



Journal Homepage: -www.journalijar.com
**INTERNATIONAL JOURNAL OF
 ADVANCED RESEARCH (IJAR)**

Article DOI:10.21474/IJAR01/7459
 DOI URL: <http://dx.doi.org/10.21474/IJAR01/7459>



RESEARCH ARTICLE

CORPORATE CRIME IN THE ECONOMIC CRIMINAL LAW PERSPECTIVES.

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Manuscript Info

Manuscript History

Received: 22 May 2018
 Final Accepted: 24 June 2018
 Published: July 2018

Abstract

Conventional crime is usually done by people, whether personal or group. In its development, legal entities (corporations) become perpetrators of crime. Organizations have financial means for legitimate buyers in state-owned enterprises. The privatization initiative is often economically profitable, they can also serve as vehicles to launder funds. In the past, criminals have been able to buy marinas, resorts, casinos, and banks to hide their illegal results and resume their criminal activities.

From an economic point of view, money laundering can also affect currency and interest rates. Washers invest funds where their deeds are hard to detect. Money laundering can increase the threat of monetary instability due to resource misallocation and distortions in asset and commodity prices. In short, money laundering and financial crime can lead to changes in money demand and increased international capital flows, interests, and exchange rates.

This study disclose that corporations in its development in Indonesia are subject to criminal offenses in economic criminal law, although in the Criminal Code is not regulated but in various criminal laws in particular, corporate crimes are regulated such as corruption, money laundering, and banking. Secondly, corporate crime is difficult to disclose or overcome because it has special characteristics such as: the perpetrators have high social and economic status, organized, able to

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influence the process of law enforcement that causes this crime difficult to handle law enforcers.

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Introduction:-

Conventional crime is usually done by people, whether personal or group. In its development, legal entities (corporations) become perpetrators of crime. According to Andi Hamzah, in Indonesia the legislation emerged and was known as a legal entity / corporation as the subject of criminal acts in 1951 that is in the Law of Stockpiling of Goods and became widely known in Law No.7 Drt. Year 1955 on Economic Crime. Further can be found, among others, in the Law on Psychotropic in Article 5 paragraph (3) Law on the Elimination of Corruption, Article 4 of Law no. 15 Year 2002 on the Crime of Money Laundering. Under Article 59 of the Criminal Code, the subject of corporate crime is not yet known, and which is recognized as a subject in a criminal offense in general is "person".

If a corporation commits a money laundering crime, for example, it must be convicted under the Money Laundering Criminal Act. This Act is not a *Lex Specialis Degorat Generalis* (special law / regulation is not subject to general regulatory law) to the Criminal Code (Criminal Code) because the Criminal Code does not regulate corporations as subjects in criminal acts. In fact, prior to the Law on Money Laundering, money laundering is not a criminal act even though it is perceived as a crime. Through criminal politics, criminalization of money laundering is done, then by penal policy is processed into law. Since the enactment of the law, formalize money laundering as a crime / crime. Soedjono Dirjosoworo said in his speech: "Crime now shows that economic progress also creates new forms of crime that are no less dangerous and the magnitude of the victims it causes. Indonesia today has been plagued by contemporary crimes that threaten the environment, energy sources and crime patterns in the economic field such as bank crime, computer crime, consumer fraud in the form of low quality goods packaged beautifully sold through large-scale advertising and various patterns of corporate crime operating through penetration and disguise. "

Actually corporate crime, the perpetrators are the people who work on the corporation, as the board, members of the board, commissioners, including the shareholders. The latter can be an intellectual actor or master mind, the brain of evil, because it has a great influence in the corporation. In turn organized crime can emerge from corporations that commit crimes like octopuses in all areas.

Opinion Soedjono Dirdjosoworo that highlights the effect of economic progress on the development of new forms of crime seems indisputable. In plain view this crime multiplies quickly, not only by individuals, groups of people, but also corporations. Crime committed not only conventional (blue collar crime) but modern crime (white collar crime) that reached the virtual world. This is also recognized by the world body, so that in the UN Congress VII of 1985 showed that there are new forms of crime committed by corporations driven by respectable entrepreneurs who bring a very negative impact on the economy of the country concerned.

