

Corporate Crime and Efforts To Overcome It

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Submission date: 18-May-2024 02:13PM (UTC+0700)

Submission ID: 2382468709

File name: IJLCJ_-_VOLUME_1,_NO._2,_JUNE_2024_Pages_114-121..pdf (1.06M)

Word count: 2888

Character count: 15853

Corporate Crime and Efforts To Overcome It

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Abstract Corporate Crime or what can be called a criminal act of corruption is a crime committed jointly where the impact can damage democracy, morality, harm state finances, violate the social and economic rights of the community. Nowadays, corporate development seems to be increasingly rapid both in terms of quality, quantity and in the field of business it operates. Corporations operate in fields such as banking, transportation, entertainment, agriculture and so on. The existence of corporations brings many benefits to society and the state, such as: an increase in state treasury income from taxes and foreign exchange, opening up job opportunities, increasing technology transfer and so on. However, there are also negative impacts from these corporations, such as: environmental pollution, exploitation or depletion of natural resources, tax manipulation, exploitation of workers and so on. The emergence of this negative impact is due to corporations pursuing large profits.

Keywords: Corporate Crime, Corporate Impact

INTRODUCTION

Background

A corporation is a legal creation. The created body consists of a corpus, namely: its physical structure and the law incorporates the animus element which makes the body have a personality so that the legal entity is a legal creation. Then, Jowitt and Walsh as quoted by Yesmil Anwar explained that a corporation is a series or collection of people who have the existence and legal rights and obligations of individuals from time to time.¹

The above definition is in line with the definition of a corporation as regulated in Article 1 point 1 of Perma 12 of 2016, namely that a corporation is an organized group of people and/or assets, whether in the form of a legal or non-legal entity. Then, if a corporation commits a criminal act, the corporation can be held criminally liable in accordance with the corporate criminal provisions in the law governing corporations.²

Nowadays, corporate development seems to be increasingly rapid both in terms of quality, quantity and the field of business it operates. Corporations have contributed a lot to the development of a country, especially in the economic sector. However, corporations also often have negative impacts from activities such as environmental pollution, tax manipulation, labor exploitation, fraud and money laundering crimes where they only think about the profits of one side.

¹Adriano, testing the Concept of Corporate Criminal Responsibility, Juridika, Vol.28, No.3, 2013

²Yesmil Anwar and Adang, Criminology, Bandung: Refika Aditama, 2010

Received April 30, 2024; Accepted May 18, 2024; Published June 30, 2024

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From the description above, it can be seen that the role of corporations is very large in human life on this earth. With this dependency, it is possible for corporations to do whatever they want so that they no longer think about causing violations of applicable regulations. In this regard, whether corporations can be held accountable for what they have done, some of which violate Indonesian criminal law, and how to deal with this. Based on the description above, journal research was conducted in the form of a journal with the title "Corporate Crime and its Management".

Formulation of the problem

Based on the background above, it is necessary to formulate several problem formulations such as:

1. What is meant by corporate crime?
2. What are the stages of handling corporate criminal cases?
3. How are efforts to overcome corporate crime?

Problem Objectives

Based on the problem formulation, the aim of writing this journal is:

1. To understand the meaning of corporate criminal acts.
2. To find out the stages of handling corporate criminal cases.
3. To find out efforts to overcome corporate crime.

RESEARCH METHODS

Research methods are needed so that research objectives can be more focused and scientifically accountable. In writing this thesis, the research method used is as follows:

Types of research

This type of journal research uses qualitative research.

Research methods

The ¹⁰research method uses normative juridical research methods which are carried out based on main legal materials by examining theories, concepts and legal principles as well as statutory regulations related to the writing of this journal.

Data collection technique

Data collection techniques come from secondary data obtained by researchers from literature and documents which are the results of research and management of other people

which are already available in the form of books or documents provided in libraries or in their own possession.¹² Secondary data consists of:

- 1) Primary Legal Materials: Primary legal materials are binding legal materials. The primary legal material was obtained from statutory regulations such as: Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.
- 2) Secondary legal materials were obtained from books and internet literature related to the research object.

⁸ Method of collecting data

The data collection method for this research is the library research method which is used to find answers to problem formulations from book literature and the internet.

DISCUSSION

Understanding Corporate Crime

Criminal acts by corporations are criminal acts committed by people based on work relationships or other relationships, either individually or together, acting for and on behalf of the corporation inside or outside the corporate environment. In the Regulation of the Supreme Court of the Republic of Indonesia 13 of 2016, Article 1 (1) states that a corporation is an organized group of people and/or wealth, whether a legal entity or not a legal entity, while in Article 1 (8), a criminal act by a corporation is a criminal act. for which corporations can be held criminally liable in accordance with the laws governing corporations.

