CRIMINAL RESPONSIBILITY FOR FINES TO CORPORATIONS IN CRIMINAL ACTS OF CORRUPTION BASED ON EMPLOYMENT RELATIONSHIPS

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Abstract

This study aims to determine the criminal liability of corporations in corruption crimes and to determine the application of material criminal law in Decision Number 1751 / Pid.Sus / 2020 / PT Mdn., and Decision Number 47 / Pid.Sus-TPK / 2022 / PT Dki. The research method used is normative legal research, by using the Statute Approach *and* Case Approach methods . This study uses a type of normative legal research with a statute approach and a case approach. The sources of legal materials used are primary and secondary legal materials. The method used by the author is the library method, then the analysis of the legal materials used is descriptive of the legal materials obtained. The results obtained from this study are: 1). The qualification of the Criminal Act of Deleting Account Records of a Bank is regulated in Article 49 paragraph (1) letter c of the Banking Law which stipulates that Members of the Board of Commissioners, Directors, or Bank Employees who intentionally change, obscure, hide, delete, or eliminate any records in the books or in reports, or in documents or reports of business activities, transaction reports or accounts of a bank, or intentionally change, obscure, eliminate, hide or damage the bookkeeping records, shall be subject to imprisonment of at least five years and a maximum of fifteen years and a fine of at least ten billion rupiah and a maximum of two hundred billion rupiah, and 2). The panel of judges who examined and decided on Case Decision Number 1751/Pid.Sus/2020/PT Mdn., and Decision Number 47/Pid.Sus-TPK/2022/PT Dki. The author believes that the panel of judges has examined and tried this case properly, considering the public prosecutor's indictment, demands, defense from the defendant and his legal counsel, evidence, and other facts revealed at the trial.

Keywords: Criminal Fines, Criminal Acts, Corruption

INTRODUCTION

Talking about criminal acts is certainly also related to criminal liability. In criminal liability there is an important thing to prove, namely the fault of the person who committed the act or crime. However, in criminal law in Indonesia which refers to the Dutch translation of the Criminal Code (KUHP) does not contain provisions related to criminal acts. This is because the Dutch translation of the Criminal Code only recognizes that the legal subject in a criminal act is a human/individual, so that corporations cannot be subject to the provisions of criminal acts in the Dutch translation of the Criminal Code. However, several laws and regulations outside the Criminal Code include Law Number 8 of 1995 concerning Capital Markets, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 3 of 2014 concerning Industry and other laws and regulations recognize it as a legal subject of criminal acts.

In corporate crime in Indonesia is a problem that is quite concerning and even very difficult, especially in terms of criminal responsibility and its continuation, it is precisely this corporation that is widely involved in business crimes that greatly influence economic life and development, which concerns aspects of the environment, energy sources, politics, foreign policy and so on. In this context, criminology in Indonesia should discuss and provide input in the framework of compiling real social politics (Hartanto, 2019). Various names, meanings and scopes whatever is to be given in relation to corporate crime or corporate crime on the basis and nature of corporate crime are not something new, what is new is the packaging, form and manifestation. Its nature can be said to be basically the same, even its worrying impact and perceived harm to society has been known since ancient times.

The concept of criminal liability for corporations is a new concept in criminal law. Before the emergence of this concept, only humans were subjects of criminal law. After the enactment of the concept of corporate criminal liability in criminal law, then according to criminal law, in addition to humans, corporations are also subjects of criminal acts (Sjahdeini, 2017).

Corruption committed by corporations is a rapidly growing phenomenon today. The crime is committed with various modes and violates applicable legal provisions with the aim of benefiting the corporation. The regulation of corporations as legal subjects of corruption crimes is contained in Article 1 number 1 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, which has provided an opportunity for law enforcers to request criminal liability for corporations in corruption cases. However, according to Surya Jaya, a Chief Justice of the Criminal Chamber of the Supreme Court, in the practice of law enforcement against corporations committing corruption crimes, law enforcers still very rarely touch on crimes committed by corporations, especially requesting criminal liability for the corporation. Of the several corruption crimes committed by corporations, it seems that only at the stage of imposing criminal liability on corporate management, the application of corporations as subjects of criminal law who are prosecuted and sentenced to criminal penalties is still rarely applied by law enforcers (Toruan, 2014).

