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Legal reconstruction of corporate criminal accountability in corruption case based on justice value

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Abstract
The aim of the research is to examine and analyze the weaknesses of regulations on the inclusion of corporate responsibility in current corruption crimes, and how to reconstruct the regulations on participation in corporate accountability in corruption crimes based on the value of justice. This research was conducted using socio-juridical research which is a legal research method that functions to see the law in its real sense and examines how the law works in a society that is analytically descriptive using primary and secondary data and using the theory of justice as a grand theory.
Research Results show that the regulation inclusion of corporate responsibility in criminal acts of corruption has weaknesses because the Criminal Code does not recognize corporate responsibility, procedural law, and provisions for criminal acts of corruption do not regulate corporate procedural law and law enforcers do not understand much about corporate criminal accountability. For this reason, the provisions of Article 20 paragraph (1) of Law Number 31 of 1999 which reads in the event that an illegal act of corruption is committed by or on behalf of a corporation, therefore, charges and criminal convictions can be made against the administrators must be reconstructed in the form of a new paragraph to become charges and criminal convictions against directors, commissioners, and management are implemented in the form of participation in criminal acts, directors, commissioners, and management representing corporations cannot be represented by other people.

Keywords: legal reconstruction, corporate crime, corruption, justice value

Introduction

If a case where more than one defendant has been tried and the other defendants are tried later with the same principle of action, in court practice the articles that are applied are the main articles and the accompanying articles and can be tried together according to the principle of procedural law, namely trial fast, simple and low cost, but in the case of PT. Giri Jaladhi Wana[1], the management is tried first and the corporation later but the corporation is not included in Article 55 paragraph (1) 1st of the Criminal Code even though in the provisions of Article 20 paragraph (1) of Law Number 31 of 1999 concerning Eradication of Corruption Crimes, regulates the existence of criminal liability that can be imposed on the corporation and or its management if it is carried out by or on behalf of the corporation, then criminal charges can be made against the corporation and or its management.
The determination of the offense of participation in criminal offenses against corporations is an issue that has not yet received theoretical agreement from criminal law experts, as Sudarto said that the issue of participation is often a source of differences in corporate criminal responsibility.
According to Remmelink, in Moeljatno [2] that for the perpetrator in a crime to be said to be a mede pleger, then there must be elements of participation, that is, between the participants there is conscious cooperation and the execution of the crime together.
However, because the concept of inclusion regulated in the Criminal Code is a concept of criminal acts that are realized and can only be applied to humans as individuals, not to humans as administrators representing corporations, it is clear that the concept of participation in criminal acts committed by corporate managers must be listed in in the provisions of the law which regulate it specifically in this case in the Corruption Crime Act.
If we refer to the written provisions regarding the teachings of participation and the concept of criminal responsibility adopted in criminal law in Indonesia which adheres to the principle of legality and the principle of legal certainty, the provisions for the inclusion of criminal acts against administrators representing corporations in criminal liability have not been regulated in the Criminal Code so that it is necessary to conduct a study in the perspective of criminal law to provide legal certainty for law enforcement officials in implementing it so that there is no doubt in its implementation.
From the first corporate case until now, many corporate law subjects have been tried for corruption crimes, especially by the Republic of Indonesia's Attorney General's Office. In the judicial process conducted against corporations, it is based on the applicable procedural law and also several other provisions to fill the legal vacuum, among others, based on the Attorney General's Regulation Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Subjects Corporate Law, in the indictment format does not include the existence of an inclusion article but rather an independent form of indictment between the corporation and its management. Based on Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, it accommodates criminal liability by corporations and management as stipulated in Article 15 paragraph (1) and Article 19 paragraph (1), but until now there has never been a lawsuit filed to corporate trials along with their management using either the inclusion article under the Criminal Code and Article 20 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of

Corruption Crimes, including administrators with other administrators. In addition to the absence of clear regulatory guidelines and concepts relating to the participation of corporations and administrators, it raises doubts for law enforcement officials to apply accountability for criminal acts of corruption committed by corporations, and in practice, it is more widely applied to their management.

Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Corporate Criminal Accountability In Corruption Case Based On Justice Value*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of The Corporate Criminal Accountability In Corruption Case in Indonesia currently?
2. How is the Legal reconstruction Of The Corporate Criminal Accountability In Corruption Case Based On Justice Value?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables[3].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of[4]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses Of The Corporate Criminal Accountability In Corruption Case In Indonesia Currently

Based on data from the Programming and Evaluation Section of the Junior Attorney General's Secretariat for Special Crimes, from 2009 to 2014 the number of investigations handled by the Indonesian Attorney General's Office was 9,637 cases, prosecutions of 9,370 cases. Of the total cases, 90 percent of corruption cases were related to the procurement of goods and services, thus these cases were related to corporations acting as providers of goods and services that benefited from the criminal act of corruption or had committed acts against the law that was detrimental to the state through their management. Even though this has happened, rarely have corporations been held accountable for corruption by prosecutors throughout Indonesia. Except for two cases from the Special Crime Investigator at the Attorney General's Office, namely Indosat/IM2, Bioremediation PT. Chevron Pacific Indonesia and the High Court of South Kalimantan PT. Giri Jaladhi Wana.[5]

Weaknesses in the provisions of Article 20 Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is that there is no mention of the participation of corporate management, then the corporate management who becomes the perpetrator of a crime allows the management representing the corporation to be represented by other people, it seems that this provision still sees corporations in civil cases where corporations can be represented by other people in court, but in criminal trials the position of the corporation's management especially the administrator who commits the act cannot be represented by another person but must be attended by the perpetrator himself, moreover Criminal procedural law adheres to proving an individual who committed a criminal act, so if represented, how to prove the actions of the corporation's management, not to mention if the participation article is applied which is made possible under Article 20 paragraph (2) of Law Number 31 Year 1999 as an accumulation of the actions of several administrators who are considered to have mens rea must be presented at trial as defendants, because the procedural law recognizes one of the pieces of evidence, namely the testimony of the accused, if the administrator who committed the criminal act is represented by another person, can he be asked for information as a witness, bearing in mind that the management concerned must prove his actions including to prove his innocence of committing a crime alleged.

So that the provisions of Article 20 paragraph (4) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes are contrary to the provisions of Article 20 paragraph (1) and are under the principles in the criminal procedural law which tries criminal cases against We can see this matter based on Article 1 number 14 of the Criminal Procedure Code, a suspect is a person who because of his actions or circumstances based on initial evidence should be suspected of being the perpetrator of a crime, while Article 1 point 15 of the Criminal Procedure Code, the accused is a suspect who is prosecuted, examined and tried in court.

Based on the principle of identification, proving the actions of corporate management are managers who have the authority to run a corporation including taking actions and preventive measures not to commit criminal acts and the management is intended as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies Article 98 paragraph (1) is directors who have the authority to manage and represent a limited liability company inside or outside

the court. However, apart from the directors, other administrators in corporate development have the authority to manage and run the corporation, namely commissioners and beneficial owners.

Participation in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, is an exception to criminal liability for representing a corporation which should not only be imposed on one administrator but can be borne by other administrators who have spiritual intentions committing a crime as a corporate organ that controls the corporation other than the directors which should be regulated can be carried out in the form of participation in the accountability of the management representing the corporation.

The basis of the corporation as a legal subject is regulated in Article 1 paragraph (1) and paragraph (3) is a legal subject that does not have a heart, while the management of the corporation is an organ that commits criminal acts together with other organs, the corporation and the management have a role as a unit in a violation punishment so that it should be subject to participation but because there is no form of inclusion, it creates problems because the basis for participation is the provisions of Article 55 or 56 of the Criminal Code, while the Criminal Code does not recognize corporations as legal subjects and the Criminal Code does not recognize substitute liability or liability without fault, so this becomes one of the weaknesses of corporate criminal responsibility with management in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption Crimes.

Article 20 paragraph (5) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes reads that the judge can order that corporate managers appear before the court themselves and can also order that the management be brought to court, the word "can" implies that in the stages corporate management can be absent unless the Judge orders the management to appear in person at trial. So this is also a problem because the Criminal Procedure Code requires a defendant to be in the process of every stage of an investigation, prosecution, and trial before the judge's decision.

In addition to the procedural law regulated in article 20 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, the rest refers to procedural law, but other provisions of the KUHAP only cover criminal justice procedures for individuals, for example in the identity of an indictment, how to construct an indictment against a corporation if the procedural law does not regulate it so that this becomes unclear in the procedural law provisions.

Under the principle of lex certa in procedural law, which means that procedural law must contain clear provisions and must be in written form or lex scripta, whereas until now both Law Number 31 of 1999 and the Criminal Procedure Code have not accommodated procedural law for corporations, so this is a weakness and makes law enforcers reluctant to process criminal responsibility for corporations. [6]

Even though the Attorney General of the Republic of Indonesia and the Supreme Court later issued a Regulation of the Attorney General and a Regulation of the Supreme Court regarding the implementation of procedural law for corporations, these two regulations are binding because they are not included in the hierarchy of laws and regulations, so weaknesses in proceedings for corporations need to be issued immediately or revised related to procedural law for corporations in the form of a written law.

