ANALYSIS OF EFFECTIVE CRIMINAL SANCTIONS CORPORATIONS AS CRIMINAL ACTORS OF CORRUPTION

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ABSTRACT

This research examines the types of criminal sanctions that are effective against corporations as perpetrators of criminal acts of corruption. The research method used a normative-juridical empirical juridical approach in the form of literature review and field research. The analysis was carried out qualitatively. The results show that the types of criminal sanctions that are effective against corporations as perpetrators of criminal acts of corruption against corporations as perpetrators of corruption must include choices of criminal sanctions and / or disciplinary action as additional crimes which alternatively and or cumulatively can be imposed against the corporation. Corruption crimes committed by corporations are crimes that are systematic in nature and can have a mass casualty impact.

Keywords: Types of criminal sanctions, corporations, corruption.

INTRODUCTION

The Government of the Republic of Indonesia has enacted Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crimes. This law is in conjunction with Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (UUTPK). The enforcement of the provisions of the UUTPK regulation is based on the consideration that the criminal act of corruption is very detrimental to the state finances or the state economy and hinders national development, so that it must be eradicated in order to create a just and prosperous society based on Pancasila and the 1945 Constitution. apart from being detrimental to state finances or the country's economy,

According to Bambang Hartono (2011), currently in Indonesia, corruption is rife, both in Central and Regional Officials. Even though currently Indonesia is experiencing a very great economic crisis, there are still many people who are experiencing hunger and starvation. But all this still does not touch the hearts of state officials, as evidenced by the fact that there are still a lot of news and news circulating in the Mass Media and Electronic Media about a number of officials who have committed acts of corruption. Placement of corporations as the subject of corruption in criminal law enforcement is very effective and becomes a deterrent element to the subject of the criminal act of corruption. In addition, theoretical studies (doctrines) are very supportive to account for and convict corporations as the subject of criminal acts of corruption. Law enforcement on criminal acts of corruption is also oriented to account for the crime and convictions of the subject of criminal acts of corruption in the form of corporations. Placement of corporations as subjects of criminal acts of corruption is very possible, given that theoretical studies (doctrines) are very supportive of this direction.

In the practice of law enforcement of corruption, the subject of criminal acts of corporate corruption is rarely enforced / applied. Criminal law enforcement officers tend to operate more on the subject of corruption in the form of civil servants (PNS) or individuals. In fact, there are quite a lot of corruption crimes involving corporations as the subject of corruption. In fact, the impact made by corporations has resulted in damage to state finances and the country's economy far more detrimental, dangerous and despicable than the perpetrators of other corruption crimes committed by individual civil servants. It is very possible that criminal responsibility and conviction against the subject of the corporation that is involved in the criminal act of corruption.

Corrupt acts of corporations can be more detrimental in nature, however, there are obstacles to the application of criminal sanctions against corporations as perpetrators of corruption, namely the formulation / formulation of minor criminal sanctions only in the form of fines that are not maximal; additional punishment in the form of (temporary) closure of all or part of the company for a maximum period of 1 (one) year; and, the Criminal Procedure Code has not regulated the provisions of the corporate criminal procedure law. The incomplete formulation and application policies make corruption law enforcement officers less enthusiastic in threatening criminal sanctions against corporations. As a result, the corporation has done damage, repeating without a deterrent effect not to commit the criminal act of corruption again.

In the study of criminal law, criminal acts / acts, criminal liability or wrongdoing, as well as crimes and convictions against corporate subjects as perpetrators of criminal acts of corruption are very possible in the scheme of eradicating criminal acts of corruption. The policy of enforcing criminal law against corporations as the subject of criminal acts of corruption needs to be implemented in an integral, simultaneous, complementary and coherent manner with individual subjects of corruption. Predicting the future, taking responsibility for and punishing corporations is seen as more effective in eradicating corruption, which has a deterrent effect and can reduce losses and damages to state finances or the country's economy.

TYPES AND RESEARCH METHOD

The approach to the problem in legal research is determined and limited by the scientific tradition that develops in legal science, which according to Bruggink is based on existing ideas (denkbeelden) and approaches (in the sense that it is limited by the scientific tradition in which legal scientists are located), or in Kuhn's terminology, by prevailing paradigms in legal science, Bruggink (1999). According to Marzuki (2005), the first step of this research is based on doctrinal research using a statute approach, an analytical approach, and a conceptual approach.

