

Juridical Analysis Of Actions And Legal Consequences For Corporations Involved In Corruption

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Abstract. The purpose of writing this journal is to identify and analyze the ways and motives behind corrupt acts carried out by corporations, as well as understand the organizational structure and market dynamics that influence these corrupt practices. And evaluate the legal consequences that apply to corporations involved in acts of corruption and examine the effectiveness of implementing these penalties in efforts to prevent and overcome corruption among corporations. The approach method used in this research is Normative Law (normative juridical) using a statutory approach, a conceptual approach, and a comparative and empirical approach (field data). The research results show that corporations are involved in acts of corruption through various, often complex and covert means, driven by motives to increase profits, dominate markets, or avoid regulations. The mechanisms they use range from giving bribes, manipulating tenders, to money laundering practices. Corporations involved in acts of corruption can face a number of legal consequences, ranging from heavy fines, license revocation, asset confiscation, to operational restrictions. Although these penalties are intended to provide a deterrent effect, their effectiveness in preventing corporate corruption often varies. While fines may have a financial impact, without significant internal changes in corporate culture and governance, the potential for a return to corrupt behavior remains.

Keywords: Juridical Analysis, Corporations, Corruption Crimes

INTRODUCTION

Corruption has long been recognized as one of the greatest threats to the stability and integrity of a country's legal and economic systems. While much discussion of corruption focuses on individual behavior, the phenomenon of corporations engaging in corrupt practices often receives less attention. Companies with significant resources may have the ability to influence public policy, conceal corrupt actions, and even undermine existing legal structures in ways that individuals cannot. In this context, corporate corruption not only harms the economy, but also encourages public distrust of market institutions.

Apart from being detrimental to state finances, corruption also slows down national development which slows down improvements in people's welfare. That corruption is considered a common enemy is not surprising. Acts against the law of corruption not only

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⁸ harm state finances but also violate the social and economic rights of the entire community. In addition, corruption has weakened the legal system, contributed to the economic crisis, and made it difficult to implement a transparent and democratic government (Romli Atmasasmita, 2012).

With the shift in the global business paradigm, corporations are now central actors in the economic and social dynamics of a country. While many corporations contribute positively through investment, job creation, and innovation, there are a handful of entities that use their power for less than moral purposes. Corruption by corporations often involves much larger sums of money than corruption by individuals, with broader impacts on the economy and society.

¹ The Constitution of the Republic of Indonesia has confirmed that the Republic of Indonesia is a State of Law (Khairul Riza, et al, 2022). As a legal state which has the obligation to protect its people from all crimes including corruption crimes, legal instruments are needed with the main aim of ²² eradicating criminal acts of corruption being ¹¹ to build a society based on Pancasila and the 1945 Constitution of the Republic of Indonesia that is just, prosperous and prosperous. because corruption has harmed the country's economy, public finances, and ability to develop.

Corruption has become rampant in Indonesian society. The number of incidents, the amount of state financial loss, and the severity of the crimes committed, which are increasingly systematic and whose reach penetrates ²³ all aspects of people's lives, all continue to increase from year to year. ⁶ In Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, this condition is recognized and disclosed. According to the law, widespread ¹⁷ criminal acts of corruption must ¹² be classified as criminal acts whose eradication requires a comprehensive approach because it not only harms state finances but also violates the social and economic rights of society as a whole (Adami Chazawi, 2015).

The law passed in 2001 expanded the definition of corruption to include "corporations" and "individuals". Every person referred to as a person or corporation that commits corruption in Article 1 Number 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is stated as ⁴ a group of people or assets ⁸ in the form of a legal entity or not. ⁴ company.

The basic punishment for corporate criminal acts according to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is in the form of a fine, with the maximum penalty increased by 1/3 (one

third), twice, or by specifying the nominal amount. which is aggravated. In addition, corporations can be forced to close all or part of their operations for up to one (one) year.

If a fine is imposed, it will ultimately fall into the hands of the state and be returned to the company in the form of capital investment. Likewise, if the sanction is the closure of the company, there will undoubtedly be state losses in the form of capital or shares included in BUMN (Adami Chazawi, 2018).

The legal consequences of corporate corruption are also complex. Although many countries have introduced criminal sanctions for companies involved in corruption, implementing these laws is often challenging. Companies can have complex structures, cross-border operations, and the resources to fight their legal cases in a much more aggressive manner than individuals.

By considering all these factors, it is very important to examine more deeply how corporations are involved in acts of corruption, their impact on society and the economy, and the legal consequences they face. Through in-depth analysis, this research aims to provide clearer insight into the role of corporations in the phenomenon of corruption and its implications for legal and business governance in the current global era.