In its development, the corporation as the subject of crime has the following stages:-

First, it is characterized by efforts to ensure that the nature of the offense by corporations is limited to individuals (*natuurlijk persoon*). If a criminal act occurs within the corporate environment, then the offense is deemed to have been committed by the board of directors of the corporation. In this phase the burden of "duty to take care" (*zorgplicht*) to the board. This is the basis of Article 31 WvSrNed (Article 59 of the Criminal Code) which says: "In cases where the offense is criminalized against the board, members of the governing body or commissioner, the board, member of the board or commissioner who is not intervene to commit a crime "

By looking at the above provisions, the compilers of the Criminal Code were influenced by the principle of "*societas delinquere non protest*", ie, legal entities can not commit a crime. According to Enshede and A.Heljder the provisions of the "*university delinquere non protest*" are typical examples of the dogmatic thought of the 19th century, where criminal errors are always implied and in fact only the fault of the human, so closely related to the individualized nature of the Criminal Code. While the period of the French Revolution the collective accountability of a city or guild (a collection of expert craftsmen) can bring about the dubious consequences so that the starting point for the production of W.v.S Balada in 1881 was "*University of non-potent delinquere*"

In this first stage, the board that does not fulfill the actual obligations is a corporate liability can be declared responsible. In Article 59 of the Criminal Code when reviewed contain reasons for the abolition of crime

(strafuitsluitingsgrond), judging from the sound of the formula stating "then the board, members of the governing body or commissioner who did not interfere in committing criminal acts"

The difficulties that may arise with Article 59 of the Criminal Code are in relation to the provisions of the criminal law which incur a liability for a person's owner or an entrepreneur. In this case the owner or entrepreneur is a corporation, whereas there is no arrangement that the board is responsible, then how to decide about the maker and accountability? This difficulty can be overcome by the development of the corporate position as the subject of a crime in the second stage.

Second, marked by recognition that arose after World War I in the formulation of the Act, that an act can be done by the corporation, but the responsibility to become the burden of the legal entity. A specific formulation for this is that if a crime is committed by or by a legal body, criminal and criminal charges shall be imposed on the member of the management. Gradually, criminal responsibility transfers from members of the board to those who order, or to those who actually lead and perform such prohibited acts.

At this stage, corporate criminal responsibility is acknowledged to have committed a criminal offense, but the criminally liable is the executives who actually lead the corporation, and this is expressly stated in the laws and regulations governing it.

In this stage the direct criminal responsibility of the corporation has not yet emerged. Examples of laws and regulations in this phase:

Law No. 12 / Drt / 1951-78 on Firearms article 4 paragraph (1):-

"Where an act punishable pursuant to this Law is committed by or upon the power of a legal body, prosecution may be exercised and punishable by punishment to the manager or to his local representative. "Paragraph (2)" The provisions of paragraph (1) shall apply also to legal bodies, acting as managers or representatives of another legal entity. "

Republic Act Number 7 of 1992 jo. Act Number 10 of 1998 on banking. Article 46 paragraph (2): "In the event that the activities referred to in paragraph (1) are carried out by a legal entity that is in the form of a company, a trustee, a foundation, or a cooperative, the prosecution of such bodies shall be good to those who give the order to do so or acting as a leader in that act or against both. "

Third, this stage is the beginning of the direct responsibility of corporations that began at the time and after World War II. At this stage it opens the possibility to sue the corporation and hold accountable under criminal law. Another reason is that, for example, in the economic and fiscal disagreements the profits derived by the corporation or the losses suffered by the public can be so great that it would not be possible for the criminal just to be handed over to the corporation's management. It is also argued that by only convicting the administrators there is no guarantee there is no guarantee that the corporation will not repeat the offense. By penalizing a corporation with its type and weight in accordance with the nature of the corporation, it is expected to be compelled by the corporation to comply with the relevant regulations.

