

## Implementation of Corporate Responsibility Theories Related to The Difference in Criminal & Civil Responsibility Between Corporation & Corporate Officer

Devina Puspita Sari <sup>1)</sup>, Sri Ismawati <sup>2)</sup>, Siti Rohani <sup>3)</sup>, Mega Fitri Hertini <sup>4)</sup> & Angga Prihatin <sup>5)</sup>

<sup>1)</sup> Faculty of Law, Universitas Tanjungpura, Indonesia, E-mail: [devina.puspita.s@hukum.untan.ac.id](mailto:devina.puspita.s@hukum.untan.ac.id)

<sup>2)</sup> Faculty of Law, Universitas Tanjungpura, Indonesia, E-mail: [sri.ismawati@hukum.untan.ac.id](mailto:sri.ismawati@hukum.untan.ac.id)

<sup>3)</sup> Faculty of Law, Universitas Tanjungpura, Indonesia, E-mail: [siti.rohani@hukum.untan.ac.id](mailto:siti.rohani@hukum.untan.ac.id)

<sup>4)</sup> Faculty of Law, Universitas Tanjungpura, Indonesia, E-mail: [mega.fitri.h@hukum.untan.ac.id](mailto:mega.fitri.h@hukum.untan.ac.id)

<sup>5)</sup> Faculty of Law, Universitas Tanjungpura, Indonesia, E-mail: [anggaprihatin@hukum.untan.ac.id](mailto:anggaprihatin@hukum.untan.ac.id)

**Abstract.** *Corporations can be charged with criminal and civil responsibility based on corporate responsibility theories. Corporate criminal responsibility must be differentiated from the corporate officer responsibility, it's not the same concept in civil law perspective. Corporate responsibility theories, and its implementation in court decision that talk about criminal dan civil corporate responsibility are the subject of this article. The discussion regarding implementation in criminal law perspective is based on the withdrawal of corporate criminal responsibility for the mistakes of corporate officer, even though the corporation was not prosecuted in court, on the other side, in civil law perspective, corporation can imposed based on the fault of their corporate officer even their worker by vicarious liability theory. Research was carried out using a statutory approach, a conceptual approach and a case approach. The case studies are Court Decision Nr. 20/Pdt.G/2018/PN.Jkt.Ut and Nr. 34/Pid.Sus/2019/PN.SDA. The analysis carried out that the corporate responsibility theory used in imposing criminal responsibility on a corporation can be seen in the law that regulates related criminal acts. A distinction must be made between criminal responsibility carried out by corporation and corporate officer. However, in civil law perspective, corporation can imposed based on the fault of their corporate officer even their worker by vicarious liability theory.*

**Keywords:** *Corporations; Officer; Responsibility.*

## 1. INTRODUCTION

The existence of corporations is one of the backbones of the world economy, but corporations tend to do things that are not in accordance with ethics and violate the law to compete in global economic competition with the aim of seeking maximum profits. This profit-seeking motivation is what ultimately drives corporations to take *unfair competition* act which leads to legal action, especially those involving corporate crimes.<sup>1</sup> In handling criminal cases carried out by corporation, or in other words the suspect or defendant is a corporation, the Supreme Court and the Attorney General's Office have issued regulations which serve as guidelines for handling criminal cases carried out by corporation. The Attorney General's Office issued the Republic of Indonesia Attorney General Regulation Nr. PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects (hereinafter abbreviated as Attorney General Regulation Concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects). The Supreme Court has issued Supreme Court Regulation Nr. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporation (hereinafter abbreviated to Supreme Court Regulation concerning Procedures for Handling Criminal Cases by Corporation).

The Attorney General Regulation regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects provides guidelines that criminal charges can be filed against corporations, corporate officers, or corporations and corporate officers. In the event that the law does not regulate corporate legal subjects, the claim is submitted to the officers. The Supreme Court Regulation on Procedures for Handling Criminal Cases by Corporations regulates procedures for examining corporations as perpetrators of criminal acts. The regulation state that the examination of the corporation as a suspect is represented by the officer (Article 11). In terms of the corporation being a suspect/defendant in the same case as the officer, so the officer representing the corporation is the officer who is the suspect or defendant. Other officers who are not being a suspect/ defendant can represent the corporation (Article 15). Based on these provisions (Attorney General Regulation and Supreme Court Regulation) it is clearly stated that there is a distinction between criminal liability for corporation and corporate officer.

Even though the relevant law and the two guidelines clearly differentiate the criminal liability of corporation and corporate officer, in practice there are still cases of corporations being convicted even though the corporation is not charged in the indictment. The panel of judges, in giving considerations, often relates it to the theory of corporate responsibility. In addition, the condition is that the law does not clearly determine what theory of liability the law adheres to in ensnaring corporations. Does it use strict liability theory, vicarious liability theory, aggregation theory, identification

---

<sup>1</sup> Hanafi, (2000), *Kejahatan Korporasi*. Yogyakarta: Fakultas Hukum Universitas Islam Indonesia. p.4.

theory, combined theory<sup>2</sup> or other theories that are known and develop along with the acceptance of corporations as subjects of criminal law. For example, Act Nr. 11 of 1995 jo. Act Nr. 39 of 2007 concerning Excise (hereinafter abbreviated to the Excise Act) and Act Nr. 10 of 1995 jo. Act Nr. 17 of 2006 concerning Customs (hereinafter abbreviated to the Customs Law) which has determined corporations as subjects of criminal law but does not state what theory of corporate responsibility is adopted. This has an impact on the use of different theories by the panel of judges in ensnaring corporations as legal subjects who responsible for criminal acts regulated by these law.

The ambiguity of the law in determining which theory is adopted or applied to impose accountability on corporations gives rise to various interpretations regarding the corporate accountability theory used. Prosecutors, in filing charges, and judges, in deciding cases, interpret which theory is embraced by the law to entangle corporations or corporate executives and simultaneously determine who can be held accountable for the criminal acts. Such interpretations open the possibility of errors in interpreting laws governing corporate criminal conduct, particularly in determining who can be held accountable and how that responsibility can be imposed.

These concerns can be seen in Court Decision Nr. 34/Pid.Sus/2019/PN.SDA. In that court decision, the legal subjects indicted and prosecuted are corporate administrators, namely Muhammad Zainul Ichwan as head of the international division of PT. Suryagita Nusaraya (Case Nr. 34/Pid.Sus/2019/PN.SDA). He was found guilty of committing the criminal offenses charged by the public prosecutor, however, the fine imposed by the panel of judges was not only imposed on the convict (corporate officer), but was also imposed on the corporation.

