

PEMBAHARUAN HUKUM PERTANGGUNG JAWABAN KORPORASI SEBAGAI SUBJEK HUKUM PIDANA DI ERA DISRUPSI

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Abstract

The ability to utilize information technology in the era of disruption is the empowerment of information and communication technology, which is increasingly difficult to stem from this phenomenon. The existence of corporations as a legal subject has a very important role in the development of a country. So that corporations have the potential to commit deviant acts and lead to criminal acts. The punishment for corporations is different from the punishment for people, because corporations have a different character in principle from the criminal law subjects for people. The research used is juridical analysis research. the issues raised regarding the Rationale of Corporations as Subjects of Criminal Law and Corporate Criminal Liability in the era of disruption, the results of the analysis are as follows. The punishment for corporations is different from the punishment for people, because corporations have a different character in principle from the criminal law subjects for people. There are forms of punishment that can be applied to people but cannot be applied to corporations. Based on this, there are several forms of sanctions that can be applied to corporations that commit crimes, namely probation, equity fines, transfer into individual sanctions, additional sanctions, community service sanctions, juridical authority from outside the company, and obligation to buy shares.

Keywords: *Accountability, Disruption Era Criminal Law Corporation*

A. Introduction

The Disruption Era presents the power of technology, information and communication based on the benefits of internet media to become a new force in providing convenience for everyone to help every movement without knowing the boundaries of space and time, with all forms of risk and legal liability arising from behavior. everyone who uses technology with different intentions and goals, this is where the challenge of crime is related to the protection of personal data which is the absolute right of every person who is a legal subject in the sovereign law country of the Republic of Indonesia.¹ Thus, development is a natural process experienced by society in order to lead to a prosperous and better society. For the Indonesian nation, the goal of national development is to realize the whole Indonesian people and Indonesian society as a whole that is just, prosperous and orderly based on Pancasila and the 1945 Constitution. Pancasila as contained in the Preamble to the 1945 Constitution is the basis of the state.²

An unavoidable fact in the process of development and modernization is a change in the function carried out by society, namely the occurrence of specialization through the formation of special units that carry out an activity, for example in the economic field, which is marked by an industrialization process which can be seen through the formation of companies or agencies. business entity oriented in the field of economy and trade. Criminal acts or criminal acts are acts that are

¹ Sri Ayu Astuti, "Era Disrupsi Teknologi 4.0 Dan Aspek Hukum Perlindungan Data Hak Pribadi," *PAJOU* (Pakuan Justice Journal Of Law) 01, no. 01 (2020): 1–32,

² Andri Winjaya Laksana, *Manifestation Of Pancasila Values In The Omnibus Law For Justice, The 6th Proceeding International Conference And Call Paper Sultan Agung Islamic University, 2021, Page 164-173*

against the law.³

According to David E. Apter, industrialization is a special aspect of modernization, occurring when modernization enters a period that places the role of factory production in a place that functionally has strategic value. He even further said that a country might modernize without relying a lot on industry, but conversely industrialization could not possibly be carried out without going through modernization first.⁴

Based on the above opinion, it can be said that development and modernization can be interpreted as a structural overhaul, namely a change in society from an agrarian society to an industrial society. According to I.S. Susanto, industrial society has the following characteristics:⁵

- a. The increasing need for large amounts of capital encourages increased efforts to collect and place ownership (money) in the hands of “other people”. This phenomenon can be seen by the emergence and increasing activities of financial and banking institutions in raising increasingly large capital and the many companies that go public as an attempt to raise capital from the public;
- b. Increasing imbalances in the distribution of income and
- c. the accumulation of vast amounts of wealth in the hands of a small part of society;
- d. Changes in the pattern of ownership, namely from visible property such as land and buildings to invisible power and rights such as shares and other securities;
- e. There is a transfer of ownership, namely from private property to corporate property, including the security system, especially in the form of legislation;
- f. Market-oriented economic activities including international markets;
- g. The more widespread and powerful the corporation is, both as an economic actor and in social life in general

The existence of a corporation is the main characteristic or requirement for industrial society. Development in Indonesia is currently directed at improving the industrialization process, so it is understandable that the industry is currently under the tug of progress in the business world followed by a very large role for corporations. Reality shows that corporate development as a development actor's business is increasingly playing an important role in people's lives. With regard to the ability of corporations to commit criminal acts and the possibility of being convicted of corporations as natural legal subjects. As a rule of law, actions taken by both the government and citizens must be based on law.⁶

B. Problem

Based on the description above, a problem related to the position of corporations as perpetrators of criminal acts in the era of disruption can be defined as follows:

1. What is the rationale for corporations as subjects of criminal law in the era of corruption?
2. What is Corporate Criminal Responsibility in the era of the eruption?

