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# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

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# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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## PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

## PROCEEDINGS

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# Responsibility Of Corporate Crimes In Criminal Actions Of Narcotics

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## Abstract

*This writing aims to determine the accountability of corporate criminals in narcotics crime which is analyzed through Law No.35 of 2009 concerning Narcotics and is based on the premise of the corporation as a subject of criminal law. The results obtained from the study are that:*

*(1) In the General Explanation of the 2015 Criminal Code Bill Book Number 4, it is stated, among other things: "Considering the progress that has occurred in the fields of finance, economy and trade, especially in the era of globalization and the development of organized crime both domestic and transnational in nature, the subject of law Criminal law cannot be limited only to natural persons (natural person) but also includes corporations, namely an organized group of people and / or assets, whether a legal person (legal person) or not a legal entity, (2) In the case of liability for narcotics crimes committed by organized crime, then every narcotics criminal in the organized crime shall be punished with the same punishment as the perpetrator as referred to in Law No. 35 of 2009 concerning Narcotics in Article 130.*

*Keywords: Liability, Corporate Crime, Narcotics Crime*

## A. INTRODUCTION

The perpetrators of narcotics crime are also not only among the dealers, users, couriers and collectors. There are also narcotics criminals from organized crime perpetrators and from corporations. The existence of a corporation, either directly or indirectly, will have an impact on the country's economy and on the environment in which the corporation and its business fields are established. Not only a positive impact, but also a negative impact from the operation of a corporation. Corporations are founded with different goals and ways of achieving different goals. Not a few of these corporations are also founded with the aim and management to achieve objectives prohibited by law. Therefore, it is often heard that there are corporations involved in various criminal acts or as a means of committing criminal acts.<sup>1</sup>

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<sup>1</sup> Yesmil Anwar dan Adang, *Kriminologi*, Refika Aditama, 2010, p. 222

David O. Friedrichs defines corporate crime as a criminal act committed by corporate management for the benefit of a corporation or a criminal act committed by the corporation itself (offenses committed by corporate officials for their corporation or the corporation itself).<sup>2</sup>The peculiarities of the crime of the corporation or its agents (manager, employee, or owner) against members of the public, the environment, creditors, investors, or against its competitors. The losses incurred by corporate crimes are greater than the losses in individual crimes.<sup>3</sup>

Apart from corporate crimes there are also organized crimes, organized crime is a crime committed by a structured group consisting of 3 (three) or more people who have been there for a certain time and act together with the aim of committing a narcotics crime (Article 1 point 20 of Law

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<sup>2</sup> David O. Freidrichs, *Trusted Criminals White Collar Crime in Contemporary Society*, Wadsworth, 2010, p. 7.

<sup>3</sup> Mahrus Ali dan Aji Pramono, *Perdagangan Orang Dimensi, Instrumen Internasional dan Pengaturannya di Indonesia*, Citra Aditya Bakti 2011, p. 45

No. 35 of 2009). Perpetrators who are members of organizational crimes have a motive for seeking profit. This is because those who join organized crime have only the motivation to get money easily through illegal businesses run by these organizations in the form of narcotics. Power and protection are also factors that encourage people to join in organized crimes such as the mafia or the like. Organized crime in the crime of narcotics has a very large negative impact on the Indonesian state. Organized crime in narcotics crime is very dangerous because it is carried out in an organized manner and has many modus operandi which are always developing and increasingly sophisticated following the times.

## **B. PROBLEM FORMULATION**

Based on the background description above, the following problems are formulated:

- 1) What is the basis for thinking about the corporation as a subject of criminal law?
- 2) What is the responsibility of corporate criminals in narcotics crime?

## **C. DISCUSSION**

### **1. Rationale for Corporations as Criminal Law Subjects**

In the Draft Criminal Code, the acceptance of corporations as subjects of criminal law is in line with the recent rapid economic development and growth, where corporations have a very large role in the ins and outs of the country's economy, especially in facing the industrialization era that is currently being developed by our government. Therefore, the role of corporations is so large in the country's economic growth, however, it is possible that crimes are committed by corporations in various fields. In the General Explanation of the 2015 Criminal Code Bill Book Number 4, it is stated, among other things: "Given the progress that has occurred in the financial, economic and trade sectors,

especially in the era of globalization and the development of organized criminal acts both domestic and transnational in nature,

According to Muladi, there are several reasons why corporations are recognized as the perpetrator of a criminal act, namely:

- a. On the basis of the integrationalist philosophy, that is, everything should be measured on the basis of balance, harmony and harmony between individual interests and social interests;
- b. Based on the principle of kinship in Article 33 of the 1945 Constitution of the Republic of Indonesia;
- c. To eradicate anomie of success (success without rules);
- d. For consumer protection;
- e. For technological advancement.<sup>4</sup>

The recognition of corporations as subjects of criminal law seems to be worldwide. This was proven, among others, by the holding of the 14th international conference on Criminal Liability of Corporation in Athens from 31 July to 6 August 1994. Where, among other things, Finland did not initially regulate corporations as subjects of criminal law, but in its development have recognized the corporation as a subject of criminal law and can be accounted for.