The withdrawal or imposition of criminal liability on corporation (even if they are not indicted) for criminal acts committed by corporate officer leads to the question, can the punishment of corporate officer be interpreted as directly/indirectly imposing liability on the corporation? And what about civil law perspective based on article 1367 of Civil Code? In answering these problems, this research will discuss and analyze how the corporate responsibility theory is applied regarding the distinction between criminal and civil responsibility of corporate and corporate officer.

Regarding the distinction between corporate and corporate officer responsibility, it can also be seen in several article journal from other cases. For example, in article published in *Jurnal Dictum*, titled *Asymmetrical Interpretation of Corporate Criminal Liability in Indonesia* written by Anugerah Rizki Akbari and Aulia Ali Reza, reviewing Court Decision Nr. 862 K/PID.SUS/2010 where the panel of judges sentenced PT. DEI as a corporation even though the defendant is the corporation officer, Kim Young Woo. Conviction of PT. DEI should not be carried out automatically if Kim Young Woo is

---

<sup>2</sup> Sutan Remy Sjahdeini, 2017, *Ajaran Pidana: Tindak Pidana Korporasi Dan Seluk-Beluknya*, Depok: Kencana. p.150.

proven guilty as a corporate officer, even though the panel of judges considers that the actions of the corporate officer provide benefits to PT. DEI.<sup>3</sup>

A similar thing happened in Court Decision Nr. 1363 K/PID.SUS/2012 which was discussed by Putri Nurmala Sari Siahaan in an article entitled *Determination of Legal Subjects in the Application of Criminal Liability in Environmental Law Enforcement (Analysis of Supreme Court Decision Number 1363 K/PID.SUS/2012)* which is published in *Bina Mulia Hukum Journal*. In this court decision, the legal subject charged was the Estate Manager of PT. KHS, as corporate officer. However, in the verdict, the panel of judges also convicted, PT. KHS as a corporation with the consideration that because the defendant is functionally responsible so that PT. KHS as a corporation also has responsibility for the negligence of the defendant, as the estate manager (corporate officer) of PT. KHS.<sup>4</sup>

Meanwhile, this research will analyze Court Decision Nr. 34/Pid.Sus/2019/PN.SDA and Court Decision Nr. 20/Pdt.G/2018/PN.Jkt.Utr where in both court decisions talk about corporate responsibility. Withdrawal of the corporation as a party that is also responsible for criminal fines imposed on corporate officer without first placing the corporation as the defendant (explicitly not distinguishing between corporate criminal liability and corporate officer liability) is the discussion or main issue that will be discussed in this article. Then it will be compared to the corporate responsibility from the civil law perspective which is imposing the responsibility to the corporation based on the worker's fault/ mistake.

This research aims to analyze regarding:

1. What are legal responsibility theories to impose corporate responsibility?
2. Can criminalization of corporate officer be interpreted as directly/indirectly imposing responsibility on the corporation and how civil law perspective assess about corporate responsibility?

## **2. RESEARCH METHODS**

The purpose of this article is to analyze corporate responsibility theories and see their implementation in court decision. Apart from that, it also aims to explain the difference in criminal liability between corporate criminal liability and criminal liability of corporate officer so that there are no mistakes in determining the defendant and imposing a sentence in cases of criminal acts committed by corporation. The analysis is carried out by linking the implementation in the court decision and the related theory and legal

---

<sup>3</sup> Anugerah Rizki Akbari and Pangabean L. Mompang Reza, Aulia Ali, (2017), *Pemidanaan Korporasi, Dictum Jurnal Kajian Putusan Pengadilan* Vol. 12: 25–43.

<sup>4</sup> Putri Nurmala Sari Siahaan, (2021), *Penentuan Subjek Hukum Pada Penerapan Pertanggungjawaban Pidana Dalam Penegakan Hukum Lingkungan (Analisis Putusan Mahkamah Agung Nomor 1363 K/Pid.Sus/2012)*, *Binamulia Hukum* Vol. 10 No. 1: p.45–60, <https://doi.org/10.37893/jbh.v10i1.293>.

basis<sup>5</sup>. For this reason, this article is analyzed qualitatively, using a statutory approach, conceptual approach and case approach, through normative juridical methods.

### 3. RESULT AND DISCUSSION

#### 3.1. Corporate Responsibility Theory

Cristina de Maglie stated one of discussion related to corporate responsibility is about what kind of organization (corporation) can be held accountable, after that discuss about criteria are needed to attach criminal liability to corporation.<sup>6</sup> About what kind of organization (corporation) can be held responsible, there are 3 approaches used by various countries in determining what organization (corporation) can be held responsible. The first approach is that every organization can be held responsible, which is adopted by Australia and Netherlands. The second approach is that the organization must be stipulated in statutory regulations, which is adopted by United States and Canada. The third approach, that the organization must be a legal entity, is adopted by France and Denmark.<sup>7</sup>

The types of corporations that can assume corporate responsibility in Indonesia are regulated in the law regarding the criminal offenses imposed (second approach). In most acts and other regulations, the definition of a corporation that can assume corporate responsibility is not limited to the form of a company that is a legal entity but also includes the form of a non-legal entity company.<sup>8</sup> For example, the definition of a corporation in Article 1 Number 1 of the Supreme Court Regulation on Procedures for Handling Criminal Cases, corporation is an organized group of people and/or assets, whether they are legal entities or non-legal entities. Then in the 2023 Criminal Code, corporations include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned companies, regional-owned companies, or equivalent, as well as associations both legal and non-legal entity, business entities in the form of firms, limited partnership, or equivalent in accordance with the provisions of statutory regulations.

Then, regarding the criteria needed to attach criminal liability to corporations. Suprpto believes that a corporation can be blamed if it is intentional or negligent on the part of the people who are its tools. This fault was not an individual fault, but a collective one

---

<sup>5</sup> Shidarta, (2022), *Putusan Pengadilan Sebagai Objek Penulisan Artikel Ilmiah, Undang: Jurnal Hukum* Vol. 5 No. 1: p.105–42, <https://doi.org/10.22437/ujh.5.1.105-142>.