Legislation that places corporations as the subject of criminal offenses and directly accountable to criminal law is the Act No. 7 of the 1955 Drug on Investigation, Prosecution and Economic Crime Justice, better known as the Law on Economic Crime, Article 15 paragraph (1) shall read: "If an economic crime is committed by or on behalf of a legal entity, an individual, a union of persons or foundation, whether against those who give orders to commit the economic crime or who acts as the leader in that act or omission or both. "

The same can be found in Law Number 6 of 1984 on Post, Article 19 paragraph (3), Law number 31 Year 1999 Jo. Law Number 15 Year 2002 regarding Money Laundering Crime.

The above formulation states that those who can do or can be accountable are the person and / or the corporation's association itself. In this third stage, Indonesian legislation that includes direct corporate responsibility is limited to specific laws outside the Criminal Code. At first in the Netherlands the same conditions of the subject of corporate crime, but after the issuance of the Act of 23 June 1976 then the editorial article 51 WvS Netherlands (article 59 Indonesian Criminal Code) has changed so that nowadays in the Netherlands has been embraced the subject of criminal acts corporation in criminal law (commune strafrecht).

The stages of corporate development as a subject of criminal law in Indonesia turned out to follow developments that occurred in the Netherlands. In the first phase of the Dutch Penal Code, article 51 before the amendment was changed, the formula was the same as the provisions of Article 59 of the Indonesian Criminal Code. This is due to the strong influence of the principle of "universality delinquere non-potest", which emphasizes the nature of offenses that corporations can confine to individuals.

In the second stage both in the Netherlands and in Indonesia, it is well known that corporate criminal liability, or corporations as the subject of criminal offenses, is well known. However, direct criminal responsibility has not yet emerged, so in this case the criminally justified is the corporate administrator.

The third stage, it turns out that in the Netherlands as well as in Indonesia corporal or corporate criminal responsibility as the subject of a criminal offense is already known. In the Netherlands the development of direct criminal responsibility is initially contained in specific legislation outside WvS. As contained in Article 15 of the 1950 "Wet op de Economische Delicten", Article 2 Rijksbelasting Wet, 1959. The development is also followed in Indonesia in article 15 of Law no. 7 Drt of 1955 on Economic Crime. In its development it turned out that in the Netherlands more advanced one step that is putting the corporation as a subject of crime in general, by loading in its WvS in 1976. While in Indonesia still has not changed, although in the draft Penal Code has been loaded like developments in the Netherlands. The conclusions in Indonesia to date of corporate criminal liability are generally unknown and only applicable to certain laws and regulations outside the Criminal Code.

Corporations as Subject of Criminal Act in Economic Criminal Law:-

Critically will be reviewed on the corporation / legal entity as the subject of a criminal offense, which starts from the definition of the corporation closely related to the civil law terminology.

Soetan K. Malikoel Adil outlines the corporate sense etymologically. Corporations (corporatie, Netherlands), corporation (English - German) are derived from the word "corporation" in Latin. As with other words ending in "tio", "corporation" as a noun (substantivum), derives from the "corporate" verb, which is widely used in medieval or later times. "Corporate" itself comes from the word "corpus" which means the body, which is interpreted by giving the body or mixing. Thus, the corporation means the result of the work of combining, the body of the person, the body acquired by human action as opposed to the human body, which occurs according to nature.

If a legal entity enables human actions to make the body as human as human beings, human beings are equated, then it means that the public interest needs it, that is, to achieve something that the individual can not achieve or be very difficult to achieve. Likewise humans use "illumination", if the lumen (light) of the stars and the moon is not sufficient or absent

Based on the above description, Satjipto Rahardjo stated that "the corporation is a body of the creation of law. The body he created consisted of "corpus", that is, his physical structure and in it the law incorporated the "animus" element that made the body personality. Because the legal entity is a legal creation, except for the creator, his death was also determined by law.