Because the principle of legal certainty is the basis for the implementation of justice to create legal certainty in its implementation. Legal certainty refers to clear, permanent, and consistent rules where implementation cannot be influenced by subjective circumstances.

The existence of legal certainty in written form supports the proper functioning of the legal system so that there is clarity in the application of provisions within the corporation. so that the goal of legal certainty to be achieved is to protect the public interest, and social justice, uphold people's trust in the state, and to uphold the authority of the state in the presence of citizens. [7]

2. Legal Reconstruction Of The Corporate Criminal Accountability In Corruption Case Based On Justice Value

The existence of a criminal act by a corporation through management/controlling personnel of the corporation commits a criminal act of corruption which is regulated in the law and results in state losses or other societal losses giving birth to criminal liability for the corporation and its management as a manifestation of their responsibility for mistakes for actions that harm the state or society. Being accountable to the corporation and its management together will certainly create a deterrent effect for both the corporation and its management not to commit crimes again, to prevent criminal acts from occurring, and more importantly, to prevent victims from criminal acts.[8]

Based on the identification of problems concerning the regulation of inclusion of criminal liability in placing corporations as legal subjects in acts of corruption together with their management, it appears that there are problems as follows:

a. The Criminal Code as the legality of criminal law provisions that can be applied in general does not stipulate and place corporations as subjects of criminal law. Even though the Criminal Code contains inclusion articles in the provisions of Articles 55 and 56, because the Criminal Code does not place corporations as legal subjects, corporations cannot be held accountable if they commit acts of corruption together with their management in the form of participation in criminal acts.

b. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption as a special law, determines and places corporations as legal subjects based on Article 1 point 1 and number 3. Based on the provisions of Article 20 paragraph (1) corporate criminal responsibility in acts of corruption can be prosecuted and punished against corporations, management, or both, both individually and jointly in the form of participation in criminal acts. But very minimal in its implementation.

c. The subject of management representing corporate criminal responsibility is not mentioned so there is no legal certainty as to who has the authority as the controller and brain of the corporation that is determined as the directing mind in criminal acts.

In the Criminal Code, there is no substitute for criminal liability, but in the 2022 Draft Criminal Code, Article 46 stipulates replacement liability in Article 46 which states "*Criminal acts by corporations are crimes committed by administrators who have a functional position in the organizational structure of corporations or people who are based on work relationships or based on other relationships acting for and on behalf of the Corporation or acting in the interests of the Corporation, within the scope of the Corporation's business or activities, either individually or jointly*". So this provision accommodates the theory of vicarious liability.

The draft Criminal Code 2022, as a renewal of the general provisions of Indonesian criminal law, has accommodated criminal acts and criminal liability against corporations as stipulated in Articles 45 to 50. The provisions related to corporations are regulated in several articles as follows:

The provisions of Article 47 of the RKUHP, expanding the criminal provisions committed by corporations read "In addition to the provisions referred to in Article 46, Corporate Crimes can be committed by givers of orders, control holders, or corporate beneficial owners who are outside the organizational structure but can control the Corporation.

Article 48 Criminal acts by Corporations as referred to in Article 46 and Article 47 can be accounted for, if: a. included in the scope of business or activity as specified in the articles of association or other provisions applicable to the Corporation; b. unlawfully benefiting the Corporation, and c. accepted as Corporate policy.

Article 49 Liability for Criminal Acts by Corporations as referred to in Article 48 shall be imposed on Corporations, administrators having functional positions, giving orders, controllers, and/or beneficial owners of Corporations.

Based on the provisions of Article 49 of the RKUHP, it does not stipulate that corporations and management can be prosecuted together as the concept is jointly stipulated in Article 20 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Crimes Corruption Crime so that the regulation of criminal liability for corruption against corporations and management is a regulation and a step forward in eradicating corruption as an ius constitutum, but in practice, it has not gone well to date.

One factor is the inconsistency of law enforcement in implementing these provisions because law enforcement officials, especially prosecutors, still adhere to a mere legalistic, formalistic, and procedural paradigm in implementing the law. The law must be able to be implemented and accelerated according to Roscoe Pond's opinion according to its function as a tool of social engineering (law as a means of social engineering) or law as a tool of development (law as a means of development) as stated by Mochtar Kusumaatmadja.[9]

In the concept of progressive law, the basic assumption is the relationship between law and humans. Progressive law has the principle that law is for humans and not the other way around. Therefore, if there are any problems in the law, then the law must be reviewed and then corrected, not the people who are forced to be included in the legal scheme.