<sup>6</sup> Andri G. Wibisana, (2016), *Kejahatan Lingkungan Oleh Korporasi: Mencari Bentuk Pertanggungjawaban Korporasi Dan Pemimpin/Pengurus Korporasi Untuk Kejahatan Lingkungan Di Indonesia?*, *Jurnal Hukum & Pembangunan* Vol. 46 No. 2: p.152, <https://doi.org/10.21143/jhp.vol46.no2.74>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Timbo Mangaranap Sirait, (2017), *The Implementation of Procedural Law of Responsibility Enforcement of Corporate Crime, Jurnal Dinamika Hukum* Vol. 17 No. 3: p.342–49.

because the corporation received profits. Meanwhile, Roeslan Saleh believes that to make corporation responsible for the criminal act is not always necessary to look at the committer fault, it is sufficient that there are facts that state so (*the adage speaks for itself*). Because the losses and dangers caused by crimes committed by corporation can be seen in society, both physical, economic and social cost. In addition, it is not only individuals who are victims, but also society and the state.<sup>9</sup>

The Attorney General Regulation regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects in Chapter II concerning Criteria for Actions in Handling Criminal Cases with Corporate Legal Subjects explains the criteria for actions that corporation can be held criminally responsible are:

1. All forms of actions that are based on the decisions of the corporate officer who carry them out or participate in them;
2. All forms of either actions or inactions carried out by someone for the benefit of the corporation either because of their work or other relationships;
3. All forms of actions that use human resources, funds, and/or any other form of support or facilities from the corporation;
4. All forms of actions carried out by third parties at the request or order of the corporation and/or corporate officer;
5. All forms of actions in the context of carrying out the corporation's daily business activities;
6. All forms of actions that give benefit to the corporation;
7. All forms of action that are accepted/usually accepted (*accepted*) by the corporation;
8. Corporations that actually accommodate the proceeds of criminal acts subject to corporate law, and/or
9. All other forms of actions for which the corporation can be held accountable according to law.

The Attorney General Regulation regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects, which is a technical guide for public prosecutors in indicting and prosecuting corporations, has explained the criteria for corporate actions that can be held criminally liable. These criteria also include criteria/forms of other acts which

---

<sup>9</sup> Edi Yunara, (2005), *Korupsi Dan Pertanggungjawaban Pidana Korporasi: Berikut Studi Kasus*. Bandung: Citra Aditya Bakti.

have not been mentioned in this regulation but the criteria/forms of the actions are regulated in other act that regulate corporate criminal act/ corporate criminal liability. In doctrine (legal expert opinion), there are several theories that can be used to impose criminal liability on corporation, or in other words, these theories may be adopted by law in determining corporate responsibility for criminal acts regulated in that law. The theories in question are as follows:

## 1. Strict Liability Theory

Strict liability or absolute liability or in Dutch it is called *leer van het materielle feit* or *feit materielle* is the opposite of the principle of criminal liability "there is no crime without guilt" (*geen straf zonder schuld; actus non facit reum nisi facit mens sit rea*).<sup>10</sup> In Indonesia, strict liability determined by law, for example on traffic violations. By calling it absolute responsibility, Sutan R. Sjahdeini does not differentiate between strict liability and absolute liability. In contrast to Smith and Hogan who argue that strict liability not the same as absolute liability. The two reasons put forward are, 1) that although *mens rea* no need to prove it doesn't mean *mens rea* is not at all required as a basic element that remains for a criminal act, for example someone who sells meat that is not fit for consumption, even though it is not necessary to prove that the seller was aware of the unfit condition of the meat, at least it needs to be proven that the seller wants to sell the meat, 2) that although no defense reasons can be put forward regarding *particular fact* which are declared prohibited by law, but can still be defended against other circumstances.<sup>11</sup>

## 2. Vicarious Liability

Vicarious liability is the imposition of criminal liability for criminal acts committed by one person against another person. This theory is taken from civil law (in tort or unlawful acts, example in Article 46 Act Nr. 44 of 2009 Concerning Hospital<sup>12</sup>) which are applied to criminal law. Vicarious liability concept in unlawful acts, for example the employer's responsibility for employee fault or negligence that occur within the scope of work. In the corporate sphere, an employer is a corporation that is obliged to bear vicarious liability for the actions of its employees.<sup>13</sup>

---

<sup>10</sup> Tim Pokja Penyusun Pedoman Pertanggungjawaban Pidana Korporasi KPK, (2017), *Tata Cara Penanganan Perkara Pidana Korporasi*. Jakarta: Komisi Pemberantasan Korupsi; Mahkamah Agung. p.26.

<sup>11</sup> Hamzah, (1991), *Masalah Pertanggungjawaban Pidana Korporasi Dalam Konteks Strict Liability Dan Vicarious Liability*, Tesis, Jakarta: Pasca Sarjana Fakultas Hukum Universitas Indonesia. p.177.

<sup>12</sup> Eko Pujiyono, (2022), *Kedudukan Korporasi Rumah Sakit Dalam Tanggung Gugat Kelalaian*, *Jurnal Hukum Dan Etika Kesehatan*, January 20, 2022, 178, <https://doi.org/10.30649/jhek.v1i2.35>.

<sup>13</sup> Juliette Overland, (2019) *Corporate Liability for Insider Trading, Corporate Liability for Insider Trading*, London dan New York: Routledge, p.57. <https://doi.org/10.4324/9781315098210>.

This theory, if applied to corporations, allows corporations to be held criminally liable for actions committed by their employees, proxies, or mandataries or anyone responsible to the corporation. Using this theory, it is justified to assume *actus reus* and *mens rea* of corporate officer or employees who are authorized by corporate officer to carry out acts which turn out to be criminal acts as *actus reus* and *mens rea* of corporation.<sup>14</sup> Difference between *strict liability* and *vicarious liability* depends on whether mens rea exists or not.<sup>15</sup>

Examples of the implementation of vicarious liability theory is in cases of consumer protection, environment, fair-trading, or others. However, in certain circumstances the application of this theory has received criticism, for example in situations where corporations do not gain benefit from criminal acts committed by their corporate officer or employees, or in very large organizations where it is difficult for corporations to carry out close supervision of employees, especially junior employees.<sup>16</sup> Brent Fisse argues, therefore, usually in applying this theory in order to prove that there is no vicarious liability of the corporation or to defend that the corporation is innocent, it is also proven that the corporation has taken reasonable action to prevent the occurring of the criminal act.<sup>17</sup>

Keulen and Gritter explained that there are differences in the criteria used by Courts in Netherlands regarding vicarious liability, that the corporation is responsible if the criminal act: a). allegedly committed by someone who works for a corporation, whether based on a formal employment relationship or not; b). is part of daily corporate activities; c). Providing profits to corporations; d). powered and accepted by the corporation. Being controlled by a corporation means that the corporation has the power to determine whether an employee's actions are acceptable to the corporation, meaning that the actions are included in actions that are usually accepted by the corporation or are part of the usual implementation of corporate affairs.<sup>18</sup>

### **3. Delegate Theory**

Delegation theory is one of the basic justifications for being able to impose criminal liability carried out by employees on corporation.<sup>19</sup> In delegation theory, the reason for imposing criminal liability on corporations is the delegation of authority from one person to another to carry out the authority they have.<sup>20</sup>

### **4. Identification Theory**

---

<sup>14</sup> Sjahdeini, *Loc.Cit.* p.150.

<sup>15</sup> Edi dan Rena Yulia Setiadi, (2010), *Hukum Pidana Ekonomi*, Yogyakarta: Graha Ilmu. p.63.

