

CORPORATION AS CRIMINAL ACT SUBJECT IN INDONESIAN CRIMINAL LAW POLICY

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ABSTRACT

The use of criminal sanctions in overcoming crimes has developed from time to time. This development can be observed from criminal law policy formulation in the positive (criminal) law either inside or outside the Indonesian Criminal Code. One of the current criminal law policy developments is the expansion of criminal act subject, which was originally only humans but now also include corporations. This study seeks to answer the basic legitimacy of a corporation as a new criminal act subject in Indonesian criminal law. In analyzing the topic, this paper will use doctrinal legal research methods. The doctrinal legal research method conceptualizes law as values, principles, regulations, and decisions related to corporations as the criminal act subjects. The result of this study indicates that normatively, Article 103 of the Indonesian Criminal Code is used as the basic legitimacy for the criminal act subject expansion that adds corporation as criminal act subject and introduces corporate crimes in various laws outside the Criminal Code. Further, along with enacting many new criminal law policies that contain corporations as legal subjects and corporate crime, the legitimacy of corporation conviction is automatically born.

Keywords: Criminal law policy, criminal act subject, corporation

1. PREFACE

No society can escape from criminality. W. Clifford mentions that crime, as much, is a normal part of any social structure. Thus, crime is a phenomenon that is found in every society, regardless of the situation and condition of the community. Crime always surrounds both traditional and modern societies. Accordingly, criminality is a universal phenomenon. Crime has become a chronic disease that every nation or state has long suffered. In fact it even hinders the state's efforts to achieve national goals, which are usually determined when a country becomes independent. Human efforts to fight crime have been carried out for a long time. Benedict S. Alper, a Professor of Criminology from Boston College, dares to say that "crime is the oldest social problem".

Besides Alper, other experts also share a similar view. One of them is Habib-Ur-Rahman Khan. He opines in his writing entitled "Prevention of Crime-It is Society Which Needs the Treatment and Not the Criminal", as follows:

"The Modern world in fully aware of this acute problem. People are busy day and night doing research work, holding seminar, international conferences and writing books trying to understand crime and it's causes in order to control it. But the net result of all these efforts is to the contrary. Crime marches on".

Khan's statement is undoubtedly a sign of how hard humans have made the efforts to control crime, but the quantity and quality of the crime increase continuously. There are several ways to overcome crime. G. Peter Hoefnagels explains several ways to overcome the crime, those are: (1) apply the criminal law; (2) prevent without punishment; and (3) influence the views of society on crime and punishment or mass media). Referring to Hoefnagels' opinion, criminal

sanctions are not the only means that can be used by the state to overcome crime. Indonesia also carries out the use of criminal sanctions in tackling crimes. It can be identified by the existence of the Indonesian Criminal Code and various laws outside the Indonesian Criminal Code, which are stipulated and intended to overcome the specific crime. Both the law inside and outside the Indonesian Criminal Code are forms of criminal law policies.

As a legacy of the colonial government, the Indonesian Criminal Code contains the general principle of criminal acts and sanctions. One of the general provisions in the Indonesian Criminal code is Article 59, which regulates the scope of criminal act subject. Article 59 Indonesian Criminal Code clearly stated that the criminal act subject in Indonesia only consists of humans (*natulijkpersoon*). However, the scope has already been expanded to include corporations alongside humans in its current development.

However, the scope has already been expanded to include corporations alongside humans in its current development. This expansion can be seen in various laws enacted by the House of Representatives of the Republic of Indonesia. This paper attempts to analyze the basic legitimacy of the criminal act subject expansion in Indonesian criminal law policies.

This paper contributes to the scientific development of criminal law because this research is conducted to see the basic legitimacy of the criminal subject expansion in the Indonesian criminal law system. The basic legitimacy of criminal subject expansion helps to answer whether the corporation's inclusion as the new criminal act subject is valid or not.

This paper will be organized as follows. The first part provides the basic understanding regarding the corruption subject in the current criminal law policy, which has been expanded in the criminal prevention context. In the second part, the researcher describes matters relating to the legitimacy of criminal act subject expansion from only humans to include corporations. In the third part, the conclusion of this study is presented.

2. RESEARCH METHOD

The method used in this paper is doctrinal research on criminal law policies related to corporation prosecution. As stated earlier, the corporation has recently been referred to in various legislative practices as a subject that can be held criminally accountable. Therefore, this research is closely related to various corporate criminal liability policies or corporate criminal policies.

