

Legal Analysis of Corporate Criminal Liability in Corruption Crimes (Study of Decision Number 16/Pid.Sus-Tpk/2022/Pn. Smg)

Rozi Juliantono¹⁾ & Gunarto²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: rozijuliantono.std@unissula.ac.id

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: gunarto@unissula.ac.id

Abstract. *This research discusses corporate criminal liability in corruption offenses, focusing on Semarang District Court Decision Number 16/Pid.Sus-TPK/2022/PN Smg. The background of this research is based on the widespread practice of corruption, which is not only committed by individuals but also involves corporations as instruments to gain profit against the law. The main issues of this research include: (1) how corporate criminal liability is regulated in corruption offenses under positive law in Indonesia; (2) how corporate criminal liability is applied in Decision Number 16/Pid.Sus-TPK/2022/PN Semarang; and (3) what are the prospects for developing the application of corporate criminal liability in the future. The research method used is a normative legal approach with primary data in the form of laws and court decisions, and secondary data in the form of literature, journals, and legal doctrines. The research results show that the regulation of corporate criminal liability in Indonesia has a clear legal basis through the Anti-Corruption Law, Supreme Court Regulation No. 13 of 2016, and the new Criminal Code (Law No. 1 of 2023). In Semarang District Court Decision No. 16/Pid.Sus-TPK/2022, the judge affirmed that corporations can be held criminally liable under Article 20 of the Anti-Corruption Law, proved the elements of the crime through the identification theory and vicarious liability, and imposed a sentence of fines and restitution. The future outlook indicates that regulations are becoming increasingly stringent, but successful implementation still depends on legal harmonization, the capacity of law enforcement agencies, the compliance culture of the business world, and international cooperation. Thus, corporate criminal liability in corruption offenses serves not only as a repressive instrument for punishment but also as a preventive instrument to deter corruption, strengthen transparent and accountable corporate governance, and achieve substantive justice.*

Keywords: *Corporation; Corruption; Criminal Liability; Court Decision; Positive Law.*

1. Introduction

Corruption is a crime that is detrimental to the continuity of a country both in terms of quality and quantity.¹ Constitutionally, the Preamble to the 1945 Constitution of the Republic of Indonesia (paragraph 4) affirms that the state's mission is to protect all Indonesians, improve general welfare, educate the nation, and realize social justice for all Indonesians. These noble ideals can only be achieved if government and business are managed honestly and free from corruption.² Therefore, combating corruption, including that perpetrated by corporations, is a constitutional mandate.

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state based on law (*rechtsstaat*), not a state based on power (*machtsstaat*). The principle of a state based on law demands legal certainty, equality before the law, and protection of human rights. If corporations that clearly commit corruption are not held criminally accountable, the principle of equality before the law becomes illusory. This will create a disparity in justice between individual perpetrators of corruption and corporations with substantial capital and political power.³

Philosophically, eradicating corruption is also closely linked to the fifth principle of Pancasila, namely "Social Justice for All Indonesian People." Corruption committed by corporations not only harms the state financially, but also harms the wider community, especially the poor and vulnerable, because public funds that should be allocated for education, health, and social development are instead misappropriated. Therefore, imposing criminal liability on corporations is a concrete manifestation of the principle of social justice and an instrument to ensure the equitable distribution of state resources.⁴ Therefore, eradicating corruption involving corporations cannot be viewed solely from the technical aspects of criminal law, but must be placed within the nation's constitutional, philosophical, and ideological framework. Law enforcement against corrupt corporations is a concrete manifestation of the implementation of the constitutional mandate, the values of Pancasila, and the principles of a state based on the rule of law that upholds justice and legal certainty.

