Application of Articles of Inclusion in Corruption Crimes Performed by Corporations and Management

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Abstract

Corporations can be held accountable for committing criminal acts of corruption together with their management, but in theory corporations cannot be subject to an inclusion article because there is no uniformity from legal experts regarding the teachings of participation which according to the Criminal Code can only be imposed on humans, not corporations. The teaching of participation according to the Criminal Code must meet two conditions, namely the existence of a recognized cooperation and the existence of a direct form of action in committing a crime. This teaching can only be applied to humans and has not yet reached corporate actions, while the development of the economy and society, corporate crime was born as a new mode of committing criminal acts of corruption, while on the other hand the existing regulations both concerning procedural law are very limited in discussing corporations while on the other hand The application of the principle of inclusion to corporations is very necessary because corporations can only carry out legal actions which are reflected in the actions of their management. Corporations do not have a heart, but the heart of the management is a reflection of the heart of the corporation. Corporations cannot commit direct criminal acts. To fill the legal vacuum, the doctrine of participation in corporations can be imposed by looking at the existence of cooperation that does not have to be realized without any mistakes and the form of the implementation of the act is not only an offense but includes the offense of not doing because the corporation benefits from the actions of the management committing a criminal act of corruption.

Keywords: criminal liability, corporation, participation

Introduction

Corporations are present in today's economic development and industrialization where their existence makes a very large contribution to the state and society, however in its development it turns out that in addition to having a positive impact, it turns out that corporations also have a negative impact in terms of corporations being used as a means to take advantage. in the form of organized crime that is detrimental to the state and society at large. In the face of global competition in the industrialized world, it is not uncommon for a corporation to make progress and profits that can be done by violating the law.

One of the legal violations committed by corporations is in the criminal act of corruption. Corporations have long been recognized as legal subjects in criminal acts, statutory policies outside the Criminal Code have expanded the subject of corruption to include corporations, not without reason. The background of the policy to carry out the expansion is that corrupt behavior that is detrimental to the state's finances and economy is not only carried out by those who meet the qualifications of civil servants according to the employment law. Those who are not civil servants in the sense of the employment law, who receive certain tasks from a state agency, or an agency or corporation that receives assistance from the state, can also commit disgraceful acts that harm state finances or the state economy. Likewise, corporations, which are believed to have the potential to commit criminal acts, this is because corruption as one of the white-collar crimes is carried out with an unusual modus operandi, one of which is using

corporations as a means, this is quite reasonable because the corporate regulation is very limited so that it becomes means of crime to avoid existing legal regulations. Because many corporate crimes have been playing fraudulently in their business activities, they always hide behind the walls of the corporation.[1]

It is not easy for law enforcement officers to determine corporations as legal subjects for criminal acts of corruption and the judges have successfully sentenced them to punishment. Even if there is, it means that it is a new thing and can be categorized as a progressive law enforcement step.[2] However, in practice and regulations in Indonesia, related to criminal corruption against corporations, it is regulated in Article 20 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption which reads:

(1) In the case of a criminal act of corruption by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and or its management.
(2) A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on a work relationship or based on other relationships, acting within the corporate environment, either individually or jointly.
(3) In the event that a criminal charge is made against a corporation, the corporation is represented by the management.
(4) The management representing the corporation as referred to in paragraph (3) may be represented by another person.
(5) The judge may order the management of the corporation to appear in person in court and may also order that the management be brought before a court session.
(6) In the event that a criminal charge is made against a corporation, the notice to appear and the submission of the summons shall be submitted to the management at the management's residence or at the management's office.
(7) The principal punishment that can be imposed on a corporation is only a fine, with the maximum sentence being added by 1/3 (one third).

