

# Criminal Sanctions Fine For Corporations as Performers of Criminal Acts of Corruption From the Perspective of the Theory of Dignified Justice

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## Criminal Sanctions Fine For Corporations as Performers of Criminal Acts of Corruption From the Perspective of the Theory of Dignified Justice

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**Abstract** Korganization in nation building is very significant. Corporations can be said to be pillars of the nation's economy. Corporations are very influential not only on economic aspects, but also social, political and other aspects. As time goes by, crimes committed by corporations arise. The Criminal Code which does not recognize corporations as legal subjects opens up opportunities for individuals to take advantage of this legal loophole. The regulations governing corporate responsibility currently in effect are considered less effective and efficient. Provisions that clearly regulate "corporate criminal liability" are still at the Draft Criminal Code stage. Based on the research results, it was found that the corporate responsibility system has several doctrines or theories in determining responsibility. These theories include "identification doctrine, aggregation doctrine, reactive corporate fault, strict liability and vicarious liability." This research aims to increase knowledge regarding criminal responsibility by corporations. This research supports the immediate ratification of the Draft Criminal Code as an answer to legal problems regarding criminal acts committed by corporations. The method used in this research is normative juridical, with data collection techniques namely literature study. The data obtained in this research comes from writings or scientific works in the form of books, journals, dissertations and other literature.

**Keywords:** Criminal Acts, Corporations, Liability

### INTRODUCTION

Corporations are the subject of criminal acts. As subjects of criminal law, corporations do not have an inner attitude. Meanwhile, to be criminally liable, mens rea/schuld is required. Crimes committed by corporations are very detrimental to society and the country. Meanwhile, conventional accountability systems, which are individual, direct and based on responsibility, are difficult to apply to corporations. According to Fisse and Braithwaite, according to Fisse and Braithwaite, there are twenty factors that must be considered in law enforcement. The purpose of this writing is to analyze the corporate responsibility system so that it can impose criminal penalties on corporations, and the obstacles to imposing criminal penalties on corporations. The method used is the statute approach (law approach) and case approach (case approach), the analysis method uses qualitative analysis with interpretation, and the data collection method uses library research. It can be concluded that corporations can be held accountable by using a system of absolute and vicarious liability; and the obstacle is the application of the conventional criminal liability system and the difficulty of proving corporate guilt. It is recommended that there be a common perception among law enforcers regarding what corporations can be punished for. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes regulates when and in what ways corporations as perpetrators of corruption can be held accountable. The criminal liability policy for corporations was then created because there were many developments in

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crimes committed by natural humans (naturalijk persons) and by legal/corporate bodies (recht persons) which could cause losses big on the part of society. However, the misconception regarding human and corporate legal subjects seems to allow corporations to commit criminal acts and not be punished. The role of all legal subjects as corporations, both national and trans/multinational in modern life in the era of globalization is increasingly important and strategic. Within the scope of criminal law, the existence of corporations is closely related to criminal acts committed by corporations so that they can be held accountable, this is what is called a corporate criminal act.

## DISCUSSION

### Understanding Corporations

Terminology or the term corporation, has actually not been used as a term in Indonesian law for too long. Nowadays in everyday life it is commonly used as a substitute for the words company, business entity, and/or legal entity, or legal subject. Limited Liability Company is a business entity that is in great demand by various parties who want to run a business. Etymologically, a corporation is a legal entity. The word corporation in Dutch, (Dutch: corporatie, English: corporation) comes from the word corporatio in Latin. Corporate itself comes from the word "corpus" which means to give body or make a body. Thus, corporation means the result of becoming a body, in other words a body that is made into a person, a body that is obtained by human actions as opposed to a human body, which occurs according to nature. Etymologically the word corporation can be found in Dutch; corporatie, UK; corporation, Germany; Korporation and comes from the words "corporation" in Latin. Like other words that end in "tio", corporatio is a noun (substantivum) which comes from the verb corporare. Many people used it in the Middle Ages or after that. Corporare also comes from the word "Corpus" (Indonesian: body), which means to give a body or make a body. Thus, corporatio originates as a result of the work of making bodies, becoming people, bodies obtained by human actions as opposed to biological human bodies, which occur according to nature. In Article 1654 of the Civil Code (KUHPer) it is stated that a corporation is defined as "A civil company is an agreement between two or more people, who promise to put something into the company with the intention that profits will be obtained from the company it is divided between them."