3. RESULT AND DISCUSSION

While talking about the criminal law policies, it is necessary to understand the operational stages of the policies. The simpler version of the long operational stages of the policies are: (a) formulation stage; (b) application stage; and (c) execution stage. In other words, Jonathan Clough divides those three stages into:

- a. Prescriptive jurisdiction: does the state have legislative power over the relevant conduct?;
- b. Adjudicative jurisdiction: do the courts have power to hear the particular disputes?;
- c. Enforcement jurisdiction: does the state have jurisdiction to enforce the law?.

Among many terms used to describe the stages, people seem to agree that the formulation stage is one of the fundamental stages in criminal law policy. The importance of the formulation stage can be seen from what must be done at this stage. At this stage, the House of Representatives of the Republic of Indonesia, as the representation of the state, must formulate a law containing the norms of criminal law. The various norms to be regulated comprise actions that are categorized as criminal acts, the subject of criminal acts, criminal sanctions that can be

imposed, the investigation process to the imposition of a crime, and even the implementation of a crime. These norms formulation has consequences, including the formulation of the criminal act subject that later will determine who can be punished.

The Indonesian Criminal Code has never explicitly formulated who can be held criminally accountable, whether if it is only humans or corporations. However, if the Indonesian Criminal Code is examined deeply, there can be found an article which provide a guideline about the criminal act subject that can be sentenced through the criminal justice mechanism.

Article 59 Indonesian Criminal Code mentions,

“in cases whereby the reason of misdemeanour punishment is imposed upon directors, member of a board of management or commissioners, no punishment shall be pronounced against the director or commissioner who evidently does not take any part in the commission of the misdemeanour”.

In regards to this provision, A. Zainal Abidin said that in *Memorie van Toelichting* (minutes of Indonesian Criminal Code Elucidation), Article 51 *Nederland Wetboek van Strafrecht* (“Ned. WvS”) states that a *strafbaarfeit* (delict) can only be realized by humans and fiction about legal entities does not apply in criminal law.

The formulation policy provisions contained in Article 59 of the Criminal Code are influenced by the principles in criminal law adopted by the formulators of the Criminal Code. Nyoman Serikat Putra Jaya explains more about the principle in question that the designer of WvS was influenced by the principle of *Delinquere University Non Potest* or *Societas Delinquere Non Potest*, which means that legal entities cannot commit criminal acts. Article 59 of the Criminal Code is the basis for stating that the Criminal Code does not recognize corporations as subject to criminal liability.

Criminal law policy is rather dynamic than static. What is regulated within criminal law policy is following the development of society. Criminal law exists to ensure that unwanted action by the community can be tackled through criminal law media. However, the party carrying out daily life necessities is not only an individual but also an intermediary called a corporation. Even further, it is undeniable that many corporations then commit crimes. The enactment of many laws containing corporations as criminal act subjects has also shown recognition of corporation crime emergence.

Despite the emergence of many corporate actions or crimes, the Indonesian Criminal Code as the parent of criminal law only acknowledges humans as a criminal act subject. It raises the question of whether the enactment of any laws outside the Indonesian Criminal Code is an allowed form of deviation or not. Normatively, the legitimacy of this deviation (expanding criminal act subject in the law outside the Indonesian Criminal Code) is still allowed based on Article 103 of the Indonesian Criminal Code.

As the Indonesian Criminal Code is originated from WvS. It is necessary to state the official language of Article 103 Indonesian Criminal Code as follows:

“De bepalingen der eerste achts titels van dit boek zijn ook toepasselijk op feiten, waarop bij andere wettelijk voorschriften straf is gesteld, tenzij bij de wet, bij algemeenen maatregel van bestuur of bij ordonnantie anders is bepaald”.

Several experts later translated this official language of Article 103 Indonesian Criminal Code. One of the experts is Moeljatno. The translation of Article 103, according to Moeljatno, is that

the provisions in Chapter I to VIII of this book (Indonesian Criminal Code) also apply to punishable acts regulated by other statutory provisions, unless the law says otherwise.