Subekti and Tjitrosudibio stated that "corporatie" or corporation is a corporation which is a legal entity. While Rudy Prasetyo states: "the word corporation is a term commonly used among criminal law experts to mention what is common in other legal fields, especially the legal field civil, legal entity, or in Dutch called rechtspersoon, or in English referred to as legal entities or corporations. "

The notion of a corporation as a legal entity may also be found in the Black's Law Dictionary, which states that: "An entity (usually a business) has authority under law to act as a single person. indefinitely, a group or succession of person established in accordance with legal rules into legal or juristic person that has the legal personality of the natural persons who make it up, exists indefinitely apart from them, and has the legal power that is constitution gives it. "

This opinion was reinforced by Ronald A. Anderson, Ivan Fox, and David P. Twomey in his book Business Law, which is said to be "The corporation as a Legal Person". Furthermore it is said that: "A corporation is an artificial legal being, created by government grant and endowed with certain powers. That is the corporation exist in the eyes of the law as a person, separate and distinct from the people who own the corporation. "

Furthermore it is said that "The corporation can sue and be sued in its own name with respect to corporate rights and liabilities, but the shareholder can not be sue or be sued as to the rights and liabilities"

Ronald A. Anderson, Ivan Fox, and David P. Twomey classify corporations based on:

1. His relationship to politics
2. Source of power from the corporation
3. Nature of activity of the corporation

Of these classifications known in the Anglo-Saxon State, the types of corporations can be classified as follows:

1. Public Corporation is a corporation established by the government that has the purpose to fulfill administrative duties in the field of public affairs. For example in Indonesia such as district or city government
2. Private Corporation is a corporation established for private purposes, which can be engaged in finance, industry and trade. This private corporation shares can be sold to the public, then the mention is added with the term "public". Examples in Indonesia "Tbk." (Open) indicate that the company has "go public" or its shares have been sold to the public through the stock market. Based on Law Number 8 of 1995 concerning Capital Market, Article 1 number 21 states that "Public Company is a Company whose shares have been owned by at least 300 (three hundred) shareholders and have paid up capital of at least Rp 3,000,000,000 three billion rupiah) or a number of shareholders and paid-in capital and applied by Government Regulation.
3. Public Corporations Quasi better known as corporations that serve the public interest (public services), for example in Indonesia is PT. KeretaApi Indonesia, Perusahaan Listrik Negara Pertamina, Drinking Water Company

I.S. Susanto said that in general, the cooperative has five important characteristics, namely: first, is the subject of artificial law which has special legal position; second, has an unlimited lifetime; third, acquire power (from the State) to conduct certain business activities; fourth, owned by shareholders; fifth, shareholder responsibility for corporate losses is usually limited to shares owned.

Further search indicates that corporations' understanding of criminal law is broader than civil law (limited to legal entity). The development of the corporation as the subject of a criminal offense takes place outside the Criminal Code (Penal Code), contained in specific legislation. While the Criminal Code itself still adheres to the subject of criminal acts of "people" (Article 59 of the Criminal Code). The subject of corporate crime, can be found in Law no. 5 of 1997 on Psychotropic Article 1 point 13, Law no. 22 of 1997 on Narcotics, Article 1 number 19 of Law no. 31 of 1999 jo, Law no. 20 Year 2001, Article 1 point 1 About the Eradication of Corruption. Law no. Law No. 15 of 2002, Article 1 point 2, concerning the Criminal Act of Money Laundering which in essence says: "The corporation is a collection of well-organized persons and or wealth constituted legal entities or non-legal bodies." The corporation's money laundering crimes have some effect on , such as economic, criminal and social law.

From an economic point of view, money laundering can also affect currency and interest rates. Washers invest funds where their deeds are hard to detect. Money laundering can increase the threat of monetary instability due to resource misallocation and distortions in asset and commodity prices. In short, money laundering and financial crime can lead to changes in money demand and increased international capital flows, interests, and exchange rates. The unexpected nature of money laundering, coupled with the loss of policy control, can make sound economic policies difficult to achieve. Distortion of Economics and Instability: Money launders are not interested in profits from their investments but simply to protect the money from their crimes. Thus they "invest" their funds in activities that are not necessarily economically beneficial to the country in which the funds are located. Furthermore, to the extent that laundering money and financial crimes lead funds to investments to hide their criminal proceeds, and economic growth does not work as it should. In some countries, for example, entire industries, such as construction and hotels, have been financed not by actual government funds, but because of the short-term interests of money laundering. When this industry is no longer in accordance with the wishes of money launderers, they abandon it. This can lead to the collapse of financial sectors and economic damage. Therefore it indirectly harms the honest taxpayers and makes the government difficult to attract taxes. Money laundering threatens the efforts of many countries to introduce reforms into their economies in privatization.

