



## Corporate responsibility in the history of criminal law reform and victimology in Indonesia

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### ABSTRACT

*In Indonesia, corporations play a crucial role in achieving national prosperity, especially in the context of globalization. This study examines two main issues: (1) the system of Corporate Criminal Liability and the implementation of sanctions to protect victims of corporate crime, and (2) corporate accountability within the reform of criminal law in Indonesia. Utilizing a normative juridical approach, the research explores statutory, conceptual, and case-based frameworks. Key findings from various court decisions highlight that corporations often face mere fines for their criminal activities, such as those documented in several district court rulings and decisions of the Supreme Court. The study concludes that while the corporate criminal liability system in Indonesia is evolving, it holds the potential to enhance law enforcement effectiveness against corporate crime. Currently, corporations can be prosecuted for economic, environmental, and corruption crimes, but enforcement focuses primarily on fines and revocation of business licenses. Significant legislative advancements, particularly Law Number 1 of 2023, recognize legal entities as valid subjects of criminal liability. The study recommends applying a principle of prudence in the examination and prosecution of corporate cases to improve accountability and prevent future offenses.*

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## 1. Introduction

Crime is not static but very dynamic, meaning that crime develops according to the development of its society. Although the essence of crime from the past to the present is still the same, namely harming various interests and the losses incurred are not the same. Crimes that are conventional in nature, both the perpetrator, the modus operandi, and the results obtained are not proportional to the risks borne by the perpetrators, as well as the partiality of the law (Rodliyah et al., 2020).

In one adage, the poorer the nation, the higher the level of crime that occurs, apparently no longer applies today. Now the adage applies only to conventional crimes such as robbery, theft, fraud, embezzlement. This is due to the fact that the higher the economic level of a nation, the more diverse and sophisticated the types of crime that exist.

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Nowadays, corporations have a big role in achieving the nation's ideals, which is to realize prosperity for all Indonesian people. The role of corporations is getting stronger in the era of globalization that is being experienced by all components in the world. Corporations are positioned as strong global economic subjects and have stronger pressure than individuals, because the potential losses incurred are much greater than those of individuals.

According to the Criminal Code (KUHP), the legality of corporations as perpetrators of criminal acts that can be accounted for in a criminal manner has not been expressed. However, the basis of legality is regulated in regulations outside the Criminal Code, including: (1) Article 15 of Law No. 7 of 1955 concerning the investigation, prosecution and trial of Economic Crimes, (2) Article 20 of Law Number 31 of 1999 *Juncto* Law on the KPK, (3) Articles 6, 7, and 9 of Law Number 18 of 2010 concerning the Crime of Money Laundering, (4) Articles 13-16 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, (5) Article 70 of Law Number 5 of 1997 concerning Psychotropics, (6) Article 130 of Law Number 35 of 2009 concerning Narcotics, (7) Articles 17 and 18 of Law Number 15 of 2003 concerning Terrorism, and (8) Law Number 40 of 2007 concerning Limited Liability Companies.

The imposition of criminal offences to the perpetrators of criminal acts regulated in the regulation mentioned above, is based on fault (*liability based on fault*). This is in accordance with the principle of "*nulla poena sine culpa*", which means that there is no crime without fault. This condition becomes a difficulty if applied to corporations.<sup>i</sup>

As a legal entity, corporations do not have a soul, so it is impossible to make mistakes. The doctrine of *liability based on fault* cannot be applied to corporations as perpetrators of criminal acts. However, theoretically it is possible to deviate from the principle of error by using the doctrine of *strict liability* (absolute responsibility), *vicarious liability* (substitute responsibility). As a consequence, corporations as perpetrators of criminal acts are difficult to be sentenced (Anjari, 2018).

The non-conviction of corporations as perpetrators of criminal acts followed by the Decision of the Tangerang District Court Number 30/Pid.B/1990/PN/TNG dated August 1, 1990 concerning poisonous biscuits, where the convicted was the director of CV. Gabisco both as a person and in his capacity as Director. Meanwhile, in the Decision of the Supreme Court of the Republic of Indonesia Number 2239K/Pid.Sus/2012 concerning the case of tax evasion of PT. Asian Agri Group (AAG). The corporation was sentenced even though the Public Prosecutor did not prosecute the corporation in his prosecution. In both decisions, the perpetrators of criminal acts are prioritized by humans, not touching their legal entities or corporations.