Corporate crimes have caused enormous losses. The consequences that are directly caused to society are financial losses, loss of jobs, and even loss of life. Seeing such a situation, plus several reasons stating that corporations in reality can also have a detrimental impact on the state and society, such as corporations can be a place to hide

assets resulting from criminal acts that are not touched by the legal process in criminal liability , especially if they come from criminal acts of corruption that are very detrimental to the state or the country's economy, of course criminal liability for corporations that commit criminal acts of corruption is very reasonable to be requested. There are already many material legal umbrellas, namely laws and regulations that place corporations as subjects of criminal law such as Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption, formal legal umbrellas also exist, namely the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Handling of Criminal Cases by Corporations (Sjahdeini, 2016).

One of the corruption cases involving a corporation is a case that was examined and tried with the Medan High Court Decision Number 1751/Pid.Sus/2020/PT MDN., and the Jakarta High Court Decision Number 47/Pid.Sus-TPK/2022/PT DKI., which is a corporation involved in a criminal act of corruption and received a fine.

RESEARCH METHODS

The type of research in this thesis is a qualitative research type, namely case studies, document or text studies, natural observation, focused interviews, phenomenology, grounded theory methodology, historical research.

Data obtained from primary data and secondary data will be processed and analyzed qualitatively and then the data is described. Qualitative analysis is a qualitative analysis of verbal data and accurate data descriptively by describing the real conditions of the object to be discussed with a formal legal approach and referring to the concept of legal doctrine. Qualitative data, namely data described in words or sentences, is separated according to categories to obtain conclusions.

RESEARCH RESULT

Legal Considerations of Judges Regarding Corporate Fines in Corruption Crimes

In the First case in the Medan High Court Decision Number 1751/Pid.Sus/2020/PT Mdn., The Panel of Judges stated that the Defendant PT. Darma Utama Mestrasco represented by Eddy Sanjaya, as the President Director, was proven legally and convincingly guilty of committing a crime as charged to him, namely; "Controlling and Recognizing as His Property the Transfer Funds which were known not to be His Right." Sentencing the Defendant PT. Darma Utama Mestrasco represented by Eddy Sanjaya, as the President Director with the Principal Criminal Charges in the form of: Criminal Fines of Rp3,000,000,000.00 (three billion rupiah) and Additional Criminal Charges in the form of Obligations to pay/return Money from criminal acts that have not been paid/returned in the amount of Rp2,880,574,000.00 (two billion eight hundred eighty million five hundred seventy four thousand rupiah) to PT BNI Tbk, Jalan Pemuda Medan Branch, and if the Principal Criminal Charges and Additional Criminal Charges are not paid/returned within a period of 2 (two) months, then the Defendant's assets and assets will be confiscated (confiscated) by the prosecutor and auctioned to pay/return the Principal Criminal Charges and Additional Criminal Charges. The Defendant PT. Darma Utama Mestrasco represented by Eddy Sanjaya, as the President Director, is considered to have violated Article 85 in conjunction with Article 88 of Law Number 3 of 2011 concerning Fund Transfers in conjunction with Article 89 ... Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies, as well as other related legal provisions.

Meanwhile, in the second case in the Jakarta High Court Decision Number 47/Pid.Sus-TPK/2022/PT Dki., the Panel of Judges upheld the decision of the Corruption Crime Court at the Central Jakarta District Court Number 57/Pid.Sus-TPK/2021/PN Jkt.Pst dated June 28, 2022 which was appealed, the Panel of Judges stated that the Defendant Corporation PT. Oso Investment Management has been proven guilty of committing Corruption and Money Laundering as regulated and subject to criminal penalties under Article 2 paragraph (1) Jo. Article 20 Jo. Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption as in the First Primary Indictment and Article 3 jo. Article 7 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering as in the Second Primary Indictment.

In principle, criminal responsibility is based on the principle of *actus non facit reum, nisi mens sit rea* (an act does not make someone guilty, except with a wrong mental attitude). so, based on this principle, there are at least two conditions that must be met in a person to be punished, namely the existence of an act and a wrong mental attitude.

Criminal liability can be imposed on the corporation and/or the management of the Corporation if the crime is committed by a person based on an employment relationship, namely the relationship between the corporation and its workers/employees based on an agreement that has elements of work, wages, and/or orders or based on another relationship, namely the relationship between the management and/or corporation with other people and/or corporations so that the other party acts in the interests of the first party based on an agreement, either written or unwritten, either individually or together acting for and on behalf of the Corporation within or outside the Corporate Environment. The Corporate Environment in question is the scope of the corporation or the scope of the corporation's business or the scope of work that includes and/or supports the corporation's business activities either directly or indirectly.