<sup>16</sup> James Gobert, (1994), Corporate Criminality: Four Models of Fault, *Legal Studies* Vol. 14, No. 3, p.398. <https://doi.org/10.1111/j.1748-121X.1994.tb00510.x>.

<sup>17</sup> Overland, *Op.Cit.* p.58.

<sup>18</sup> Wibisana, *Loc.Cit.* p.158-159.

<sup>19</sup> KPK, *Loc.Cit.* p.28.

<sup>20</sup> Sjahdeini, *Loc.Cit.* p.150.



Identification theory or also known as direct responsibility theory or organic theory or alter ego doctrine. In order to impose criminal liability on corporation, the public prosecutor must identify the perpetrator of actus reus are controlling personnel of the corporation (directing mind). If a criminal act is committed by controlling personnel or ordered by controlling personnel to be carried out by someone else, according to identification theory, criminal liability can be imposed on the corporation.<sup>21</sup> Different from vicarious liability theory where the corporation is responsible for the actions of its corporate officer or employees, in this identification theory the corporation is deemed to have committed a criminal act if proven the *actus reus* and *mens rea* corporate officer in committing criminal acts.<sup>22</sup> What is meant by controlling personnel, according to Sutan Remi Sjahdeni, are corporate officer or director who have the authority to act for and on behalf of the corporation.<sup>23</sup> Article 61 and 62 Act Nr. 8 of 1999 concerning Consumer Protection Law is an example of an using of identification theory.<sup>24</sup>

## 5. Expanded Identification Theory

This theory is a development of identification theory. This theory is also known as the management failure theory. The prerequisite for being able to hold a corporation criminally liable is if the corporation cannot prove that the corporation has made adequate efforts to prevent criminal acts committed by corporate officer, employees and/or contractors.<sup>25</sup>

## 6. Aggregation Theory

In aggregation theory, all acts (actus reus) and all mental elements (mens rea) from various people who are relevantly involved in the company activity, it is assumed that all actions and mental elements are carried out by one person only.<sup>26</sup> Therefore, this aggregation theory is also known as the collective knowledge doctrine which allows the aggregation of behavior or knowledge of more than one individual in a corporation.<sup>27</sup> Aggregation theory does not require the existence of perfect criminal acts from one individual. Corporations can remain liable even if not a single employee has committed a crime. So, even though there is no individual associated with a corporation that commits a criminal act, the actions/behavior or knowledge of two or more individuals who represent the corporation or for whom the corporation is responsible, can be

---

<sup>21</sup> *Ibid.*

<sup>22</sup> Overland, *Loc.Cit.* p.58.

<sup>23</sup> Sjahdeini, *Op.Cit.* p.150..

<sup>24</sup> Butarbutar, Widijowati, and Makbul, "Peran Teori Identifikasi Dalam Pertanggungjawaban Korporasi Pada Tindak Pidana Perlindungan Konsumen." Vol. 10 No. 7: p.1677.

<sup>25</sup> KPK, *Loc.Cit.* p.32.

<sup>26</sup> Wibisana, "Loc.Cit." p. 162.

<sup>27</sup> Eric Colvin, (1995), *Corporate Personality and Criminal Liability*, *Criminal Law Forum* Vol. 6 No. 1. p.18. <https://doi.org/10.1007/BF01095717>.

aggregated so that the corporation can be held criminally liable.<sup>28</sup> This aggregation theory can prevent companies from hiding their responsibilities deeply within the corporate structure. If in identification theory it is considered sufficient to find one person whose actions can be attributed to the company, in aggregation theory it is required to be able to find several people whose overall actions can be attributed to the company's actions.<sup>29</sup>

## **7. Organizational Fault Theory**

Organizational fault theory or also known as the corporate culture model or the company's work culture model.<sup>30</sup> This theory is applied on the basis that it is possible for a situation to occur where no particular individual in the corporation commits a criminal act, but the behavior of the corporate organization itself is to blame and the corporation must be held criminally responsible.<sup>31</sup> This theory seeks to impose responsibility on corporations if actions are deemed to be blameworthy on the corporation without the need to identify specific individuals whose actions and intentions should be attributed to the corporation.<sup>32</sup>

### **3.2. Differences in Criminal and Civil Responsibility of Corporation and Corporate Officer**

There are criteria for imposing liability on corporate officer, which aims to analyze the differences in responsibility between corporations and corporate officer. Andri G. Wibisana believes that if a corporation responsible for a criminal act, it does not necessarily mean that the corporate officer will automatically also be responsible. This is based on Sarre's statement which emphasizes that making a corporation responsible for someone's actions is not the same as making someone responsible for the corporation's actions.<sup>33</sup>

According to Andri G. Wibisana, there are three approaches that can be criteria for corporate officer responsibility, which are the personal substitute accountability approach (individual vicarious liability), based on delegation theory, and an approach due to direct participation, assistance, support, or failure of corporate officer in preventing criminal acts. First approach, individual vicarious liability, corporate officer are responsible for the criminal acts of other people (employees). Individual vicarious liability commonly used in civil contexts, but quite rarely used in criminal cases. Because basically criminal liability is personal in nature, and therefore a person cannot be held responsible for the actions of other people. The second approach, based on

---

<sup>28</sup> G. R. Sullivan, (1996), *The Attribution of Culpability to Limited Companies,* " *Cambridge Law Journal* Vol. 55 No. 3. p.527. <https://doi.org/10.1017/S0008197300100492>.

<sup>29</sup> KPK, *Loc.Cit.*, p.33.

<sup>30</sup> *Ibid.*

<sup>31</sup> Sullivan, *Op.Cit.*, p.524.

<sup>32</sup> Overland, *Loc.Cit.*, p.57.

<sup>33</sup> Wibisana, *Loc.Cit.*, p.155.

delegation theory, the criteria seen is that statutory regulations have determined that there is only one party who will be responsible for violations of obligations, which is those who are burdened with these obligations.<sup>34</sup>

The third approach, there is direct participation, assistance, support, or failure of corporate officer in preventing criminal acts, that the responsibility of corporate officer can be based on three reasons, which are direct participation in criminal acts, assistance or encouragement to commit criminal acts by facilitating, assisting, encouraging, providing direction, or approving the commission of criminal acts, whether certain active actions or not carrying out certain steps, as well as failure to carry out supervision, even though the corporate officer does not know specifically what criminal acts have been committed by his subordinates, with proving that corporate officer has the power to make up or prevent criminal violations.<sup>35</sup>

Andri G. Wibisana emphasized that corporate management is not automatically responsible for criminal acts within the scope of corporate work carried out by anyone, just because of their position as leader or administrator of the corporation. If the prosecutor want to include corporate officer as defendant, apart from the fact that they are corporate officer, evidence is needed that there was participation or failure to supervise or prevent criminal acts committed by the corporate officer. Individual vicarious liability theory (corporate officer seem to be automatically responsible for criminal acts within the scope of the corporation's work carried out by anyone, just because of their position as corporate officer) is often found in the civil context, but in the criminal context individual vicarious liability should be avoided.<sup>36</sup>