In discussing corporate crime, we cannot forget Edwin H. Sutherland because he was the first to reveal white collar crime. At the 34th (thirty-fourth) annual meeting of the American Sociological Society in 1939, which highlighted or explained corporate behavior in America that violated the law. However, if we look back, the ideas or problems put forward by Sutherland are actually not something new. Several years earlier, in 1907 to be precise, Edward Ross was called a Criminaloid, perhaps what is now called criminal behavior/corporate crime. Ross depicts that criminoloids enjoy immunity from their sins thanks to their honorable appearance, they show society that they are socially minded people, obedient to religion but behind that, all these corporate leaders are immoral.

¹⁸
³Soerjono Soekanto and Sri Mamudji, Normative Legal Research (A Short Study), Rajawali Press, Jakarta, 2001, p.14

If we use the typology proposed by Clinard and Qiunney, then white collar crime can be divided into 2 (two) types of perpetrators, namely occupational criminal behavior and corporate criminal behavior. Firstly, occupational criminal behavior is evil behavior that is legal according to law. Like breaking the law in order to carry out his work. Then secondly, corporate criminal behavior is evil behavior carried out by corporations or violating the law in the name of the corporation.

In Article 4 (2) of Perma 13 of 2016, in imposing criminal penalties on corporations, judges can assess various corporate mistakes, including:

1. Corporations can gain profits or benefits from these criminal acts or the criminal acts are carried out ¹³ for the benefit of the corporation.
2. Corporations allow criminal acts to occur. ²
3. Corporations do not take the necessary steps to carry out prevention, prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts.

From what is described above, it can be concluded that corporate crimes must be differentiated from economic crimes in general, because corporate crimes are committed in large businesses, not small businesses. Thus, the elements of corporate criminal acts include: criminal acts committed by respectable people, of high social status and these acts are carried out in connection with their work and are carried out in violation of public/society trust.

Stages of Handling Corporate Criminal Cases

The criminal process whose legal subject is basically specifically regulated in Supreme Court Regulation Number 13 of 2016 and Attorney General Regulation Number 28 of 2014. The process is as follows:

1. Inspection and summons stages

The stage of summons to the corporation is addressed to the corporation at the address where the corporation is domiciled or the address where the corporation operates. In the event that the corporate address is unknown, the summons will be sent via the residential address of one of the corporations. However, if the administrator's address is also unknown, a summons will be sent via print or electronic mass media and affixed to the announcement place in the court building which has the authority to hear the case.

2. Investigation and investigation stages

Examination of corporations as suspects at the investigation level is represented by the management. Then the investigator carrying out the examination will summon the corporation represented by the management with a valid summons. Then, the management is obliged to attend or not attend the corporate inspection. If the corporation has been properly

summoned and its management is not present, one of the management will represent the corporation's management and summon it once again with orders for the officers to take the management by force.

3. Stages of prosecution

Before bringing a prosecution to court, the prosecutor appointed as a public prosecutor first carries out the pre-prosecution stages. The appointed public prosecutor examines the completeness of the case files, including:

- a. Deed of establishment of the corporation
- b. Deed of corporate change
- c. Decree ¹⁴ of the Minister of Law and Human Rights regarding ratification of the deed of establishment of the corporation
- d. Corporate form
- e. Corporate relations and management representing the corporation
- f. Corporate Power of Attorney to the representative
- g. Letters, documents, books and evidence related to the alleged criminal act
- h. Damage and losses caused by criminal acts as well as profits obtained by corporations
- i. Financial and tax data for both corporations and corporate managers
- j. Expert information if necessary.

Once the case files are complete, the next stage is to prepare an indictment against the corporation. The indictment against corporations refers to the Criminal Procedure Code, especially Article 143 (2) with adjustments to the contents of the indictment as follows:

- a. Name of the Corporation, place, date of establishment and/or number of articles of association/deed of establishment regulations/documents/agreements as well as the latest amendments, place of domicile, nationality of the corporation, type of corporation, form of activity/business and identity of the representing management; And
- b. ⁹ A careful, clear and complete description of the criminal act charged by stating the time and place of the crime committed.

The corporations that can be sued include:

- a. Corporation;
- b. Corporations that are transferred or taken over;
- c. Group corporations which are groups of people or bodies that are related to each other in terms of ownership, management and/or financial relationships; and/or
- d. The corporation is still in bankruptcy process.

Then, it is important to know that corporations can only be prosecuted for fines and additional criminal penalties and/or disciplinary action.

4. Trial stages

At this stage, the management representing the corporation at the investigation level is required to be present at the corporation's examination in court.

5. Stages of the decision and implementation of the court decision

This stage is divided into criminal imposition, decision and execution of the decision. In relation to criminal impositions, judges can impose penalties on corporations or management based on the respective laws regarding criminal threats against other perpetrators who may be involved.

