

# OBSTACLES OF THE PROSECUTOR IN DETERMINING CRIMINAL PROSECUTIONS AGAINST CRIMINAL ACTS OF CORPORATE CORRUPTION

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## Abstract

*This study aims to determine the barriers to prosecution of criminal acts of corporate corruption in accordance with the development of existing laws and regulations and to find out the obstacles to its application in real life. This research is an empirical legal research, using the law approach, interview approach, and data collection approach. corporations as legal subjects are in modern society, the role of corporations is very strategic, even in practice it can be a means to commit crimes (corporate criminals) and profit from the proceeds of crime (crimes for corporations) therefore to protect the public and provide legal certainty in the enforcement process. Government law seeks to regulate corporations as legal subjects in dealing with the public and other corporations. Corporations are legal subjects who can be held accountable but in practice there are still many obstacles to law enforcement in determining the prosecution of criminal acts of corporate corruption. Those obstacles. With the issuance of Supreme Court Regulation No. 13 of 2016 corporations can be held accountable for corruption crimes committed by management or corporate organs.*

**Keywords:** *Protection of the law, Consumer Protection, Non-national standard Indonesia electroni goods*

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## 1. INTRODUCTION

In the current era of globalization, crime is growing in society so that the state is very disturbing, as is the case with corruption which is regulated outside the criminal law code. The crime of corruption is a development of the crime of theft but the difference is that if the object of corruption is state money, the object of theft is money that does not belong to the state.

Explore the contemporary developments that are currently progressing and developing criminal acts of corruption in Indonesia, not only involving natural persons or natural persons, but also criminal acts of corruption involving limited liability companies, which comply with Article 1i number 1i jo.i Article 7i paragraph (4)i of Law Number 40i of 2007i concerning Limited Liability Companies are legal entities. i In some cases of corruption which are still in the process of investigation, i or i who are in the process of trial or which have been decided by the court, show that there are few corporations that have the formation of limited individuals involved in criminal acts of corruption.

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (hereinafter referred to as the Anti-Corruption Law) has regulated corporate responsibility or corporate actions that can be punished in relation to committing Corruption Crimes, the Anti-Corruption Law clearly states that a corporation is an organized collection of people and or wealth, whether it is a legal entity or not. (Emerson yantho 2017)

Corporations can be considered to have committed criminal acts, based on the actions carried out by people who control the management of the corporation. One of the breakthroughs in the latest criminal law policy in eradicating criminal acts of corruption is to make the corporation a legal subject so that it can be held accountable

A corporation or legal entity consisting of an alliance between one person and another in order to facilitate establishing a business. A corporation is a combination of people who in legal relations act together as a separate legal subject, a personification. A corporation is a legal entity with members, but has its own rights and obligations apart from the rights and obligations of each member.

The stipulation of the management as a person who can be convicted (legal subject) is apparently not enough to recover losses caused by multi-dimensional corporate crimes. These corporate crimes are the same as victims of conventional crimes that can be easily detected. For victims of corporate crimes that harm society on a large scale, both nationally and internationally. Often the victims are abstract, such as the government, other companies, or

consumers who are numerous but difficult to detect. In addition, the most threatening and frightening perceived social harm arising from corporate crime is that it has a detrimental impact on the moral standards of the business community. Therefore, there is a need for legal provisions that strictly regulate corporations as the subject of criminal acts. Furthermore, it needs to be observed, namely what type of punishment is appropriate to use in a corporate crime? Of course, the punishment of corporations is very different from the punishment of people because corporations have a different character in principle from the subject of criminal law.

Along with the development of the era, obstacles arise due to crimes committed by the corporate sector, among others, related to procedural law such as technical procedures for examination of the corporate law enforcement process, both in the stages of investigation, prosecution, up to court decisions. This is one of the triggers for the inaccuracy of investigators or prosecutors in making indictments that do not include corporations as parties being held criminally responsible.