The legal materials used in this research are primary and secondary legal materials. Primary legal material consists of criminal law laws and regulations related to law enforcement on corruption crimes. Secondary legal materials used are legal literature, scientific papers, research results, dictionaries, scientific journals (periodicals), especially those related to criminal law and criminal law enforcement. Field data in the form of interview results are used as support to complement the analysis of legal materials, which are sourced from agencies authorized in the field of law enforcement on corruption crimes in the jurisdiction of the Bandar Lampung City Police (Polresta).

According to the source, the data used in this study can be divided into two, namely:

a. Primary data sources are data sources taken directly from the source in the research field, in the form of informant interviews and observations made at the research location, namely the Lampung Police and the Bandar Lampung Police.
b. Secondary data sources are data obtained from notes, newspapers, documents, reports and other sources related to the research theme.

The data collection technique used is documentation. Legal materials are collected through procedures for identification, inventory, and classification of legal materials according to research problems. Then the legal materials / data are recorded or cited using a card system. Field data (for socio-legal research), were collected in the following ways: (1) In-depth interviews; and (2) Direct Observation.

Analysis of legal materials is also carried out descriptively-analytic, namely examining legal concepts, legal principles, legal norms, and legal systems related to criminal law enforcement against corruption crimes. From the aspect of dogmatic jurisprudence, the analysis of legal materials is carried out by means of exposure and analysis of the content (structure) of the applicable law, systematization of legal symptoms that are presented and analyzed, interpreted, and judgments of applicable laws. The methods of legal interpretation used include grammatical interpretation (language), systematic interpretation, authentic interpretation, and comparative interpretation. While the field data were analyzed following the Miles and Huberman model, namely data reduction, data presentation, and drawing conclusions or verification.

RESULTS AND DISCUTION

Types of Criminal Sanctions That Are Effective Against Corporations as Perpetrators of Corruption Crimes

The characteristics of a legal entity as a subject of criminal law are individuals who are the founders, have separate assets separate from the assets that establish them and their managers, have rights and obligations in addition to the rights and obligations of the founders and their managers. The essence of the corporation has differences in the legal subject of people. People who are subject to law have an inner soul and attitude; corporations do not have an inner attitude (mens rea). The soul and inner attitude of the corporation reside in the management who acts for or on behalf of the corporation. Mens Rea is a provision that must be contained in corporate accountability. According to Ni Kadek and Kadek Agus (2020), corporations cannot attend in person at the trial. This is what makes the difference between natural legal subjects (humans) and corporate legal subjects.

The corruption law enforcement model currently applied is a model that prioritizes the corruption law enforcement system enforced in the police, such as conducting investigations and investigations. The corruption law enforcement model is different from handling / prosecuting other cases. Of course, there are differences because corporations are seen as legal subjects that have no similarity with personal human subjects, so their handling is different, considering that corporations cannot be subject to criminal sanctions in the form of body confinement, so the treatment of law enforcement is different, as regulated in Law No. 40 of 2007 concerning Limited Liability Companies and Law Number 5 of 1999 concerning Unfair Business Competition.

Corruption law enforcement exists or does not have a direction that makes corporations the subject of criminal acts of corruption. The interviewee's answer stated that the corporation has been accepted as a legal subject, so in Article 2 of the UUTPK, it is stated that the corporation can be subject to punishment when the corporation is used as a tool to commit criminal acts of corruption.

Making a corporation the subject of a criminal act of corruption will experience many difficulties in handling / prosecuting the case. There are so many because it is not as easy as in practice when determining a corporation as a suspect because it is easier for investigators to see the wrongdoing factor of the perpetrator than the corporation. It is very difficult to measure corporate error because the corporation is also controlled by the board of directors. If there is no board of directors, the corporation will not work, therefore it is more effective to punish the perpetrators, namely individuals, than corporations.

According to Jeane N. Saly (2015), in the development of criminal law education in Indonesia there are two schools of teachings. First (monistic), argues that criminal responsibility (as a subjective element in the perpetrator) is attached to the act against the law (objective element), while the second opinion (dualistic) separates it. In fact, the face of criminals in Indonesia has undergone

significant changes since 1955, when the economic crime law was declared valid in Indonesia. In other words, in development during the Old Order period 1955-1967) and the New Order (1967-1998), where corporations played an important role in the quality of crimes that occurred in our country, including today during the Reformation Era that was already running.