Second, criminal decisions against corporations are made in accordance with the Criminal Procedure Code. Then, the judge can impose a criminal penalty against the corporation ¹⁷ in the form of a basic criminal penalty (fine) and/or additional criminal penalties in accordance with applicable regulations.

Finally, management is carried out based on a court decision which has permanent legal force. In fines imposed on corporations, a period of 1 (one) month is given. Then, ²² if the corporate convict does not pay the fine, the corporation's assets ⁵ can be confiscated by the prosecutor and auctioned off. Then, in the event that a fine is imposed on the management, a period of 1 (one) month is given from the inkraht decision to pay the fine. The term can be extended for a maximum of 1 (one) month. However, if the fine is not paid in part or in full, the supervisor will be sentenced to imprisonment in lieu of the fine imposed after the principal criminal sentence.

Crime Prevention Efforts Corporation

In recent developments, criminal sanctions are considered disproportionate to the consequences caused by corporate criminal acts and are deemed unable to prevent the commission of similar criminal acts either by the corporation involved or by other corporations. When compared ⁶ with the criminal system existing in Indonesian criminal law, specifically in the applicable Criminal Code. It should be stated that corporations are not recognized as subjects ⁴ of criminal law because the Criminal Code is strongly influenced by the principle of "societas delinquere non potest" namely that legal entities (corporations) cannot commit criminal acts.⁴

²⁴ Muladi and Barda Nawawi Arief, "Anthology of Criminal Law" Bandung: Alumni, 2007, p. 53

Efforts to overcome corporate crime can be carried out through non-penal and penal efforts. Non-penal efforts cover a fairly broad field. The main aim of overcoming corporate crime through ¹¹ non-penal measures is to improve certain social conditions, but indirectly has a preventive effect on corporate crime. These non-penal efforts can include, among other things, government actions to change corporate structures through statutory regulations, changing corporate attitudes and structures voluntarily, administrative actions from the bureaucracy, social sanctions in the form of publications against corporations that commit criminal acts. .

The use of penal measures or criminal law is not an absolute means, meaning that the use of criminal law is attempted last after other efforts have not worked, criminal law should not be used as the main means for dealing with criminal acts that are complex and economically charged. There are 2 (two) main issues in the use of penal means in dealing with corporate criminal acts, namely what actions should be made into criminal acts and what sanctions should be given to the perpetrators. What actions should be considered criminal acts are essentially criminalization. Furthermore, regarding appropriate sanctions for corporations, namely very heavy fines, in addition to additional penalties and administrative sanctions.

In fact, efforts to overcome corporate criminal acts cannot only be carried out through one of non-penal means (means other than criminal law) and penal (criminal law means) but must be carried out in an integrative manner between non-penal and penal policies to suppress or reduce potential factors causing the proliferation of corporate criminal acts.

CONCLUSION

The conclusions from this research are as follows:

1. Corporate criminal acts are criminal acts committed ¹⁹ by people based on employment relationships, or ⁴ based on other relationships, either individually or together acting for and on behalf of the corporation inside or outside the corporate environment.
2. The criminal process whose legal subject is basically specifically regulated in Supreme Court Regulation Number 13 of 2016 and Attorney General Regulation Number 28 of 2014.
3. Corporate criminal acts carried out together are very detrimental to various sectors. From these laws and regulations, it can be seen that there is inconsistency in holding corporations accountable in criminal law, so that corporate criminal acts have received attention from the government, namely by carrying out reforms in the field of criminal law, especially the Criminal Code by drafting a new Criminal Code. Efforts to overcome corporate criminal

acts can be carried out by integrating non-penal means with penal means to suppress or reduce the factors contributing to the emergence of corporate criminal acts.

BIBLIOGRAPHY

Book

Adriano, Testing the Concept of Corporate Criminal Responsibility, *Juridika*, Vol.28, No.3, 2013

Yesmil Anwar and Adang, *Criminology*, Bandung: Refika Aditama, 2010

Soerjono Soekanto and Sri Mamudji, *Normative Legal Research (A Short Study)*, Rajawali Press, Jakarta, 2001, p.14

Muladi and Barda Nawawi Arief, "Anthology of Criminal Law" Bandung: Alumni, 2007, p. 53

Internet

<https://www.Hukumonline.com/klinik/a/prosedur-penanganan-tindak-pidana-korporasi-lt524e812eb78c5/> accessed on Wednesday at 09.00 WIB

Journal

Ali Kusumo, Bambang, "Journal of Corporate Crime and its Management, Vol. 2, No.2, October 2005: 100-109

Legislation

Criminal Code

Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by the Corporation

Attorney General's Regulation No. 28 of 2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects

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