In this case, the Deputy Chairperson of the KPK, Laode M. Syarief, in the KPK seminar stated that it was not the judges or courts who were the cause of corporate punishment in corruption cases being hampered and hampered but from the investigators (especially the Corruption Eradication Commission) who were still not convinced to make corporation as a defendant in a corruption trial.

The crucial problem is the ineffectiveness of law enforcement against corporations. Other corruption actors are law enforcers (prosecutors) having difficulty proving corporate criminal responsibility in order to fulfill the elements of criminal offenses that are violated by corporations that have committed criminal acts, because law enforcement officers are still fixated on the principle of no crime without fault. which is indeed embraced in the teachings of criminal responsibility in Indonesian criminal law.

## **2. RESEARCH METHODS**

The type of research used in this legal research review is empirical research. Empirical research is legal research from an external perspective with social attitudes and behavior towards law as the object of research. (Jonaedi Efendi, 2018) This study uses empirical facts taken directly from human behavior that are obtained directly through verbal (interviews). This legal research is used to discover the process of occurrence and the process of working law in

society by examining the relationship between law and other social institutions using social science research techniques. (Masruhan, 2013)

Sources of data used are primary and secondary data sources. Primary data sources are data obtained directly from the field based on the sources. The writer did this data collection by conducting interviews with the Special Criminal Prosecutor at the Surabaya District Attorney, namely Mr. Nur Rochman S.H, M.H. The secondary data source used in this legal research is data collection carried out by studying and collecting data from documents and literature, laws and regulations, electronic documents and other documents.

### **3. RESULTS AND DISCUSSION**

#### **A. Prosecutors' Constraints in Imposing Sanctions for Corruption Crimes Performed by Corporations**

A corporation or legal entity which consists of an association between one person and another in a series to facilitate the establishment of a business. those who are members, but have haki and have their own obligations, separate from haki and have obligations to each other

The stipulation of the management as a person who can be convicted (legal subject) is apparently not enough to recover losses caused by multi-dimensional corporate crimes. These corporate crimes are the same as victims of conventional crimes that can be easily detected. For victims of corporate crimes that harm society on a large scale, (Amirullah, 2012) both nationally and internationally. Often the victims are abstract, such as the government, other companies, or consumers who are numerous but difficult to detect. (Elfina Lebrin, 2010)

The crucial issue is the ineffectiveness of law enforcement against corporations. Other corruption perpetrators are law enforcers (prosecutors) that are difficult to prove the accountability of corporate criminals in order to fulfill the elements of criminal offenses that have been violated by corporations that have committed criminal acts, because law enforcement officials are still subject to criminal prosecution without guilt, the person who is guilty of being held accountable is taught criminal responsibility in Indonesia. i These constraints were found by the author during an interview with the prosecutor at the Public Prosecutor's Office of Surabaya, whom they encountered in various cases at the Public Prosecutor's Office of Surabaya, among others:

1. Determination of Legal Subjects related to Corporate Liability which is regulated in the Corruption Crime Act

The Anti-Corruption Law regulates corporate criminal responsibility in Article 20. A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on work relationships or based on other relationships, acting within the corporate environment, either individually or jointly. In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and/or its management. In the event that a criminal charge is made against a corporation, the corporation is represented by the management. Managers who represent the corporation can be represented by other people.

The Anti-Corruption Law does not fully regulate criminal responsibility, was stated by the Head of Sub-Directorate for Serious Human Rights Violations at the Directorate of Prosecution of the Junior Attorney General for Special Crimes, Law Mugopal. He mentioned several issues in the Anti-Corruption Law, including who has the right to represent corporations in the legal process of corruption cases? To be legally accountable and to facilitate the execution of executions, it is the person who is the administrator of the appointed legal entity and not another person who acts as legal adviser in the criminal justice process. There must be a limit to the extent to which the provisions of Article 20 paragraph (4) of the Anti-Corruption Law, in the event that a corporation can be represented by "other people". Regarding the formulation of Article 20 paragraph (4) of the Anti-Corruption Law, problems will arise if the corporation is represented by another person. In this case, of course, there must be provisions that regulate, which are affirmative in nature, so that there are no multiple interpretations in its implementation.