Then it also needs to be emphasized that vicarious liability cannot be applied automatically to corporate officer. Even though criminal acts are committed by corporate employees for the benefit of the corporation, this does not always mean that the offenses are also committed for the benefit of corporate officer. A corporate officer cannot be held criminally responsible for criminal acts committed by his subordinates, only on the basis of the position of the corporate officer and regardless of personal contribution to the violation.<sup>37</sup>

Indonesia has regulated corporate criminal liability that clearly differentiates between corporate criminal liability and the responsibility of corporate officer. This can be seen in the relationship between Articles 3, 11, 15 and 19 of The Supreme Court Regulation on Procedures for Handling Criminal Cases. Article 3 states that criminal acts by corporation are criminal acts committed by people based on work relationships, or

---

<sup>34</sup> *Ibid.* p.154-155.

<sup>35</sup> *Ibid.* p. 168-176.

<sup>36</sup> *Ibid.* p.191.

<sup>37</sup> Andri Gunawan Wibisana and Andreas Nathaniel Marbun, (2018), *Corporate Criminal Liability in Indonesia Anti-Corruption Law: Does It Work Properly?*, *Asian Journal of Law and Economics* Vol. 9 No. 1: p.12–13, <https://doi.org/10.1515/ajle-2017-0029>.

based on other relationships, either individually or together acting for and on behalf of the corporation inside or outside the corporate sphere. Investigation of the corporation as a suspect is represented by the officer (Article 11). In the event that the corporation is made a suspect/ defendant in the same case as the officer, then the officer representing the corporation is the officer who is the suspect or defendant. Other officer who is not being a suspect/ defendant can represent the corporation (Article 15). Investigation and prosecution stage against the corporation and/or officer can be carried out individually or jointly (Article 19). From these provisions it can be seen that corporate and corporation officer can be prosecuted and indicted. Both subjects can each be criminally responsible.

The distinction responsibilities between corporate and corporation officer can also be seen in The Attorney General Regulation regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects. The Prosecutor provides guidelines that criminal charges can be filed against corporation, corporate officer, or corporation and corporate officer. In the event that the law does not regulate corporate as a legal subject (not as a legal entity), the claim is submitted to the officer. For corporations that are not in the form of legal entities, responsibility for criminal acts is borne by the officer and additional sanction and/or disciplinary sanction may be imposed on the corporation.

The Attorney General Regulation regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects in Chapter II concerning Criteria for an Act in Handling Criminal Cases with Corporate Legal Subjects explains the criteria for an act that corporate officer can be held criminally liable, are:

1. Every person who commits, participates in committing, orders the commission of, suggests the commission of, or assists in the commission of a criminal act;
2. Every person who has the control and authority to take steps to prevent such criminal acts but does not take appropriate steps and is aware that he will accept a significant risk if such criminal acts occur;
3. Every person who has knowledge that there is a sufficient substantial risk if he knows that the criminal act was committed by a corporation; and/or
4. All other forms of an act for which the corporate officer can be held accountable according to the law.

Based on this description, the legal subjects that can be charged with criminal liability are 1) corporations, 2) givers of orders/leaders of criminal acts/ corporate officer, or 3) both (corporations and givers of orders/leaders of criminal acts/ corporate officer). So there is distinction between the imposition of corporate criminal liability and the imposition of criminal liability on corporate officer. Both are different legal subjects,

corporation as legal subjects of corporation (legal entities) and corporate officer as legal subject of person. Proving the corporation's responsibility for a particular criminal act does not automatically make the corporation's officer also responsible, and vice versa, if an indictment accusing the corporation's officer has been proven, it does not mean that the corporation can be sentenced to a crime (get a sanction), but first must indict and prove guilt for the criminal act charged.

From the provisions of Article 6 paragraph (2) of Act Nr. 48 of 2009 Regarding Judicial Authority, that "no one can be sentenced to a crime, unless the court, because of legal evidence according to law, is convinced that a person who is deemed to be responsible is guilty of the act for which he is charged," Giving a sanction to legal subjects can only be carried out if the court, based on valid evidence and belief (the judge) proves the guilt of the legal subject so that the legal subject can be held accountable.

If law enforcement intends to impose criminal liability on them (the corporation and the corporate officer), then both must be charged and prosecuted. Corporate punishment can be carried out if it can be proven that the corporate officer of the corporation is guilty of committing a criminal act, based on the theory of the imposition of corporate responsibility as previously described in accordance with the Law that regulates corporate criminal acts (material law). Even if the charges against corporate officer and the corporation are carried out in one indictment, in the indictment it must be clearly stated that both (corporate officer and corporation) are charged with committing a certain criminal act and the proof which fulfill the elements of the criminal offense is carried out against the corporate officer and corporation. In order that it is clear that each (corporate officer and corporation) is guilty and can be held accountable for the criminal act charged.

Regarding criminal acts committed by both (corporations and corporate officer), Sutan R. Sjahdeini explained that for corporate criminal acts where there is one criminal act with two perpetrators, it would be better if prosecution was first carried out against the corporate officer. Only then will prosecution be carried out against the corporation after the real perpetrator is proven guilty. Prosecution can be carried out simultaneously in one indictment, but the judge must firmly state that the perpetrator is actually the perpetrator *actus reus* and have *mens rea* necessary so that corporations can also be held criminally liable.<sup>38</sup>

In practice, although charges against corporate and corporate officer can be made in one indictment, the indictment must clearly state that both (corporate and corporate officer) are accused of committing a certain criminal offense and that proof of the fulfillment of the elements of the criminal offense is carried out towards corporate and corporate officer. The Attorney General's Office regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects has provided examples of indictments

---

<sup>38</sup> Sjahdeini, *Loc.Cit.*, p.300-301.

accusing corporation (in form 1), corporate officer (in form 2), as well as corporation and corporate officer (form 3). By explicitly stating that the corporation or corporate officer or both (corporation and corporate officer) in the indictment, it will be clear that each (corporate officer and/or corporation) is guilty and can be held responsible for the criminal act charged.

Meanwhile for the corporate responsibility in civil law refers to Civil Code. A corporation is considered as a legal entity with legal responsibilities towards other parties or entities in the civil context. Corporate civil liability can arise from either unlawful acts or contractual breaches (default).

1. Contractual Breaches or default is a negligence/ not fulfilling the obligations in the agreement (which is legal and binding)<sup>39</sup> and the debtor fault for not carrying out the performance<sup>40</sup> or the non-performance does not have justifiable reasons or causes (force majeure).<sup>41</sup>
2. Unlawful Acts: If a corporation engages in actions that harm others or violate civil law, the injured party can pursue compensation. This may include violations of rights, financial losses, or other damages resulting from the corporation's actions.