Thus, Article 103 of the Indonesian Criminal Code indicates that the expansion of the criminal act subject from humans to include corporations is something that can be considered legally valid. This is because Article 59 in Book I of the Criminal Code is open to aberration. The legislation practice shows there are many laws have inserted corporations as a new criminal act subject alongside humans. The instances of these laws can be seen in the table below:

Table 1

Corporation as the criminal act subject in the law outside the Indonesian Criminal Code

Laws	Articles
Law Number 1 Year 1953 concerning the Stipulation of Emergency Law on Goods Stockpiling (Law Number 17 Year 1951) as a Law	<p>Article 1</p> <p>Alphabet e</p> <p>Legal entity: any partnership or company, association or foundation, in the broadest sense also if the position as a legal entity either by legal means or based on reality is not granted to him.</p> <p>Article 11</p> <p>(1) If an act punishable under this law is carried out by a legal entity, then the claim is made and the sentence is imposed on both of them.</p> <p>(2) An act punishable under this law is carried out by a legal entity, if it is carried out by one or more persons who can be considered acting individually or jointly on behalf of a legal entity.</p> <p>Article 12</p> <p>(1) When a lawsuit is made against a legal entity, this legal entity during the prosecution is represented by an administrator who, if necessary, is appointed by the Prosecutor's Office.</p> <p>(2) Court documents relating to this claim shall be officially notified at the office of the legal entity or at the house of the administrator.</p>
Emergency Law Number 7 Year 1955 concerning Investigation, Prosecution, and Judiciary of Economic Crimes.	<p>Article 15</p> <p>(1) If an economic crime is committed by or on behalf of a legal entity, a company, an association of other persons or a foundation, then a criminal charge is made and criminal penalties and disciplinary actions are imposed, whether against the legal entity, company, union or the foundation, either against those who gave the order to commit the economic crime or who acted as leaders in the act or omission, or against both.</p> <p>(2) An economic crime is also committed by or on behalf of a legal entity, a company, an association of people or a foundation, if the act is committed by people who, either on the basis of employment or on the basis of other relationships, act within the legal entity, company, association or foundation, it does not matter whether these individuals individually commit the economic crime or there are elements of the crime together with them</p> <p>(3) If a criminal charge is made against a legal entity, a company, an association of persons or a foundation, the</p>

	<p>legal entity, company, association or foundation at the time of the prosecution is represented by a manager or, if there are more than one manager, by one of them. Representatives can be represented by other people.</p> <p>(4) The judge may order an administrator to appear before the court himself, and may also order that the administrator be brought before the judge.</p> <p>(5) If a criminal charge is made against a legal entity, a company, an association of people or a foundation, then all summons to appear before and will be made to the head of the management or at the head of the management's place of residence or at his place of residence. where the board of directors convenes or has an office.</p>
Law Number 8 Year 1995 concerning Capital Market	<p>Article 1</p> <p>23. A Person is a natural person, a Company, a partnership, an association or any organized group.</p> <p>Article 103, 104, 105, 106, 107, 108, dan 109 contains a criminal law that includes corporations as criminal act subject in the capital market sector with the phrase "Person", "Persons", "Any Person".</p>
Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition	<p>Article 1</p> <p>5. Business actors shall be any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economic field.</p> <p>Article 4-28, and Article 41 contains many prohibited business activities for business actors.</p> <p>Article 48</p> <p>(1) Violations of the provisions of Article 4, Article 9 up to and including Article 14, Article 16 up to and including Article 19, Article 25, Article 27, and Article 28 shall be subject to the criminal sanction of a fine of minimum Rp. 25,000,000,000,- (Rupiah twenty-five billion) and maximum Rp. 100,000,000,000,- (Rupiah one hundred billion), or the criminal sanction of imprisonment as a replacement of a fine for no longer than 6 (six) months.</p> <p>(2) Violations of the provisions of Article 5 up to and including Article 8, Article 15, Article 20 up to and including Article 24, and Article 26 of this Law shall be subject to the criminal sanction of a fine of minimum Rp. 5,000,000,000,- (Rupiah five billion) or maximum Rp. 25,000,000,000,- (Rupiah twenty-five billion), or a criminal sanction of imprisonment as replacement of a fine for no longer than 5 (five) months.</p> <p>(3) Violations of the provisions of Article 41 of this Law shall be subject to a fine of minimum Rp. 1,000,000,000,- (Rupiah one billion) and maximum Rp. 5,000,000,000,- (Rupiah five billion) or the criminal sanction of imprisonment as replacement of a fine for no longer than 3 (three) months.</p> <p>Article 49</p>