Based on the description above, the author feels interested in researching further where this research will be presented in the form of a scientific journal work entitled : "Judicial Analysis of Legal Actions and Consequences for Corporations Involved in Corruption " .

From the problems and titles that have been described in above, then the formulation of the problem to be discussed is as follows:

1. How do corporations get involved in acts of corruption, and what are the motives and mechanisms they use to carry out corrupt practices ?
2. What are the legal consequences faced by corporations involved in acts of corruption, and to what extent is the application of these penalties effective in preventing and overcoming corporate corruption?

THEORETICAL FRAMEWORK AND RESEARCH METHODS

Researchers in this section apply a theoretical framework and methodology to analyze the problems mentioned above and need to be clear from the start about the theoretical framework which uses theoretical frameworks and concepts as analytical tools (Soerya Respatono , 20 22). In this methodology section, one of the methods used by the author is applying usage corporate criminalization theory , and Otto von Gierke's organ theory

regarding the issues discussed in this research . (Idham , et al, 20 22). ⁵ Research used by in writing journal is research , which ¹ is library law research by examining library materials (Dollar, Khairul Riza, 2022) . The approach method used in this research is Normative Law (normative juridical) using a statutory approach, a conceptual approach, and a comparative and empirical approach (field data). What is meant by a normative legal research method is a legal research method carried out by reviewing library materials or secondary data only.

This research was carried out in order to obtain materials in the form of: "theories, concepts, legal principles and legal regulations related to the subject matter". In this research, the scope is by drawing on legal principles, which are carried out on written and (Soerjono Soekanto and Sri Mamudji, 2013) .

¹ The data sources in this research consist of library research as the main data source and field studies as complementary data (*Library research and field research*) (Zainuddin Ali , 2014). Within the framework of the formation of legal theory, legal norms (*law in books*), implementation of legal norms (legal behavior, including compliance and deviation (*law in actions*), social structure and other socio-cultural phenomena are completely observed (Oloan Sitorus and Darwinsyah Minin, 2010) .

RESULTS AND DISCUSSION

1. Corporations Involved in Corrupt Actions, Motives and Mechanisms Used in Carrying Out Corrupt Practices

Corporations can engage in corruption through various mechanisms. One way is through "bribes", where a company provides something of value to gain a commercial or regulatory advantage. Apart from that, corporations can also manipulate tenders, avoid taxes and embezzle funds.

The motives behind corporate corrupt actions are usually driven by a desire to increase profits, reduce costs, or gain access to resources or markets. In some cases, corporations may feel the need to pay bribes to operate efficiently in certain countries or regions, especially in areas with less stringent regulations or where corruption is considered the "norm of business."

Corporate organizational structures often enable or even encourage corrupt actions. For example, if a company has a highly decentralized structure without close oversight, certain branches or divisions may have more opportunities to engage in corruption. On the other hand, a lack of transparency and accountability in corporate structures can also facilitate corruption (Yasmirah Mandadasari Saragih, 2018).

In situations where market competition is intense, corporations may feel compelled to pay bribes or engage in other corrupt actions to gain a competitive advantage. For example, a company may pay bribes to government officials to obtain government contracts or to avoid certain regulations.

Corporate culture also plays an important role in encouraging or preventing corruption. If integrity and ethics are emphasized in the corporate culture, employees are more likely to avoid corrupt actions. However, if a corporation has a culture that encourages achieving targets by any means, including through corrupt actions, then corruption may become more prevalent.

With the growth of international trade and cross-border investment, multinational corporations often operate in many countries with different standards and norms. This can create challenges for companies to maintain consistent standards of ethics and integrity throughout their operations.

Corporate involvement in corrupt acts is a complex phenomenon that is influenced by various factors, ranging from organizational structure, market dynamics, corporate culture, to the influence of globalization. Understanding how and why corporations are involved in corruption is an important step in efforts to prevent and overcome corrupt acts among corporations (Yasmirah Mandasari Saragih, 2017).

In this part of the discussion, to analyze the motives and mechanisms used by corporations in carrying out corrupt practices, we use corporate criminology theory which emphasizes the analysis of the causes and factors that encourage corporate entities to commit law violations. This theory can help researchers understand the economic, structural and cultural motives that encourage corporations to participate in corruption. (Theo Huijbers , 2019) .

Basically, the legal regulation of criminal acts of corruption in the context of corporate criminal liability is regulated in the criminal act of corruption in the country concerned. However, in general there are several general principles that are applied in these arrangements (Eva Achjani Zulfa, 2011).