The regulation regarding Unlawful Acts in Indonesia normatively refers to Article 1365 of the Civil Code which states that anyone committing an unlawful act causing harm is responsible for providing compensation for the resulting losses. In Indonesian Civil Law, the concept of vicarious liability, an extension of an individual's responsibility as stipulated in the aforementioned provision, is recognized. Vicarious liability, or the liability of a substitute, can be understood as a form of substitute accountability imposed on the party responsible for someone's actions.

Article 1367, paragraph (1) of Civil Code regulates vicarious liability, stating that an individual is not only responsible for the harm caused by their own actions but also for the harm caused by the actions of those under their responsibility or caused by goods under their supervision. There are three theories related to accountability for unlawful acts committed by others: the superior responsibility theory, the substitute responsibility theory not from superiors over those under their responsibility, and the substitute responsibility theory for goods under their responsibility.<sup>42</sup> In Civil Code, liability for unlawful acts committed by others is further detailed in Article 1367, paragraphs (2) to (4), as well as Article 1368 and Article 1369. In this discussion which talk about corporate responsibility, specifying parties which is meant that can be held

<sup>39</sup> Subekti dan Tjitrosoedibio. (2008) *Kamus Hukum*, Jakarta: Pradnya Paramita, p 110.

<sup>40</sup> J. Satrio. (2014). *Wanprestasi: Menurut KUHPerdara, Doktrin, Dan Yurisprudensi*, Bandung: Citra Aditya Bakti, p. 2-3.

<sup>41</sup> A. Ridwan Halim. (2007). *Pengantar Hukum Indonesia: Dalam Tanya Jawab Jilid I*, Bogor: Ghalia Indonesia, p. 300.

<sup>42</sup> Krisnadi Nasution, (2014), *Penerapan Prinsip Tanggung Jawab Pengangkut Terhadap Penumpang Bus Umum*, *Mimbar Hukum*, Vol. 26 No. 1, p.57.

accountable for the losses of others, including 1) employers and those who appoint others to represent their affairs, for their subordinates in the assigned tasks and 2) foremen for their workers while under their supervision. Vicarious liability can be used to determine the corporate responsible of compensation claims for unlawful acts. However, there are limitations to imposing liability based on vicarious liability. These limitations is the liability ends if corporate can prove that they could not prevent the unlawful acts committed by those under its (corporate) responsibility.

### **3.3. The Differentiation Between Corporation and Corporate Officer Responsibility in Court Decision Nr. 34/Pid.Sus/2019/PN.SDA and Compare To The Corporation Responsibility in Civil Law Perspective Based On Court Decision Nr. 20/Pdt.G/2018/PN.Jkt.Utr**

Court Decision Nr. 34/Pid.Sus/2019/PN.SDA was decided after the enactment of enacted of The Attorney General Regulation regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects in 2014 and The Supreme Court Regulation on Procedures for Handling Criminal Cases in 2016. Even though these two regulations are already enacted and have provided clear guidelines regarding corporate criminal liability, the withdrawal of corporations as parties to the verdict crimes - even though the corporations are not charged and prosecuted in the court - still occur so it is still clear that law enforcers still do not differentiate between the criminal liability of corporation and corporate officer.

Panel of Judges in Case Nr. 34/Pid.Sus/2019/PN.SDA decided Muhammad Zainul Ichwan guilty of having committed the criminal act of submitting false or falsified customs notifications and/or complementary customs documents (Article 103 letter (a) of the Customs Act). Then, the panel of judges imposed a fine on Muhammad Zainul Ichwan as the head of the International Division and also as Branch Head (annual implementation officer) PT. Suryagita Nusaraya and/or to PT. Suryagita Nusaraya (corporation) with the provisions that if the fine is not paid, it will be replaced with imprisonment for 3 months.

In this case, there was a withdrawal of the corporation, PT. Suryagita Nusaraya, as the party who is also responsible for the criminal acts committed by the corporate officer, Muhammad Zainul Ichwan. If we are looking at the indictment submitted by the public prosecutor, the party being indicted is Muhammad Zainul Ichwan as Head of the International Division of PT. Suryagita Nusaraya. Proving the elements of the criminal act is also directed at proving the actions of Muhammad Zainul Ichwan as Head of the International Division of PT. Suryagita Nusaraya. What has also been proven is the fault of Muhammad Zainul Ichwan as Head of the International Division of PT. Suryagita Nusaraya. However, PT. Suryagita Nusantara was also sentenced to a fine by the panel of judges.

In its considerations, the panel of judges also considered the responsibility of PT. Suryagita Nusaraya as the Customs Notification Services Company (in Indonesia known as Perusahaan Pemberitahuan Jasa Kepabeanan or PPJK) for mistakes in export notification of goods made by the defendant Muhammad Zainul Ichwan as Head of the International Relations Division of PT. Suryagita Nusaraya (corporate officer). In their decision, the panel of judges also imposed a fine on PT. Suryagita Nusaraya that is "Imposing a crime against the defendant Muhammad Zainul Ichwan and/or PT. Suryagita Nusaraya as a legal entity/corporation with a fine of IDR 100,000,000 (one hundred million rupiah) with the provisions that if the fine is not paid then it must be replaced with a sentence of 3 months in prison."

Based on the formulation of Article 108 paragraph (1) letter a, it appears that corporation in the Customs Act can be criminally liable. It is stated that a Customs criminal act is committed by a corporation if the criminal act is committed by people who are either based on an employment relationship or based on other relationships, acting in a corporate sphere without considering whether the actions are carried out individually or together. The theory of criminal liability that allows a corporation to be charged with criminal liability for actions committed by its employees, proxies, or mandataries or anyone who is responsible to the corporation is vicarious liability theory. This theory is justified to consider actus reus and mens rea of corporate controlling personnel or employees who are authorized by controlling personnel to carry out acts which turn out to be criminal acts as actus reus and mens rea from the corporation. Thus, criminal penalties against corporations in the Customs Act can be carried out by accusing and prosecuting the corporation in a court and proving that people who, either based on work relationships or other relationships, acted within the corporate sphere committed customs crimes. Proving the error or responsibility of management, employees, anyone acting within the corporate sphere is considered as actus reus and mens rea of the corporation, with the provision that sanction can be imposed by indicting and prosecuting the corporation.