Meanwhile, regarding criminal sanctions that can be imposed on corporations, Article 20 paragraph (7) of the Anti-Corruption Law states that "The main punishment that can be imposed on corporations is only a fine, with the maximum penalty being added 1/3 (one third)." From the provisions of the article, the main criminal sanction that can be imposed on a corporation is a single sanction, there is no other alternative that can be chosen. This creates problems in its implementation, namely what if the fine is not paid by the corporation, what action is taken?

## 2. Identifies and Berkasani in the Letter of Indictment

In article 143i paragraph (2) i letter ai the Book of Law on Criminal Procedure, i have arranged the formal requirements in the indictment letter which is composed of a general guide, namely i contains full name, i place of birth, i age or date of birth, i gender, i nationality, where you live, i religion, i and work for the suspect. i So far, no provisions have been found to punish the criminal proceedings, those who hold the position of corporations as suspects or defendants, i are in the process of conducting investigations concerning the making of the Investigation

Report (BAP) i the suspect or the accused the prosecution stage concerns the identity of the defendant, remembering that the provisions in the Bible Law on Criminal Procedure only accommodates the identity of individuals as legal subjects, but does not regulate the identity of corporations.

Corporations as legal entities are confirmed to have legal identities of their own. i Ironically, the provisions concerning the requirements for formal identification in the indictment for corporations as subject to criminal prosecution as defendants are not found in the Book of Laws to Law Criminal Procedures. The indictment was found to be overturned by the judge. (Ayui Nuruli Alfia, 2016) i Law enforcement officers see that the existence of Article 143i paragraph (2)i letteri ai Kitabi of the Criminal Code cannot be ignored. i Even though there is room for breakthroughs in the law, they themselves are investigating the case against corporations that is not regulated in the Book of the Law on Criminal Procedure Law, technically, it even creates its own difficulties for law enforcement officers.

Problems arose when the Attorney General issued an appeal in the form of a Letter of Circular B-36/A/Ft.1/06/2009i regarding the Corporation as the Suspect/Defendant in the Corruption Crime. Corruption, i does not mean negating criminal liability committed by the management, but rather this corporation must be seen as an extension of criminal liability in criminal acts of corruption. The filing with the suspected corporation cannot be found combined with the suspected person as a legal subject related to the doctrine of participation, but must be separated (split) and not included in the framework of the doctrine of participation.

### 3. Practice in the Field, Implementing Corporate Criminal Accountability in Corruption Crimes

Law enforcement officers have difficulty in ensnaring corporations. Investigators who carry out the initial process of examining cases have difficulty in determining the corporation as the perpetrator of a crime. This can be seen from the rare cases handled by investigators involving corporations as suspects. The investigation process by the National Police will affect the next process, at the stage of prosecution and examination of cases in court. Because from the investigation stage the Police did not ensnare corporations, the Public Prosecutor did not indict the corporations. In fact, since 2014 the Attorney General's Office has been determined to ensnare corporations as perpetrators of criminal acts, by issuing the Attorney General's Regulation Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects (Perja of 2014). Perja 2014 which contains guidelines for prosecutors/public prosecutors in handling criminal cases with corporate legal subjects as suspects/defendants/convicts

Within the framework of criminal responsibility, in addition to the criminal liability of natural persons, in general, corporate criminal responsibility is also regulated on the basis of identification theory, given the increasing role of corporations in criminal acts, both in the form of crime for corporations that benefit corporations as well as in the form of corporate criminals, namely corporations formed to commit crimes or to accommodate the proceeds of crime. In this case the corporation can be accounted for together with the management (by-punishment provision) if the corporate management (natural human) who has key positions in the corporate management structure has the authority to represent, make decisions and control the corporation, commit criminal acts for the benefit of the corporation acting either individually or on behalf of the corporation. So there is a power decision and a decision accepted by the corporation as a policy of the corporation. In this case, the mens rea of the natural man of the management is identified as the mens rea of the corporation (Widyopramono, 2014). The punishment of corporate management alone is considered insufficient to carry out repression of offenses committed by or with a corporation, considering that in social and economic life, corporations play an increasingly important role as well. Criminal law must have a function in society, namely protecting the community and enforcing the norms and provisions that exist in society. If criminal law is only emphasized on the individual aspect, which only applies to humans, then that goal is not effective, therefore there is no reason to always suppress and oppose the criminalization of corporations. The punishment of corporations with criminal threats is one of the efforts to avoid criminal acts against the employees of the corporation itself. The corporation benefits from the actions or actions taken by its management