Corporate Criminology Theory is a field of study that explores the causes and contexts in which corporate entities choose to break the law. Using this theory as a framework, we can understand the motives and mechanisms underlying corrupt corporate practices.

At the center of corporate criminological theory is the understanding that corporations aim to maximize profits. Economic motives are often the main driving force behind

corruption. Giving bribes to public officials, for example, might be considered an investment to obtain profitable contracts, obtain permits, or avoid taxes and tariffs. Corruption here is seen as a means to achieve economic efficiency, even though through unethical or illegal means (Elwi Danil, 2012).

In highly competitive markets, corporations may feel the need to “game the system” to stay relevant. Using corrupt practices can be a means of gaining a competitive advantage, such as obtaining confidential information about competitors or securing exclusive rights to certain resources.

Corporate criminology theory emphasizes the importance of organizational structure and culture in encouraging or preventing criminal activity. Corporations with strict hierarchies and a lack of transparency may be more susceptible to corruption, especially if there is pressure to meet certain targets. On the other hand, a corporate culture that promotes ethics and integrity will tend to reduce the risk of corrupt actions.

In carrying out corrupt practices, corporations often use complex mechanisms to hide their tracks. This may include money laundering, setting up shell companies, or using interpersonal networks to give or receive bribes. The use of technology and international financial systems also allows corporations to move funds in ways that are difficult for authorities to track.

Corporate criminological theory also highlights the lack of effective oversight as a factor facilitating corporate corruption. In many cases, regulators may not have the resources or expertise to detect or act on corrupt practices, providing opportunities for corporations to “get away” with violations (Nurdjana, 2015).

Using the lens of corporate criminology theory allows us to understand corruption not just as an individual act, but as the result of a number of structural and cultural factors in the corporate world. Economic motives, competitive pressures, and organizational structure are some of the many factors that play a role in pushing corporations toward corrupt behavior. By understanding these motives and mechanisms, we can be more effective in preventing and dealing with corporate corruption.

2. Legal Consequences Faced by Corporations Involved in Corruption, and the Effectiveness of Applying These Punishments in Preventing and Overcoming Corporate Corruption

In this section, to discuss the legal consequences faced by corporations involved in acts of corruption, and the extent to which the effectiveness of implementing these penalties

in preventing and overcoming corporate corruption can be analyzed using the organ theory of Otto von Gierke (Idham , et al, 2022) which says that a corporation is not a collection of individuals, but is organic and has its own 'life' that is different from its members. Gierke saw the corporation as a manifestation of social cooperation that produces something greater than the sum of the individuals involved.

Corporate criminal liability is a legal concept that stipulates that a company or organization can be criminally punished for criminal acts committed by individuals who work for the company. This means that companies can be considered perpetrators of criminal acts and subject to criminal sanctions, such as fines or imprisonment, as is the case with individuals who commit these criminal acts (Andi Hamzah, 2015) .

When corporations engage in acts of corruption, there are a range of legal consequences that can be faced, depending on the legal jurisdiction and the level of the offense committed. Below we will outline some of the most common legal consequences that corporations may face.

One of the most direct consequences of acts of corruption are fines and financial sanctions. Many jurisdictions have laws that provide for significant fines for corporations found guilty of corrupt conduct, with such fines often calculated based on the profits obtained from the corrupt act or the losses suffered by others.

Corporations involved in corruption may be at risk of losing their licenses or operating permits. This could mean losing the right to operate in certain regions or in certain industries. While the corporation as an entity may be subject to sanctions, individuals within the corporation, such as executives or employees, may also face criminal prosecution for their role in corrupt acts. This could result in prison sentences for the individuals involved.

In some cases, corporate assets obtained from corrupt activities or used in such acts may be confiscated by the government. This could include property, bank accounts, or other assets. In addition to criminal legal action, corporations involved in corruption may also face civil legal action from parties harmed by acts of corruption, such as injured competitors, the government, or other stakeholders.

Although not technically a legal consequence, reputational harm is one of the most detrimental and long-lasting impacts of corrupt actions. Damage to public image and trust can have long-term effects on a corporation's business success, including loss of customers, business partners, and investment opportunities.

In addition to license revocation, corporations involved in corruption may also face operational restrictions. For example, they may be prohibited from bidding on government

contracts or prohibited from operating in certain countries. Corporations that have been involved in acts of corruption may come under closer scrutiny from regulators, with the possibility of further investigations and audits in the future.

Implementing penalties for corporations involved in corruption is ⁶an effort to provide a deterrent effect and prevent corruption in the future. However, the effectiveness of such punishments may vary depending on various factors.