In Article 108 paragraph (1) apart from confirming that corporation can be criminally responsible, it also distinguishing the responsibilities of corporation and corporate officer. This states that the legal subjects in customs crimes are 1) corporation, 2) corporate officer, or 3) corporation and corporate officer. So, if a corporation is suspected of being responsible for a criminal act under the Customs Act, the corporation must be charged and prosecuted to impose criminal liability. Likewise, if a corporate officer is suspected of taking part in a criminal act under the Customs Act, the corporate officer must be charged and prosecuted to impose criminal liability. Proving corporate's fault does not directly prove corporate officer's fault, and vice versa.

However, the panel of judges in Court Decision Nr. 34/Pid.Sus/2019/PN.SDA also imposed a fine on PT. Suryagita Nusaraya (corporation), even though the legal subject charged and prosecuted in the case was Muhammad Zainul Ichwan as Head of the



Division International PT. Suryagita Nusaraya. The panel of judges in their considerations explained that PT. Suryagita Nusaraya is a legal entity that is subject to Act Nr. 40 of 2007 concerning Limited Liability Companies, which in Article 1 number 5 states that the Board of Directors is a Company Organ that has full authority and responsibility for managing the Company for the interests of the Company in accordance with the aims and objectives of the Company and representing the Company, both inside and outside the court in accordance with the provisions of the articles of association. Muhammad Zainul Ichwan was accused responsible for making the fake Goods Export Notification (in Indonesia known as Pemberitahuan Ekspor Barang or PEB), due to the illness of the definitive official, which ended on October 2 2018. The defendant was in the capacity as the head of the international division, then he was the most responsible person for making the fake PEB.

Based on the consideration of the panel of judges in this court decision, it appears that the panel of judges did not differentiate between the criminal responsibilities of corporation and corporate officer. The panel of judges withdraws the corporation to share criminal liability for criminal act committed by the corporation's officer. Supposedly, if a corporation is suspected of being responsible for a criminal act committed by its officer, then the corporation must be indicted, proven guilty, and prosecuted in a trial. If law enforcement officer intends to impose criminal liability on them (the corporation and the corporate officer), then both must be indicted and prosecuted. Sanction can be carried out if it can be proven that the corporate officer is guilty of committing a criminal act, based on the theory of the imposition of corporate responsibility as previously described in accordance with the law that regulates corporate criminal acts, in this case the Customs Act. Even if the indictment against the corporate officer and the corporation are made in one indictment, the indictment must clearly state that both (the corporate officer and the corporation) are indicted committing a certain criminal act and proof the fulfillment of the elements of the criminal act against the officer of the corporation and the corporation. So it will be clear that each (corporate officer and corporation) is guilty and can be held accountable for the criminal act indicted.

For this reason, Court Decision Nr. 34/Pid.Sus/2019/PN.SDA should not impose penalty on corporation (PT. Suryagita Nusaraya). Penalty or imposition of criminal sanctions against PT. Suryagita Nusaraya should be able to do if the public prosecutor indicts and prosecutes PT. Suryagita Nusaraya and proves his mistake based on the theory of corporate criminal liability, which based on Article 108 paragraph (2) of the Customs Act, using the vicarious liability theory. So with the proven mistake of Zainul Ichwan as head of the International Division PT. Suryagita Nusaraya for submitting fake or falsified Goods Export Notifications (PEB), make PT. Suryagita Nusaraya's fault also proven and PT. Suryagita Nusaraya can be imposed criminal sanctions in the form of fines (by previously indicting and prosecuting PT. Suryagita Nusaraya).

Meanwhile, implementation of corporate responsibility in the civil law perspective can be seen in court decision Nr. 20/Pdt.G/2018/PN.Jkt.Utr. In this case, the Plaintiff sue the Defendant for the unlawful act which is done by the defendant's worker. The plaintiff uses vicarious liability based on Article 1376 of Civil Code. From the lawsuit and judge's consideration we can find out that the fault of mistake done by the worker can withdraw the corporation as the responsibility party. In this case, the corporation success to prove that the corporate implemented standard operating procedure (SOP) that was undone by the worker. Consequently, the corporation can escape from the responsibility sued by the plaintiff.

#### **4. CONCLUSION**

The corporate responsibility theory used in imposing criminal liability on a corporation can be seen in the act that regulates criminal act as material law for the corporate criminal responsibility. In order for a corporation to be responsible for a criminal act, a distinction must be made between criminal liability carried out by the corporation and that carried out by the corporation's officer. The Excise Act and the Customs Act have regulated and emphasized the distinction of it. The distinction between corporate criminal liability and corporate officer is also regulated in The Attorney General Regulation regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects and The Supreme Court Regulation on Procedures for Handling Criminal Cases. On the other hand, for the civil responsibility, corporate responsibility based on an unlawful act which is regulate in Civil Code. However, the distinction between criminal liability of the corporation and corporate officer has not been implemented properly. This can be seen in Court Decision Nr. 1481/Pid.Sus/2011/PN.Jkt.Ut and Court Decision Nr. 34/Pid.Sus/2019/PN.SDA. These two decisions were analyzed to see how the differentiation of criminal liability of corporation and corporate officer before and after The Attorney General Regulation and The Supreme Court Regulation was implemented. Based on these two decisions, it can be seen that there is no distinction between corporate criminal liability and corporate officer's liability. There was a withdrawal of the corporation as the responsible party for the prosecution to the corporate officer. That the party prosecuted was the corporation's officer, but the corporation was also imposed for fulfilling the fine imposed on the corporate officer. This withdrawal is not justified. Proving the responsibility of corporate officer for a criminal act does not automatically make the corporation also responsible, and vice versa, if an indictment accusing the corporation has been proven, this does not directly mean that the corporate officer can be sentenced to a crime. If the corporate officer and the corporation are to be indicted in one indictment, the indictment must clearly state that both are charged with committing a certain criminal act and proof the fulfillment of the elements of the criminal act is carried out by the corporate officer and the corporation. So it is clear that each of them is guilty and can be held responsible for the crime which indicted/ accused.

