

# The Limit of Legal Subject of Criminal Act of Corruption

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## ABSTRACT

The objective of this study is to explain the limit of legal subject of corruption. So far, it has been understood only in terms of people and corporations. However, this definition needs to be clarified. The question of what the definitions of people and corporations are is answered by conducting a literacy study of the criminal acts of corruption and legal theories written by criminal law experts. From the research it can be found that the definition of "everyone" is referring to certain people, while the definition of the corporation refers to legal entities and non-legal entities.

**Keywords:** limit, legal subject, corruption

## 1. INTRODUCTION

The legal subject limit of corruption according to Indonesian law needs to be studied in depth because in the law on corruption in Indonesia it is not clearly and firmly stated who the legal subject of corruption is. The corruption act only provides a definition of corporations, civil servants and everyone. However, it is not explicitly stated as a legal subject of corruption. A corporation is defined as an organized collection of people and / or assets, whether it is a legal entity or not a legal entity [13]. Meanwhile, the definition of civil servants is emphasized to:

- civil servant as referred to in law of employment;
- civil servant as referred to in The Criminal Code;
- a person who receives salary from state or regional finance
- a person who receives salary or wage from a corporation that receives aids from State or regional finance; or
- A person who receives salary or wage from other corporations use capital or facilities from the state or community

Civil servant or PNS is defined as each citizen of The Republic of Indonesia who meets particular requirements, is appointed by authorized official, and assigned in a certain position or entrusted with other duties of state, and is paid based on the applied regulations. Moreover, in the Indonesian law on civil servants, namely Law No. 43 of 1999 concerning amendment to Law No. 8 of 1974 concerning personnel principles, which was later replaced in Law No. 2014 5 of 2014 concerning the State Civil Apparatus, abbreviated as ASN. In this law, Civil Servants, hereinafter abbreviated as PNS, means Indonesian citizens who meet certain requirements, are appointed as ASN personnel permanently by personnel development official to occupy governmental positions (Article 1 number 3).

According to Law No. 5 of 2014 concerning State Civil Apparatuses, State Civil Apparatuses (ASN) are civil servants and government employees with a work agreement, appointed by a personnel development officer and entrusted with duties in a governmental position or

assigned to other state duties and are paid based on laws and regulations.

The definition of civil servants is also found in the Criminal Code, namely Article 92. This article uses the term "*ambtenaar*" (civil servants, public office holders, i.e. all people chosen according to choices already made according to general law, as well as all people, who, not because election, become members of the legislative council of government or people's representatives formed by or on behalf of the government, then all members of the regional and local councils and all heads of the Indonesian and Foreign East nations, who have legal powers, includes judges, experts decide upon disputes, those who perform administrative legal power, the chairman and members of the religious council, as well as the army.

According to jurisprudence, *ambtenaar* is a person appointed by the general authority to be a public official to carry out part of the tasks of the Government or its parts. So the elements of *ambtenaar* are (1) appointed by public agencies, (2) public office holders, and (3) performing part of the tasks of government or its parts [11].

Meanwhile, 'everyone' is given meaning as individual person or corporation. The question is whether individual person or corporation is the limit of the legal subject of corruption. If so, it can be concluded that the limit of legal subjects of corruption are corporation, civil servant, and everyone. The next question is how those three things formulated in the articles of law of criminal act of corruption in Indonesia. Therefore, this writing will explain the articles of the law of corruption to find out the formulation limit of the legal subject of corruption. The explanation is important as it deals with the actor or doer who responsible when there is allegation of corruption.

## 2. METHOD

This research is literature or library research. It uses secondary data (library data), data in form of document of literature (reading material), which come from primary law materials in form of law regulation on criminal act of corruption and reading materials of books and journals on legal subject in

general and legal subject of corruption in particular. The research uses method of conceptual approach [9]. The analysis uses method of interpretation of the provision of laws and regulations of corruption.

### 3. DISCUSSION

There have been many researches about legal subject of criminal act of corruption by previous researchers. Nevertheless, they only revolve around the affirmation that corporations are legal subjects of corruption, so that they can be sentenced. For example, Hengki M. Sibuea states that so far those who are sentenced in corruption cases are individuals only. Moreover, he says, "Corporation is a legal entity. Legal entity is considered as legal subject as it is considered as a person who can conduct any legal act with all the risks that may appear so that the legal entity can sue as legal subject or can be sued by other legal subjects in court" [7].

Budi Suhariyanto states, "Normatively, corporations have long been appointed as legal subjects for corruption perpetrator so that they can be prosecuted and sentenced on their crimes. However, only one corruption case has made the corporation a defendant and convicted of it, namely, through the decision No.04 / PID.SUS / 2011, PT.BJM ". Another researcher, Rony Saputra, said: "Most of the perpetrators of criminal acts of corruption, who are detrimental to the state finances and brought to the trial, are individual perpetrators. Until now, in practice, filing corporations as defendants of corruption is still rare even though the PTPK Law also outlines provisions other than person as individual. Corporations are also legal subjects that can be sentenced for committing corruption cases [10].

From some of the previous research mentioned above, it can be said that this research is different from previous studies. This study examines the legal subject boundaries of corruption according to Indonesian laws and regulations in which corporations are one of the legal subjects of criminal acts of corruption. In addition, other legal subjects are also determined by law.

