

# Regulation of Corporate Criminal Liability According To Law Number 1 Year 2023 On The Criminal Code

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## Article info

Received: Dec 21, 2024

Revised: Feb 27, 2024

Accepted: Apr 2, 2024

DOI: <https://doi.org/10.31599/krtha.v18i1.1650>

**Abstract :** *Corporation as a subject of criminal law that can be held criminally responsible is not known in the old Criminal Code. This is because the old Criminal Code is a legacy of the Dutch colonial government whose legal system adheres to the Continental European legal system (civil law). Countries that adhere to the civil law legal system are a little behind in terms of regulating corporations as subjects of criminal law, in contrast to countries that adhere to the common law legal system, which has regulated corporate liability and this has started since the industrial revolution. In Indonesia itself, the regulation on corporation as a subject of criminal law is regulated in the Law outside the Criminal Code. Meanwhile, the new Criminal Code has regulated corporations as legal subjects that can be held criminally liable. As regulated in Article 45 to Article 50, Article 56, and Articles 118 to 124 of Law No. 1 of 2023 on the Criminal Code. Although prior to the enactment of Law No. 1 of 2023 on the Criminal Code there was already Perma No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations and Regulation of the Attorney General of the Republic of Indonesia Number PER-28/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects. Prior to the issuance of the regulation, the Attorney General's Office had first issued Circular Letter of the Attorney General of the Republic of Indonesia Number B-036/A/FT.1/06/2009 regarding Corporations as Suspects/Defendants in Corruption Crimes addressed to the Head of High Prosecutors throughout Indonesia. Thus, Corporations as a subject of criminal law can already be held criminally liable with the strength and legal certainty stipulated in the New Criminal Code.*

**Keywords :** *Criminal Code, Corporation, Criminal Liability, Subject of Criminal Law*

**Abstrak :** Korporasi sebagai subjek hukum pidana yang dapat dimintai pertanggungjawaban pidana tidak dikenal dalam KUHP lama. Sebab, KUHP lama merupakan warisan pemerintah kolonial Belanda yang sistem hukumnya menganut sistem hukum Eropa Kontinental (civil law). Negara-negara yang menganut sistem hukum civil law sedikit tertinggal dalam hal mengatur korporasi sebagai subjek hukum pidana, berbeda dengan negara-negara yang menganut sistem hukum common law yang sudah mengatur pertanggungjawaban korporasi dan hal ini sudah dimulai sejak revolusi industri. Di Indonesia sendiri, pengaturan mengenai korporasi sebagai subjek hukum pidana diatur dalam Undang-Undang di luar KUHP. Sementara KUHP baru telah mengatur korporasi sebagai subjek hukum yang dapat dimintai pertanggungjawaban pidana. Sebagaimana diatur dalam Pasal 45 hingga Pasal 50, Pasal 56, dan Pasal 118 hingga 124 Undang-Undang Nomor 1 Tahun 2023 tentang KUHP. Padahal sebelum berlakunya Undang-Undang Nomor 1 Tahun 2023



tentang KUHP sudah ada Perma Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Pidana oleh Korporasi dan Peraturan Jaksa Agung Republik Indonesia Nomor PER-28/A /JA/10/2014 tentang Pedoman Penanganan Perkara Pidana yang Subyek Hukum Korporasi. Sebelum terbitnya aturan tersebut, Kejaksaan Agung telah terlebih dahulu menerbitkan Surat Edaran Jaksa Agung Republik Indonesia Nomor B-036/A/FT.1/06/2009 tentang Korporasi Sebagai Tersangka/Terdakwa Tindak Pidana Korupsi yang ditujukan kepada Kepala Kejaksaan Tinggi seluruh Indonesia. Dengan demikian, Korporasi sebagai subjek hukum pidana sudah dapat dimintai pertanggungjawaban pidana dengan kekuatan dan kepastian hukum yang diatur dalam KUHP Baru.

**Kata kunci :** KUHP, Korporasi, Pertanggungjawaban Pidana, Subyek Hukum Pidana

## I. INTRODUCTION

Criminal offenses according to the latest Criminal Code include conspiracy, preparation, attempt, and assistance in committing a criminal offense, unless otherwise provided in the law.<sup>1</sup> According to Moeljatno, criminal acts according to the Indonesian Criminal Code system are divided into crimes (*misdrifven*) and offenses (*overtredingen*).<sup>2</sup> Criminal acts generally occur due to the element of intention, the element of opportunity of the perpetrator of the criminal act and the element of the victim of the criminal act, with the following formulation: If one of the elements is absent, then no criminal offense will occur. The element of intention of the perpetrator of the crime exists, but the element of opportunity for the perpetrator of the crime does not exist, even though the victim exists, there will be no criminal offense because the victim has very strict inward security and outward security both physically and non-physically. Likewise, even though the elements of opportunity and the victim exist, but the element of intention of the perpetrator of the crime does not exist, the criminal offense will not occur, nor will a criminal offense occur, if there is no opportunity for the perpetrator of the criminal offense even though the element of intention and the element of the victim exist.<sup>3</sup>

As we already know, a corporation is an association of a group of organized people and / or assets with the aim of seeking profit, both *legal persons (legal persons)* and non-legal persons, whose administrators have rights and obligations.<sup>4</sup> The word corporation itself comes from the Latin *corporare* which consists of *corpus* which means body or giving body or body. Thus, a corporation is an entity created by law.<sup>5</sup>

Corporate criminal offenses must be understood differently from criminal offenses committed by human legal subjects. Therefore, the criminal law treatment towards the two legal subjects is different. In this case, it must be understood that corporate crime

<sup>1</sup> Article 144 of Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code.