The problems that are seen in the application of criminal acts against corporations are that there are no rules in criminal procedural law that accommodate ways of law enforcement against corporations in addition to being related to criminal liability for corporate crimes as legal subjects not explicitly regulated in the Criminal Code, considering that the national criminal law is designed to deal with individual human behavior (natuurlijk person). The Criminal Code is based on the principle that only humans can be prosecuted as creators/actors who are accountable for an offense, whether in the form of a crime or a violation. This can be seen through the formulation of articles in the Criminal Code, including:

1. How to formulate offenses that always start with the word "whoever" which generally refers to or refers to people or humans
2. The criminal system adopted, specifically for the loss of freedom, can only be imposed on humans and cannot be imposed on legal entities
3. According to the principles of Indonesian criminal law, legal entities cannot realize offenses because Indonesian criminal law is formed based on the teachings of individual mistakes
4. There is no special procedure in criminal procedural law for corporations.[3]

The unregulated procedural law concerning corporations in the Criminal Procedure Code is an obstacle in eradicating corruption against corporate actors. This was acknowledged by the Supreme Court,

1 Edi Yunara, *Korupsi dan pertanggungjawaban Pidana Korporasi*, Bandung, PT. Citra Aditya Bakti, 2012, Page. 11

2 Budi Suhariyanto, *Progresivitas Putusan Pemidanaan Terhapda Korporasi Pelaku Tindak Pidana Korupsi,* De Jure, Juni 2016,Vol. 16 No. 02.

3 I Dewa Made Suartha, *Hukum Pidana Korporasi Pertanggungjawaban pidana dalam kebijakan hukum pidana Indonesia*, Malang, Setara Press, 2015, Page. 8

where several Supreme Court judges complained that there were still few legal rules, both materially and procedurally, which clearly regulate criminal acts against corporations. The rules contained in Article 20 paragraph (1) to paragraph (7) of the Anti-Corruption Law are still considered unclear.[4]

However, the corporation was finally able to be tried for the first time in a corruption crime which was charged and prosecuted and the sentence was decided until it became legally binding, namely PT. Giri Jaladhi Wana (PT GJW). In his indictment, the Public Prosecutor (JPU) demanded that PT GJW be found guilty of violating Article 2 paragraph (1) jo. Article 18 Jo. Article 20 of the PTPK Law jo. Article 64 paragraph (1) of the Criminal Code as stated in the Primary Indictment, and imposes a criminal sentence on the defendant PT GJW with a fine of Rp. 1,300,000,000, - (one billion three hundred million rupiah) and additional punishment in the form of temporary closure of PT. GJW for 6 (six months. On this claim, the Panel of Judges of the Banjarmasin District Court through its Decision No.812/Pid.Sus/2010/PN.Bjm decided exactly the same as the prosecutor's claim. Based on the decision of the Banjarmasin District Court, the defendant through his legal advisor submitted an appeal to the Banjarmasin High Court. The Banjarmasin High Court through its decision Number 04/PID.SUS/2011/PT.BJM decided to accept the request for an appeal from the Defendant's Legal Counsel and upheld the Banjarmasin District Court's Decision Number: 812/Pid.Sus/2010/PN.Bjm dated 09 June 2011 requested the appeal, with a mere improvement regarding the amount of the fine so that it reads in full stating that the defendant PT GJW has been legally and convincingly proven guilty of committing a criminal act of "continuous corruption" and therefore sentenced the defendant PT GJW to a fine of Rp. 1,317 ,782 129, - (one billion three hundred seventeen million seven hundred eighty-two thousand one hundred and twenty-nine Rupiah) and impose additional penalties in the form of Temporary Closure of PT. Giri Jaladhi Wana for 6 (six) months.