The prospect of regulating corporate liability in criminal law in Indonesia seems very positive. In the 2012 Criminal Code Bill drafted by the Ministry of Law and Human Rights, which is currently in the hands of the House of Representatives with the president's introduction, the corporate criminal liability will be integrated in Book I of the Criminal Code (General Provisions). With the definition of a corporation in the Criminal Code Bill above, which includes corporations does not only include legal entities such as limited liability companies, foundations, cooperatives, or associations that have been legalized as legal entities classified as corporations, but also includes firms, Municipal Corporations or CVs and partnerships, namely business entities based on civil law, not a legal entity. The existence of an update to the concept of corporate criminal liability is very important, considering that as the company's activities and freedom in opening a business increase, it is possible that this is used by criminals in committing criminal acts using the corporation itself. Apart from that, the victims and the impact caused by corporate crime are certainly greater than those committed by individuals. So with the explanation of the background above, the formulation of the problem that can be asked is: How is the Accountability and Criminal Implementation for Corporations in the Reform of Criminal Law in Indonesia?

## **2. Method**

The authors use a type of normative legal research (normative juridical), namely legal research that puts the law as a norm system. The norm system in question is about principles, norms, rules, from laws and regulations, and court decisions (Achmad & Fajar, 2010). The approaches used in this study include the statute *approach*, the conceptual *approach* and the *case approach*, namely by researching and reviewing several court decisions. This is necessary in order to be able to see the facts in practice. The normative juridical research method is commonly called doctrinal legal research or literature research. Such a method is used considering that the problem to be studied is about corporate criminal liability from the perspective of criminal policy and legal policy, whether a law and policy can be applied to an existing corporate crime event (Ali, 2021). Therefore, it is hoped that in this study we can see Criminal Policy and Criminal Law Policy for Victims of Corporate Crime in Indonesia. An analysis of normative law, in the statement of Soerjono Sukanto and Sri Mamudji stated: "Normative legal research includes the principles of law, the level of synchronization of the law" (Soekanto & Mamuji, 2007). As a normative juridical research, this research is aimed at written regulations so that this research is very closely related to libraries because it requires secondary data to be analyzed.

## **3. Analysis and Results**

### **3.1. Criminal Accountability and Implementation for Corporations in Criminal Law Reform in Indonesia**

Christina de Maglie explained that the discussion related to corporate criminal liability is divided into three categories. The first is related to what kind of organization can be criminally burdened with criminal liability. Second, the typology, type, or type of crime that can be categorized as criminal responsibility. Third, the criteria used to determine that the crime can be considered or categorized as a corporate crime so that corporate criminal liability can be demanded (De Maglie, 2005).

De Maglie explained that in general, there are three possible models that can be used to solve the problem. First, it is the approach to use organizational or corporate terminology without any specific limitations. In this case, the laws and regulations do not specify or specify certain conditions for an organization that can be sentenced and charged with criminal liability (Fadlian, 2020). Some examples of decisions involving corporations such as Yogyakarta District Court Decision Number 15/Pid.Sus-TPK/2022/PN Yyk, (2) Meulaboh District Court Decision No. 54/Pid.Sus/2014/PN. MBO, (3) Karawang District Court Decision No.434/Pid.B/2011/PN. Krw, (4) Decision of the Supreme Court of the Republic of Indonesia dated March 1, 1969 No. 136/KR/1996, (5) Decision of the Supreme Court of the Republic of Indonesia dated September 19, 1970 No. 66/KR/1969, and (6) Decision of the Supreme Court of the Republic of Indonesia on January 26, 1984 No. 346 K/KR/1980. From the example of the decision above, most of the above decisions are only imposed on a corporation for a criminal act that has been committed by a corporation represented by a director.

(Wells, 2001) Categorize the forms of criminal sanctions imposed on corporations, namely: a) Financial Sanction: It is a criminal sanction in the form of a fine whose amount is considered appropriate and can be imposed on the corporation. If the corporation does not want to carry out or is unable to carry it out, the substitute for the fine is not a form of imprisonment or confinement as stipulated in the Criminal Code, but the confiscation of assets or property from the corporation itself; b) Non-Financial Sanction: (1) Probation, (2) Adverse publicity, (3) Community service, (4) Direct compensation orders, and (5) Punitive injunctions.

For the *non-financial sanctions model*, Indonesia also has similar regulations both in the Criminal Code and laws outside the Criminal Code. *Probation*, for example, is similar to the probation penalty regulated in Articles 14a to 14f of the Criminal Code (Moeljatno, 2021). In addition, *adverse publicity* similar to the model of announcing judges' decisions is also formulated by

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Article 10 of the Criminal Code. On the other hand, the concept of community service, direct compensation orders, and punitive injunctions was also introduced by Law Number 32 of 2009 concerning Environmental Protection and Management as additional crimes, namely in the form of the obligation to do what was neglected without rights, deprivation of profits obtained from criminal acts, and reparations due to criminal acts. Basically, *non-financial sanctions models* were developed to answer the limitations of the form of criminal sanctions that can be imposed on corporations (Pieth & Ivory, 2011).