<sup>2</sup> Moeljatno, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2008, pp. 78.

<sup>3</sup> Abdussalam, *Victimology*, PTIK, Jakarta, 2010, pp. 259.

<sup>4</sup> Mahrus Ali, *Principles of Corporate Criminal Law*, Jakarta, Rajawali Pers, 2015, p.2

<sup>5</sup> Hari Sutra Disemadi and Nyoman Serikat Putra Jaya, The Development of Corporate Regulations as Subjects of Criminal Law in Indonesia, *Journal of Law Media Bhakti*, Vol. 3 No. 2 December 2019 pp. 118~127 ISSN: 2580-3298 (print) 2580-7277 (online) DOI: 10.32501/jhmb.v3i2.80 Received July 17, 2019; Revised August 20, 2019; Approved September 14, 2019

must be understood as a criminal act committed in an organizational manner involving several parties with mutual interests.<sup>6</sup>

Criminals in the development of criminal law are not only committed by humans as legal subjects, but also by corporations. The design of Indonesian criminal law also adopts and recognizes corporations as subjects of criminal law, the alignment of individuals and corporations as subjects of criminal law means that both can be held accountable individually, not alternatively.

The rationale for individual criminal liability is more intended as a result of individual actions that result in harm to other people or other groups. Meanwhile, corporations are more intended to "compensate" for the losses caused in the framework of creating a sense of justice for the people whose rights have been sacrificed. In its development, corporations are not just subjects of civil law, but have shifted to become subjects of criminal law. Viewed from the form of the subject and its motive. Corporate crime can be categorized as *white collar crime* as an organized crime.<sup>7</sup>

Responsibility for a criminal offense is a process of continuing the objective censure (*verwijtbaarheid*) of the act declared as a criminal offense by the criminal law and the perpetrator is a legal subject who is considered to meet the requirements for punishment.<sup>8</sup>

The role of corporations in the economic development of society not only has a positive impact, but also has a negative impact, one of which is the development of deviant behavior committed by corporations with economic motives where the characteristics and modus operandi are different from conventional crimes in general so that law enforcement requires handling with special instruments. This is in line with what is stated in the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations which states that corporations as legal subjects in their existence make a major contribution in increasing economic growth and national development, but in reality corporations sometimes also commit various criminal acts that have a loss **impact on the state and society. In this regard, Article 1 point 1 of the Regulation defines a corporation as "an organized collection of persons and/or assets, whether a legal entity or not".**

Initially, corporations as legal subjects were more regulated in the field of civil law, because in the field of civil law, people are not the only legal subjects (*natuurlijke person*), but there are legal entities (*rechtspersoon*) also as legal subjects. Because legal entities themselves have rights and can also carry out legal actions, have their own assets and through the intermediary of their administrators can be sued and sued before the court.<sup>9</sup>

<sup>6</sup> Roni Wiyanto, *Principles of Indonesian Criminal Law*, CV Mandar Maju, Bandung, 2012, pp. 19.

<sup>7</sup> Punishment System in Economic Crimes, in: [http://www.google.com/url?q=http://www.Komisihukum.go.id/index.php%3Foption%3Dcom\\_phocadownload%26view%3Dcategory%26download%3D10:punishment-system-ineconomiccrimes%26id%3D7:year-research2010&sa=U&ei=wWFTU\\_iCC9GjiAeB7cgBw&ved=0CBIQFjAD&usq=AFQjCNH050k1MihnxFYZgVPE1O4J8DLLw](http://www.google.com/url?q=http://www.Komisihukum.go.id/index.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D10:punishment-system-ineconomiccrimes%26id%3D7:year-research2010&sa=U&ei=wWFTU_iCC9GjiAeB7cgBw&ved=0CBIQFjAD&usq=AFQjCNH050k1MihnxFYZgVPE1O4J8DLLw), accessed on February 8, 2017.

<sup>8</sup> Rofinus Hotmaulana Hutahuruk, 2018, *Combating Corporate Crime Through a Restorative Approach A Legal Breakthrough*, Jakarta: Sinar Grafika, p. 47.

<sup>9</sup> Subekti, *Principles of Civil Law*, Jakarta, Intermasa, 1984, pp. 21.

Initially in the field of criminal law, corporations were not recognized as legal subjects, as we can see in the old Criminal Code (KUHP). This is because the old Criminal Code is a legacy of the Dutch colonial government whose legal system adheres to the Continental European legal system (*civil law*). Countries that adhere to the *civil law* legal system are a little behind in terms of regulating corporations as subjects of criminal law, in contrast to countries that adhere to the *common law* legal system, which has regulated corporate liability and this has started since the industrial revolution.<sup>10</sup> Corporations are not regulated as legal subjects in the field of criminal law in the *civil law* legal system, because they accept the principle that says "*societas/universitas delinquere non potest*" which means that legal entities/associations cannot commit criminal acts.<sup>11</sup> In the *civil law* legal system does not recognize the name "*collective responsibility*" for the fault of only one person, they only recognize that a criminal offense can only be committed by a *person (natuurlijke persoon)*.<sup>12</sup>