From the first corporate case, until now many corporate legal subjects have been tried for corruption, especially by the Attorney General's Office of the Republic of Indonesia. In the judicial process carried out against corporations, it is based on the applicable procedural law and also several other provisions to fill legal voids, among others, based on the Attorney General's Regulation Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Subjects. Corporate Law as well as Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

In relation to the corporation as the subject of a criminal act, there are 3 forms of accountability, namely:[5]

1. Corporate management as the maker and management who must be responsible

2. Corporations as producers and administrators who must be responsible; and

3. Corporation as maker and responsible.

In connection with the conviction of PT. The Giri Jaladhi Wana is interesting to discuss regarding the application of criminal sanctions against the corporation itself and also being subject to criminal sanctions against corporate management who have previously been sentenced to imprisonment and fines. The interesting thing to discuss is whether the corporation being tried, namely PT. Giri Jaladhi Wana is not nebis In idem, considering that a corporation in carrying out legal actions is represented by its management and the actions of the management who violate the law have been tried based on the corruption law, so that based on the provisions of Article 76 of the Criminal Code paragraph (1) requires a person not may be prosecuted twice because of an act that an Indonesian judge against him has tried with a final

4 **. Ahmad Drajad (Hakim Ad Hoc Tipikor Pengadilan Tipikor Medan),** *Kendala Penerapan Sanksi Pidana Terhadap Korporasi Sebagai Pelaku Tindak Pidana Korupsi*, Internet, Internet, 28 March 2015, accessed 9 October 2021

5 Edi Yunara, *Op.Cit*, Page. 105

decision, what needs to be discussed is why the corporation is not subject to an inclusion article but is subject to an article of continuous and independent action that is not the same as the article imposed on its management which includes the act of participation.

Method / Methodology

The normative juridical method is used in reviewing the sentencing decisions of corporations that are perpetrators of corruption in this progressive legal perspective. There are 3 (three) approaches to assessing the problem, namely the statutory approach and the case approach and the conceptual approach.

The statutory approach is used to examine the problem normatively from both the ius constitutum and ius constituendum perspectives. The case approach is used to examine the problem in terms of developing judicial practice in responding to and actualizing the law in concreto. The conceptual approach is used to examine the issue of corporate punishment in the legal considerations listed in court decisions related to the views and doctrines of legal experts.

The data sources used are secondary data consisting of primary legal materials in the form of legislation and court decisions as well as secondary legal materials in the form of literature and research results. The laws and regulations used include those relating to the regulation of corporations as subjects of criminal law and corruption, namely Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

The court decisions studied are those related to corporate cases Perpetrators of corruption, namely Decision No.812/Pid.Sus/2010/PN.Bjm and Decision Number 04/PID.SUS/201 1/PT.BJM which is assumed to contain the discovery of new legal rules. viewed from a progressive legal perspective. The literature used in the study to avoid misunderstandings is related to criminal liability, corporations, criminal acts of corruption, and the theory of legal discovery, as well as methods of progressive legal discovery. The legal materials and literature are collected through systematic methods and recorded on cards, including the problems, principles, arguments, implementations taken, alternative solutions and so on.

The data that has been collected is then described and interpreted according to the subject matter, then systematized, explained, and given arguments. The analytical method applied to obtain conclusions on the problems discussed is through qualitative juridical analysis.

Discussion / Results and Discussion

Criminal liability for corporations and their management and application of inclusion articles in corruption crimes

Corruption crimes that are being investigated and prosecuted against corporations are now starting to appear, along with the development of the modus operandi of corruption that uses business entities as a tool to take advantage which unlawfully has caused enormous losses to state finances and can even harm the country's economy. . By targeting corporations as perpetrators of criminal acts, it is intended to provide significant results towards the goal of eradicating corruption, namely to restore and restore state finances that were taken against the law. In addition, to anticipate the slow development of crime, the provisions governing it are followed.

This is quite reasonable, considering that the results of criminal acts of corruption committed by corporations will be transformed into corporate assets and assets so that it will be easier to recover state

losses by seizing corporate assets originating from criminal acts of corruption, compared to if they have to prosecute. civil servants or state administrators who commit criminal acts of corruption that often only punish the perpetrators without any assets or assets resulting from corruption that can be confiscated or recovered because most of them have been enjoyed by individual actors.