In addition, other criminal sanctions models for corporations also emerged from the results of the "International Meeting of Experts on the Use of Criminal Sanction in the Protection of Environment" on March 19-23, 1994 in the United States. From the results of the meeting, it was stated that the model of sanctions for corporations that can be imposed is: (McMurry & Ramsey, 1986) (1) Replacing economic gains derived from crime (2) Reimburse all or part of the cost of the investigation and make reparations for the losses incurred (3) Fine and (4) Additional crimes such as prohibition of committing acts/activities that may cause the continuation of crimes, orders to end or not continue activities, revocation of activity licenses, and dissolution of business ventures, confiscation of wealth and proceeds of crime, issuing and disqualifying convicts, and so on.

On the other hand, various laws in Indonesia have adjusted the criminal sanctions imposed on corporations. However, from the various sanctions options available above, Indonesia only chooses a fine as the only main crime that can be imposed on corporations that commit criminal acts (Sitepu, 2019). In general, the threat of a criminal fine for corporations that commit a criminal act is regulated by one-third more severe when compared to the criminal threat for individuals who commit the offense (Lubis & Siddiq, 2021).

In contrast to the principal crime as described above, the formulation of additional penalties for corporations that commit criminal acts tends to be more diverse. Indonesia regulates other additional forms of criminal offences in addition to those stipulated in Article 10 paragraph (2) of the Criminal Code (Irawan et al., 2022), such as the closure of all or part of the company for a maximum period of 1 year for corruption crimes, revocation of business licenses, revocation of legal entity status, determination of an action that must be carried out by the corporation, and so on (Kurniawan, 2023).

### **3.2. Reform of Indonesian Criminal Law**

Initially, the Criminal Code (*WvS*) was seen as the parent and as a form of codification and unification. However, in its development, the Criminal Code is considered incomplete or unable to accommodate various problems and dimensions of the development of new forms of criminal acts, which of course are in line with the development of thoughts and aspirations of the needs of the community (Arief, 2009). In addition, the current Criminal Code is not a criminal law that comes from basic socio-philosophical, socio-political and socio-cultural values that live in Indonesian society (Arief, 2021), So it is appropriate to ask whether the Criminal Code at this time is still appropriate to be called part of Indonesia's positive law, especially criminal law. The Criminal Code of this colonial legacy is not a complete criminal law system, because there are several articles/offenses that have been revoked. Therefore, new laws have emerged outside the Criminal Code that regulate special offenses and special rules. However, the new law outside the Criminal Code, although it is a national product, is still under the auspices of the general rules of the Criminal Code (*WvS*) as a colonial-made parent system. In short, the principles and fundamentals of the colonial criminal code still persist with the blanket and face of Indonesia (Isima, 2022). Although the special law makes special rules that deviate from the master rules of the Criminal Code, in its dynamics, the special law grows like a wild rule that is not systematic or patterned, inconsistent, problematic juridically, and even undermines the main building system, namely the Criminal Code.

Furthermore, positive criminal law oriented towards the Criminal Code raises concerns, especially with regard to its dogmatic and substantial nature. By teaching. The Dutch Heritage Criminal Code, directly or indirectly, means teaching and instilling the dogmas, concepts, and substantive norms formulated in the Criminal Code. As is known, the Criminal Code is motivated by the idea of individualism, liberalism and is strongly influenced by the classical school, although there is also the influence of neoclassical schools.

Studying matters that are dogmatic or substantial in the Criminal Code must be accompanied by wisdom and vigilance. This means that if the dogmatic things in the Criminal Code are used rigidly (without wisdom), then the output produced certainly hinders the purpose of criminal law enforcement, and even does not exclude the possibility of hindering the ideas of reform of Indonesian criminal law that are always echoed.

The Criminal Code that is currently in force does not regulate the concept adopted in relation to the definition of Criminal Acts and Criminal Responsibility. This situation often causes debate, as well as differences in the enforcement of criminal law in Indonesia. Even though basically most Dutch criminal law teachers are influenced by monistic views, which basically see the issue of "accountability" as part of a "criminal act". This means that a "criminal act" itself also includes the ability to be responsible. It has been a long time since in Indonesia has developed dualistic thinking (Chairul Huda, 2015), among them are particularly influenced by Moeljatno's thinking, which basically assumes that the concept that separates "criminal acts" from the issue of "criminal responsibility" is considered more in accordance with the way of thinking of the Indonesian people (Prasetyo et al., 2017). This concept seems to have been used as one of the bases in updating the Criminal Code, as seen in chapter II (book I), namely "Criminal Acts and Criminal Liability" (Syamsu & SH, 2015).

