

Corporate Punishment

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Abstract

Legal subjects in legal science consist of natural person (human legal subject) and legal person (man-made legal subject). This legal subject (legal entity) also carries out various legal acts. Article 10 of the Criminal Code is the basis for reference to various criminal sanctions that can be imposed on perpetrators of natural crimes but cannot necessarily be imposed directly on corporations. Based on the description above, a problem can be formulated, namely how to punish corporations in Indonesia. The aim of this research is to find out and analyze corporate criminalization in Indonesia. A corporation is always identified as a legal entity that is considered to have personality before the law. Recognition of corporations as perpetrators of crimes, which means acceptance of corporations as subjects of criminal law, has consequences for the form of criminal sanctions that can be imposed on corporations. Crimes committed by corporations have their own difficulties in handling. The criminal offense imposed on a corporation is not only a fine, but also includes imprisonment if an environmental crime is committed by a person, based on an employment relationship or based on another relationship acting within the scope of work of the business entity, criminal sanctions are imposed on the person giving the order or leader. in the criminal act regardless of whether the criminal act was committed individually or jointly. The forms of criminal sanctions for corporations are very diverse, it's just that so far fines have been the "prima donna" of criminal sanctions for corporations. The implementation of the double track system is a sign that is different from the corporate punishment arrangements that already existed.

Keywords : Criminal, Corporate, Sanctions

INTRODUCTION

Legal subjects in legal science consist of natural person (human legal subject) and legal person (man-made legal subject). Humans are declared as legal subjects starting from the time the human is born or if there is a legal interest in wanting the baby in the womb to become a legal subject and ends when the human dies. Humans as legal subjects have the right to carry out various legal acts, legal acts of humans as legal subjects can be categorized as legal acts in the field of private law, namely legal acts between one human legal subject and other humans, for example: legal acts of buying and selling, renting, rent, grants and so on.

Apart from that, the actions of human legal subjects also cover the field of public law, for example: humans as citizens are subject to various taxes from the state, which in the case of private humans carries out various legal acts with the subject of state law. The legal actions of legal subjects bring consequences, the result of the actions of human legal subjects is responsibility for legal actions before the law. This legal subject (legal entity) also carries out various legal acts. Legal actions carried out by legal entities also carry the consequences of legal liability.

Within the scope of criminal law liability issues, the issue of legal entities (in the following description the term corporation is used) will be raised as the subject or creator or perpetrator (dader) of criminal acts, acts that are prohibited from being carried out by corporations, and criminal issues or corporate punishment. In corporate responsibility, the creator can be punished if he has committed a prohibited act as formulated in the law without further looking at the inner attitude of the perpetrator (corporation). It is very difficult to find fault with a corporation, therefore the implementation of criminal liability without fault is very necessary in corporate criminal liability.

The final result of the implementation of criminal law in a case can be seen clearly through the imposition of punishment on the perpetrator of a crime in one or several sentences. The form of criminal sanctions itself is very dependent on the provisions of criminal law which are explicitly regulated in the law. There are not many laws that regulate criminal sanctions for corporations, which are different from the regulation of criminal sanctions for individual or individual perpetrators. Article 10 of the Criminal Code is the basis for reference to various criminal sanctions that can be imposed on perpetrators of natural crimes but cannot necessarily be imposed directly on corporations. Based on the description above, a problem can be formulated, namely how to punish corporations in Indonesia. The aim of this research is to find out and analyze corporate criminalization in Indonesia.

METHOD

This research includes normative legal research, prescriptive and applied with a case approach. The technique for collecting legal materials used in this research is literature study. The legal material is obtained from statutory regulations, judge's decisions, books, legal journals related to the problems studied. The analytical method in this research is deductive / syllogism deduction, the legal material that has been collected is analyzed using a case approach and then draws conclusions from general matters regarding the problems faced.

RESULTS AND DISCUSSION

A corporation is always identified as a legal entity that is considered to have personality before the law. In fact, in the context of civil law there is never any doubt about establishing this conception. In criminal law, it turns out it is not that simple. In fact, the reluctance to bring corporations into the realm of criminal law, according to Diamantis and Laufer, has led to under prosecution of corporations. Returning to the issue of definition, which exists in various laws and regulations in Indonesia, which was also later adopted by Supreme Court Regulation No. 13 of 2016 which reads "an organized group of people and/or assets, whether they are legal entities or non-legal entities." This formulation is the same as the formulation in the Draft Criminal Code which was submitted to the DPR in 2015, namely 'an organized collection of people and/or assets, whether they are legal entities or non-legal entities.

Recognition of corporations as perpetrators of crimes, which means acceptance of corporations as subjects of criminal law, has consequences for the form of criminal sanctions that can be imposed on corporations. Not every criminal sanction as regulated in Article 10 of the Criminal Code can be applied to corporations. The creators of the Criminal Code (Wetboek van Strafrecht) still view perpetrators as limited to people/individuals/natural persons with human rights attached to them. The essence of the imposition of criminal sanctions is nothing other than giving sorrow which is a reduction in human rights.

The formulation found in the Draft Criminal Code determines that corporate criminal acts are: Criminal acts committed by management who have a functional position in the organizational structure of the Corporation or people who, based on an employment relationship or other relationships, act for and on behalf of the Corporation or act in the interests of the Corporation. , within the scope of the business or activities of the Corporation, either individually or jointly.