Corporations that commit Money Laundering Crimes may be Sentenced to Criminal Money Laundering Law:-

Organizations have financial means for legitimate buyers in state-owned enterprises. The privatization initiative is often economically profitable, they can also serve as vehicles to launder funds. In the past, criminals have been able

to buy marinas, resorts, casinos, and banks to hide their illegal results and resume their criminal activities. Risk reputation: the nation can not afford to have the reputation and financial institutions tarnished by the association with the role of money laundering, especially in the global economy. Confidence in the market and in the profit-seeking role is eroded by money laundering and financial crimes such as crime laundering, widespread financial fraud, insider trading, and embezzlement. The negative reputation generated from these activities reduces the legitimate global opportunity. The sustainable growth attracts international criminal organizations to undertake an undesirable reputation in short-term goals. This can reduce economic growth. The damaged state's financial reputation is difficult to revive and requires significant government resources to fix preventable problems with proper anti-money laundering controls through the application of criminal sanctions in the Money Laundering Act.

Corporations Doing Money Laundering, resulting in Social Issues, as they demand a High Social Cost:-

Significant social costs and risks associated with money laundering. Money laundering is an important process to make valuable crime. This allows drug dealers, smugglers, and other criminals to expand their operations. This causes the government's expenses to increase as the need for law enforcement increases and health care spending swells (eg for drug rehabs) so there needs to be serious efforts to combat it. Other effects of negative socio-economic, money laundering transfers, economic power from markets, governments, and citizens are subject to money laundering crimes that have a detrimental effect on all elements of society. To the extreme, it can lead to virtual take over of a legitimate government. Money laundering presents to the world community, the complexity and dynamic challenges of this crime. Indeed the global nature of money laundering requires global standards and international cooperation if we want to reduce the ability of criminals to launder the proceeds from their criminal activities.

Article 51 W.v.S (Dutch Criminal Code) which was renewed in 1976 reads: (1) Criminal acts can be done by natural persons and legal entities; (2) If a criminal offense is committed by a legal entity, it may be subject to a criminal charge, and if it deems necessary to be punished by the criminal and acts contained in the Law against: (a) Legal Entity or; (b) To those who order to do such acts, as well as to those who act as leaders in the prohibited act, or; (c) Against those mentioned in a and b together; (3) for the use of the remaining paragraphs equated with the law of the company without the right of legal entity, trust, and foundation.

The legal entity is a civil law terminology, that is a corporation or agency derived from human deeds, because the public interest requires it because individually what is a living purpose is difficult to achieve. Corporations are a law-created entity, better known by criminal law experts and more broadly than civil law bodies. The Criminal Law Code (KUHP) still adheres to the subject of "people" (Article 59 of the Criminal Code), not or does not know the corporation as the subject of a criminal offense. Corporal criminal subjects are found in various Special Criminal Acts, such as the Law on Psychotropics, Narcotics, Corruption, Money Laundering, etc. In a variety of criminal laws, "corporations" are subjected to criminal offenses as the impact of the losses / casualties is greater than those of the criminal act "people" even the Criminal Code has included the corporation as the subject / criminal actor.