In the development of science and human life, the types and forms of crime in society have also developed. Forms of crime are also committed by corporations, resulting in difficulties in holding them accountable. As stipulated in Article 59 Book I of the Criminal Code which states that "in the case of determining the punishment for an offense against the management, member of one of the management, or commissioner, the punishment shall not be imposed on the management or commissioner, if it is evident that the offense has occurred outside his responsibility".<sup>13</sup> Finally, Article 91 of the Dutch colonial Criminal Code or Article 103 of the Criminal Code, which has been adopted by Indonesia, allows regulations to be made outside the Criminal Code to deviate from the General Provisions of Book I of the Criminal Code. Thus the *Wet Economische Delicten (WED)* was born in 1950 in the Netherlands, which regulates economic crimes and regulates that corporations can commit criminal acts and can be held criminally liable.<sup>14</sup> Since 1976 through the Act of June 23, 1976 (Sbt. 377, entered into force September 1, 1976) in the Netherlands considers that legal entities or corporations can commit criminal acts and can be criminally liable as well before the applicable law. This provision also initiated the birth of Law No. 7 Drt of 1955 concerning Investigation, Prosecution and Trial of Economic Crimes in Indonesia, which regulates that corporations are also subjects of law.<sup>15</sup>

This is in line with what was conveyed by Peter Gillies<sup>16</sup> who said that a corporation or company or legal entity is a person or human in the eyes of the law, thus capable of

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<sup>10</sup> Yusi Amdani, Criminal Law Formulation Related to Corporate Criminal Liability in Corruption Crime, *Samudra Keadilan Law Journal*, Volume 12, Number 2, July-December 2017, p.189.

<sup>11</sup> Muladi, *Democratization, Human Rights, and Legal Reform in Indonesia*, Jakarta: The Habibie Center, 2002, p. 157.

<sup>12</sup> Yusi Amdani, Criminal Law Formulation Related to Corporate Criminal Liability in Corruption Crime, *Samudra Keadilan Law Journal*, Volume 12 Number 2, July-December 2017.

<sup>13</sup> Rodliyah, Any Suryani, and Lalu Husni, The Concept of *Corporate* Criminal Liability in the Indonesian Criminal Law System, *Journal of Legal Compilation*, Volume 5 No. 1, June 2020 E-ISSN 2598 6414, P-ISSN 2502-5333 <https://doi.org/10.29303/jkh.v5i1.43>

<sup>14</sup> Article 15 Paragraph 1 *Wet Economische Delicten* Netherlands

<sup>15</sup> Law Number 7 Drt Year 1955 in State Gazette Number 27 Year 1955.

<sup>16</sup> Peter Gillies, *Criminal Law*, Sidney, The Law Book Company Limited, 1990. p.125

doing something as well as a human being who is also recognized as having wealth, making contracts and can also be held accountable for the crimes he has committed.<sup>17</sup>

Crimes committed by corporations or corporate crimes are also commonly referred to as economic crimes, where these crimes can be committed by anyone, both individuals and corporations. This corporate crime is generally a form of unlawful act committed by a corporation, especially related to the executive or corporate management.<sup>18</sup>

Corporate crime is categorized in the form of white *collar* crime. This crime has consequences, namely the denial of the theory that the occurrence of crime is due to poverty, this crime tends to be organized and transnational in nature and this corporate crime is included in the category of *white collar crime*.

*White collar crime* itself which Sutherland calls *white collar criminality* is defined as "a crime committed by a person of respectability and high social status in the course of his occupation". That crimes committed by this group of people cause harm to society that is far greater than street crime.<sup>19</sup>

In Indonesia, corporation as a subject of criminal law has been used since the enactment of Law No. 7 Drt Year 1955, until today there are many laws and regulations outside the Criminal Code that regulate corporations as subjects of law and criminal liability.

Thus, the New Criminal Code (KUHP), which absorbs the values of local wisdom of the Indonesian people and follows the development of the criminal world, already regulates corporate liability in criminal law.

The purpose of this research on corporate criminal liability is to see the extent of the provisions regarding corporations as subjects of criminal law and the extent of criminal liability that will be imposed on corporations. This research is significant, considering the development of science and technology, the more sophisticated and extensive the crimes that can be committed by corporations.

## II. RESEARCH METHOD

This research is *normative law research* using normative case studies *in the* form of legal behavior products, for example examining the Law. Normative legal research method or library legal research method is a method or method used in legal research conducted by examining existing library materials.<sup>20</sup> The first stage of normative legal research is

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<sup>17</sup> Zulkarnain, Obstacles to Law Enforcement Against Corporate Criminals in the Indonesian Criminal Justice System, *Constitutional Journal*, Volume IV, Number 2, November 2011, Puskasi FH Widayagama University Malang. p.61

<sup>18</sup> Mirsa Astuti and Muhammad Faris Aksa, Restorative Approach as an Alternative Criminal Sanction in Corporate Crime, *Iuris Studia Journal of Legal Studies*, Volume 2 Number 3, October 2021: Page: 679-684 <http://jurnal.bundamedia grup.co.id/index.php/iuris>

<sup>19</sup> Mardjono Reksodiputro, Corporate Crime, An Old Phenomenon in a New Form, *Indonesian Journal of International Law*, Vol. 1 Number 4, July 2004.

<sup>20</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Overview*, 11th Printing. Jakarta: PT Raja Grafindo Persada, 2009, pp. 13-14.

research aimed at obtaining objective law (legal norms), namely by conducting research on legal issues. The second stage of normative legal research is research aimed at obtaining subjective law (rights and obligations).<sup>21</sup> The subject of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in *inconcreto* cases, legal systematics, the level of synchronization, comparative law and legal history.<sup>22</sup> The method of approach in this research is a *statutory* approach (*statue aproach*).<sup>23</sup>

The research conducted is descriptive in nature, namely describing the symptoms in the community environment of a case under study, the approach taken is a qualitative approach which is a research procedure that produces descriptive data.<sup>24</sup> The qualitative approach used by the author aims to understand or understand the symptoms studied.<sup>25</sup> The author conducts research with the aim of drawing legal principles (*rechtsbeginselen*) which can be done on written positive law and unwritten positive law.<sup>26</sup>

### III. DISCUSSION

#### Regulation of Corporations as Subject of Criminal Law Before the New Criminal Code

In the field of law, the subject of law is every bearer of rights and obligations, both persons and legal entities. There are two kinds of legal subjects according to legal science, namely legal subjects in the form of persons (*natuurlijke persoon*) and subjects in the form of legal entities (*recht persoon*) such as foundations, companies, cooperatives and others.