According to the Big Indonesian Dictionary (KBBI), corruption is the abuse of power or position (state or private) for personal or group gain, usually through bribery or embezzlement of state funds. Corruption is an act that includes the abuse of public power for personal gain, which can take the form of bribery, embezzlement, extortion, and abuse of office. In Indonesia, corruption is regulated by Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which normatively defines corruption as an unlawful act that harms the state's finances or economy and enriches oneself or others.⁵

2. Research Methods

The approach used, namely normative juridical, is a legal research method that focuses on the study of positive legal norms, whether in the form of statutory regulations, doctrines, or

¹ Nandha Risky Putra and Rosa Linda, "Korupsi Di Indonesia: Tantangan Perubahan Sosial," *Integritas : Jurnal Antikorupsi* 8, no. 1 (2022): 13–24.

court decisions.⁶ This research does not test law in social practice directly, but analyzes law as a prevailing norm (das sollen), not as a social reality (das sein).

3. Results and Discussion

3.1. Regulation of Corporate Criminal Liability in Corruption Crimes According to Positive Law in Indonesia

A corporation, or legal entity (rechtspersoon), is a legal entity recognized by the state and separate from its individual founders. As a legal subject, a corporation can have rights and obligations, take legal action, and be held independently liable in both civil and criminal matters. Thus, a corporation is not merely a collection of individuals but has an independent legal existence.⁷ The evolution of corporate recognition as legal entities arose from the needs of contemporary society, particularly in the economic, trade, and industrial sectors, where various legal transactions are conducted by group entities. This facilitates legal activities and provides recognition for the actions of legal entities before the state and society.⁸

A corporation is essentially an entity that arises from a legal agreement and whose existence is recognized by the legal system. Generally, a corporation can be defined as a group of individuals and/or assets structured for a specific purpose, either as a legal or non-legal entity. From a civil law perspective, a corporation is considered a legal subject with rights and obligations similar to an individual, thus having the right to take legal action, own assets, and be legally responsible through its management or organs.

From a criminal law perspective, the recognition of corporations as legal subjects represents significant progress. Initially, criminal law only recognized humans (natural persons) as subjects of crime. However, with the advancement of technology and the increasing complexity of modern crime, corporations can become tools for committing crimes, particularly in the economic and corruption sectors.⁹ This is based on the fact that decisions or actions of managers representing corporations often reflect not only personal interests but also the interests of the corporation itself.

² Fariz Oktan, Artha Febriansyah, dan Ishandi Saputera, "Tindak Pidana Korupsi Dan Pertanggungjawaban Pidana Oleh Korporasi," *Simbur Cahaya* XXX, no. 1 (2023): 81–104, <https://doi.org/10.28946/sc.v29i2.1961>.

³ Ratna Kumala Sari Sanjaya, Bahari & Muladi, "Inkonsistensi Pertanggungjawaban Pidana Korporasi Dalam Peraturan Perundang-Undangan Di Luar KUHP," *Pandecta Reseach Law Journal* 15, no. 2 (2023).

⁴ Dwi Haryadi, "Efektivitas Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Ekonomi Di Indonesia," *Jurnal RechtsVinding* 11, no. 1 (2022).

⁵ Pasal 2 ayat (1) Undang-Undang Nomor 31 Tahun 1999 jo. Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi.

⁶ Soekanto Soerjono, *Op.Cit*, p. 13

⁷ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1984), p. 25

⁸ Kurnia, "Kedudukan Korporasi Sebagai Subjek Hukum Dalam Perspektif Hukum Indonesia."

⁹ Muladi, "Pertanggungjawaban Pidana Korporasi Dalam Hukum Pidana Indonesia," *Jurnal Hukum & Pembangunan* 35, no. 3 (2005).

The legal definition of a corporation is regulated in Article 1, number 1 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Corruption Law), which states that "A corporation is an organized group of people and/or assets, whether a legal entity or not." This definition is broad, encompassing both formal legal entities (such as limited liability companies, cooperatives, foundations) and non-legal entities (such as CVs, firms, or associations). Therefore, there is no fundamental difference in the legal form of an organization; as long as it is proven that the organization has committed or benefited from a criminal act, it can be prosecuted as a corporation.

Corporations can be subject to criminal law if certain conditions are met. This is emphasized in Article 20 paragraph (1) of the Corruption Eradication Law, which states that "If a criminal act of corruption is committed by or on behalf of a corporation, prosecution and criminal penalties may be imposed on the corporation and/or its management." This means that a corporation can be held criminally liable if:

1. The crime is committed by a manager, employee, or someone with an employment relationship with the corporation;
2. The crime is committed for the benefit and/or benefit of the corporation;
3. The corporation directly benefits from the crime.