A corporation is held criminally responsible in a criminal case if the corporation gains profit from a criminal act, allows a criminal act that it should have known about to occur in the corporate environment, and does not take appropriate preventive steps so that a criminal act can occur in the corporate environment. This is contained in the provisions regulated in Article 4 paragraph (2) letters a, b, and c of PERMA Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, namely in imposing criminal penalties on Corporations.

The judge can assess the Corporation's guilt if the Corporation can obtain benefits or advantages from the crime or the crime is committed for the benefit of the Corporation, the Corporation allows the crime to occur, the Corporation does not take the necessary steps to prevent, prevent greater impacts and ensure compliance with applicable legal provisions to avoid the occurrence of the crime.

The inclusion of corporate legal subjects as criminal law subjects is inseparable from the large and important role of corporations along with the increasingly complex and advanced life of society. Corporations are one large legal entity or subject in increasing economic growth and national development, but sometimes corporations can also cause losses to the state and society which demands broader and fairer criminal accountability to employers and corporations. One example is the fact that corporations

can be used as a place to hide assets resulting from criminal acts that are not touched in accountability.

The doctrine of criminal liability for corporations has experienced quite rapid development. Various countries have adopted this corporate liability doctrine into corporate cases in their courts. England, for example, since the mid-1800s has used the *strict liability doctrine* to attract the actions of managers into corporate liability.

Application of Criminal Law to Corporate Fines in Corruption Crimes

In the application of sanctions against corruption cases in Indonesia, there are several things including imprisonment, fines, and the threat of severe criminal penalties in the form of the death penalty. However, throughout the enforcement of criminal law on corruption in Indonesia, the application of the death penalty has not been carried out, even though these elements are fulfilled in the crime. As we know that in Indonesia the opportunity to commit corruption seems to be an opportunity in various places and times, it can even be said that the legal culture does not grow in a person even in certain circumstances or natural disasters.

The application of criminal sanctions for corruption crimes in certain circumstances is regulated in Article 2 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which is explained in paragraph (1) Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah). then in paragraph (2) In the event that the corruption crime as referred to in paragraph (1) is committed in certain circumstances, the death penalty may be imposed.

In order to achieve more effective goals to prevent and eradicate corruption, the Law contains criminal provisions that determine the threat of special minimum penalties, higher fines, and the threat of the death penalty which is an aggravation of the penalty. In addition, the Corruption Eradication Law also contains imprisonment for perpetrators of corruption who cannot pay additional penalties in the form of compensation for state losses.

In imposing criminal sanctions for corruption crimes as described above, the principle of legality is applied as the objective of punishment, but as a manifestation of the principle of culpability, the application of fines for corruption crimes in certain circumstances is a form of humanity.

In the application of the principle of legality, the imposition of severe criminal penalties is a proportional method where the purpose of this application is the heaviest punishment so that similar crimes are not committed again. However, in reality, even the heaviest punishment does not prevent the crime from being committed, meaning that in overcoming criminal acts, legal reform is needed to achieve the goal of a punishment.

Another form of application of the principle of balance is the imposition of higher criminal fines as a form of aggravation that can be used as an effort to return assets resulting from corruption due to state financial losses more effectively even though the recovery of assets resulting from corruption is very complicated to implement, because it must involve coordination and collaboration with domestic

agencies and ministries in various jurisdictions with different legal systems and procedures.

One of the important concepts that is part of a collaborative organization between the World Bank and the United Nations Office on Drugs and Crime (UNODC) or often called the StAR Initiative, where this organization was formed for the main purpose of providing support for international efforts to eradicate and end "safe havens" that hide the proceeds of corruption (Budiono, 2016).

The implementation of NCB has actually been in line with several conventions in international law that have been ratified by the Indonesian government, such as international conventions and the eradication of criminal acts of terrorism as regulated in the provisions of Law Number 6 of 2006 and UNCAC which has been ratified through the provisions of Law Number 7 of 2006 which has met *the standards* of *the recommendations of the financial action task force (FATF) on money laundering* which in principle are important for the regime against confiscation of assets without a criminal penalty itself.

Confiscation of assets from criminal acts and the elimination of a criminal sentence have been regulated in accordance with the provisions of the laws in Indonesia, namely Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Article 38 paragraph 5, Article 38 paragraph (6) and Article 38 B paragraph 2 of Law Number 20 of 2001. In matters concerning provisions of rules that do not directly concern regulations for perpetrators/suspects who flee, suspects or defendants experience disturbances in the way they think or are insane so that there are no heirs as a civil lawsuit which in principle there is a leak of state finances but is not positioned as a criminal confiscation in criminal acts of corruption.