Thus, legal entities or corporations as legal subjects are only recognized in the field of civil law, especially business law. In the field of criminal law, corporations are not recognized as legal subjects.

The subject of criminal law is only a natural person (*natuurlijke persoon*), because the Indonesian criminal law system adheres to the classical school of individualism, indeterminism and accepts the principle of *universitas delinquere non potest* or *societas delinquere non potest*, the principle of culpability or the principle of *geen straf zonder schuld*, and also the principle of retaliation. Thus, Prodjodikoro said that only a human being can be the subject of law.<sup>27</sup>

The new concepts of the Criminal Code that began in 1964 until now have undergone several changes. In 1981, the Study Team in the field of **criminal law at the BPHN of the Ministry of Justice questioned whether corporations can be held**

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<sup>21</sup> Hardijan Rusli, "Normative Legal Research Methods: How?", Law Review, Faculty of Law, Universitas Pelita Harapan, Volume V No. 3, 2006, p. 50. 50.

<sup>22</sup> Abdul Kadir Muhammad. *Law and Legal Research*. Cet. 1. Bandung: PT Citra Aditya Bakti. 2004. p.52

<sup>23</sup> Peter Mahmud Marzuki, *Legal Research*. Cet2. Jakarta: Kencana. 2008. p.29

<sup>24</sup> Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: UI Press, 1986, p. 32.

<sup>25</sup> Soerjono Soekanto, *Introduction to Research...Ibid*.

<sup>26</sup> Soerjono Soekanto, *Introduction to Research Ibid*. p. 252. 252.

<sup>27</sup> Wirjono Prodjodikoro, *Principles of Indonesian Criminal Law*, Bandung, Eresco, 1986, p.55.

accountable in general criminal law in the Criminal Code or liability is only limited to offenses specified in certain laws as it is today? Before answering this question, Tim first analyzed the systems that have existed in Indonesian criminal law regarding the position as a maker and the nature of corporate liability, namely:<sup>28</sup>

a). The management of the corporation as the maker and the management is responsible; b). The corporation as the maker and the management is responsible; c). The corporation as a maker and also as responsible.

The justification of corporate liability as the perpetrator of a criminal offense, can be based on the following matters:<sup>29</sup> a). On the basis of integralistic 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 succes* (success without rules); d). For consumer protection; e). For technological advancement.

The making of corporations as the subject of criminal law still leaves pros and cons until now, as well as the pros and cons of corporate liability as the subject of criminal law. However, in substance, the debate seems to be complete, because almost all experts, both those who adhere to the Continental European legal system (*civil law*) and those who adhere to the Anglo Saxon legal system (*Common Law*) have recognized and accepted corporations as subjects of criminal law. Oemar Seno Adji provides an opinion that the basis for the possibility of criminalizing corporations is not only on utility considerations, but also on theoretical grounds.<sup>30</sup>

The teachings of Von Savigny and Von Feurbach were the beginning of the inclusion of corporations as subjects of criminal law. Because of this teaching, the two experts were opposed by other experts who said that corporations are *legal fiction*, thus they cannot speak, have no soul, no voice, no mind, and do not have *actus reus* and *mens rea* in criminal law.

According to Bambang Poernomo, corporations or legal entities can be convicted through the approach of expanding penalties in the theory of *recht persoon* interests, parallel to the theory of *deelneming* and the theory of *principle accessories*. Legal interests that are regulated and protected by the law **can change along with changes in time and circumstances, in line with the progress of legal awareness in society. The possibility of opening legal entities as subjects of criminal law, can be included in the renewal of the codification of criminal law (New Criminal Code).**<sup>31</sup>

Regarding the development of corporations as legal subjects that can be held criminally liable. Prof. Muladi argues that the corporation is the maker and is responsible by taking into account the development of the corporation itself. Because if only the

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<sup>28</sup> Mardjono Reksodiputro, *The Progress of Economic Development and Crime*, Jakarta: Center for Justice and Community Service, 1994, p.72

<sup>29</sup> Muladi, *Liability of Legal Entities in Criminal Matters*, Paper Delivered at a Lecture at Muria Kudus University, March 5, 1990, 1990, p.11.

<sup>30</sup> Setiyono, *Corporate Crime*, Malang, Bayumedia Publishing, 2003, pp. 11

<sup>31</sup> Bambang Poernomo, *Prospects for the Development of Criminal Sanctions in the Scope of National Criminal Law Principles in Indonesia*, Paper presented at the National Seminar on National Criminal Law Principles, Semarang April 26-27, 2004. pp.26-27.

management is determined that can be punished, it is not enough. By criminalizing the management of the corporation, it does not necessarily provide sufficient guarantee that the corporation does not commit unlawful acts and is prohibited by law.<sup>32</sup>

In Indonesia itself, efforts to reform the criminal law have been carried out since 1964, although since 1963 it has also been carried out, but the changes occurred between one concept and another concept that had been designed by the legislator, inseparable from political, sociological, philosophical considerations, and practical considerations for the implementation of legal reform in Indonesia.