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According to the Big Indonesian Dictionary, a corporation is a legal business entity; legal entity; a very large company or business entity or several companies managed and run as one large company. The definition of a Limited Liability Company or PT according to Law

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Number 40 of 2007 concerning Limited Liability Companies is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares, and meets the requirements stipulated in the Law -This law and its implementing regulations.

**Karak teristik CorporationsiCorporations have very different characteristics when compared to other forms of business.**

In general, these characteristics can be described as follows, namely first, the existence of a legal entity, which has the consequence that the corporation is an artificial legal subject, which itself can carry out legal actions. As a legal entity, this status is given to by the State after fulfilling certain requirements and following certain procedures stipulated through statutory regulations as a form of incorporation. Second, unlimited life period. Corporations basically have an unlimited life span until a limit is determined in the company's articles of association (by law) or its existence is dissolved by an organ that has the authority to do so. Third, the objectives and authority are very broad. Corporations usually have goals and authority which are formulated in the company's articles of association. Fourth, the limited authority of the capital owner. A characteristic that is always attached to corporations that have the status of a legal entity is the limited responsibility of the capital owner (limited liability). This limited liability is theoretically a consequence of limiting the authority of capital owners to manage the company. In corporations, the management of the company is handed over to an organ (professional) that is separate from the owner. Types of Corporations

**Based on certain distinctions, corporations can be divided into several types, including: judging from the owner, corporations can be divided into**

: state-owned corporation, state-owned corporation private (private corporation) and mixed corporation, where the capital comes from state and private elements. Judging from the ownership guess, corporations can be divided into: open corporations and closed corporations. Based on the business network developed, corporations can be divided into: national (local) corporations and multinational corporations (transnational) Regulations Concerning Legal Entities or Corporations as Legal Subjects

**In general, the legislative regulations governing corporations are Law Number 40 of 2007.**

As for regulations that specifically explain the identity of corporations as legal subjects, including: Postal Law (Law Number 6 of 1984), in Article 19 (3), if the criminal acts mentioned in paragraph (1) and paragraph (20) are committed by, or on behalf of, an agency law, company, association of other people, or foundation, then criminal charges are made and criminal and disciplinary action is imposed, both against the legal entity, company, association,

or foundation, as well as against the person who gave the order to commit the criminal act as the leader or person in charge in the act or omission in question, or both. Industrial Law (Law Number 5 of 1984) In Article 1-7, an industrial company is a business entity that carries out activities in the industrial business sector. Narcotics Law (Number 22 of 1997) in Article 1-19, Corporations is an organized collection of people and/or property, whether a legal entity or not.

Banking Law (Law Number 10 of 1998) in Article 21 (1) The legal form of a Commercial Bank can be

:LimitedCompany, cooperative, regional company. Capital Markets Law (Law Number 8 of 1995) in Article 1-23, Parties are individuals, companies, joint ventures, associations or organized groups. The Psychotropics Law (Law Number 5 of 1997) in Article 1-13 states that a corporation is an organized group of people and/or assets, whether a legal entity or not a legal entity. Environmental Law (Law Number 32 of 2009) in Article 32, Every person is an individual or business entity, whether a legal entity or not a legal entity. Crime of Corruption

**In the provisions of Law Number 31 of 1999 joLaw**

Law Number 20 of 2001 concerning the Eradication of Corruption there is no definition of corruption. However, taking into account the category of criminal acts of corruption as formal offenses, Article 2 and Article 3 of Law no. 31 of 1999 strictly regulates the criminal elements of the criminal act of corruption in question. Article 2 Law no. 31 of 1999, states as follows, "Any person who unlawfully commits acts of enriching himself or another person or a corporation which can harm the state's finances or the state's economy." Furthermore, in Article 3 of Law no. 31 of 1999, states: Any person who, with the aim of benefiting himself or another person

or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the state's finances or the state's economy. Corruption was first considered a criminal act in Indonesia based on Law Number 24 of 1960 concerning Investigation, Prosecution and Examination of Corruption Crimes. In reality, this Law was unable to carry out its duties so it was revoked and replaced with Law Number 3 of 1971 concerning the Eradication of Corruption Crimes, and most recently since August 161999 replaced by Law Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001 concerning Eradication of Corruption Crimes. Article 2 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, reads: Every person who unlawfully commits an act of enriching himself or another person or a corporation which can harm the state's finances or the state's economy, shall be sentenced to imprisonment. life imprisonment



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or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least two hundred million rupiah and a maximum of one billion rupiah.

Through the sound of the article above, the following elements of criminal acts of corruption can be obtained: Every person, against the law, enriches himself or herself <sup>15</sup> or another person or a corporation and can harm the state's finances or the state's economy.