C. Research Methods

To answer the writing questions that have been formulated above, the authors will use the normative research method.⁷ Normative Juridical Research is a legal research method that is carried

³ Bahtiyar Efendi, Anis Mashdurohatun, Sri Endah Wahyuningsih, *The Reconstruction Of Values In Handling Terrorism Based On Pancasila*, IJLR, Volume 6, Number 1, April 2022, Page 29-41

⁴ Satjipto Rahardjo, *Hukum Dan Perubahan Sosial: Suatu Tinjauan Teoretis Serta Pengalaman-Pengalaman Di Indonesia* (Genta Publishing, 2009). Page 113

⁵ I S Susanto, “Kejahatan Korporasi Di Indonesia: Produk Kebijakan Rezim Orde Baru” (1999). Page 68-69

⁶ Ahmad Faisol and Anis Mashdurohatun, *Law Enforcement against the Criminal Action of Little Theft*, Vol 2 Issue 4, December 2020, Page 647-657

⁷ Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, *The Legal Protection Against Children Through A Restorative Justice Approach*, Law Development Journal, Volume 3 Issue 2, June 2021, Page 223-231

out by examining library materials or mere secondary materials,⁸ This research is a Normative Juridical Research on legal renewal in corporations as a subject of criminal law in the era of disruption. This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter. The scope of normative legal research according to Soerjono Soekanto includes;⁹

1. Research on legal principles.
2. Research on legal systematics.
3. Research on the level of legal synchronization vertically and horizontally.
4. Comparative law.
5. Legal history.

This research can be used to draw legal principles in interpreting laws and regulations. In addition, this research can also be used to find legal principles that are formulated either implicitly or explicitly.¹⁰

D. Results and Discussion

1. The Rationale of Corporations as Subjects of Criminal Law in the Era of Disruptions

The Criminal Code (KUHP) only recognizes individuals as subjects of criminal law, while corporations are not yet seen as subjects of criminal law. However, in subsequent developments, both in specific criminal law, such as Law Number 7 Drt. of 1955 concerning Investigation, Prosecution and Trial of Economic Crimes, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, Government Regulation in Lieu of Law -Invite No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism as already stipulated to become law based on Law Number 15 of 2003 concerning the Stipulation of Government Regulations in lieu of Law Number 1 of 2002 on the Eradication of Criminal Acts of Terrorism, as well as in sectoral laws and regulations which contain provisions crimes, such as Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 22 of 2001 concerning Oil and Natural Gas, Law Number 41 of 1999 concerning Forestry, Law Number 4 of 2009 concerning Minerals and Coal Mining and others.

Based on the provisions above, corporations are considered as subjects of criminal law. Likewise, in the Criminal Code Bill, the acceptance of corporations as subjects of criminal law is in line with the development and economic growth that is quite rapid today, where corporations play a very large role in the intricacies of the economy. country, especially in the face of the industrialization era that is currently being developed by our government. Due to this, the role of corporations is so large in the country's economic growth, but behind that it cannot be ruled out that there are crimes committed by corporations in various fields. In the General Explanation of the 2015 Criminal Code Bill Book One number 4, among other things, it is stated: "Given the progress that has taken place in the fields of finance, economy and trade, especially in the era of globalization and the development of organized criminal acts both domestic and transnational in nature, the legal subject Criminal law cannot be limited only to natural persons, but also includes

⁸ Soerjono Soekanto, *"Faktor-Faktor Yang Mempengaruhi Dalam Penegakan Hukum"* (Jakarta: Rajawali Pers, 2008). Page 11

⁹ Soekanto Soerjono and Sri Mamudji, *"Penelitian Hukum Normatif Suatu Tinjauan Singkat"* (PT Raja Grafindo Persada, Jakarta, 1995). Page 5

¹⁰ Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Sinar Grafika, 1991). Page 12

corporations, namely organized groups of people and/or assets, whether they are legal persons or not..... *By adhering to the understanding that corporations are the subject of crime, it means that corporations, both as legal entities and non-legal entities, are considered capable of committing crimes and can be held accountable in criminal law.....*”

According to Muladi, there are several justification reasons why corporations are recognized as perpetrators of criminal acts, namely:¹¹

- a. On the basis of an integrative philosophy, namely everything should be measured on the basis of balance, harmony and harmony between individual interests and social interests;
- b. On the basis of the principle of kinship in Article 33 of the 1945 Constitution;
- c. To eradicate anomie of success (success without rules);
- d. For consumer protection;
- e. For technological progress