4. As far as Manai Article 4i Paragraph 2i Regulation of the Supreme Court Numberi 13i Tahun 2016i Regarding Procedures for Handling Criminal Cases by Corporations, i Dalami Paragraph 2i Regulations Are Not Explained By Explaining Meaning Dani Definitions From Corporations Allowing To Do Crime Acting Own

In Article 4i paragraph (2)i Permai determined that in imposing criminal charges against the Corporation, i Hakimi found that the Corporation's faults included, among others: i

- a. The corporation is found to have benefited or benefited from the criminal act or the criminal act was carried out for the benefit of the Corporation;
- b. Corporations allow criminal acts to occur; i or
- c. The corporation does not take the necessary steps to take preventive measures, prevent the effects from being exaggerated and ensure compliance with the applicable legal provisions in order to avoid the occurrence of criminal acts.

Three forms of guilt that lead to criminal liability are found to be guidelines for judges to comply with the provisions of Permai, overcome can be interpreted, i, namely: i. corporations allow the occurrence of criminal acts, it is interpreted that corporations do not immediately take steps, both those that are legally required or based on propriety to stop and/or report the criminal act. i These steps must be carried out proportionally at the first opportunity. i Third, i preventive measures include but are not limited to special or general corrective measures to prevent

criminal acts from occurring. certain increments, while general steps are efforts to establish legal compliance with their employees. (Augustinus Pohan, 2014)

#### B. Attempts to Effort Prosecutors as Law Enforcers Against Imposition of Sanctions for Criminal Acts of Corruption Performed by Corporations

Completely reduce the provisions for punishing criminal proceedings related to issues Constraints and problems that occur regarding handling corporate criminal acts require breakthroughs and take legal action separately. /defendant for this reason, the Attorney General's Regulation of the Republic of Indonesia No: i PER-028/A/JA/10/2014, i dated 1i October 2014i concerning Guidance for Handling Criminal Cases with the Subject of Corporate Law, is basically meant for law enforcement officers punish especially prosecutors / prosecutors in general in investigating, prosecuting, i and implementing decisions in criminal cases involving corporations in The Perjai provides rules regarding the identification of corporate actions and their management. The functional power relationship between the two is shown so that the boundaries between the two become clearer. found to be held criminally responsible.

It is also regulated in the Perjai regarding the mechanism for criminalizing corporations starting from the investigation stage, investigation, prosecution, carrying out court decisions, and handling assets/assets. the management of the corporation, form the indictment against the two, i and i formulate the indictment.

The corporation that is being charged with complies with the regulations of the attorney general which includes:

- (a) Corporation,
- (b) Corporations that are transferred or taken over,
- (c) group corporation (group) i which is a collection of individuals or bodies that are related to one another in terms of ownership, management, i and financial relations,

To overcome all obstacles and problems, prosecutors and other law enforcement officers make every effort to overcome these obstacles, namely:

##### 1. Corporate Accountability Efforts regulated in the Corruption Crime Act

Criminal liability is the passing of objective and subjective reproaches on a person who meets the requirements to be punished for his actions. When someone is said to have made a mistake is a matter of criminal responsibility. A person has a mistake when at the time of committing a crime, from a societal perspective, the corporation can be reproached because of



his actions. In accounting for corporations as subjects of criminal law, prosecutors and apart law use several theories to determine corporate liability:

1. The theory of Direct Corporate Criminal Liability Corporate criminal liability is closely related to the doctrine of identification

2. Strict Liability Strict liability theory

It is defined as a criminal act without requiring the perpetrator to make a mistake against one or more of the actus reus.