In the context of criminal law, corporations are increasingly recognized as subjects of criminal offenses. This aligns with the emergence of various forms of modern crime committed through legal entities, such as environmental crimes, money laundering, market manipulation, and corruption. Legally, this recognition is reflected in national and international regulations that position legal entities as both perpetrators and those subject to sanctions. For example, in cases of environmental crimes, legal entities can be subject to sanctions in the form of fines, revocation of business licenses, or environmental restoration measures.

The recognition of corporations as criminal entities marks a shift in the criminal law paradigm from an individual-centric to an entity-centric one, where criminal responsibility no longer rests solely with individual managers but also with the legal entity itself. This aligns with the demands of justice, as crimes are often committed for the benefit of the corporation, making it appropriate for the entity to be held accountable.

3.2. Application of Corporate Criminal Liability in Corruption by the Judge in Decision Number 16/Pid.Sus-TPK/2022/PN Semarang

The application of corporate criminal liability in corruption is a strategic issue in modern criminal law in Indonesia. This is due to the increasing frequency of corruption committed not only by individuals but also by business entities, which serve as instruments for unlawful gain. Corporations are often used as vehicles to channel funds, disguise transactions, or offer bribes to public officials, resulting in significant losses to state finances and the national economy.

Master of Law, UNISSULA

From the context of corruption eradication, the Corruption Eradication Law, which includes corporations as subjects of criminal law, and Supreme Court Regulation No. 13 of 2016, provide legitimacy for law enforcement officials to prosecute businesses. One concrete example of the application of this norm is the Semarang District Court Decision Number 16/Pid.Sus-TPK/2022/PN Smg, in which the judge imposed criminal liability on a corporation.

Brief Chronology of the Case

This case stemmed from a Sports Facilities and Infrastructure Development project involving landfilling for the Tegal City Sports Center in the 2015 Fiscal Year. EK, an entrepreneur and Director of CV RK, collaborated with Tegal City Public Works Department officials, namely HS as the Commitment Making Officer (PPK), and other parties to secure PT JS's bid, even though the company did not meet the requirements. In practice, EK used PT JS's name and manipulated the tender documents to ensure the project went to the company. After the contract, valued at approximately IDR 5.29 billion, was signed, the work did not comply with the contract specifications. An audit by the Central Java Provincial Financial and Development Supervisory Agency (BPKP) found that the volume of fill installed was significantly less than the contract. As a result, the state suffered a loss of IDR 1,891,222,580. Some of the funds intended for the project were instead distributed to certain parties, including department officials and partners, while the remainder was enjoyed by EK.

Indictment

Primary

The Defendant's actions are regulated and subject to criminal penalties under Article 2 paragraph (1) in conjunction with Article 2. Article 18 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code.

a) Article 2 paragraph (1) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001: "Any person who unlawfully commits an act of enriching themselves or another person or a corporation that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

b) Article 18 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001:

Regulates additional penalties in the form of:

1) confiscation of movable and immovable property used for or obtained from criminal acts of corruption;

Master of Law, UNISSULA

2) payment of compensation;

3) closure of the company;

4) revocation of certain rights.

c) Article 55 paragraph (1) point 1 of the Criminal Code: "Those who commit, order, and participate in the act shall be punished as perpetrators of the crime."

Subsidiary

The Defendant's actions are regulated and subject to criminal penalties in Article 3 in conjunction with Article 18 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code.

a) Article 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001: "Any person who, with the intention of benefiting themselves or another person or a corporation, abuses the authority, opportunity, or means available to them due to their position or position, which may harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years, and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

b) Article 18 of the Corruption Law: regulates additional penalties, including confiscation of goods, payment of compensation, company closure, and revocation of certain rights.

c) Article 55 paragraph (1) point 1 of the Criminal Code: "Those who commit, order, and participate in committing the act shall be punished as perpetrators of the crime."