Steps to ensnare corporations in criminal acts of corruption have been started by the Banjarmasin District Attorney who investigated, prosecuted and tried the first corporation, namely PT. Giri Jaladhi Wana and received a court decision that has permanent legal force. This should be appreciated considering the limitations in terms of the set of rules, both regarding formal and material crimes. This is a progressive form of action taken in the midst of the lack of tools that regulate corporations but is a necessity because along with the development of society and its economy, of course, it is accompanied by the growing number of crimes with various modus operandi carried out by corporations.

Based on data from the National Working Meeting for Special Crimes at the Indonesian Attorney General's Office, from 2020 to 2021, there are 13 corporate cases that have entered the trial stage and 10 cases in the investigation stage. As quoted from Tempo magazine, the 13 suspected investment management companies are PT PAN Arcadia Capital, PT OSO Investment Management, PT Pinnacle Persada Investama. Then PT Millennium Capital Management, PT Prospera Asset Management, PT MNC Asset Management, PT Maybank Asset Management and PT GAP Capital. Next are PT Jasa Capital Asset Management, PT Corfina Capital, PT Treasure Fund Investama, PT Sinarmas Asset Management and PT Pool Advista Asset Management.[6]

In its development, there are pros and cons regarding criminal liability to corporations. The opinion that opposes corporations being subject to criminal charges is that corporations do not have a heart, therefore it is impossible to show a moral value that can be required to be criminally blamed. Then the defending opinion states that the corporation is not a fiction. Corporations really exist and occupy an important position in our society and are capable of causing harm to others in society as well as humans. Treating corporations like humans and burdening the liability of criminal acts made by corporations is in line with the legal principle that everyone is equal before the law (principle of equality before the law).

According to Sutan Remy Sjahdeini, supporting corporations is accounted for for several reasons:[7]

First, even though the corporation in carrying out its activities does not do it alone but through people who are the management and employees, if the action is intended to provide benefits to the corporation and harm others. Second, it is not enough to impose criminal responsibility on the management of the corporation for the crime he committed because the management rarely has sufficient assets to be able to pay the criminal fines imposed on him for the social costs that must be borne as a result of his actions. Third, imposing criminal acts on corporate management is not enough to be an incentive to take preventive action so as to reduce the purpose of prevention from punishment. Fourth, the imposition of criminal liability on corporations will place the company's assets in heavy fines, possibly confiscated for the state.

Furthermore, Sutan Remy stated that there are 4 (four) criminal liability systems against corporations, namely:

1. Management as perpetrators of criminal acts, management who must bear criminal responsibility
2. Corporations as perpetrators of criminal acts, but administrators who bear criminal responsibility
3. The corporation as the perpetrator of the crime and the corporation itself bears criminal responsibil-

6 Majalah Tempo, *13 Tersangka dari Korporasi Jiwasraya akan di sidangkan*, tgl. 20 Pebruari 2021 accessed on the Internet on November 6, 2021.

7 utan Remy Sjahdeini, Pertanggungjawaban Pidana Korporasi, Jakarta, Pustaka Utama Grafiti, 2011, Page. 57

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4. Managers and corporations are both perpetrators of criminal acts and both must bear criminal responsibility.

In relation to the fourth system, the question then becomes whether the joint concept referred to is the concept of participation that can be imposed on the corporation and its management together. The provisions of Article 20 paragraph (1) of Law Number 31 of 1999 allow corporations and their management to be subject to criminal penalties together as well as the provisions of Article 26 of the Regulation of the Supreme Court Number 13 of 2016 concerning Procedures for Handling Corporate Crime Cases which reads: jointly filed as defendants, the verdict of punishment and not punishment shall follow the provisions as referred to in Article 24 and Article 25.

To answer this, we must refer to the provisions of Article 55 paragraph (1) of the Criminal Code, namely those who commit, order to do and those who participate in doing it. Referring to the concept of inclusion in the Criminal Procedure Code, according to Wirjono Prodjodikoro, citing the opinion of Hazewinkel-Suringa, the Dutch Hoge Raad who stated two conditions for the existence of participating in a criminal act, namely: among them; Second, they must jointly carry out the will.[8] According to Adami Chazawi, participation includes all forms of participation/involvement of a person or persons both psychologically and physically by doing each act so as to give birth to a criminal act.[9] Even though they have different roles in the crime committed, in my opinion, the two participants must have a correlation so that the series of actions makes a perfect crime.