3. Vicarious Liability Theory Vicarious liability

Usually known as substitute criminal liability, which is defined as the responsibility of a person without personal fault, to be responsible for the actions of others.

4. Main Thesis Aggregation Theory

This theory is that it is an appropriate step for a corporation to be blamed even though criminal responsibility is not directed to one individual, but to several individuals.

5. Corporate Culture Model

For the corporate culture model, criminal responsibility is charged to the corporation if it is found that someone who has committed an unlawful act has a rational basis for believing that a member of the corporation who has the authority has given authority or permitted the commission of the crime.

2. Efforts in identity and filing in the indictment

To overcome these obstacles, the Attorney General of the Republic of Indonesia has issued the Regulation of the Attorney General of the Republic of Indonesia, Number. PER.028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects. Through this regulation, at least it can be used as a guideline for prosecutors/public prosecutors in handling criminal cases with corporate legal subjects as suspects, defendants or convicts.

The indictment against a corporation as a defendant must include the identity of the corporation, namely: a. Name of corporation b. Number and date of deed of establishment of the corporation and its amendments c. Number and date of deed of corporation at the time of the crime

- a. Place of domicile e. Nationality of corporation f. Field of business g. Taxpayer identification number; and h Identity representing the corporation in accordance with Article 143 paragraph (2) letter a of the Criminal Procedure Code.

In the preparation of this indictment, there are 3 (three) models of indictment that can be made, namely: First, the indictment in which the defendant is only the management of the corporation. Second, the indictment that became the defendant was only the corporation represented by the corporation's management/authorized, the description of the identity of the defendant started from the identity of the corporation and then the identity that represented the corporation. Third, the indictment in which the defendant consists of a corporation represented by the corporation's management/proxies and the corporation's management are also defendants.

### 3. Efforts to Implement Corporate Responsibility

To overcome the problem of holding corporations accountable as the subject of criminal acts, the Supreme Court issued Supreme Court Regulation no. 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations, on December 29, 2016. This regulation was issued as a guide for law enforcement officers and fills legal voids related to procedures for handling certain crimes carried out by corporations and/or their management. This regulation is not only to ensnare corporations in criminal acts of corruption, but also to corporations that are criminally accountable by other special laws.

Perma regulates the accountability of corporate corporations and the possibility if the corporation does so in a group or joint, whether in the course of amalgamation or separation occurs. Even the mechanism for returning assets resulting from corporate crimes is also not spared from its regulation.

According to Article 6 of the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, in the event that a criminal act is committed by a corporation involving the parent corporation and/or subsidiary corporations and/or related corporations, they can be held criminally accountable in accordance with their respective roles. each.

Article 7 paragraph (1) Regulation of the Supreme Court Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, In the event of a merger or consolidation of Corporations, criminal liability is imposed to the extent of the value of assets or assets placed against the Corporation receiving the merger or the resulting Corporation. smelting.

4. Article 4i Paragraph 2i Regulation of the Supreme Court Number 13i Tahun 2016i Regarding Procedures for Handling Criminal Cases by Corporations, i Dalami Paragraph 2i The Regulations Are Not Explained By Explaining What It Means Dani Definitions From Corporations I Letting Go Doing Crimes By Theirself Definitioni No.