Efforts to include corporations as subjects of criminal law began to show results since the enactment of Law No. 7 Drt of 1955 concerning Investigation, Prosecution and Trial of Economic Crimes in State Gazette No. 27 of 1955. And until now, there have been many laws and regulations outside the Criminal Code in Indonesia that regulate the issue of corporate criminal liability.

Among the Indonesian laws and regulations that regulate criminal offenses committed by corporations as subjects of criminal law, but the responsibility is only imposed on individuals are:<sup>33</sup>

- a. Law Number 1 of 1951 concerning Labor
- b. Law Number 2 of 1951 concerning Accidents
- c. Law Number 3 of 1951 concerning Labor Inspection
- d. Law Number 12 Year 1951 on Firearms
- e. Law No. 3 of 1953 on the Opening of Pharmacies
- f. Law No. 22 Year 1957 on Labor Settlement
- g. Law Number 3 of 1958 concerning the Placement of Foreign Workers
- h. Law Number 83 of 1958 concerning Aviation
- i. Law Number 7 of 1981 concerning Mandatory Labor Reporting
- j. Law Number 2 Year 1981 on Legal Metrology
- k. Law No. 3 of 1982 on Compulsory Company Registration
- l. Law Number 3 of 1989 concerning Telecommunications
- m. Law Number 7 of 1992 jo Law Number 10 of 1998 concerning Banking

Furthermore, the development of laws and regulations that regulate criminal offenses committed by persons or corporations as subjects of criminal law and also corporate criminal liability, including:<sup>34</sup>

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<sup>32</sup> Muladi and Dwidja Priyanto, *Corporate Liability in Criminal Law*, Bandung, Bandung College of Law, 1991, p.71.

<sup>33</sup> Nyoman Serikat Putra Jaya, *Law and Criminal Law in the Field of Economics*, Semarang, Diponegoro University Publishing Agency, 2018. Quoted in Hari Sutra Disemadi and Nyoman Serikat Putra Jaya, 'The Development of Corporate Regulations as Subjects of Criminal Law in Indonesia', *Journal of Law Media Bhakti*, Vol. 3 No. 2 December 2019 pp. 118~127 ISSN: 2580-3298 (print) 2580-7277 (online) DOI: 10.32501/jhmb.v3i2.80 Received July 17, 2019; Revised August 20, 2019; Approved September 14, 2019

<sup>34</sup> Nyoman Serikat Putra Jaya, *Law and Criminal Law..Ibid.* quoted in Hari Sutra Disemadi and Nyoman Serikat Putra Jaya, *The Development of Regulations..Ibid.*



- a. Law No. 7 Drt Year 1955 on the Investigation, Prosecution and Trial of Economic Crimes
- b. Law Number 5 of 1984 concerning Industry
- c. Law Number 6 of 1984 concerning Post
- d. Law Number 8 Year 1995 on Capital Market
- e. Law Number 5 Year 1997 on Psychotropic Substances
- f. Law Number 22 of 1997 concerning Narcotics
- g. Law Number 23 of 1997 concerning the Environment
- h. Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Competition
- i. Law Number 8 Year 1999 on Consumer Protection
- j. Law No. 20 of 2001 jo Law No. 21 of 2002 on the Eradication of the Crime of Corruption
- k. Law Number 25 Year 2003 jo Law Number 8 Year 2010 on the Prevention and Eradication of Money Laundering Crime.
- l. Law Number 11/PNPS of 1964 concerning Eradication of Subversion Activities
- m. Law No. 38 Year 2004 on Roads
- n. Law Number 31 of 2004 jo Law Number 45 of 2009 concerning Fisheries
- o. Law No. 32 of 2009 on Environmental Protection and Management
- p. Law No. 18/2013 on the Prevention and Eradication of Forest Destruction.

As we have mentioned above, the Criminal Code does not recognize corporation as a legal subject. However, by looking at the many special **arrangements regarding criminal offenses committed by corporations as a subject of criminal law, it automatically regulates the criminal sanctions that will be given to the corporation. Corporations themselves cannot speak, have no soul, no voice, no mind, and do not have *actus reus* and *mens rea* in criminal law, so the criminal sanctions given to corporations are not classic criminal sanctions but criminal sanctions in the form of fines or penalties. In addition to imposing the main punishment in the form of fines or penalties, the corporation can also be sentenced to additional punishment in the form of temporary license revocation, prohibition of doing business for a certain time and can also be sentenced to dissolution of the corporation.**<sup>35</sup>

In addition to the many laws and regulations made governing the criminal acts of the corporation, the Supreme Court as a judicial institution issued Supreme Court Regulation of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (Perma No. 13 of 2016). The issuance of Perma No. 13 of 2016 is to fill the legal vacuum in handling criminal cases committed by corporations.

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<sup>35</sup> Hasbullah F. Sjawie, *Corporate Criminal Liability in Corruption Crime*, Jakarta, Kencana, 2017.

In addition to Perma No. 13 of 2016 issued by the Supreme Court, the Attorney General's Office as an institution that has the authority as a prosecutor (public prosecutor), also issued Regulation of the Attorney General of the Republic of Indonesia Number PER-28/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects. Prior to the issuance of the regulation, the Attorney General's Office had first issued Circular Letter of the Attorney General of the Republic of Indonesia Number B-036/A/FT.1/06/2009 regarding Corporations as Suspects/Defendants in Corruption Crimes addressed to the Heads of High Prosecutors throughout Indonesia.