Making corporations the subject of criminal acts of corruption is considered important and urgent to do. Everything that is related to criminal acts is urgent and must be acted upon, so there is no gap for crime, let alone corruption crimes that harm the state. The police view that making corporations the subject of criminal acts of corruption, then eradicating corruption crimes is more effective. In fact, it is effective considering that the human resources of law enforcers are still limited in implementing law enforcement against corporations and also the procedural law that regulates corporations does not exist, so for now it is not yet effective.

Based on the research of Patricia Garcia (2019), that corporations are used as the subject of criminal acts of corruption with zero or very little numbers compared to individual subjects because they are more effective in imposing sanctions on perpetrators in the form of people than corporations considering that criminal sanctions are more effectively applied to people because there is a body sentence / imprisonment which is different from that of corporations which are only subject to administrative sanctions.

Seeing the unbalanced condition, it is necessary or not a police chief policy to encourage and make corporations the subject of criminal acts of corruption. Of course, the legal breakthrough will definitely be carried out, but the police cannot arbitrarily have regulations in place first. In 2016 the Supreme Court of the Republic of Indonesia issued Supreme Court Regulation 13/2016 on Procedures for Handling Criminal Cases by Corporations. This regulation encourages and enforces corporations as subjects of criminal acts of corruption.

Based on the explanations that have been put forward by research sources and relevant reading materials / sources, it shows that the application of the corruption law enforcement model is that of the police, especially the Criminal Investigation Unit (corruption) applies a repressive model. A model that emphasizes the use of penal / criminal aspects. Criminal aspects that are suffering / devastating / oppressing / destroying powerfully and repressively are regulated in material criminal law. Criminal law which regulates the elements of a criminal act, criminal offense / responsibility as well as criminal and convictions.

However, the policies of the police and police officers have not effectively placed and enforced corporations proportionally as perpetrators of corruption. The police apparatus argued that corporations have different characteristics from individual legal subjects, it is difficult to prove the element of error and there is no criminal procedural law provisions that regulate the accountability of corporations as perpetrators of corruption. Another reason is that the different nature of corporations from humans makes the choices / forms of criminal sanctions limited.

The View of Criminalization on Corporations as Perpetrators of Corruption Crime

According to resource person Erna Dewi (2018) that corporations as subjects of criminal acts of corruption at the formulation / formulation stage (in abstracto) of legislation can be seen in Article 20 UUTPK. Resource persons Maroni (2018) stated that the provisions regarding corporations as subjects of corruption in UUTPK are deemed incapable of overcoming the modus operandi of corporations as perpetrators of corruption, for example the hidden practices of corporate business activities that harm state finances, but who cannot be regulated responsible criminally. Law enforcement practices should be able to make corporate managers their legal targets.

Furthermore, the second question is asked which is still related to current criminal law enforcement policies concerning corporations as the subject of the criminal act of corruption at the application / application stage (in concreto) of the formulation / formulation of criminal acts of corruption. According to Erna Dewi, at the application stage the corporate management tends to be less than optimal. In corporations in Indonesia there are only a few court decisions. If counted less than 3 (three) court decisions, while in Maroni's opinion it is stated that the UUTPK has not explicitly regulated who is responsible if the corporation commits a criminal act of corruption. Law enforcement practices are only aimed at corporate management, while the suitcase itself is not affordable, an example of a case is a case involving Indosat.

Based on the description above, it can be said that the criminal regulations regarding corporate criminal responsibility in the criminal act of corruption have been regulated in the laws and regulations on corruption, but are rarely applied in practice. The public prosecutor's reluctance to bring corporate perpetrators to court, because the punishment to be imposed on corporations is only in the form of fines which have less deterrent effect than capital punishment or imprisonment for individual perpetrators and difficulties in proving corporate “guilt” as part of an element against the law rather than proving. individual mistakes. Criminal experts still have different opinions, some state that it is only people (humans) who have faults, while others argue that corporations can also have mistaken.

The issue of corporate responsibility in criminal law has emerged, because so far the responsibility for perpetrators of criminal acts in the Criminal Code has only been to people. According to Bismar Nasution (2011), crime can be identified by the incidence of harm, which then creates criminal liability. What then raises a debate is corporate liability considering that in the Criminal Code, only individuals with natural biological connotations (naturlijkee persons) are considered as subjects of criminal law. If if the activities or activities carried out for and on behalf of a corporation are proven to cause losses and must be given sanctions, who will be responsible? Is it the corporation itself or the management?