The purpose of the law is to ensure order in society, for this reason, the means for regulating order in society are in the form of legal rules which cannot be implemented in reality, creating a legal vacuum in the sense of its implementation. arrangements relating to the inclusion of corporate responsibility in acts of corruption by corporations, administrators, and administrators are a necessity and an obligation amidst the rise of criminal acts of corruption committed by corporations through their management which is under the concept of corporate criminal responsibility which has been recognized for its application in Indonesia. The necessity of applying criminal liability to corporations and management aside from the symbiotic principle of mutualism "*the occurrence of criminal acts because each other needs each other's roles*" and also so that there is a deterrent effect in the form of corporations cannot be behind the responsibility of management and vice versa administrators also cannot be behind corporate responsibility so that in the end if that happens it is likely that there will be criminal acts of corruption by corporations using other managers or managers who commit acts of corruption using other corporations.[10]

For this reason, several matters related to the scope of the regulation on the inclusion of criminal liability for corporations and administrators as well as administrators with other administrators that must be regulated in Indonesian laws and regulations are:

a. Regulating the form of corporate responsibility in the criminal act of corruption against corporations and management as well as the criminal liability of the management is not only represented by one administrator who is authorized to represent the corporation, namely the directors but other managers who are identified as the directing mind and the accountability of the management is carried out in the form of participation even though they can act for and on behalf of the corporation;

b. procedural law regarding procedures for the prosecution of corporations;

c. Expansion and affirmation of management as legal subjects of corporate criminal liability listed in the Corruption Crime Act and the Limited Liability Company Law are not only represented by the directors but can be in the form of participation in criminal acts, including jointly with commissioners and/or management who can move a corporation;

d. criminal sanctions against corporations.

Based on matters that are important to regulate regarding the regulation of the inclusion of corporate responsibility in corruption crimes against the corporate criminal responsibility system which is accounted for by the management so that it is based on the value of justice, the reconstruction needs to be manifested in future legal arrangements (ius constituendum) which are more precise, especially if regulated, namely the addition of a new paragraph in Law Number 31 of 1999 which reads: "*Criminal charges and convictions against directors, commissioners and/or management are applied in the form of accompanying criminal acts*".

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The Weaknesses in the regulation involving criminal responsibility for corruption against corporations and

management is that the Criminal Code does not recognize corporations as legal subjects, considering that the Criminal Code is made more influenced by the principle of societas delinquere non potest and van savigny's fictional theory, that corporations cannot commit criminal acts, causing confusion among law enforcement officials. law, especially the Attorney General's Office of the Republic of Indonesia to apply the teachings of inclusion to corporations and management, the provisions of Article 20 paragraph (1) of the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts do not regulate joint participation of criminal acts between corporations and their management or other administrators who excluding or lex specialist from the Criminal Code causing the inclusion of criminal liability for corporations has weaknesses besides not being supported by the applicable legal system in the form of a legal structure including the readiness of law enforcers in understanding and commitment its implementation and the legal culture of the people who still do not understand and report and criticize corporate responsibility in acts of corruption.

2. The regulations for inclusion of corporate responsibility in corruption crimes stipulated in Article 20 paragraph (1) of the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes which were born in 1999 until now have not been implemented in accordance with the provisions so that they are not based on justice because there are weaknesses in the development of corporate crime so that fixing it must be carried out in a progressive way, namely studying comparative law from countries that gave birth to the concept of criminal liability for corporations and improving regulations so that there is no doubt from law enforcement officials to process it in the future by making the concept, especially in Law Number 31 of 1999 concerning the eradication of criminal acts of corruption, which is specific in nature so that it becomes a solution and becomes the basis for legality in its implementation. Reconstruction of regulations on the inclusion of corporate responsibility in corruption based on the value of justice is an answer to the substantive basis of problems related to the regulation of corporate criminal responsibility in statutory regulations in the field of corruption with the value of fair legal certainty as the arrangements must be able to accommodate protection for victims of corporate crime collectively and also against its implementation. The summary of the reconstruction of the regulation on the inclusion of corporate criminal responsibility in corruption crimes based on the value of justice is by adding a new paragraph in Law Number 31 of 1999 which reads: "*Criminal charges and convictions against directors, commissioners and/or management are applied in the form of participation in criminal acts*".

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