In several legislative provisions outside the Criminal Code that place corporations as perpetrators of criminal offenses, there are still weaknesses. For example, in terms of providing definitions, scope, types of sanctions, procedural law, and forms of corporate criminal liability are different and not harmonious in each legislation.<sup>36</sup> In addition, it can be examined from several cases that place corporations as convicts, there are variations in the punishment of corporations, including:

- 1) The corporation was made a defendant and prosecuted in court after its management was first processed and decided on its conviction until it was legally binding (*inkracht*). An example is the case of PT GWJ, which was charged with corruption and brought to trial by the public prosecutor after its managing director (SW) was first convicted based on Decision Number 908/Pid.B/2008/PN.Bjm dated December 18, 2008, which has been strengthened by Court of Appeal Decision Number 02/PID/SUS/2009/PT.Bjm dated February 25, 2009 and the defendant's cassation was rejected based on Decision Number 936 K/Pid.Sus/2009 dated May 25, 2009. Then based on this decision, the panel of judges through Decision Number 812/Pid.Sus/2010/PN.Bjm decided exactly the same as the indictment, namely stating that PT GWJ had been proven legally and convincingly guilty of committing the crime of corruption in a continuous manner as in the primary indictment, thus imposing a fine of Rp1,300,000,000 (one billion three hundred million rupiah) and an additional penalty in the form of temporary closure of PT GWJ for six months. At the appeal level, the Banjarmasin High Court through Decision Number 04/PID.SUS/2011/PT.Bjm upheld Decision Number 812/Pid.Sus/2010/PN.Bjm dated June 9, 2011 with corrections regarding the amount of the fine so that PT GWJ has been proven legally and convincingly guilty of committing the crime of "continuous corruption" and therefore imposed a fine of Rp1,317,782,129 (one billion three hundred seventeen million seven hundred eighty-two thousand nine rupiah) and imposed an additional penalty in the form of closure of PT GJW for six months.<sup>37</sup>

Corporations are made defendants and prosecuted in court and their convictions are decided without being preceded by the conviction of the management. One example is the case of PT Cakrawala Nusamedia (PT CN) charged with violating

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<sup>36</sup> Budi Suharyanto, Corporate Criminal Liability Based on *Corporate Culture Model* and Its Implication for Public Welfare, *Journal of Recht Vinding*, Volume 6 Number 3, December 2017, p. 446. 446.

<sup>37</sup> Budi Suhariyanto, Criminal Verdicts Against Corporations Without Charge in the Perspective of *Vicarious Liability*, *Judicial Journal*, Volume 10 Number 1, April 2017, pp. 27-28.27-28.

Article 2 paragraph (1) jo. Article 18 jo. Article 20 of Law Number 20 Year 2001 on the Amendment to Law Number 31 Year 1999 on the Eradication of Corruption (primary charge) and Article 3 jo. Article 18 jo. Article 20 of Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption (subsidiary charges). YW as the director of PT CN represented at the trial and witnessed the charges against his corporation. The panel of judges tried with Decision Number **65/Pid.Sus/TPK/2016/PN.Bdg** which stated that the defendant PT CN was proven legally and convincingly guilty of committing the crime of corruption as stated in the primary charge. Therefore, it sentenced PT CN to a fine of Rp700,000,000 (seven hundred million rupiah) with the provision that if the defendant PT CN does not pay the fine within one month from the date the verdict is legally binding, then the property of the convicted PT CN can be confiscated by the prosecutor and auctioned off to pay the fine.<sup>38</sup>

- 2) The verdict of conviction against the corporation is based on the prosecutor's charges without being made a defendant. An example is the verdict against PT Indosat Multi Media (IM2). In this case, the main director, IA, who was charged with violating Article 2 paragraph jo. Article 18 paragraphs (1) and (3) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption jo. Article 55 paragraph (1) to 1 of the Criminal Code (Primary) and violating Article 3 jo. Article 18 paragraphs (1) and (3) of Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Corruption jo. Article 55 paragraph (1) to 1 of the Criminal Code. The public prosecutor demanded that the court declare the defendant IA guilty of committing the crime of corruption as regulated and punishable in the articles of the defendant's actions as stated in the primary indictment and impose a sentence on the defendant in the form of imprisonment for ten years, reduced while the defendant is in detention and by charging the defendant to pay a fine of Rp500.000,000, - (five hundred million rupiah), in lieu of six months imprisonment and with an order that the defendant be immediately detained in the detention center and compensation of Rp1,358,343,346,674, - (one trillion three hundred fifty-eight billion three hundred forty-three million three hundred forty-six thousand six hundred seventy-four rupiah) charged to PT Indosat and PT (IM2), whose prosecution was carried out separately. The panel of judges through Decision Number 01/Pid.Sus/2013/PM.Jkt.Pst decided and found defendant IA guilty of committing the crime of "corruption committed jointly", imposed a prison sentence of four years and imposed a fine of Rp200,000.000, - (two hundred million rupiah) and if the fine is not paid, it will be replaced by imprisonment for three months and punish PT IM2 to pay compensation of Rp1,358,343,346,674, - (one trillion three hundred **fifty-eight billion three hundred forty-three million three hundred forty-six thousand six hundred seventy-four rupiah**) within one year after this decision has permanent legal force. Both the public prosecutor and the defendant's legal counsel appealed this decision. Decision No.

