

# *Announcement of The Judge's Decisions as Additional Sanction For The Corruption Perpetrating Corporations*

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**Abstract** — Corporations often do corruption together with government officials. It is often that the corporation charged by criminal sanction of fines but not executed. Based on the phenomenon, it should be found and investigated the sanction that will bring deterrent effects. In analyzing the problem will be used statute approach, and by using qualitative analysis. The analysis results are expected will bring discourses for law enforcer especially the judge in punishing the corporation which commit corruption together with governmental officials.

**Keywords**—corruption, corporation, judge decision announcement.

## I. INTRODUCTION

Forestry crime is no longer purely stand-alone but there is an established collaboration that penetrates into illegal timber trade, often involving license-issuing officials and license-applying corporations. Corporate activities in the timber trade sector are related to permits, such as Commercial Forest Estate Utilization Permit, Environmental Services Utilization Permit, Commercial Non-Timber Forest Products Utilization Permit, Commercial Timber Forest Products Utilization Permit, and others.

Several studies have shown indications of corruption with regard to permits granted by government officials. The criminal law acknowledges concurrently committed crimes (*concursum*). With regard to the granting of licenses there are at least legal subjects of licensing officials and the applying corporations. In the corporation crime, several court decisions have punished the corporation. Regrettably, some Supreme Court decisions, such as 812/PID SUS/2010/PN.BJM, in the decision PT Giri punished with fine of Rp 1.3 M. While Supreme Court decision Number 2642/K/PID/2006 stated, land of 47 thousand hectares in register 40 with the content seizure by government. Both decision not executed yet because no dare and not deterrent effect for the corporation. Based on the explanation above, the article aimed at analyzing the appropriate sanction for corruption perpetrating corporation.

## II. RESEARCH METHOD

The article analyzed problem by using statute approach, research data, and by using qualitative analysis.

## III. RESULTS AND DISCUSSION

### *a. Corporations position in the corruption crimes which have been done together with governmental officials*

In today era, the corporate role in the industrial and trading world is unquestionable. Trading world become so intense in competition demands the corporations to grab opportunities and profits. It demands creativity and intense competition. At one side, the ambition to reap profit but at other side corporations are also demanded to build image. But often be met corporation use illegal ways. In the framework the criminal law is empowered in handling the violating corporations. Clinard and Yeager said, the criminal law can be implemented into corporations which conduct crimes, by still considering: (a) The degree of loss to the public; (b) The level of complicity by high corporate managers; (c) The duration of the violation; (d) The frequency of the violation by the corporation; (e) Evidence of intent to violate; (f) Evidence of extortion, as in bribery; (g) The degree of notoriety engendered by the media; (h) Precedent in law; (i) The history of serious violations by the corporation; (j) Deterrence potential; (k) The degree of cooperation evinced by the corporation (Clinard dan Yeager, 1980: 93). In the permission violation in the management and usage of forestry resources contains corruption, in line with statement of Clinard and Yeager, that is "evidence of extortion, as in bribery". Corruptive behavior in process of permission acquisition done by the governmental officials who have authorization in giving permission and the corporations as the petitioners. In the criminal law, it is known participation (*samenloop*), that is more than 1 (one) persons in the crimes. If in the permission giving, it is proven not suitable with the required procedures, beside the corruptive element, the officials and the corporations can be disqualified as doing corruption. Either the governmental officials and the corporations at position as the doers.

In article 20 paragraph (7) Number 18 Year 2013 about prevention and eradication of forest destruction, it is determined the principal punishment can be charged penalty only to the corporation, with maximum punishment stipulation added by 1/3 (one third) . The stipulation can be understood because has been suitable with the corporation characteristics, as the criminal subjects. But should be given attention to the participation

teaching, that will be implemented to the doers, that is the officials and corporations. Of course, in the participation teaching will bring legal consequences in the form of criminal detention for the doers suitable with each position as the doers or the helpers. Article 55 of Criminal Code determines that the doers are those who conduct, order to do and participated in doing and also suggest. Then Article 56 of Criminal Code determines the helpers are those who give help during the crimes done and they intentionally give chances, means, or explanation to do the crime. Position as the doers or helpers become important because as helper the principal punishment will be subtracted 1/3 (one third). Related to the matters, then the position between corporation and governmental officials are equal, as the participants or maker (dader)

*b. Announcement of judge's decision as sanction for corruption perpetrating corporations*

The types of sanction imposed on corporations are certainly different from those imposed on humans due to the characteristics of corporations as the subject of criminal law. In connection with corporations as perpetrators of forestry sector crime, Deby Natalia from the Forestry Anti-Mafia Coalition wrote:

*“Corruption in the forestry sector in Riau does not only benefit the individual actors but also the corporations, especially those engaged in the forestry business. In cases involving a number of regional heads and former Riau forestry officials, based on the facts of the trial, due to the unauthorized granting of such permits the perpetrators were accused of enriching at least 20 companies totaling IDR 1.3 trillion and causing state losses of IDR 1.7 trillion. The 20 companies are suspected of supplying timber to two groups of large timber and paper companies in Riau. The facts of the trial also showed that a number of company officials bribed regional heads or provincial forestry officials for the smooth operation of their companies”*

Regrettably, as stated by Natalia, the majority of the 20 companies remain operating and are not brought before the court. Those corporations committing criminal acts, especially corruption, certainly have economic motives behind their deeds and all would certainly agree with a sanction of fines to be imposed on the corporations concerned. In addition to the appropriate motive, it is also in accordance with the characteristics of corporations as legal subjects. In the event that the judges consider the need to impose additional sanctions the announcement of the judges' decision would be an effective instrument since it may cause a deterrent effect on the corporations.