Regulating corporations as subjects of criminal law is motivated by history and different experiences in each country, including Indonesia. However, in the end there is a common view, that is, in connection with the development of industrialization and progress in the fields of economy and trade, this has prompted the notion that the subject of criminal law is no longer limited to natural persons, but also includes corporations, because certain crimes can be also carried out by corporations. According to Jan Rummelink, initially the legislators were of the view that only humans (individuals/individuals) could become subjects of criminal law, while corporations could not become subjects of criminal law. The existence of such a view can be traced from the history of the formulation of the provisions of Article 51 Sr. (Article 59 of the Criminal Code) especially from the way the offense is formulated which always begins with the phrase *hij die* (whoever).¹² The provisions contained in Article 51 have existed since 1951 in the economic criminal law (Article 15 of the Economic Penal Code). However, the provisions of the article in the economic field were repealed in 1976, and it was mentioned in the new Article 51, which means that it has ended the doctrine of fiction. The new legislation applies to general criminal law and economic criminal law, which is based on the idea that corporations are legal entities and can commit criminal acts. Furthermore, one thing that needs to be stated is related to the types of actors consisting of people and corporations. The definition of a corporation used by the Dutch Criminal Code is different from the definition of a corporation in civil law, also a legal entity that is not in the form of a legal entity is seen as a corporation and can be subject to criminal liability under Article 51.

2. Corporate Criminal Responsibility in the Disruption Era

Muladi emphasized that the problem that might arise is regarding what measures can be used as guidelines for corporate accountability. Another problem is how to determine the intentionality and negligence of the corporation. In his article “Responsibility of Legal Entities in Criminal Law” Muladi put forward two guidelines to be able to determine corporate intent and negligence, namely:

Taking responsibility for the corporation can be solved by looking at: Are the actions of the corporation’s management within the framework of the goals of the corporation’s statutes and/or in accordance with company policies. In fact, it is actually enough to see whether the corporate action is in accordance with the scope of work (*feitelijke werkzaamheden*) of the corporation. Corporate behavior is not easy to accept, if corporate actions in society are not considered as corporate behavior;

¹¹ Hamzah Hatrik, *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia: (Strict Liability Dan Vicarious Liability)* (Raja Grafindo Persada, 1996). Page 15

¹² Jan Rummelink, “Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dari KUHP Belanda Dan Padanannya Dalam KUHP Indonesia,” Jakarta: Gramedia Pustaka Utama (2003). Page 286

To determine corporate intent and negligence, this can be done by looking at: Whether the intentional acts of corporate management are in fact included in company politics, or are in real activities of a company. So it must be detected through the psychological climate that applies to the corporation. With the construction of accountability (tearekenings-constructie) individual intention (natuurlijk persoon) acting on behalf of the corporation can become corporate intention.¹³

According to Soeprapto, he gave the following reviews:¹⁴

By adhering to the old premise, that one's accountability is closely related to one's mistakes, the separation of bodily actions from responsibility... understandable. But the realities in society show that bodies play a significant role in economic life. Bodies have a will that is expressed in the form of decisions through their equipment, member meetings, board meetings, directors, representatives and so on. If the law allows bodies to perform actions as people through their tools, then it is understandable that mistakes can be found in bodies, if intentional or negligent people who maintain the tools. The mistake is not individual, because it concerns the body as a collectivity. Can this error be called a collective error, which can be borne by the management.

Furthermore, Hamzah Hatrik added that “besides, there are sufficient reasons to assume that a legal entity (corporation) has made a mistake and therefore must also bear it with his wealth, because he is the one who receives the prohibited benefits. Based on the above review, Soeprapto argues that in the case (a) there is intentional participation in a criminal act based on the formulation of Article 15 paragraph (1) of Law No. 7 Drt of 1955 concerning Investigation, Prosecution and Trial of Economic Crimes. Meanwhile in case (b) if the legal entity (corporation) is must also be held responsible for the actions of someone who acts as a representative for him as mentioned above, it is understandable that it is too far to expand responsibility. So Soeprapto argues that for legal entities (corporations) to be held accountable, the principle of error cannot be abandoned. As a comparison in responding to cases above, Roesla's opinion will be expressed here n Saleh, namely for case (a), he argues that:

- a The manager has committed an economic crime, namely setting a higher price than the price allowed by the government;
- b The director has committed a criminal act, the same as the manager. The position of the director in carrying out the criminal act, can be referred to as a person who participates in or assists one another depending on the nature of the cooperation between the Director and the Manager;
- c Legal entities (corporations) have committed economic crimes related to Article 15 paragraph (1) of the Law on Economic Crimes.

then the following conclusions can be drawn:

- a The source of the problem that gives rise to different views regarding the responsibility of the corporation and/or its management is related to the doctrine of deelneming, namely concerning prohibited acts or criminal acts and the teachings of errors concerning criminal responsibility;
- b Roeslan Saleh assesses by separating criminal acts and criminal liability. Meanwhile, Soeprapto actually combines criminal acts with criminal responsibility;
- c Soeprapto adhered to the principle of guilt for corporate criminal responsibility. Meanwhile, Roeslan Saleh is of the opinion that the principle of error is not absolutely applicable, especially for holding corporations accountable in law.