Several forms of corporate crime and examples include using the power or authority given to them.

This often happens to high-level officials. In relation to contractors to win tenders. Second, fictitious payments. This case often occurs in employees who frequently shop for needs at the office. Third, use the facilities of the office for personal purposes. Fourth, does not work according to the specified schedule. This is often called time corruption. Fifth, organize a fictitious official trip. The operating system is to apply to for funds to take business trips out of town, these funds should be used for business trips to meet one's own needs and reduce the quality of goods purchased. In ancient times, corporate development took the form of group formation which occurred in Asia Minor, Greek and Roman society.

During their development, these groups in Rome formed an organization that was in many ways similar in function to corporations as we know them today. This organization has assets separate from its members. In this ancient time, differences in the position of individuals in organizations and the positions of individuals who were separated from the organization began to be recognized. The development of corporations at the beginning of the modern era was influenced by trading businesses which were increasingly complex in nature. for example, England since the XIV Century has been a trade center for wool and textiles which were exported to mainland Europe. In 1581, The Turkey or Levant Company was formed as a Turkish trading business. The formation of several trading businesses/companies is the embryo of corporations today. The development of state limited liability companies is very sad with many experiencing losses, so it is necessary to reorganize state companies <sup>19</sup> with the issuance of Law Number 1 Prp of 1969 concerning Forms of State Business, stipulated by Law Number 9 of 1969. 1969. Article 1 of the Law stipulates that there are three types of state businesses, namely, civil service company (Perjan), public company (Perum) and corporate company (Pesero). The stages in the development of <sup>4</sup> corporations as subjects of criminal acts <sup>4</sup> are broadly divided into three stages, the first stage is characterized by efforts to limit the nature of the offenses committed by corporations to individuals (naturelijk persoon). If a criminal act occurs within the corporate environment, then The criminal act is deemed to have been committed by the management of the corporation.

In this case, it imposes a "duty of care" on the administrator. In the second stage, the corporation is recognized as capable of committing criminal acts, will but those who can be held accountable are the administrators who actually lead the corporation. The <sup>4</sup>third stage is the beginning of direct responsibility from the corporation. In this stage the possibility is opened to sue the corporation and hold it accountable according to criminal law. Mardjono Reksodiputro believes that there are three systems in Indonesia regarding the position as a maker and the nature of corporate responsibility seen from 's management function. Namely, firstly, corporate administrators as creators and administrators are responsible. Second, corporations as responsible creators and administrators. Third, the corporation as the creator and also is responsible. Meanwhile, Sutan Remi Sjahdeini is of the opinion that management and corporations are both perpetrators of criminal acts and both must bear criminal responsibility. This is appropriate because corporations are not only placed as subjects of criminal law, meaning they can commit offenses, but there are also elements to them. *mens rea*, as a consequence if the corporation is guilty it can be punished. Because the corporation can only act with the "hands" of other parties, in this case its management, the management concerned must also be held criminally responsible..

**Characteristics of Corporate Crimes** Corporate crimes are usually carried out by people who are quite intelligent, so disclosing corporate crimes is not easy.

Especially if it is related to the following characteristics These crimes are difficult to see <sup>1</sup>(low visibility), because they are usually covered by normal and routine work activities, involving professional skills and complex organizational systems.

- a. This crime is very complex because it is always related to lies, fraud and theft and is often related to something scientific, technological, financial, legal, organized, involving many people and going on for years.
- b. There is an increasingly widespread distribution of responsibility due to organizational complexity.
- c. Wide distribution of victims (diffusion of victimization) such as pollution, consumer fraud, and so on.
- d. Obstacles in <sup>1</sup>detection and prosecution as a result of unbalanced professionalism.
- e. Unclear regulations (ambiguity laws) often cause losses in law enforcement.
- f. Ambiguous attitude towards the status of criminals.
- g. Crimes and Criminal Sanctions

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According to Article 1 paragraph (1) of the Criminal Code (KUHP), an act may be punished, based on the strength of the punishment rules in the law

laws that were enacted before the act. If there are no statutory regulations that contain punishments that can be imposed on criminals or violators, then the act concerned is not an act that is subject to punishment (*nullum delictum, nulla poena sine praevia lege poenali*). Criminal law is a law that has special characteristics, namely in terms of sanctions. It contains provisions regarding , what should do and what it should not do. What differentiates criminal law from other laws is the form of sanctions, which are negative in nature and are called criminal (punishment). It takes various forms, from being forced to have one's property taken away because one has to pay a fine, to being deprived of one's freedom because one is sentenced to imprisonment or prison, one can even have one's life taken away, up to the death penalty. Criminal sanctions for corporations that commit criminal acts are the main sanction in the form of a fine.