The following is an in-depth analysis of the effectiveness of applying penalties in the context of corporate corruption:

1. Amount of Fines and Financial Sanctions

Significant fines can have a significant financial impact on corporations and can serve as a deterrent. However, if the fine is only a small portion of the profits obtained from the corrupt act or if the corporation has substantial financial resources, the deterrent effect of the fine may be limited.

2. Revocation of License or Permit

Revocation of a license or permit can be very effective, especially for corporations that depend on that license or permit for their operations. However, the application of these sanctions must be carried out carefully so as not to harm employees or third parties who are not involved in corrupt actions.

3. Asset Confiscation

Asset confiscation ensures that corporations do not profit from corrupt actions and can destroy a corporation's financial capacity, making it an effective sanction. However, the confirmation process may require in-depth investigation and a long time.

4. Reputational Loss

While not punitive in the traditional sense, reputational harm often has profound long-term effects on a corporation's operations and sustainability. Reputational damage can affect relationships with customers, investors, and business partners, and is often difficult to repair.

5. Civil Legal Action

Civil legal actions from third parties can increase a corporation's financial burden. However, their effectiveness as a prevention tool may be limited unless they are accompanied by significant changes in corporate governance and culture.

6. Operational Restrictions

Operational restrictions, such as prohibitions on bidding for government contracts, can have a significant impact on corporations and serve as a powerful deterrent.

7. Sustainability of Sentencing

A one-time punishment may be ineffective if there is no ongoing monitoring mechanism. Ongoing investigations and audits can ensure that corporations comply with the law and improve their practices.

While penalties can serve as an effective tool to prevent and address corporate corruption, their success often depends on consistent implementation and monitoring, as well as the corporation's willingness to make internal changes. Apart from that, a holistic approach that includes punishment, education and changes in corporate culture can be a more effective way to overcome the problem of corruption in corporations.

Otto von Gierke, a German legal scholar, is known for his theory of "organ theory". According to Gierke, a corporation is not a collection of individuals, but is organic and has its own 'life' that is different from its members. Gierke saw the corporation as a manifestation of social cooperation that produces something greater than the sum of the individuals involved.

Referring to Gierke's thinking, a corporation is an entity that has its own "life" and identity, separate from the individuals who make it up. This provides an interesting perspective on the legal ramifications for corporations. By viewing corporations as organic entities, the legal consequences faced by corporations (such as fines or license revocation) not only affect the corporation's finances and operations, but also its 'existence' as a social and economic entity.

Through the lens of Gierke's theory, corporations have an inherent moral responsibility. When a corporation is involved in corruption, it is not just the individuals within it that are at fault, but the entire "organism" of the corporation. Therefore, the legal consequences faced by the corporation must be commensurate with the level of error committed by the entity as a whole.

If we accept Gierke's view that corporations are organic entities with their own life and morality, then the punishment imposed on corporations must be designed to improve the 'morals' of the corporation, not just provide a deterrent effect. This means punishments such as fines may not be effective unless they are accompanied by efforts to improve corporate culture and internal governance.

Apart from providing punishment, there may need to be a rehabilitative approach to help corporations return to the right path, considering that corporations as "organisms" have

the capacity to change and grow. This could include ethics training, improved governance, and external monitoring.

By considering Otto von Gierke's organ theory, we gain an in-depth perspective on how to view corporations and how to deal with the problem of corruption among corporations. Rather than simply imposing punitive punishments, there is a need to understand and improve the 'soul' of the corporation itself, by recognizing that corporations have the potential to change and develop in positive ways.

CONCLUSION

Based on that discussion associated with problem then you can conclusions drawn as following:

1. Corporations engage in acts of corruption through a variety of often complex and covert means, driven by motives to increase profits, dominate markets, or avoid regulation. The mechanisms they use range from giving bribes, manipulating tenders, to money laundering practices. Internal factors such as an organizational culture that is tolerant of violations, as well as external factors such as weak supervision and regulation, contribute to this corruptive practice. Awareness of the methods and reasons behind corporate corrupt actions is important for the development of more effective prevention strategies .
2. Corporations involved in acts of corruption can face a number of legal consequences, ranging from heavy fines, license revocation, asset confiscation, to operational restrictions. Although these penalties are intended to provide a deterrent effect, their effectiveness in preventing corporate corruption often varies. While fines may have a financial impact, without significant internal changes in corporate culture and governance, the potential for a return to corrupt behavior remains. Therefore, a holistic approach that combines sanctions, education and structural reform is key in efforts to prevent and overcome corruption at the corporate level .

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