The model of criminal sanctions that may be applied is none other than taking away or reducing the existence rights that every human being has, such as the right to independence, the right to communicate and relate, the right to expression, and so on. Based on this idea, various types of criminal sanctions are imposed: imprisonment to reduce personal freedom and freedom of relationships, fines to reduce the perpetrator's economic rights and additional criminal sanctions which essentially increase the reduction of the perpetrator's rights. The imposition of criminal sanctions on people is once again based on whether or not the perpetrator has committed a criminal act and is guilty of committing the act.

An action can be held accountable to a corporation if the following requirements are met:

1. included in the scope of business or activities as determined in the articles of association or other provisions applicable to the Corporation.
2. unlawfully benefit the Corporation.
3. accepted as Corporate policy.

The measure of error itself is seen more from the conformity between the perpetrator's intentions and actions. Wrongdoing is measured as intentional when the perpetrator knows the consequences that will result and performs prohibited actions to achieve those consequences. In contrast to negligence, the perpetrator can imagine the consequences that will occur but does not want those consequences. As with individuals, the imposition of criminal sanctions on corporations also depends on whether or not the corporation has intentions. The problem is, in what form the intention is measured must be based on the doctrine of *ultra vires*.

It is unimaginable if criminal sanctions as regulated in Article 10 of the Criminal Code are immediately applied to corporations that are proven guilty. Corporations cannot be subject to imprisonment like people because if implemented it would make it difficult to execute the crime in the field. Finally, someone appointed to represent the corporation will be subject to imprisonment. What form of criminal sanction can be imposed on a corporation so far is only known as a criminal sanction of fine. Fines are mostly applied to corporations as a sanction based on the premise that corporations commit crimes to gain profit. The imposition of criminal fines on corporations is carried out with the aim of reducing the economic rights of corporations. Profits obtained by corporations as a result of crime may be confiscated, unlike other corporate profits obtained from other activities.

Criminal sanctions as intended in Article 10 of the Criminal Code are considered ineffective in having an impact on both the perpetrator and society (the Single Track System is not effective). Corporations that are proven to have committed criminal acts are often only subject to fines along with weights even though the turnover of the corporation's activities (including money from crime) is more than enough to pay the sanctions. Crimes are repeated again with the idea that the profits obtained from business crimes are greater than the fines that may be imposed, even if they are discovered by investigators.

Because the single track system was considered less effective, the idea of a double track system came up. Barda Nawawi Arief explained the emergence of the double track system idea as a form of development of global insight in

criminal law theory/science in terms of the idea of balance which allows for a "mixed sentence" between punishment and treatment/measures. This means that the use of the double track system is a form of development of criminal law thinking in terms of the purpose of punishment which not only prioritizes the deterrence effect on the perpetrator but also the value of balance between justice and legal certainty (rule of justice).

The double track system thinking originates from the philosophy of punishment regarding why we punish someone so that inevitably thinking about punishment is centered on an awareness of the importance of protecting interests in society. The development of an understanding of which party's interests should be prioritized in practice creates a dichotomy between individual interests and the interests of the wider community. The double track system is a "middle way" thinking in anticipating the dichotomy of interests which gives birth to a new punishment called action.

Actions must be imposed simultaneously with criminal sanctions because this is where the role of action as a complement to criminal sanctions creates the goal of fair punishment. Criminal sanctions and actions are like a sword with 2 (two) blades that can be used to dissect increasingly complex and complicated criminal acts. Actions are not only a complement to criminal sanctions but complement criminal sanctions so that they are not only directed at the imposition of harsh sanctions. However, the action becomes an independent punishment apart from the main criminal sanction. The action has advantages when applied to corporate crimes, considering that the action is very applicable and is not trapped in the administrative system but still depends on the imposition of the main crime.

The philosophy of punishment has been decided to be included in the Draft Criminal Code, which briefly states that the purpose of punishment is prevention, rehabilitation, conflict resolution, restoring balance and bringing a sense of security, as well as fostering feelings of regret and repentance. From this formulation it is very clear that the drafters of the Criminal Code Bill have a preference for a utilitarian philosophy rather than a retributive one, a philosophy that is forward looking and emphasizes benefits for the people at large. In the corporate context, after reviewing various existing laws and regulations and considering various public input, and relying on the criminal objectives that have been determined, the Criminal Code Bill team agreed that there would be a special section regarding Crimes & Actions for corporations, because it is clear that this entity has the character of and characters that are different from humans.

Crimes committed by corporations have their own difficulties in handling. It is difficult to hold corporations criminally responsible because corporations are not individuals. Because corporations are not individuals, this means they can involve other parties, making it quite difficult to carry out inquiries or investigations, especially in terms of punishment. Dalinama Telaumbanua said that criminal acts can be identified by the occurrence of losses, which then results in criminal liability. Criminal liability is a form of legal protection for victims of criminal acts for the losses they suffer.

The criminal offense imposed on a corporation is not only a fine, but also includes imprisonment if an environmental crime is committed by a person, based on an employment relationship or based on another relationship acting within the scope of work of the business entity, criminal sanctions are imposed on the person giving the order or leader. in the criminal act regardless of whether the criminal act was committed individually or jointly.

CONCLUSION

Imposing sanctions on corporations is not easy. Various forms of sanctions must be applied appropriately to corporations. Improper imposition of criminal sanctions will lead to repetition of criminal acts by corporations and even victims will not receive the justice they hope for. The forms of criminal sanctions for corporations are very diverse, it's just that so far fines have been the "prima donna" of criminal sanctions for corporations. The implementation of the double track system is a sign that is different from the corporate punishment arrangements that already existed.

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