There are two teachings in the inclusion, namely:[10] subjective teachings, requiring two things, namely, first, the existence of an inner relationship (intentional) with the criminal act to be realized, meaning that intentional action is directed at the realization of a criminal act, secondly there is an inner relationship (intentional, such as knowing). between himself and the other participants and even what the other participants did. Then the subjective teaching states that the person's actions have something to do with the realization of a criminal act or in other words the form of that person's actions objectively has a role/influence, whether large or small, on the realization of a crime.

The teachings of participation that are required according to the Criminal Code are related to criminal acts committed by people as individuals. Our concept of criminal responsibility adheres to the concept of the teaching of wrongdoing known as mens rea, namely an act does not result in a person being guilty unless the person's thoughts are evil. Based on this concept, there are 2 (two) conditions that must be met to be able to convict someone, namely there is a forbidden outward act (actus reus) and there is an outward evil/despicable attitude that is forbidden (mens rea). Criminal liability is always related to mistakes, whether in the form of intentional or negligent.[11]

Related to this, what about criminal acts committed by criminal liability against the corporation and also its management whether it can be subject to participation. There is no legal theory that supports this. Considering that to be subject to participation, there must be awareness for both actors in committing an element of a criminal act. Corporations do not have a heart, so they are said to have no thoughts of committing a crime.

In the development of the theory of corporate criminal responsibility, it is impossible for a corporation to carry out its activities without the corporate organs that move it and the corporation is not a body that can act alone and has mens rea because it does not have a heart, so based on the theory of identification to determine the existence of mens rea it must identify who is the directing mind of the corporation.

8 jono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia,* Page. 123

9 Adami Chazawi, *Percobaan dan Penyertaan,* Jakarta, PT. Raja Grafindo Persada, Page. 73

10 *Ibid*, Page. 77

11 I Dewa Made Suartha, *Op.Cit*. Page. 82

So based on the theory, it states that the behavior and mens rea of someone related to the company can be attributed to the corporation so that criminal liability can be charged to the corporation. In other words, the behavior and attitude of the heart of the person is considered to be the behavior and attitude of the heart of the corporation.

In addition to using identification theory, to determine the existence of mens rea in the form of intentional acts is to use the theory of vicarious liability, based on this theory allows a corporation to be responsible for actions committed by corporate organs in its capacity to act for and on behalf of the corporation. It is from the actions of the corporate organs that it can be proven that there was an element of intent or an error.

The determination of the offense of participation in a crime against a corporation is an issue that has not yet received theoretical agreement from criminal law experts, as Sudarto said that the issue of participation is often a source of differences in corporate criminal liability.[12]

What is said is true if it is related to the existence of a corporation that cannot commit a criminal act directly without the intermediary of people acting for and/or on behalf of the corporation. According to Remmelink, so that the perpetrator in a criminal act can be said to be a mede pleger, then there must be elements of participating in doing that, namely between participants there is cooperation that is realized and the implementation of criminal acts together.

However, if you look at the elements of the offense that are accounted for by the corporation and its management, related to the condition that there must be an agreed-upon cooperation, it can actually be seen that there is cooperation in it, namely that the management in committing a crime cannot carry out a series of actions if it is not in a container or facility called a corporation. This means that in criminal acts committed by the management, they commit criminal acts in the form of commission offenses, while corporations commit criminal acts in the form of commissions. a corporation whose heart (mens rea) is in the management as the directing mind,[13] then the management's mens rea is a representation of corporate mens rea based on the theory of vicarious liability and aggregation. Then regarding the conditions for the implementation of a criminal act together, a participating actor is not required to completely fulfill all the elements of the offense.[14]

In my opinion, this means that it is sufficient for the corporation to be a means to commit criminal acts in accordance with the ultra vires principle and the purpose of the crime is to gain profit for the corporation, the act of carrying it out is carried out by the management who fulfills the elements of the criminal act until it is completed where the capacity of the management is to represent the heart of the corporation and its capacity. act for and on behalf of the corporation in accordance with the principle of vicarious liability.