Sanctions for corporations which committing criminal acts of corruption shall be imposed by apply the provisions of the Corruption Eradication Law as follows:

1. Paragraph 1 of Article 20, in case of criminal offenses committed by corporations and imposition of sanctions on corporations the principal sanction to be imposed shall be a sanction of fines in accordance with the provision of maximum sanction plus 1/3 (paragraph 3) of the Corruption Eradication Law.

2. Paragraph 1 of Article 18, additional sanctions shall be as defined in Article 10 of the Criminal Code as set out in subparagraphs a, b, c and d of paragraph (1) of Article 18 and paragraphs 2 and (3) of the Corruption Eradication Law.

Among the additional sanctions imposed under Article 10 of the Criminal Code is the announcement of the judges' decision. The Criminal Code adopts the criminal sanction system that additional sanctions is facultative in nature, which can only be imposed as long as the judges deems it is necessary. All judges' decisions are actually pronounced in a trial open to the public. The additional sanctions in the form of an announcement of the judges' decision is intended to have the decision broadcasted distinctly in accordance with what the judges decide and the cost shall be borne by the punished (Ninik, 1993: 28).

Cella Wells divided sanctions to corporation into financial sanctions and non-financial sanctions. Financial sanction relate to the economic motive of corporate crime, while non-financial sanctions relate, for example, to corporations with limited management, being unable to pay fines, expectation to have a deterrent effect (Wells, 1994: 31). In recent years, sanctions imposed on corporations are believed to have a deterrent effect since it is understood that corporations does have economic motives in addition to corporations' character as the subject of law. However, the fact shows the opposite. A study by Macrory indicated that 96% of the sanction of fines imposed by Australian courts on corporations had no deterrent effect. This was due to the fact that the fines imposed on corporations would be compensated for by the company's operational costs, employees and consumers (Macrory, 2006: 57). Thus, Macrory recommended adding additional sanctions in addition to a sanction of fines, such as, the announcement of the judges' decision, among others. In the era of today's business "wars" some corporations are increasingly busy building themselves and their reputations through the so-called "corporate image". Any company has an image inherent to it, whether or not it is realized. Not a few goods or services produced by a company have a powerful image in the minds of their consumers. Dowling defines "corporate image's as "corporate image is a set of beliefs and feeling about an organizations". A corporate image can be construed as is a set of beliefs and feelings about an organization

Corporate image can be said as the peoples' perceived experience, beliefs, feelings, and knowledge of a company. Thus, the company's facility and service delivered by its employees to consumer may affect the consumers' perceived image. Hence, an image is one of the most important assets of a corporation that should be continuously built and maintained. The announcement of the judges' decision as a non-financial sanction is intended to embarrass the board and/or corporation. Corporations with a previously excellent reputation would be really embarrassed when this happens. This form of sanction, even if it is only an additional sanction, would be very effective in achieving the deterrence purpose. With regard to the announcement of judges' decision, Curcio stated "... In fact, opinion surveys suggest corporations fear the sting of adverse publicity attacks on their reputations more than they fear the law itself" (Curcio, 1996: 364). Curcio further described that the announcement of the judges' decision has 3 (three) basic elements:

*“...As a threshold issue, it requires that information about the wrongdoer's misconduct reach the public. Thus, the “information highway” existing today is critical to the penalty's success. Second, the proposed penalty operates under the assumption that businesses value their public images. Finally, concern about public reaction to the wrongdoing, and its consequent impact on the business' public image must influence a change in the corporate culture. When these three building blocks are set in place, the publicity penalty may fulfill the underlying objectives of punitive damages in a way that monetary sanctions alone cannot” (Curcio, 1996 : 365).*

Some studies of perception to corporate crime prevention showed that corporations do not commit crimes since it represents a threat to the organization's reputation, management and job prospects (Simpson, 2002: 40). The announcement of the judges' decision is actually expected to cause a deterrent effect on the perpetrators of crime, especially corporations. However, it has never been applied by the courts in Indonesia. In fact, there has not been a thorough discussion of the sanction (Wulandari, 2016 ). It should be a common concern since, as Andrix says, “image and reputation are at the very heart of modern corporate life” (Andrix, 2009: 1857).

#### IV. CONCLUSIONS

An additional sanction in the form of the announcement of the judges' decision for corporations is more powerful to bring about a deterrent effect than a sanction of fines as a principal sanction. The announcement of the judges' decision would threaten the reputation of the corporation that would ultimately

affect the future of the corporation. Therefore, fines imposed on corporations should be accompanied by an additional sanction in the form of announcement of the judges' decision.

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