolution and / or the level of wrongdoing of the perpetrators are relatively heavy and / or the consequences of actions are relatively large and / or his actions cause public unrest (subsidiarity principle)[38]

As material to be able to better understand, the author also carried out a series of interviews with several parties that the author considered competent and knew about the law enforcement of corporate crime, which the author focused on corruption, was based on the author's belief that corporate criminal acts were always economic. In the beginning, to provide an answer to the author's curiosity, the author obtained data regarding corruption in various regions in Indonesia as presented in the following table.

[38] The weakness of the subsidiarity principle in the formulation of the old Environmental Law has resulted in the tightening of the implementation of the subsidiarity principle in its replacement law, namely Law No. 23 of 2009 concerning the Environment. In the new law, the principle of sub-priority is replaced by the principle of ultimum remedium which is limited to certain formal offenses, namely violations of waste water quality standards, emissions, and interference only. While for other criminal acts, the principle of ultimum remedium does not apply, but the principle of premium remedium, namely the principle that prioritizes the enforcement of criminal law. See Article 100 of Law No. 23 of 2009 concerning the Environment.

Table 2: Corruption Cases in Various Regions in Indonesia



Source : Indonesia Corruption Watch, 2018

From the data presented in the table. 2 above, throughout 2017, there were 26 cases of corruption in South Sulawesi Province, of which the results of the searches conducted by the author at the Makassar District Court, there were no corporate suspects charged with Corruption Law. This search result corresponds to the information given by Abdul Razak[39] explaining that from the number of cases of corruption that have been tried at the Makassar District Court, no corporation has been made a suspect by the Public Prosecutor even though in some cases the corruption cases have suspects who have position in a particular corporation.

Furthermore Abdul Razak[40] explained that almost all the Tipikor cases that were tried at the Makassar Corruption Court, placed the subject of legal persons (natuurlijkerechts) as suspects, although some of them were leaders of certain corporations.

With regard to procedures and procedures for investigating and prosecuting criminal acts committed by corporations, as stipulated in the Indonesian Attorney General's Regulation, Number 028 / A / JA / 10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects in Chapter IV letter D numbers 2, criminal sanctions that can be imposed on the corporation in the form of fines and additional crimes and / or disciplinary actions.

Law enforcement against corporate crime according to the author requires a legal policy that is supported by strong political will from all elements of state administration and government, this is not without reason, because Indonesia is a state of law, as stated earlier, the characteristic of a legal state is the existence rule of law, recognition of equality before the law and judicial processes that guarantee the protection of human rights.

Law enforcement requires the existence of thoughts about the meaning of "repetition", where the strength of moral values is the core of law enforcement itself, namely the verdict on corporations that have been decided and have permanent legal force can be used as a guide in handling similar cases, so that the law is established is something that keeps repeating and puts pressure on every period or period with moral content (content) that suppresses the legal substance, legal structure, and legal culture to become a unified whole in the face of the Unitary State of the Republic of Indonesia.

V. CONCLUSION

1. The nature of corporate punishment as a manifestation of law enforcement and justice in the justice system in Indonesia is:

a. formal, as a form of effort to realize the ideals of the rule of law in protecting all its people in the form of regulations and utilization of other social facilities (due process of law) so that legal justice can be felt;

b. Material, as a form of efforts to realize equality before the law in the context of the rule of law in order to provide certainty of the protection of human rights in law enforcement, where every legal subject is treated before the law.

[39]Razak, Abdul. "The Company's Position in Corruption Case."*Dissertation Research* (Friday, September 21, 2018).
[40]Razak, Abdul. "Only a Subject from a Legal Entity (Natuurlijke Rechts) as a Corruption Suspect."*Dissertation Research* (Thursday, September 27, 2018).

2. The regulation of corporate criminal sanctions is essentially a legal effort in identifying corporate responsibility as a legal subject as well as sanctions that can be imposed and implemented against corporations as subjects of criminal law. Determination of principal penalties for corporations is based on the system of corporate accountability as stipulated in Perma Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations that are very much in line with Indonesia's ideals as a legal state, as well as a means to fill the legal vacuum with less assertiveness The Criminal Procedure Code describes the position of the corporation as the subject of criminal law if it is based on the formulation of article 10 of the Criminal Code which is only human as naturlijkrechts, where the principal penalty that can be imposed on corporations is only a fine and announcement of a judge's decision. With the existence of fines sanctions for criminal corporations, the thing that must be considered is the still varying magnitude of the fine sanction in the law that regulates corporations as the subject of criminal law, this can trigger a sense of injustice in the community.
3. Law enforcement against corporate criminal acts can be realized in total enforcement, namely the scope of criminal law enforcement as formulated by the substantive law of crime in the form of an assertion of accountability and sanctions against corporations in law. includes rules for arrest, detention, search, seizure and preliminary examination. Besides that it is possible that substantive criminal law itself provides limitations. For example, a complaint is needed first as a requirement for prosecution in complaint offenses (klachtdelicten). This restricted scope is called the area of no enforcement. Law enforcement will then be carried out in Full Enforcement, namely the scope of total criminal law enforcement reduced by the area of no enforcement in law enforcement. Law enforcers are expected to enforce the law to the fullest. The last thing is law enforcement in the Actual Enforcement dimension, which is because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the necessity for discretion and the rest is called actual enforcement. This law enforcement room is also closely related to Legal Policy, in the form of Penal and Non Penal Policy, where the reasoning policy is more about the policy of determining substantive legal facilities while non-reasoning is in the form of dissemination and information relating to the purpose of criminal law enforcement against the subject of corporate law.

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