#### **5. REFERENCES**

## Journals:

- Akbari, A. R., & Reza, Aulia Ali, P. L. M. (2017). *Pemidanaan Korporasi*. *Dictum Jurnal Kajian Putusan Pengadilan*, Vol. 12: p.25–43.
- Alhakim, A., & Soponyono, E. (2019). *Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi*. *Jurnal Pembangunan Hukum Indonesia*, Vo. 1 No. 3: p.322–336. <https://doi.org/10.14710/jphi.v1i3.322-336>
- Butarbutar, L. E., Widiowati, R. D., & Makbul, A. (2022). *Peran Teori Identifikasi dalam Pertanggungjawaban Korporasi Pada Tindak Pidana Perlindungan Konsumen*. *Kertha Semaya: Journal Ilmu Hukum*, Vol. 10 No. 7: p.1677-1692. <https://doi.org/10.24843/ks.2022.v10.i07.p18>
- Colvin, E. (1995). *Corporate personality and criminal liability*. *Criminal Law Forum*, Vol. 6 No. 1. <https://doi.org/10.1007/BF01095717>
- Eko Pujiyono. (2022). *Kedudukan Korporasi Rumah Sakit dalam Tanggung Gugat Kelalaian*. *Jurnal Hukum Dan Etika Kesehatan*, Vol. 1 No. 2: p.177–185. <https://doi.org/10.30649/jhek.v1i2.35>
- Faisol. (2019). *Pertanggung Jawaban Pidana Pengurus Korporasi Terkait Tindak Pidana Perdagangan Orang*. *Yurispruden*, Vol. 2 No. 2: p.163-178. <https://doi.org/10.33474/yur.v2i2.2776>
- Gobert, J. (1994). *Corporate Criminality: Four Models of Fault*. *Legal Studies*, Vol. 14. No. 3: p.393. <https://doi.org/10.1111/j.1748-121X.1994.tb00510.x>
- Hadrian, E., Putri, A. H., & Hakim, L. (2022). *Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi*. *Jurnal Hukum Pelita*, Vo. 3 No. 2: p.130–140. <https://doi.org/10.37366/jh.v3i2.1464>
- Krisnadi Nasution. (2014). *Penerapan Prinsip Tanggung Jawab Pengangkut Terhadap Penumpang Bus Umum*. *Mimbar Hukum*. Vol. 26 No. 1: p.54-69. [10.22146/jmh.16054](https://doi.org/10.22146/jmh.16054)
- Retno Ningsih, S. D., Supanto, S., & Latifah, E. (2018). *Corporation As the Actors of Fisheries Crime in Indonesia*. *Jurnal Dinamika Hukum*, Vol. 18 No. 2; p.208-214. <https://doi.org/10.20884/1.jdh.2018.18.2.2067>
- Shidarta. (2022). *Putusan Pengadilan sebagai Objek Penulisan Artikel Ilmiah*. *Undang: Jurnal Hukum*, Vol. 5 No. 1: p.105–142. <https://doi.org/10.22437/ujh.5.1.105-142>

- Siahaan, P. N. S. (2021). *Penentuan Subjek Hukum Pada Penerapan Pertanggungjawaban Pidana Dalam Penegakan Hukum Lingkungan (Analisis Putusan Mahkamah Agung Nomor 1363 K/Pid.Sus/2012)*. *Binamulia Hukum*, Vol. 10 No. 1: p.45–60. <https://doi.org/10.37893/jbh.v10i1.293>
- Sirait, T. M. (2017). *The Implementation of Procedural Law of Responsibility Enforcement of Corporate Crime*. *Jurnal Dinamika Hukum*, Vol. 17 No. 3: p.342–349. <http://dx.doi.org/10.20884/1.jdh.2017.17.3.769>
- Sullivan, G. R. (1996). *The Attribution of Culpability to Limited Companies*. *Cambridge Law Journal*, Vol. 55 No. 3: p.515-546. <https://doi.org/10.1017/S0008197300100492>
- Wibisana, A. G. (2016). *Kejahatan Lingkungan oleh Korporasi: Mencari Bentuk Pertanggungjawaban Korporasi dan Pemimpin/Pengurus Korporasi untuk Kejahatan Lingkungan di Indonesia?* *Jurnal Hukum & Pembangunan*, Vol. 46 No. 2: p.149-195. <https://doi.org/10.21143/jhp.vol46.no2.74>
- Wibisana, A. G., & Marbun, A. N. (2018). Corporate Criminal Liability in Indonesia Anti-Corruption Law: Does It Work Properly? *Asian Journal of Law and Economics*, Vol. 9 No. 1: p.1–16. <https://doi.org/10.1515/ajle-2017-0029>

#### **Books:**

- A. Ridwan Halim. (2007). *Pengantar Hukum Indonesia: Dalam Tanya Jawab Jilid I*, Bogor: Ghalia Indonesia, p. 300.
- D. Schaffmeister, N. Keijzer, E. P. S. (1995). *Hukum Pidana* (J. E. Sahetapy (ed.)). Liberty.
- Dwidja Priyatno. (2004). *Kebijakan Legislasi Tentang Sistem Pertanggungjawaban Pidana Korporasi di Indonesia*. CV Utomo.
- Edi Yunara. (2005). *Korupsi dan Pertanggungjawaban Pidana Korporasi: Berikut Studi Kasus*. Citra Aditya Bakti.
- Hamzah. (1991). *Masalah Pertanggungjawaban Pidana Korporasi dalam Konteks Strict Liability dan Vicarious Liability*. Universitas Indonesia.
- Hanafi. (2000). *Kejahatan Korporasi*. Fakultas Hukum Universitas Islam Indonesia.
- J. Satrio. (2014). *Wanprestasi: Menurut KUHPerdara, Doktrin, Dan Yurisprudensi*, Bandung: Citra Aditya Bakti, p. 2-3.

KPK. (2017). *Tata Cara Penanganan Perkara Pidana Korporasi*. Komisi Pemberantasan Korupsi; Mahkamah Agung.

Overland, J. (2019). Corporate Liability for Insider Trading. In *Corporate Liability for Insider Trading*. Routledge. <https://doi.org/10.4324/9781315098210>

Setiadi, E. dan R. Y. (2010). *Hukum Pidana Ekonomi*. Graha Ilmu.

Sjahdeini, S. R. (2017). *Ajaran Pidana: Tindak Pidana Korporasi dan Seluk-Beluknya*. Kencana.

Subekti dan Tjitrosoedibio. (2008) *Kamus Hukum*, Jakarta: Pradnya Paramita, p 110.

### **Regulation:**

Indonesia. Act Nr. 10 of 1995 Regarding Customs. L.N. Nr. 75. Year 1995. T.L.N. Nr. 3612.

Indonesia. Act Nr. 17 of 2006 Regarding Changes to The Act Nr. 10 of 1995 Regarding Customs. L.N. Nr. 93 Year 2006. T.L.N. Nr. 4661.

Indonesia. Act Nr. 40 of 2007 Regarding Corporation. L.N. Nr. 106 Year 2007. T.L.N. Nr. 4756.

Indonesia. Act Nr. 48 of 2009 Regarding Judicial Authority. L.N. Nr. 157 Year 2009. T.L.N. Nr. 5076.

The Attorney General of Indonesia Regulation Nr. PER-028/A/JA/10/2014 Regarding Guidelines for Handling Criminal Cases with Corporate Legal Subjects.

The Supreme Court has issued Supreme Court Regulation Nr. 13 of 2016 Regarding Procedures for Handling Criminal Cases by Corporation.

### **Court Decision:**

Sidoarjo District Court Decision Nr. 34/Pid.Sus/2019/PN.SDA.

North of Jakarta District Court Decision Nr. 20/Pdt.G/2018/PN.Jkt.Ut.