In the development of criminal law in Indonesia, there are three systems of corporate re-

¹³ Hatrik, *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia: (Strict Liability Dan Vicarious Liability)*.
Page 15

¹⁴ *Ibid.*

sponsibility as the subject of criminal acts, namely:

- a The management of the corporation as the actor, then the management is responsible;
- b The corporation as the actor, then the management is responsible;
- c The corporation as actor and responsible

Thus, if a crime is committed by and for a corporation, prosecution can be carried out and punishment can be imposed on the corporation itself, or the corporation and its management, or only the management. We can find this formulation in several criminal laws or sectoral laws that contain criminal provisions, for example in Law no. 32 of 2009 concerning Environmental Protection and Management, Law no. 15 of 2002 in conjunction with Law no. 25 of 2003 concerning Money Laundering Crimes and others

Then this corporate criminal responsibility can also be seen in Article 49 of the 2015 Criminal Code Bill which states “Criminal acts are committed by corporations if they are committed by people who have functional positions in the corporate organizational structure who act for and on behalf of the corporation or in the interests of the corporation, based on working relationship or based on other relationships, within the scope of the corporate business, either individually or jointly. Furthermore, Article 50 of the Criminal Code Bill states that “If a crime is committed by a corporation, criminal liability is imposed on the corporation and/or its management or corporate control personnel”. Furthermore, Article 51 of the Criminal Code Bill states that “Corporations can be criminally responsible for an act committed for and/or on behalf of the corporation, if the act falls within the scope of its business as specified in the articles of association or other provisions applicable to the corporation that is involved in the -kutan”. While the limitations are regulated in Article 52 of the Criminal Code Bill which reads “Criminal liability of corporate administrators is limited as long as the administrators have a functional position in the corporate organizational structure”.

Wolfgang Friedmann in his book entitled Law in Changing Society as quoted by Muladi, who states “the main effect and usefulness of a criminal conviction imposed upon a corporation be seen either in any personal injury or, in most cases, in the financial detriment, but in the public opprobrium and stigma The progress that has occurred in the field of economy and trade has brought changes to the subject of criminal law which can no longer be limited to natural humans (naturlijke person) but also includes legal humans (rechtsperson) who are commonly called corporations, because criminal acts Certain things can also be done by corporations. By adhering to the understanding that corporations are legal subjects, it means that corporations must be held accountable for all their actions. As a consequence of liability is the punishment of the corporation.

The punishment for corporations is different from the punishment for people, because corporations have a different character in principle from the criminal law subjects for people. There are forms of punishment that can be applied to people but cannot be applied to corporations. The progress that has occurred in the field of economy and trade has brought changes to the subject of criminal law which can no longer be limited only to natural humans (naturlijke person) but also includes legal people (rechtsperson) which is commonly called a corporation, because certain criminal acts can also be committed by corporations. By adhering to the understanding that corporations are legal subjects, it means that corporations must be held accountable for all their actions. As a consequence of liability is the punishment of the corporation. The punishment for corporations is different from the punishment for people, because corporations have a different character in principle from the criminal law subjects for people. There are forms of punishment that can be applied to people but cannot be applied to corporations.

E. Conclusion

Regulating corporations as subjects of criminal law is motivated by history and different experiences in each country, including Indonesia. However, in the end, there is a common view, that is, in connection with the development of industrialization and progress in the fields of economy and trade, this has prompted the notion that the subject of criminal law is no longer limited to natural persons, but also includes corporations, because certain crimes can be also carried out by corporations.

The punishment for corporations is different from the punishment for people, because corporations have a different character in principle from the criminal law subjects for people. There are forms of punishment that can be applied to people but cannot be applied to corporations. The progress that has occurred in the field of economy and trade has brought changes to the subject of criminal law which can no longer be limited only to natural humans (naturlijke person) but also includes legal people (rechtsperson) which is commonly called a corporation, because certain criminal acts can also be committed by corporations.

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