However, because the concept of participation regulated in the Criminal Code is a concept of a criminal act that is realized and can only be applied to humans as individuals who have a heart and the actions taken are in the form of direct physical acts, it is clear that the concept of participation in criminal acts committed against corporations can not be applied because the concept of teaching does not stipulate that way.

If we refer to the written provisions regarding the doctrine of participation and the concept of

12 Sudarto, *Hukum Pidana I*, Fakultas Hukum Universitas Diponegoro, Badan Penyediaan Bahan-Bahan Kuliah, Semarang, 1987, Page. 63

13 Hasbullah F. Sjawie, *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi,*Bandung, PT. Citra Aditya Bakti, 2013, Page 274

14 Mahrus Ali, *Asas-Asas Hukum Pidana Korporasi,* Jakarta, PT. Raja Grafindo Persada, 2013, Page. 84

criminal liability adopted in criminal law in Indonesia, especially regarding corporations, then the legality principle adopted in Indonesia cannot be applied to participation acts carried out by corporations and management, but in the criminal liability system against corporations that allow corporations to be held criminally accountable along with their administrators, it is necessary to reform the criminal law, especially regarding the doctrine of inclusion where in overcoming the development of increasingly complex crimes, especially crimes by corporations, it seems that classical criminal law which adheres to the principle of error is no longer able to accommodate the crimes committed indirectly by the corporation. Based on modern progressive and criminal law, the accountability of the inclusion doctrine needs to be expanded to mean that the inclusion doctrine can be imposed on participation actors who do not act directly and have no faults at all like corporations.

This is in line with the opinion of Sutan Remy which states that for criminal acts that require an element of action (actus reus) and an element of error (mens rea), these two elements do not have to be in one person only.[15] This means that the person who performs actus reus does not necessarily have to have his own mens rea which is the basis for the purpose of doing the actus reus, as long as in the case that the person performs actus reus what is meant is carrying out orders or orders from other people who have a heart that wants the mens rea to be carried out by the person who was ordered. With the combination of actus reus carried out by actors who do not have mens rea (not having the wrong heart) and mens rea owned by the person who ordered or arranged for the actus reus to be carried out, then in aggregate (aggregation) the elements needed for imposition of criminal liability on corporations.

Nebis in idem against decisions that punish the actions of corporate management who have been tried before are related to court decisions against corporate actions that are tried later

The principle of Ne bis in idem (non is in idem) comes from the Latin which means no or never twice the same . In the Law dictionary, Ne bis in idem means that the same case cannot be submitted more than once to be decided by the court. [16]This principle in the laws and regulations in our country is regulated in article 76 paragraph (1) of the Criminal Code which reads: Unless it is regulated in a judge's decision it is still possible to repeat it, a person may not be prosecuted twice because of an act that an Indonesian judge against him has tried with a verdict that be fixed. In the sense of Indonesian judges, including judges of the autonomous and customary courts, in places that have these courts.

The provisions of this article are intended to provide certainty to

society as well as to each individual to respect the decision. The principle contained in Article 76 of the Criminal Code is known as ne bis in idem, which means that it cannot be the same thing that has been decided,

examined, and decided again a second time by the court. A person can be free from prosecution for a second time based on the principle of ne bis in idem (Article 76 of the Criminal Code) if it meets the following requirements:

1. There is a court decision that has permanent legal force against the same crime

2. Decisions handed down against the same person

3. The actions of the suspect/defendant are the same.

In the provisions of Article 20 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, regulates the existence of criminal liability that can be imposed on

15 Sutan Remi, *Op.Cit.* Page. 121

16 Alfitra, *Hapusnya Hak dan Menuntut Menjalankan pidana*, Depok, Raih Asia Sukses, 2012, Page. 134

a corporation and or its management in the event that it is carried out by or on behalf of a corporation, criminal charges can be made against the corporation and or manager.