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<sup>38</sup> Budi Suhariyanto, Sentencing Decision Against Corporations *Without...ibid.*

33/PID/TPK/2013/PT.DKI accepted the appeal and amended Decision No. 01/Pid.Sus/2013/PM.Jkt.Pst in relation to the nullification of the criminal verdict of PT IM2, which was previously sentenced to pay restitution of Rp1,358,343,346,674 (one trillion three hundred fifty-eight billion three hundred forty-three million three hundred forty-six thousand six hundred seventy-four rupiah) within one year after this decision has permanent legal force. Meanwhile, the verdict of conviction against defendant IA is final and in accordance with the decision of the district court. At the cassation level, the Supreme Court revised Decision Number 33/PID/TPK/2013/PT.DKI which amended Decision Number 01/Pid.Sus/2013/PM.Jkt.Pst only regarding fines and restitution so that it stated that defendant IA was legally and convincingly proven guilty of committing the crime of "corruption committed jointly" and sentenced the defendant to eight years imprisonment and imposed a fine of Rp300,000.000, - (three hundred million rupiah) and if the fine is not paid, it will be replaced by imprisonment for six months and punish PT IM2 to pay restitution in the amount of Rp1,358,343,346,674, - (one trillion three hundred fifty-eight billion three hundred forty-three million three hundred forty-six thousand six hundred seventy-four rupiah) provided that if PT IM2 does not pay the restitution no later than one month after the decision has permanent legal force, then PT IM2's property will be confiscated by the prosecutor and auctioned to pay the restitution.<sup>39</sup>

From the examples described above, it can be concluded that prior to the issuance of Perma No. 13 of 2016 and the enactment of Law No. 1 of 2023 on the Criminal Code, there was no uniformity in handling criminal cases committed by corporations. This is because there are no guidelines for investigators, public prosecutors, and judges in handling criminal cases with corporate legal subjects. The settlement of criminal cases with corporate legal subjects is based on the knowledge and experience of each law enforcement officer.

### Regulation of Corporate Criminal Liability in Indonesia

Problems faced regarding criminal responsibility related to corporate liability, M. Yahya Harahap suggests several main problems in corporate criminal liability, including:<sup>40</sup>

- a. With regard to the special position of *corporation*. What is related to the special position of the corporation is that it has a *legal entity (legal person)*, because its existence is not a human being (*natural person*).
- b. Another main problem is that the law does not allow or close criminal liability to reach the corporation for criminal acts committed by its board of directors or

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<sup>39</sup> Budi Suhariyanto, Sentencing Decision Against Corporations *Without..Ibid*.p.29

<sup>40</sup> M. Yahya Harahap, *Limited Liability Company Law*, Jakarta, Sinar Grafika, 2013, pp.142-143

management. Thus, in this case the law opens a wide door and opportunity for corporate administrators to make the corporation a vehicle for committing crimes.

- c. The widespread of crimes that are not only *mala in se* but have expanded to include the regulation of criminal acts that are *mala in prohibita*. Thus, one concept that is considered to be able to bridge the increasingly widespread crime is corporate criminal liability.

As a legal entity, the corporation certainly has its own legal identity that is separate from the legal identity of the shareholders, directors and all other organs within it. The identity of the corporation will never change despite the addition of new shareholders or new management, as well as the termination or death of existing members. However, the concept of corporate criminal *liability* as a person (*corporate criminal liability*) is still being debated. Although there are also many parties who do not support one view that says that an intangible corporation is impossible to commit a criminal offense and has *criminal intent* that can give birth to criminal liability.<sup>41</sup>

As we know that the old Criminal Code did not recognize corporation as a legal subject that can be held criminally liable. Therefore, the new Criminal Code regulates corporations as legal subjects that can be held criminally responsible. As regulated in Article 45 to Article 50 of Law Number 1 Year 2023 concerning the Criminal Code which explains corporations as legal subjects of criminal acts:

Article 45: paragraph (1) reads "Corporation is the subject of criminal offense". Meanwhile, paragraph (2) states that Corporations as referred to in paragraph (1) include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises, or the equivalent, as well as associations both incorporated and **unincorporated, business entities in the form of firms, limited partnerships, or the equivalent in accordance with the provisions of laws and regulations.**

Furthermore, Article 46 states that Criminal Acts by Corporations are Criminal Acts committed by administrators who have a functional position in the organizational structure of the Corporation or persons based on employment relationships or based on other relationships acting for and on behalf of the Corporation or acting in the interests of the Corporation, within the scope of the business or activities of the Corporation, either individually or jointly. Furthermore, Article 47 states that in addition to the provisions referred to in Article 46, Criminal Acts by Corporations may be committed by the commanders, controllers, or beneficial owners of the Corporation who are outside the organizational structure, but can control the Corporation.

Meanwhile, Article 48 elaborates on the conditions for the accountability of Criminal Acts by Corporations as referred to in Article 46 and Article 47, if: a). included in the scope of business or activities as specified in the articles of association or other provisions applicable to the Corporation; b). unlawfully benefiting the Corporation; c). accepted as Corporation policy; d). The Corporation does not take the necessary steps to

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<sup>41</sup> Bismar Nasution, *Corporate Crime*, Paper in <https://bismarnasution.com/tindak-pidana-korporasi/> accessed on August 13, 2022

prevent, prevent greater impact and ensure compliance with applicable legal provisions to avoid criminal acts; and/or e). The corporation allows the criminal offense to occur. Article 49 further emphasizes that accountability for criminal acts by corporations as referred to in Article 48 shall be imposed on corporations, administrators who have functional positions, commanders, controllers, and/or beneficial owners of corporations.

Article 50 Justification and excuse reasons that can be submitted by administrators who have a functional position, commanders, controllers, and/or beneficial owners of the Corporation can also be submitted by the Corporation as long as the reasons are directly related to the Criminal Act charged to the Corporation.