3.3. Prospects for the Future Development of the Implementation of Corporate Criminal Liability in Corruption Crimes in Indonesia

The implementation of corporate criminal liability is not merely a normative discourse, but has been practically proven through court decisions. Semarang District Court Decision No. 16/Pid.Sus-TPK/2022/PN Smg is an important example of how corporations are no longer viewed solely as civil entities but can also stand as criminal defendants. This fact demonstrates a paradigm shift in Indonesian criminal law, which previously focused more on individual perpetrators.

In the author's opinion, the above description suggests that the prospects for developing the implementation of corporate criminal liability in the future must be viewed from several strategic perspectives:

Master of Law, UNISSULA

1. Normative Prospects

Initially, the Criminal Code (old Criminal Code) did not clearly regulate corporate criminal liability, as its focus still considered individuals as the sole subjects of criminal law. However, the development of criminal law in Indonesia has finally recognized corporations as legal subjects through specific laws, including Law No. 31 of 1999 in conjunction with Law No. Law No. 20 of 2001 concerning the Handling of Corruption Crimes (Corruption Law).

Article 20 of the Corruption Law stipulates that if a criminal act of corruption is committed by or on behalf of a company, prosecution and punishment can be brought against the company and/or its management. This provision serves as a crucial basis for judges in punishing corporations, as in Semarang District Court Decision No. 16/Pid.Sus-TPK/2022, which affirms that corporations can be held criminally liable for receiving profits from corruption committed by their management.

This strengthening of norms was also implemented through Supreme Court Regulation (Perma) No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. This Perma provides technical guidance for judges and law enforcement officials in evaluating corporate culpability, including who is authorized to represent the company in court, how to prove the company's guilt, and the types of criminal sanctions that can be imposed. This Perma fills a procedural legal gap that previously hampered law enforcement in handling corporate criminal cases.¹⁰

Ultimately, the new Criminal Code (Law No. 1 of 2023) clearly lists corporations as subjects of criminal law. Articles 45–50 of the new Criminal Code regulate who can be held accountable, the criteria for corporate misconduct, the types of principal and additional penalties (permit revocation, asset confiscation, announcement of decisions), and provisions regarding cumulative penalties between managers and legal entities.¹¹ This is a significant advancement that strengthens the normative foundation for criminal law enforcement against corporations in Indonesia.

While the new Criminal Code already encompasses comprehensive provisions, the existence of special laws (*lex specialis*) still plays a significant role. For example:

a) The Corruption Eradication Law, which specifically regulates corruption and makes corporations subject to criminal law.

b) The Money Laundering Law (UU TPPU) also recognizes criminal liability for corporations.

¹⁰ Mahkamah Agung Republik Indonesia, *Peraturan Mahkamah Agung No. 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi*.

¹¹ Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 45-50.

Master of Law, UNISSULA

c) The Environmental Protection and Management Law (UU PPLH) covers corporate crimes in environmental cases.

This potential harmonization of regulations is likely because the new Criminal Code will serve as general criminal law, while special laws will remain in effect unless specifically regulated within the Criminal Code.¹²

The author predicts there will be integration between the new Criminal Code and specific laws, with the new Criminal Code serving as the general basis, while the Corruption Eradication Law and other laws serve as *lex specialis*. This harmonization is crucial to prevent overlap or inconsistency in the application of the law.

From the author's perspective, the regulations regarding corporate criminal liability in Indonesia have become increasingly robust with the introduction of the new Criminal Code. However, several improvements remain, including:

a) Consistency of Implementation: Despite clear regulations, in practice, judges and law enforcement officials are still hesitant to prosecute corporations. Consistent jurisprudence is needed to ensure effective enforcement of these norms.

b) Strengthening Sanctions: Fines are often considered lenient for large corporations. More effective sanctions, such as prohibitions on tenders, revocation of business licenses, or special oversight of corporate governance, need to be considered in the future. c) Clarification of the Liability of Managers and Corporations, where regulations still need to clarify the boundaries between individual managerial misconduct and corporate responsibility, to avoid overlapping liability that would undermine legal certainty.

The analysis shows that the normative prospects for the implementation of corporate criminal liability are quite bright, but still require improvements in regulatory harmonization and consistent implementation.