This provision gives rise to the interpretation that in the event that a prosecution can be carried out against the corporation and its management simultaneously and it can also be carried out against the management and the corporation separately. This happened in the case of a criminal act of corruption which has permanent legal force in the case of PT. Giri Jaladhi Wana, where in that case the president director and director were first brought to trial and convicted until later serving a sentence, after that a separate prosecution was carried out for the corporation and also been found guilty and has permanent legal force, matters This is interesting to discuss. Because the defendant as the Management in this case as the President Director and the Director is subject to Article 2 paragraph (1) in conjunction with Article 55 paragraph (1) of the 1st Criminal Code, while the corporation is subject to Article 2 paragraph (1) in conjunction with Article 64 paragraph (1) Criminal Code.

If we examine in depth, the imposition of criminal sanctions on the President Director and the Director of PT. Giri Jaladhi Wana is based on the proof of the actions of both in their capacity as managers who act for and on behalf of the corporation where the actions of both are in the context of benefiting or providing benefits to the corporation, thus based on the principle of vicarious liability, the scope of their actions should be to prove the criminal act charged to the corporation.

The doctrine of vicarious liability is also called respondent superior.[17] This theory adopts a civil principle, namely a principle that the employer will be responsible for the unlawful acts of his subordinates, as long as it is carried out within the scope of his work. This is because employers benefit from the work of their subordinates, this theory deviates from the teachings of mens rea because this theory holds that one person's mistakes can automatically be attributed to others who do not have any faults.

Based on the legal theory of identification, the mens rea of the corporation is the embodiment of the actions and mens rea of its management so that the proof of guilt and actions of the management of the corporation also proves the actions of the corporation, so based on this, the actions have been tried and the court decided against the management.

When referring to the evidence of the actions carried out by the management of the corporation and its capacity as a directing mind, then the act should no longer be prosecuted because the act is proven, except if in the application of the article to the corporation the inclusion article is also imposed, then the practice is still allowed because it is still there are other defendants as participating actors who have not been asked for criminal responsibility.

From the case of PT. Giri Jaladhi Wana, it is as if the cases and actions being tried are carried out independently, where the management is subject to an article on participation with other actors based on the definition of participation which can only be imposed on perpetrators who physically commit a criminal act and who have a heart and soul. carry out direct actions as described previously, while the imposition of the corporation is judged by itself as if it is separate from the case of the management.

In the decision, the judge stated that the case was not nebis in idem, because the perpetrators were different and based on the provisions of Article 20 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which stated that criminal charges could be made against the management and the corporation and by because the corporation has not been prosecuted so that the Panel of Judges declares the case not nebis in idem.

Indeed, when viewed from the perpetrators, it is clearly different in terms of capacity, the North Director, whose capacity as management has been tried earlier, while the corporation that was presented

17 Hasbullah F. Sjawi, *Op.cit,* Page. 302

as a defendant as a legal entity is also represented by the management, in this case the President Director of PT. Giri Jaladhi Wana.

This is of course a legal issue to be studied, but with this decision at least it is a legal breakthrough in terms of the lack of regulations governing corporations which we currently know turns out to be a lot of state money being corrupted by using means in the form of corporations that are exploited. by criminals, in the event of a legal vacuum due to unclear regulations regarding corporations.

The number of corporate cases that have been acted on by the Attorney General's Office such as the Jiwasraya case and other cases have opened our eyes to the urgency of making corporate arrangements in written provisions considering that our country is a country that adheres to the principle of legal certainty, which means that every action of its citizens must be based on legal certainty. written legal provisions.

Related to the trial against the corporation PT. Giri Jaladhi Wana, although the legal provisions and judge's considerations state that corporations can also be criminalized, but if we see that the actions proven to PT. Giri Jaladhi Wana is an act that has been decided according to the law in Indonesia that has been set against its management, so it is clear that there is a series of ne bis in idem, even though if we analyze the actions of the Management it is a corporate act, because a corporation cannot commit a criminal act without the help of the organs of the community. corporate organ that has the power to move the corporation.