			<p>In compliance with the provisions of Article 10 of the Criminal Code, in addition to the sanctions set forth in Article 48, additional criminal sanctions may be imposed in the form of:</p> <ol style="list-style-type: none"> revocation of business licenses; or prohibition of business actors proven to have violated this law from filling the positions of director or commissioner for at least 2 (two) years and for no longer than 5 (five) years; or orders to stop certain activities or actions resulting in losses to other parties.
Law Number 8	Year 1999	Consumer	<p>Article 1</p> <p>3. Entrepreneur is an individual person or a company, in the form of a legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities in the economic sector through contracts, both individually and collectively.</p> <p>Article 61</p> <p>Criminal charges can be filed against the entrepreneurs and/or their administrators.</p> <p>Article 62</p> <ol style="list-style-type: none"> Entrepreneurs who violate the provisions as intended by Article 8, Article 9, Article 10, Article 13 Section 2 Article 15, Article 17 Section 1 point a, point b, point C point e and Section 2, and Article 18 shall face a maximum criminal penalty of 5 (five) years imprisonment or a maximum fine of Rp. 2000,000,000,- (two billion rupiah). Entrepreneurs who violate the provisions as intended by article 11 Article 12 Article 13, Section 1, Article 14, Article 16 and Article 17 Section I point d and point f shall face a maximum criminal penalty of 2 (two) years imprisonment or a maximum fine of Rp. 500,000,000 (five hundred million rupiah). Violations causing serious injury, serious sickness, permanent physical handicap or death shall subject to the provisions of the prevailing law.
Law Number 11	Year 2008	Electronic	<p>Article 52</p> <p>4. Criminal acts as intended by Article 27 through Article 37 committed by corporations shall be sentenced to the basic sentence plus two-thirds.</p> <p>Crimes regarding Information and Electronic Transaction are regulated in Article 45-51. These articles contain the "Person" phrase by which include corporation.</p> <p>Article 1</p> <p>21. Person is an individual, whether an Indonesian citizen, foreign citizen, or legal entity.</p> <p>Article 163</p> <ol style="list-style-type: none"> In this matter, a criminal act as stated in this Chapter, when committed by an incorporated entity, aside from jail and fines against the executives, the punishment that

	<p>can be imposed on the incorporated entity is a criminal fine with a 1/3 (one third) premium from the maximum fine that can be imposed by these provisions</p> <p>(2) In addition to criminal fines as stated in paragraph (1), corporate entities can incur additional criminal [sanctions] in the form of:</p> <ol style="list-style-type: none"> cancellation of business licenses; and / or cancellation of their status as a legal entity.
Law Number 4 Year 2009 concerning Mineral and Coal Mining	<p>Article 121</p> <p>If the criminal act as referred to in Article 120 is committed by a corporation, criminal charges and penalties will be imposed on the corporation and/or its management.</p>
Law Number 3 Year 2014 concerning Industrial Affairs	<p>Article 73</p> <ol style="list-style-type: none"> (1) If the criminal acts as referred to in Articles 62 to 71 are committed by corporations, prosecution and imposition of imprisonment and fines shall be imposed on the owners and/or administrators. (2) The fine imposed on the corporation shall be enforced with the provisions of a weighting of 3 (three) times the fine as referred to in Article 62 to Article 71. (3) The corporation as referred to in paragraph (1) shall be given additional punishment in the form of: <ol style="list-style-type: none"> cancellation of business licenses cancellation of their status as a legal entity
Law Number 20 Year 2014 concerning Standardization and Assessment of Suitability	<p>Article 76</p> <p>In the event that the criminal acts as referred to in Article 67, Article 68, Article 69, Article 74 and Article 75 are committed by Business Entity, in addition to imprisonment or fine imposed on the management, the punishment that may be imposed on the Business Entity is added 1/3 (one-third) of the fine.</p>
Law Number 21 Year 2014 concerning Geothermal Energy	<p>Article 1</p> <p>27. Person means a natural person or legal entity</p> <p>Crimes regarding copyrights within Article 112-118 declare the criminal act subject is "person".</p>
Law Number 28 Year 2014 concerning Copyrights	<p>Article 1</p> <p>12. Business Operator is any individual or business entity in the form of legal entity or not that organizes business activities in the territory of Indonesia.</p> <p>14. Every person is an individual or legal entity.</p> <p>Article 56</p> <p>Business Operators that do not maintain the halalness of Products that have obtained Halal Certificate as intended in Article 25 letter b is punishable with imprisonment for a maximum of 5 (five) years or a maximum fine of Rp2.000.000.000,00 (two billion rupiah).</p> <p>Article 57</p> <p>Every person involved in organizing JPH process that does not maintain the secrecy of the formula included in the information that is submitted by Business Operators as intended in Article 43 is punishable with imprisonment for a maximum of 2 (two) years or a maximum fine of Rp2.000.000.000,00 (two billion rupiah).</p>