Regarding the definition of "Criminal Act", the Criminal Code Bill has formulated as "the act of doing or not doing something that is declared by laws and regulations to be prohibited and criminally threatened". The formulation does not seem to include the definition of a criminal act in a material crime, as in the crime of murder. This weakness certainly has no relevance related to the crime of corruption which has not been formulated as a material crime.

The Criminal Code Bill views every "criminal act" as unlawful, unless it can be proven that there are justifiable reasons, which include: the act of implementing the law, the existence of an office order, an emergency, a forced defense, and an act that is declared not contrary to the law that lives in society (the adherence to the teachings of against the law materially formulated in the Criminal Code Bill). This formulation further guarantees ease in the prosecution process, because the Public Prosecutor is not required to prove the fulfillment of unlawful elements (Septian, n.d.). Although this is actually a common thing in the practice of criminal law enforcement in Indonesia, the current Criminal Code has never been strictly regulated.

The Criminal Code Bill regulates the possibility of qualifying the act of "malicious conspiracy" as a criminal offense, in certain criminal acts, which is expressly stated in the law. In the Criminal Code Bill, malicious conspiracy is qualified as a criminal offense in criminal acts: Treason, Betrayal of the State, Sabotage, Terrorism, Treason against a Friendly Country, Causing Fires, Explosions, and Floods, Endangering People and Public Safety, Psychotropics, Money Laundering. The Criminal Code Bill does not qualify "malicious conspiracy" to commit the crime of corruption as a punishable act.

In the concept of the Criminal Code, it has also formulated a definition of "initiation of implementation" which is one of the requirements to qualify an act as an "attempted criminal act". The formulation of this definition certainly has a positive impact, especially it can facilitate and provide legal certainty in determining an act as an "attempted criminal act" (Schaffmeister et al., 1995). Indirectly, this formulation certainly also makes it easier to distinguish an act, whether it is an "attempted criminal act" or solely as a preparation for a criminal act.

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The topic of corporate crime is indeed important to discuss, especially in relation to the renewal of the Criminal Code, the final text of which has now arrived in the President's office. It is undeniable that the role of corporations today has become very important. The role of corporations dominates daily life, let alone the increase in privatization. It is no longer the state that provides the needs, but the corporation. Corporations can increase the wealth of the state and labor, but the revolution in economic and political structures has grown the power of corporations so that the state is too dependent on corporations so that the state can be dictated according to its interests. Therefore, corporations must have responsibilities. Various attempts to demand corporate responsibility continue, but full of obstacles, some of them untouched by the law (Panjaitan, 2022). In order for the weaknesses of the legal system to not be repeated, it is necessary to create comprehensive corporate accountability rules that cover all crimes.

The Criminal Code Bill has also defined corporate crimes (Saputra, 2015), As formulated in the Criminal Code Bill, "Criminal acts are committed by corporations if they are committed by persons in functional positions, in the organizational structure of a corporation acting for and on behalf of the corporation, or in the interests of the corporation, based on employment relationships or based on other relationships, within the scope of the corporation's business, either individually or jointly". The formulation is different from the formulation as stipulated in article 20 of the CORRUPTION Law, which has been formulated more broadly, because it can be done by everyone either based on employment relationships or based on other relationships. Meanwhile, in the Criminal Code Bill, it is restricted, only if the act is carried out by people in certain functional positions in the corporation. This difference can lead to legal debate, especially related to whether in this case, the Corruption Law can still be excluded as a *lex specialist*. In the sense that in the enforcement of corruption crimes against corporations, the criteria of "corporate acts" used still refer to the Corruption Law and not to book I of the Criminal Code (if later the Bill has become a law). In fact, book I itself applies to criminal provisions outside the Criminal Code.

#### 4. Conclusion

Corporations or legal entities can be perpetrators of criminal acts, especially in the context of economic, environmental, and corruption crimes. In classical criminal law that is oriented to individual subjects, corporations are difficult to criminally charge. However, the development of modern criminal law recognizes that legal entities must also be held criminally accountable, as stipulated in the provisions of Law Number 1 of 2023 concerning the Criminal Code Article 45 paragraph (1) and paragraph (2), which clearly and expressly state that the Corporation is the subject of a criminal act. With the provisions as stipulated in the first book of the National Criminal Code, all criminal acts regulated in related laws and regulations are harmonized so that there is no overlap of rules.

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