Responding to the problem regarding the regulation in Article 4 paragraph 2, the prosecutors and law enforcement officers will examine the regulation and find out about the offenses involved in the crime. Three forms of errors that lead to criminal liability as a guide for judges according to the provisions of the Perma above can be interpreted, namely: first, these conditions are actually more of a condition of action to determine whether an act can be held accountable to the corporation. Second, the corporation allows the occurrence of a criminal act, which means that the corporation does not immediately take steps, both legally required and based on propriety, to stop and/or report the crime. These steps should be carried out proportionately at the first opportunity. Third, preventive measures include but are not limited to efforts that are either specific or general in nature to prevent the occurrence of criminal acts.

a) Specific steps are specifically aimed at preventing certain criminal acts, while general steps are efforts to build legal compliance with employees. Observing the three forms of corporate wrongdoing stipulated by Perma No.13/2016 above, it indicates the strong will of the Supreme Court to renew the corporate criminal responsibility system that has been in the legislation so far through sharpening the relationship between the elements of proof of corporate guilt and the actions or effects of the actions of the management. . The existence of this error is an absolute element that can result in the corporation being held criminally responsible. It cannot be said that the responsibility of a director or agent is fully delegated to the corporation, because in general it is necessary to first find a violation of certain regulations by the corporation and then ask who committed the error or omission to be held accountable. The purpose of corporate criminal liability is to provide an important impact for directors to regulate effective management so that the corporation runs in accordance with the obligations of the corporation.

b) Other attempts by the prosecution as an in-depth investigation into the corporate corruption case that occurred at the Surabaya District Attorney's Office include, among others:

- c) Prosecutors are trying to find actions against the law that occurred in dealing with cases of corporate corruption
- d) The prosecutor is also trying to find two pieces of evidence in this case
- e) Prosecutors try to coordinate with and improve with institutions to discuss losses to state finances.
- f) Prosecutors go through pre-prosecution by going over and over so that the responsible party can be determined.
- g) Conducting legal proceedings with the parties involved and the relevant legal apparatus
- h) Coordinate together with Badan i i Auditor i i Finance i i (BPK)i because the report on the results of the audit on the financial report is the main report in the financial audit which contains the opinion on the audit which is based on the audit carried out in accordance with the SPK Ni (State Financial Auditing Standards)

#### 4. CONCLUSION

Based on the analysis of the research above, which the researchers described previously regarding the Barriers to Prosecutors in Determining Criminal Prosecution Against Corporate Corruption Crimes:

1. Corporations as the subject of criminal law have been stipulated in Law No. 31 Tahun 1999i concerning the Eradication of Criminal Acts of Corruption as amended by Law No. i20i Tahun 2001i concerning Amendments to Law No.i 31 Tahun 1999i Regarding the Eradication of Criminal Acts of Corruption. Although the Anti-Corruption Law has designated corporations as the subject of criminal law, only a few law enforcement officers have identified corporations as suspects for committing criminal acts of corruption and punishing them, but corporations are rarely accused because of the lack of attention from the authorities. law enforcers are responsible for corporate criminal liability due to legislative issues, i in particular regarding the placement of corporations as legal subjects and their criminal liability. urlijkei persoon).i This is reflected in the use of the element "whoever" is interpreted in various formulations of delik in the Criminal Code, so it is focused on the subject of natural human law or individuals.

In Article 20i paragraph (1)i of Law No. 31i of 1999i which provides several opportunities for a corporation to appear before a trial as a result of the criminal act it has committed, together with the management of the corporation. administer it or the corporation, or both. The choice is actually not easy for the public prosecutor to carry out in moderation.

2. The problem with prosecutors in imposing sanctions for criminal acts of corruption carried out by corporations, the main obstacle in eradicating corporate criminal acts is the weakness in the regulation of technicians in prosecuting criminal proceedings. 14i Tahun 1985i gave authority to the Supreme Court to regulate further matters needed for the smooth running of the judiciary if there are matters which have not been adequately regulated by law, then Permai No. 13 Tahun 2016i was issued to fill the vacancy in procedural law i Based on this reality, the provisions (normative) of corporate crime are under the existing legislation, which can be enforced or implemented properly. indicates the will of the Supreme Court to renew the system of criminal liability for corporations that have been studying the legislation through sharpening the relationship between the elements of proving a corporation's fault with the action or impact of the actions of its management. I can't find it said that the responsibility of a director or agent is fully delegated to the corporation, because in general it must be found first before the violation of certain regulations by the corporation ii then it is asked who did the wrongdoing or omission to be held accountable

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