Corporate Crime Is Hard to Tackle viewed From Economic Criminal Law Perspective:-

Although corporations have been subjected to criminal offenses in various specialized criminal legislation, corporal crimes / crimes are difficult to disclose. From several observations and reviews of cases there may be several causes: First, there is more than one person in the corporation who commits a crime; Second, they are intelligent and not seldom highly educated; Third, the crime is organize crime (organized crime); Fourth, having influence in the field of government and law; Fifth, have high social and economic status. It is not excessive to align with the characteristics of corruption, because corruption is also part of corporate crime. According to Syed Hussein Alatas in his book *The Sociology of Corruption* illustrates the characteristics of corruption as follows:

First, corruption always involves more than one person;

Secondly, corruption is generally perpetuated in secrecy;

Third, it involves elements of mutual obligations and benefits;

Fourth, corruption with a variety of minds ensconced behind legal justification;

Fifth, those involved in corruption are those who want tough decisions and they are able to influence decisions;

Sixth, the act of corruption contains fraud either on public bodies or the general public;

Seventh; every form of corruption is a form of treating belief;

Eighth, every form of corruption involves the contradictory dual function of those who do;

Ninth, an act of corruption violates the norms of duty and accountability in the public order.

The characteristics of corruption mentioned above make the criminal act of corruption difficult to be revealed or overcome. The characteristics of corruption mentioned above can also be attached to corporate crime, so corporate crime is difficult to handle.

Case Of Polri, Labor's Wealth from Forest Case and BBM:-

INILAH.COM, Jakarta - The National Police Headquarters through the Directorate of Specific Crime (Dirtipiter) and the Directorate of Special Economic Crime (Direksus) are investigating illegal business allegedly involving Aiptu Labora Sitorus.

Firstly, together with Polda Papua will conduct investigation of illegal wood and fuel oil (BBM) business case. This team has been established and has been in close contact with the Papua Police.

"Bareskrim through certain criminal directorates will prove the criminal origin of predicate crime. Meanwhile, the Special Economic Director will support and back up transaction tracking in the context of the implementation of Money Laundering Crime ", said Director of Crime Economic and Special Crimes Police Brigadier General Arief Sulistyanto at Police Headquarters on Thursday (16/05/2013).

Currently Dittipiter is conducting an in-depth investigation into the criminal acts of forestry and petroleum which is a crime of origin. "The proceeds of these crimes are then transacted into their business transactions flowing into several accounts and the last one flowing into the LS account (Labora Sitorus)", he said.

Previously on March 28, 2013 Papua Police assisted by the Directorate of Criminal Acts Crime Police conducted a search of illegal logging cases conducted by PT Rotua. On March 21, 2013, Polri began to investigate the illegal fuel business case conducted by PT Seno Adi Wijaya

For the BBM case, the police have already assigned one suspect in the name of Jimmy Jalesang as the manager of PT. In addition, the police have already confiscated the evidence in the form of one unit of Batamas Santosa ship cargo 400 tonnes of fuel, one LDP vessel load 335.5 tons BBM, one unit safe ship cargo 264.5 tons BBM, 3 units of flawmeter, one unit of fuel diesel with 20 tons of fuel.

As for the case of forestry conducted by PT Rotua, the police have secured 80 wooden containers that are now secured at UKP3 Tanjung Perak Surabaya. 80 containers of timber, 40 containers have entered the warehouse 40 still at the port and this is being handled by the Directorate of Criminal Acts Crime Police and Police of Papua. (Source: <http://nasional.inilah.com/read/detail/1990037/polri-kekayaan-labora-of-case-bbm#.UeZ6spyPmiY> accessed on May 30th, 2013 at 20:07 hrs).

The above case shows some corporations playing a role in filling LS accounts. Corporations can be involved even have a big role in the occurrence of crime or economic crime. For these cases the Criminal Code can not be used, because it does not regulate the corporation as a perpetrator of criminal acts, so the special laws and regulations that are used to handle it are the Law on Corruption Eradication, Money Laundering, and Banking.

Conclusions:-

As for the conclusion in this paper: First, corporations in its development in Indonesia are subject to criminal offenses in economic criminal law, although in the Criminal Code is not regulated but in various criminal laws in particular, corporate crimes are regulated such as corruption, money laundering, and banking. Secondly, corporate crime is difficult to disclose or overcome because it has special characteristics such as: the perpetrators have high social and economic status, organized, able to influence the process of law enforcement that causes this crime difficult to handle law enforcers.

Based on the conclusion, the suggestion in this paper is the existence of arrangements in the Draft Penal Code which will become the Criminal Code for corporate crime to be regulated accordingly, even though there is already a special law made for it.

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