Next, will explain several regulations which contain fines as the main corporate crime and additional criminal sanctions. Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo . Law Number 20 of 2001, a maximum fine of one billion plus one third of the main penalty as well as additional penalties and other actions in the form of confiscation of goods used or obtained from criminal acts of corruption, payment of compensation money, 6 closure of all or part of the company for a maximum period of one year, revocation of all or part of certain rights or elimination of all or part of certain benefits that have been or can be provided by the Government to convicts. 19 Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, maximum fine of one hundred billion 13 Announcement of judge's decision freezing part or all of corporate business activities, revocation of business permits, dissolution and/or prohibition of corporations, confiscation of corporate assets for the state, corporate takeover by country. Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, maximum fine of one trillion, closure of all or part of the company. Apart from criminal sanctions, administrative sanctions, government coercion, forced money and revocation of permits can also be imposed. 22 Law Number 35 of 2009 concerning Narcotics, a maximum fine of ten billion with a weighting of three times the main penalty with 22 additional penalties in the form of revocation of business permits. Revocation of legal entity status. Perppu 8 Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, maximum fine of one trillion, additional punishment in the form of corporations involved in criminal acts of terrorism can have their permits frozen or revoked and declared as prohibited corporations Dignified Justice



**The theory of dignified justice as a philosophy is built in the context of understanding, explaining and implementing a certain positive legal system.**

In this case I explain, apply, understand, corporations as legal subjects that can be subject to criminal sanctions (fines). The Theory of Dignified Justice is a legal philosophy, legal theory, legal science (jurisprudence). In the perspective of the Theory of Dignified Justice, justice is where the three legal objectives put forward by Gustav Radbruch converge; justice, certainty and usefulness. Thus, in general the aim of law is justice. In the justice that a legal system wants to achieve, there is also certainty and usefulness. The Theory of Dignified Justice places the goal of law, namely systemic justice. Referring to a system perspective, the laws and regulations that apply in a Pancasila legal system cannot be separated from Pancasila as the First Agreement. CONCLUSION Dignified Justice provides guidance so that the legal system owned by the Indonesian nation can run with full dignity (upholding national dignity), therefore the imposition of sanctions on corporations found guilty is an act of dignity.

Even the imposition of criminal sanctions in the form of fines for corporations is also considered to be in accordance with the human values contained in Pancasila, considering the nature of corporations as artificial persons, therefore the imposition of sanctions for corporations in general is also unique, namely only the basic punishment in the form of fines. as the main penalty. However, in some cases that are considered serious, can prosecute the corporation and its management separately. The essence of Dignified Justice is that anyone who commits a criminal act and regardless of exceptions, he must also be responsible for his actions.

## **BIBLIOGRAPHY**

- Amirudin. (2010). Corruption in the Procurement of Goods and Services. Mataram: Genta Publishing.
- Elwi Danil. (2012). Corruption, the Concept of Criminal Acts and its Eradication. Jakarta: Raja Grafindo.
- Ismaidar, et al. (2024). Characteristics of Corporate Crime in Criminal Law. Journal of Legal Dimensions, 8(4), 149-195.
- Law No. 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.
- Muladi, Dwija Priyatno. (2009). Corporate Criminal Responsibility. Jakarta: Kencana Prenada Media Group.
- R. Subekti. (1969). Legal Dictionary. Jakarta: Pradnya Paramita.

Setiyono. (2002). Corporate Crime, Victimological Analysis, and Corporate Responsibility in Indonesian Criminal Law. Malang: Overpress.

Sri Redjeki Hartono. (2000). Kapita Selekta Company Law. Bandung: Mandar Maju.

Teguh Prasetyo. (2013). Law and Legal System Based on Pancasila. Yogyakarta: Media Perkasa.

Tika Damayanti. (2009). Application of Criminal Sanctions Against Corporations as Perpetrators of Criminal Acts Corruption (Case Study Decision No: 936.K/Pid.Sus/2009.MA). Makassar: Hasanuddin University.

Wibisana, A. G. (2016). Environmental Crime by Corporations: Looking for Forms of Corporate Accountability and Corporate Leaders/Managers for Environmental Crime in Indonesia? *Journal of Law & Development*, 46(2), 149-195.

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