2. Institutional Prospects

The implementation of criminal liability for corporations in corruption cases depends not only on the strength of legal norms (substantial), but also on the ability of law enforcement officials and related institutions to implement them consistently. In the author's view, there are three main pillars in this institutional outlook: the function of law enforcement officials, the capacity of audit institutions, and institutional strengthening.

One of the main obstacles in corporate criminal law is how to prove fault (*schuld*) in an abstract legal entity. In this context, investigators, prosecutors, and judges play a crucial role. Investigators must be able to find evidence linking the actions of managers to the interests of the company; prosecutors must be able to formulate charges that link personal fault to the

¹² Ahmad Sofian, "Pertanggungjawaban Pidana Koorporasi Dalam KUHP Baru: Sebuah Langkah Progresif," *Jurnal Hukum IUS QUIA IUSTUM* 30, no. 2 (2023).

legal entity. and judges must carefully assess whether the actions of the management were truly carried out for and on behalf of the company.

Going forward, the author believes that institutional prospects will improve if law enforcement officers implement more sophisticated evidentiary models, for example, by utilizing the identification theory (a corporate organ acts on behalf of the legal entity), the vicarious liability theory (the management's responsibility is transferred to the corporation), and the aggregation theory (corporate wrongdoing arises from the accumulation of the actions of its management).¹³

4. Conclusion

The regulation of corporate criminal liability in corruption crimes according to positive law in Indonesia now has a clear legal basis. Initially, the classical Criminal Code only recognized individuals as criminal subjects, but through Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption Crimes (Tipikor Law), corporations are recognized as subjects of criminal law as regulated in Article 20. This recognition is emphasized by Supreme Court Regulation No. 13 of 2016 which provides technical guidelines for criminal punishment, and is further strengthened in the new Criminal Code (Law No. 1 of 2023) which regulates the mechanism of corporate criminal liability comprehensively. This development shows a paradigm shift from individual-centric to entity-centric, in line with the theories of identification and vicarious liability, so that corporations can be directly sanctioned for criminal acts of corruption. The application of corporate criminal liability in corruption crimes by the judge in Decision Number 16/Pid.Sus-TPK/2022/PN Semarang shows that Indonesian positive law has been able to ensnare corporations as perpetrators of corruption crimes.

5. References

Journals:

- Ahmad Sofian, "Pertanggungjawaban Pidana Koorporasi Dalam KUHP Baru: Sebuah Langkah Progresif," *Jurnal Hukum IUS QUIA IUSTUM* 30, no. 2 (2023).
- Dwi Haryadi, "Efektivitas Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Ekonomi Di Indonesia," *Jurnal RechtsVinding* 11, no. 1 (2022).
- Fariz Oktan, Artha Febriansyah, dan Ishandi Saputera, "Tindak Pidana Korupsi Dan Pertanggungjawaban Pidana Oleh Korporasi," *Simbur Cahaya XXX*, no. 1 (2023): 81–104, <https://doi.org/10.28946/sc.v29i2.1961>.
- Muladi, "Pertanggungjawaban Pidana Korporasi Dalam Hukum Pidana Indonesia," *Jurnal Hukum & Pembangunan* 35, no. 3 (2005).

¹³ Muladi dan Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Kencana, 2019), p. 88-90

Master of Law, UNISSULA

Nandha Risky Putra and Rosa Linda, "Korupsi Di Indonesia: Tantangan Perubahan Sosial," *Integritas : Jurnal Antikorupsi* 8, no. 1 (2022): 13–24.

Ratna Kumala Sari Sanjaya ,Bahari & Muladi, "Inkonsistensi Pertanggungjawaban Pidana Korporasi Dalam Peraturan Perundang-Undangan Di Luar KUHP," *Pandecta Reseach Law Journal* 15, no. 2 (2023).

Books:

Kurnia, "Kedudukan Korporasi Sebagai Subjek Hukum Dalam Perspektif Hukum Indonesia."

Muladi dan Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Kencana, 2019)

Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1984)

Regulation:

Article 2 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, Articles 45-50.

Supreme Court of the Republic of Indonesia, Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.