Corporate regulation as a subject of criminal law is motivated by different histories and experiences in each country, including Indonesia. However, in the end there is a common view, namely in connection with the development of industrialization and progress that has occurred in the field of economy and trade, it has encouraged the idea that the subject of criminal law is no longer limited to natural persons but also includes corporations, because certain criminal acts also carried out by corporations.

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<sup>4</sup>Hamzah Hatrik, *Asas Pertanggungjawaban Pidana Korporasi dalam Hukum Pidana Indonesia*, Alumni, Bandung, 1996, p. 36.

## 2. Accountability of Corporate Crime in Narcotics Crime

Louise Shelley defines organized crime as follows:

- a. *That are based in one state;*
- b. *That commit their crimes in at least one but usually several host countries whose market conditions are favorite;* and
- c. *In which the possibility of conducting illicit activity affords low risk of apprehension.*<sup>5</sup>

An analysis conducted by expert criminologist Frank Hagan who has defined organized crime explicitly into 11 characteristics, namely:

- a. Continuously organized hierarchy;
- b. Rational profit through criminal acts;
- c. Use of force or threats;
- d. Bribery of government officials for impunity;
- e. The public's need for services;
- f. Monopoly on certain markets;
- g. Limited membership;
- h. Not ideological;
- i. Specialties;
- j. Secret code;
- k. Extensive planning.<sup>6</sup>

In the case of liability for narcotics crimes committed by organized crime, then every narcotics criminal in the organized crime shall be punished with the same punishment as the perpetrator as referred to in Law No. 35 of 2009 concerning Narcotics in Article 130 which reads:

- 1) In the case of criminal acts as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129 are committed by corporations, in addition to

<sup>5</sup> Louise Shelley, *Can Russia Fight Organized Crime and Corruption*, *The Tocqueville Review / La Revue Tocqueville*, 2002, pp. 37-55

<sup>6</sup> Frank E. Hagan, *Pengantar Kriminologi, Teori, Metode, dan Perilaku Kriminal*, Jakarta, Kencana, 2013, p. 98.

imprisonment and fines against their management, the penalties that can be imposed against the corporation are in the form of fines with a weighting of 3 (three) times the penalty as referred to in these Articles;

- 2) In addition to the fine as referred to in paragraph (1), the corporation can be subject to additional penalties in the form of:
  - a. revocation of business license; and / or
  - b. revocation of legal entity status.

There are 2 (two) forms of participation based on the Criminal Code, including the makers (*mede dader*) contained in Article 55 of the Criminal Code and the assistants (*made plichtigheid*) contained in Article 56 of the Criminal Code. The makers (*mede dader*) can be categorized into 4 (four) parts according to their actions, among others: those who do, those who instruct to do, those who participate in doing, and those who deliberately recommend.

In terms of type, corporations can be classified as Public Corporations, Private Corporations, and Quasi Public Corporations.<sup>7</sup> Hamzah Hatrik describes a double track system in the punishment adopted in the Criminal Code and according to him this can also be applied to corporate criminal liability as a legal subject for the perpetrator of a criminal act, namely that in addition to being a crime it can also be subject to the following actions:

1. Criminal sanctions
  - a. The main punishment is in the form of a fine;
  - b. Additional penalties are in the form of revocation of certain rights, confiscation of certain items, announcement of a judge's decision, and payment of compensation.
2. Action
  - a. Profit withdrawal;
  - b. Obligation to pay security deposit;
  - c. The placement of the company under surveillance.

<sup>7</sup> Yesmil Anwar and Adang, *Op.Cit.*, p. 222.

Meanwhile, according to Suprpto, the penalties or penalties that can be imposed on corporations are the closure of all or part of the company for a certain time, revocation of all or part of certain facilities that have been or can be obtained from the government by the company or corporation for a certain time, the placement of the company under interdiction for a certain time. <sup>8</sup>

#### **D. CLOSING**

- 1) In the General Explanation of the 2015 Criminal Code Bill Book Number 4, it is stated, among other things: "Considering the progress that has occurred in the fields of finance, economy and trade, especially in the era of globalization and the development of organized crime both domestic and transnational in nature, the subject of law Criminal law cannot be limited only to natural persons (natural persons) but also includes corporations, namely an organized group of people and / or assets, whether a legal person (legal person) or not a legal entity.
- 2) In the case of liability for narcotics crimes committed by organized crime, then every narcotics criminal in the organized crime shall be punished with the same punishment as the perpetrator as referred to in Law No. 35 of 2009 concerning Narcotics in Article 130.

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<sup>8</sup> Suprpto, *Hukum Pidana Ekonomi ditinjau dalam Rangka Pembangunan Nasional*, disertai, Widjaya Jakarta, 1963, p. 35.

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