The formulation of corporate responsibility in UUTPK is not easy to apply, because by making a corporation (a legal entity) the subject of a criminal act, the criminal system and its punishment should also be corporate-oriented. This means that there needs to be a reformulation of criminal regulations:

1. When did the corporation commit a criminal act and when was it accounted for? Because so far there have been policies that have formulated and some have not formulated them in statutory regulations.
2. Who can be accounted for, some formulate it and some are not? For the future, the legislative policies regarding who can be accounted for in the corporation must be strictly regulated.
3. Types of sanctions must be reformulated clearly and in detail, including the types of penalties in the form of basic crimes, additional penalties and disciplinary measures as well as the types of sanctions from these crimes. Including the choice of punishment model, namely whether the punishment imposed on corporations is regulated differently from the type of sanction for the subject of a criminal act in the form of "human" or whether it will be separated, meaning that special punishment for corporations is regulated separately.
4. The formulation of sanctions must also be clear and consistent, so that they can be applied to corporations.
5. If in the future, corporations are subject to criminal acts in general, and are regulated in the Criminal Code, it is necessary to have criminal regulations that apply in general to corporations, Dwidja (2012).

The logical consequences of the position of the corporation as a legal entity, have an effect on criminal acts that can be committed by the corporation, there are several exceptions. In this regard, Barda Nawawi Arief (1990) states, although in principle corporations can be held accountable to the same as individuals, there are some exceptions, namely:

1. In cases which by nature cannot be committed by a corporation, for example bigamy, rape, or perjury.
2. In cases where the only punishment that can be imposed may not be imposed on the corporation, for example imprisonment or capital punishment.

In the Netherlands it is stipulated that a legal entity in criminal law can commit a criminal act, therefore it can be prosecuted and sentenced, but through three stages regarding the recognition of a legal entity as a subject of criminal law:

1. First Stage: This stage is characterized by efforts so that the nature of the criminal act committed by a legal entity is limited to individuals (naturlijk persoon), so that if a criminal act occurs within a legal entity environment, a criminal act is deemed to have been committed by the law enforcement officials. In this stage, the principle of “non-potest delinguere university” applies, namely that a legal entity cannot commit a criminal act. Accountability here is only related to the obligation to maintain that is carried out by the management.
2. Second stage: This stage states that a legal entity cannot commit a crime, but the responsibility has been borne by the management of the legal entity. The specific formulation for said legal entity is: If a criminal act is committed by or because of a legal entity, the criminal charges and criminal penalties must be imposed on the management. So in this case people take the attitude that it is as if a legal entity can commit a real permanent criminal offense, the person who commits the act is a human being as its representative.
3. Third Stage: This stage is the beginning of the direct responsibility of a legal entity, cumulatively, legal entities can be accounted for according to criminal law in addition to them as the giver of their orders who as the giver of orders or givers of leadership who have actually played a role in the crime. This happened first for "ondering strafrecht", namely the decision to control prices from 1941 tofu, then in "Wet op de Economische Delicten" (the 1950 Economic Crime Law).

CONCLUSIONS AND SUGGESTION

Types of criminal sanctions that are effective against corporations as perpetrators of criminal acts of corruption against corporations as perpetrators of criminal acts of corruption must include options for criminal sanctions and / or disciplinary action as additional crimes which alternatively and or cumulatively can be imposed against the corporation. Liability for corporate crimes in Indonesia is not regulated in the Criminal Code, but is scattered in various laws. The Criminal Code that was in effect at that time (in the Dutch East Indies) was the 1886 KUHP which was Wetboek van Strafrecht voor Nederlandsch Indie, also in effect in the Netherlands as a substitute for the Penal Code that was in effect previously. According to the founder at that time, it was best for the Dutch East Indies to apply only one KUHP, which applied jointly to the European and Indonesian (Bumiputera) and East-Foreign groups. This means that the perpetrators of criminal acts of corruption committed by corporations are crimes that are systematic in nature and can have a mass victim impact. Therefore, corporate accountability will benefit from creating a deterrent effect on corporations not to be involved in criminal acts of corruption.

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