However, it is worth appreciating the actions taken by the Banjarmasin Kejari and the Court who have made legal breakthroughs in the midst of a legal vacuum to ensnare corporations, but along with the development of corporate crime, especially related to corruption which has begun to surface, where the impact is very large. and is detrimental to the state, it is appropriate that the non-uniform application of criminal rules, including the procedural law, needs to be regulated in a different provision from the provisions in the Criminal Code which are very outdated compared to the development of modern criminal law.

Corporations are a new tool in the development of corruption crimes that must be strengthened in the application of the law, changes to the Criminal Code and the Criminal Procedure Code are an urgent need to adapt to the development of corporate crime. For this reason, it is necessary to regulate the procedural law, how the investigation and prosecution process, who should act on behalf of the corporation, our Criminal Procedure Code only regulates the procedures for the judicial process against individuals who commit criminal acts in accordance with the provisions of the Criminal Code, while in its development outside the Criminal Code there are criminal acts committed by a corporation which, according to the provisions of Article 1 point 1, a corporation is a group of people and/or assets that are organized either as legal entities or non-legal entities.

The provisions in Article 20 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, still lead to interpretations and indecision regarding who can represent a corporation as a criminal act, because it still provides a gap for corporations to be represented by other people, as is the concept in law. civil.

Corporations must be seen as legal subjects who have different characters from individual or human actors, in terms of fulfilling a criminal act against a corporation, it is necessary to study that corporations do not require any mistakes. The main reason for implementing criminal liability without guilt is for the protection of the community but with conditions that have been fulfilled based on legal theory that has developed in the judicial process.

According to Sutan Remy, the imposition of corporate criminal liability can be carried out if it

fulfills the following elements:[18]

1. The crime was committed either in the form of doing or not doing or ordered by the corporate personnel who within the corporate organizational structure have a position as the directing mind.
2. Actions are taken within the framework of the aims and objectives of the corporation.
3. The criminal act is committed by the perpetrator or on the orders of the giver of orders in the context of his duties in the corporation.
4. The crime is committed with the intention of providing benefits to the corporation.
5. The perpetrator or the giver of the order has no justification or excuse to be released from criminal responsibility.
6. For criminal acts that require an element of action and an element of error, these two elements do not have to be present in only one person.

Regarding the existence of a court decision that punishes a corporation for an act that has been proven against its management, it should not stand alone but is a series of actions that are participatory in nature so that the proof against the corporation is a continuation of the previous case related, but to apply the doctrine of participation to the corporation together with its management It is also not something that is commonly applied because the teachings of criminal law in the Criminal Procedure Code have not accommodated this and legal experts have not agreed on the doctrine of inclusion that can be applied in cases of management and corporations. So it takes courage to apply the teachings of inclusion in the context of progressive legal needs.

Conclusion

The teaching of participation in the Criminal Code only accommodates criminal acts committed by individuals who are not legal entities, the condition for participation in a criminal act is the conviction of the perpetrators to commit a crime and the act is carried out directly, so it cannot be applied to the crime committed. and shared responsibility between the management and the corporation. However, in its development, based on the legal theory of vicarious liability and identification theory, the mens rea of the corporation is reflected in the mens rea of the corporate organ which acts as the directing mind and the corporation as a form of passive organization that cannot commit criminal acts without the assistance of its management, so it is clear that there are active actions carried out by the management and passive actions by the corporation, meaning that there is close cooperation between the corporation and its management in carrying out criminal acts perfectly and these actions are intended for the benefit of the corporation. So that there are legal developments related to participation by corporations that have not been accommodated in the Criminal Code, namely the inclusion of criminal acts by actors who do not act directly, namely corporations, so it is necessary to apply it based on progressive law and modern criminal accountability. participation that does not act directly and has no fault at all like a corporation.

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