Regarding punishment for corporations is regulated in Article 56 which states that "In the punishment of Corporations that must be considered, are: a). the level of loss or impact caused; b). the level of involvement of the management who has a functional position of the Corporation and/or the role of the commanders, controllers, and/or beneficial owners of the Corporation; c). the length of the Criminal Offenses that have been committed; d). the frequency of Criminal Offenses by the Corporation; e). the form of guilt of the Criminal Offenses; f). the involvement of Officers; g). the value of law and justice that lives in the community; h). the track record of the Corporation in conducting **business or activities; i). the effect of the conviction on the Corporation; and/or j). the cooperation of the Corporation in handling Criminal Offenses.**

Meanwhile, the fourth part of Law No. 1 Year 2023 on Criminal Code regulates the punishment and action for corporation. Regarding the punishment for corporations, it is the same as the punishment for other general criminal offenses consisting of principal punishment and additional punishment.<sup>42</sup>

The main punishment in the punishment for corporation is fine.<sup>43</sup> Meanwhile, additional punishment for corporation consists of:<sup>44</sup>

- a) payment of compensation;
- b) repair of the consequences of a criminal offense;
- c) performance of obligations that have been neglected;
- d) fulfillment of customary obligations;
- e) financing of vocational training;
- f) forfeiture of goods or profits derived from the crime;
- g) announcement of court decisions;
- h) revocation of certain licenses;
- i) permanent prohibition of certain acts;
- j) closure of all or part of the place of business and / or activities of the Corporation;
- k) suspension of all or part of the Corporation's business activities; and
- l) dissolution of the Corporation.

Regarding the additional punishment of revocation of certain licenses, closure of all or part of the place of business and/or activities of the Corporation, and freezing of

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<sup>42</sup> Article 118 of Law No. 1 Year 2023 on the Criminal Code

<sup>43</sup> Article 119 of Law No. 1 Year 2023 on the Criminal Code

<sup>44</sup> Article 120 paragraph (1) of Law No. 1 Year 2023 on Criminal Code

all or part of the Corporation's business activities, the maximum period of 2 (two) years is imposed.<sup>45</sup> However, if the corporation does not carry out the additional punishment of payment of compensation, repair of the consequences of the Criminal Act, implementation of obligations that have been neglected, fulfillment of customary obligations, and financing of job training, then the assets or income of the Corporation can be confiscated and auctioned by the prosecutor to fulfill the additional punishment that is not fulfilled.<sup>46</sup>

Regarding Fines, it is regulated in Article 121 paragraph (1) which reads "Fines for Corporations shall be imposed at least category IV, unless otherwise provided by Law". Meanwhile, paragraph (2) states that "**In the event that the criminal offense committed is punishable by: a). imprisonment of under 7 (seven) years, the maximum fine for the Corporation is category VI; b). imprisonment of 7 (seven) to a maximum of 15 (fifteen) years, the maximum fine for the Corporation is category VII; or c). death penalty, life imprisonment, or imprisonment of a maximum of 20 (twenty) years, the maximum fine for the Corporation is category VIII.**

Meanwhile, Article 122 regulates ;

- (1) The fine must be paid within a certain period of time as stated in the court decision;
- (2) The court decision as referred to in paragraph (1) may determine the payment of the fine in installments;
- (3) If the fine as referred to in paragraph (1) is not paid within the prescribed period, the assets or income of the Corporation may be confiscated and auctioned by the prosecutor to pay off the unpaid fine;
- (4) In the event that the assets or income of the Corporation are insufficient to pay off the fine as referred to in paragraph (3), the Corporation shall be subject to substitute punishment in the form of suspension of part or all of the business activities of the Corporation.

Meanwhile, the actions that can be imposed on corporations are: a). takeover of the Corporation; b). placement under supervision; and/or c). placement of the Corporation under guardianship.<sup>47</sup> Meanwhile, further provisions regarding the procedures for the implementation of penalties and actions for Corporations as referred to in Article 118 through Article 123 shall be regulated by Government Regulation.<sup>48</sup>

#### IV. CONCLUSION

Prior to the issuance of Perma Number 13 of 2016 and the enactment of Law Number 1 of 2023 concerning the Criminal Code, there was no uniformity in handling criminal cases committed by corporations. This is because there are no guidelines for investigators, public prosecutors, and judges in handling criminal cases with corporate legal subjects, although there are already several regulations governing corporations as subjects of

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<sup>45</sup> Article 120 paragraph (2) of Law No. 1 Year 2023 on Criminal Code

<sup>46</sup> Article 120 paragraph (3) of Law No. 1 Year 2023 on Criminal Code

<sup>47</sup> Article 123 paragraph (3) of Law No. 1 Year 2023 on the Criminal Code

<sup>48</sup> Article 124 paragraph (3) of Law No. 1 Year 2023 on Criminal Code

criminal law. In resolving criminal cases with corporate legal subjects, investigators, public prosecutors and judges are based on the knowledge and experience of each of these law enforcement officials.

The new Criminal Code has regulated corporations as legal subjects that can be held criminally liable. As stipulated in Article 45 to Article 50, Article 56, and Article 118 to Article 124 of Law Number 1 Year 2023 on the Criminal Code which explains corporations as legal subjects of criminal acts.

## **V. SUGGESTION**

It is necessary to socialize more quickly to law enforcers, legal practitioners, academics and the entire community regarding Law Number 1 of 2023 concerning the Criminal Code, even though the process of its enactment is 3 (three) years ahead.



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