In the Corruption Eradication Law, the heaviest punishment is indeed regulated, namely the death penalty, but it seems to be only material, meaning that the application of the death penalty for corruption crimes still tends to be weak and even perpetrators of corruption have never been sentenced to death even though the elements of the crime have been fulfilled, such as perpetrators of corruption in certain circumstances or when the country is experiencing a disaster. Ironically, perpetrators of corruption seem to be oppressed, begging for mercy to be given the lightest possible sentence without realizing that the actions they have committed not only harm the country but also take away the welfare rights of the community.

Based on the description above, it can be concluded that the principle of balance is very important in all areas of law, because with this principle of balance, the values of balance between rights and obligations can be realized in the form of legal and non-legal norms. This means that in the application of the idea/value of balance if applied to certain criminal acts, especially corruption, supervision is needed so that the value of balance, the purpose of which is not to reduce the dignity of the victim, is actually used as something that is mitigating, which can eliminate the deterrent effect.

As an effort to enforce the application of criminal sanctions against corruption in certain circumstances, it is necessary to reform the law for the benefit of the nation and state as a manifestation of the purpose of a criminalization, so that the law does not seem to be just a tool but rather as a manifestation of the protection and protection of society. If the heaviest punishment in the form of the death penalty is indeed needed to maintain national stability, then its application must also be implemented based on the applicable legal reality. Not only does it seem like something to scare but it is not implemented. If the death penalty cannot be implemented, it will be more effective to

carry out a fine or confiscation of assets, to the confiscation of assets in part or in full as a severe punishment for perpetrators of corruption.

In realizing the restoration of social balance, the principle of balance as a form of protection for society/victims and guidance/improvement of individuals so that criminal acts are not committed, so that modifications, changes/adjustments/reviews of the implementation of criminal punishment are needed, however, this principle of balance certainly has weaknesses if it is in the hands of irresponsible law enforcers, so that supervision must be carried out in its implementation.

CONCLUSION

In the First case in the Medan High Court Decision Number 1751/Pid.Sus/2020/PT Mdn., The Panel of Judges stated that the Defendant PT. Darma Utama Mestrasco represented by Eddy Sanjaya, as the President Director, was proven legally and convincingly guilty of committing a crime as charged to him, namely; "Controlling and Recognizing as His Property the Transfer Funds which were known not to be His Right." Sentencing the Defendant PT. Darma Utama Mestrasco represented by Eddy Sanjaya, as the President Director with the Principal Criminal Charges in the form of: Criminal Fines of Rp3,000,000,000.00 (three billion rupiah) and Additional Criminal Charges in the form of Obligations to pay/return Money from criminal acts that have not been paid/returned in the amount of Rp2,880,574,000.00 (two billion eight hundred eighty million five hundred seventy four thousand rupiah) to PT BNI Tbk, Jalan Pemuda Medan Branch, and if the Principal Criminal Charges and Additional Criminal Charges are not paid/returned within a period of 2 (two) months, then the Defendant's assets and assets will be confiscated (confiscated) by the prosecutor and auctioned to pay/return the Principal Criminal Charges and Additional Criminal Charges. The Defendant PT. Darma Utama Mestrasco represented by Eddy Sanjaya, as the President Director, is considered to have violated Article 85 in conjunction with Article 88 of Law Number 3 of 2011 concerning Fund Transfers in conjunction with Article 89, Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies, as well as other related legal provisions.

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1) In cases of corruption, a fine of Rp. 1,000,000,000.00 (one billion rupiah) must be paid.
2) In the Crime of Money Laundering, pay a fine of Rp.75,000,000,000,- (seventy five billion rupiah), with the provision that in the event that the convict PT. OMI is unable to pay the fine, the fine is replaced by the confiscation of the Assets

belonging to the convict PT. OMI or the Controlling Personnel of PT. OMI, namely Rusdi Oesman, SE as the President Director of PT. OMI, the value of which is the same as the criminal fine imposed. In the event that the sale of the confiscated Assets belonging to the convict PT. OMI is insufficient, a prison sentence in lieu of a fine is imposed on the Controlling Personnel of PT. OMI for 6 (six) months by taking into account the fine that has been paid.

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