Law Number 33 Year 2014 concerning Halal Product Assurance	<p style="text-align: center;">Article 113</p> <p>(1) In the case of acts referred to in Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, and Article 109 made by the corporation, in addition to its officers convicted under Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, and Article 109, the corporation is liable to a maximum penalty of 1/3 (one third) of the criminal penalties of the individual.</p> <p>(2) In the case of acts referred to in Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, and Article 109 made by officials as the person who ordered or the person who has authority because of his position in the field of plantation, the official shall be punished as a criminal threat in this Act plus 1/3 (one third).</p>
Law Number 39 Year 2014 concerning Plantations	<p style="text-align: center;">Article 81</p> <p>(1) In the event the criminal acts as referred to in Article 73, Article 75, Article 76, Article 77, Article 78, or Article 80 are carried by a corporation, the sentence shall be imposed to the corporation, the Controllers, and/or the managers acting for and on behalf of the corporation.</p> <p>(2) A criminal sanction shall be imposed to a corporation if the criminal act:</p> <ol style="list-style-type: none"> a. is performed or instructed by the Controllers and/or the managers acting for and on behalf of the corporation; b. is performed in order to meet the objects and purposes of the corporation; c. is performed according to the duties and functions of the perpetrator or the instructor; and d. is performed with the objective of giving an advantage to the corporation. <p style="text-align: center;">Article 82</p> <p>A criminal sanction imposed to a corporation shall be a criminal fine of maximum Rp 600.000.000.000 (six hundred billion rupiahs).</p>
Law Number 40 Year 2014 concerning Insurance	<p style="text-align: center;">Article 57</p> <p>(1) Where criminal acts as intended are perpetrated by a corporation, in addition to imprisonment and fine for its management, a sentence that may be inflicted on such a corporation shall be in the form of a fine with a 3 (three) times aggravation increase of the fine referred to in Article 55 and Article 56.</p> <p>(2) In addition to sentence to a fine as intended by section (1), a corporation may be subject to an additional sentence in the form of:</p> <ol style="list-style-type: none"> a. revocation of business permits; b. seizure of proceeds that are reaped from criminal acts; c. revocation of legal entity status; d. dismissal of members of the management ; and/or e. prohibition of such members of the dismissed management from establishing a corporation engaged in the same line of business.

Law Number 5 Year 2017 concerning Advancement of Culture	Article 87
(1)	In the event that criminal offences as referred to in Article 65, Article 66, Article 67, Article 68, Article 71, dan Article 72 are conducted by or on behalf of a corporation, the criminal prosecution and sentence can be given to corporation and/or its management.
(2)	Principal punishment that can be subject to the corporation is only fine punishment, under the condition maximum punishment is added by 1/3 (one third) of each fine punishment.
(3)	Othe than principal punishment, corporation as referred to in section (2) can be subject to additional punishment in the form of license revocation.
Law Number 18 Year 2017 concerning Protection of Indonesian Migrant Workers	

The existence of the law mentioned above adds to the legitimacy of criminal act subject expansion because in Indonesia, the basis to impose criminal sanction must be regulated in law. It is consistent with Article 28 J Indonesian Constitution paragraph (2) by which stated:

“In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.”

Through this provision, it can be concluded that the imposition of a crime is closely related to the rights and freedoms of every person. So, if the criminal sanction will be used, it must be stipulated in the law. Even further, the provisions are expected to fulfil moral, religious values, security and public order, yet recognition and respect to other’s rights and freedom. This kind of provision is not only found in Indonesian Constitution but also Article 1 paragraph (1) Indonesian Criminal Codes whereby stated that, “No act shall be punished unless by the virtue of a prior statutory penal provision”. This means, only law/statutory.

In addition to Article 28 J paragraph (1) Indonesian Constitution and Article 1 paragraph (2) Indonesian Criminal Codes, there is Article 15 paragraph (1) Law Number 12 Year 2011 as amended by Law Number 15 Year 2019 concerning the Establishment of Legislation that states the material contents of a legislation regarding criminal provisions may only be regulated in: (1) law, (2) provincial regulation, and (3) regency/municipal regulation. This article indirectly shows that criminal law norms can appear in laws and regional regulations. However, in terms of expanding the criminal act subject, which is certainly a form of Indonesian Criminal Code deviation, it is not allowed to be carried out by regional regulation.

4. CONCLUSIONS AND RECOMMENDATIONS

The expansion of criminal act subjects from only humans to include corporations is a deviation of material criminal law contained in the Indonesian Criminal Code. Nonetheless, this expansion is legitimized through Article 103 Indonesian Criminal Code which opens up the opportunities for the special provisions regulated in the laws outside the Indonesian Criminal

Code. However, it is worth noting that the expansion of criminal act subject outside the Criminal Code can only be carried out through law/statutory.

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