#### 3.1. Legal Subjects

Chidir Ali says that the subject of law is one of the basic understandings and basic forms that can be studied by legal theory. Therefore, the question of 'what is the subject of law' is a matter of legal theory that is positive legal theory which means that theory can only be explained in relation to positive law. The legal theory does not require a description of the contents of a positive law and does not question the basis of the content of the law, but desires to understand its forms, then make a picture of the facts and elements that will be made material by law and science to build the system [6]. So, this paper looks for types or classifications of legal subjects of corruption by studying or reading positive legal provisions regarding corruption. D.J. Harris, a British international legal expert said [4]:

*"It is clear that the word "person" is used to refer to one who is a legal actor, but that it is of no assistance in ascertaining who or what is competent to act. Only the rules of law can determine this, and they may select*

*different entities and endow them with different legal functions, so that it is a mistake to suppose that merely by describing an entity as a "person" one is formulating its capacities in law....*

Based on what is stated by D.J. Haris, it can be stated that the legal subject is called "person". According to him, the word "person" is used to refer to someone as a legal actor. But according to him, this definition does not help in ascertaining who or what is competent to act. According to D.J. Haris, only the rule of law can determine this, and they can choose different entities and provide different legal functions, so it is a mistake to assume that only by describing an entity as "person" a person's capacity or ability is formulated in law.

As legal subject is a legal actor determined by law, it can be different and has different functions. This means that the legal subject of corruption is not the same as the subject of other criminal acts, for example money laundering, narcotics crime and so on.

According to R. Soeroso, legal subject is:

- a. Something that according to law has right/ authority to do legal acts, or whoever has right and capability to take action in law.
- b. Something that according to law has authority to act as right supporter.
- c. Something that according to law has right and obligation.

It can be concluded that legal subject is everything that has right and obligatory to act in law. Legal subject is right and obligatory supporter that has authority to act according to law. It takes further clarification about who is meant by supporters of legal rights and obligations, whether in an abstract sense or something more concrete or more specific. Therefore, we need to look at the legal rules regulating the problem.

#### 3.2. Legal Subject of Criminal Act of Corruption

This description will explain on who has the right and obligation to act according to the legal rules of corruption in Indonesia. If we look at the provisions in the law on corruption, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 of the Republic of Indonesia concerning eradication of the corruption crimes, we can find legal subjects of corruption with the following classification:

##### 3.2.1. "Everyone"

The mention of the term "everyone" which is then called the legal subject of corruption can be seen in the provisions of articles 2-19 where the articles always begin with the term "everyone". This means that this provision refers to the understanding of individuals as has been formulated in the provisions of article 1 number 3 of the law of corruption of the Republic of Indonesia. However, corporations are also included in the sense of "everyone".

The classification of individuals is "person as individual" and "individual who carries out his/her duties". This definition can be seen in the provisions of articles 2, 3, 5, 6, 7, 8, 9, 10, 11, 12,13, 21, 22, 24, 28, 29, 31, 35 Law No. 31 of 1999 in conjunction with UU no. 20 of 2001 concerning

eradication of corruption crimes in Indonesia.

In detail, 'every person as an individual who carries out his/her duties' can be interpreted as a civil servant. This can be seen in the provisions of articles 5, 8, 9, 10, 11, 12 of Law No. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning eradication of corruption in Indonesia; judge is regulated in articles 6 and 12, advocate is regulated in articles 6 and 12, subcontractor is regulated in article 7, project supervisor is regulated in article 7, partner of Indonesian Army / Police is regulated in article 7, supervisor of partner of Indonesian Army / Police is regulated in article 7, goods recipient of Indonesian Army / Police is regulated in article 7, bank is regulated in articles 22 and 29, witness or expert is regulated in articles 22, 24, 31, 35, and people who hold office secrets are regulated in article 2 and 36.

For example, article 2 defines: "Everyone unlawfully commits acts of enriching themselves or other people or a corporation that can harm the country's finances or the country's economy ...". The definition of article 2 do not explicitly state who is meant by "everyone". Thus, it can be assumed that anyone can be interpreted by anyone "illegally committing acts of enriching oneself or others or a corporation that can harm the country's finances or the country's economy" is the subject of criminal acts of corruption.

Article 3 states: Any person who has the purpose of benefiting himself/herself or another person or a corporation, misusing the authority, opportunity or means available to him/her because of his/her position that could harm the country's finances or the country's economy ... ". From the provisions of article 3, every person is limited to the definition of someone who has a position, where he/she misused the authority, opportunity or means available to him/her can be detrimental to the country's finances or state economy.

Article 5 states: every person who gives or promises something to a civil servant or a state official with the intention that the public servant or state official does or does not do something in his/her office that is contrary to his/her obligations.

Article 6 (a) states: everyone who gives or promises something to a judge in order to influence the decision of a case handed to him/her for trial; or gives or promises something to someone, who according to the provisions of the legislation is determined to be an advocate to attend a court hearing, in order to influence the advice or opinion to be given dealing with the case handed to the court for trial.

Article 6 (b) a judge receives gifts or promises as referred in paragraph 1 (a), or advocate who receives gifts or promises. Article 7 paragraph 1 (a): contractor, constructor who at the time of constructing the building, or seller of building materials who when delivering building materials, commits fraudulent actions that can endanger the security of people or goods or the safety of the state in a state of war. Article 7 paragraph 1 (b): every person in charge of overseeing the construction or handing over of building materials who intentionally allows fraudulent acts.

Article 8: a civil servant or person other than a civil servant assigned to carry out a public office continuously or temporarily who intentionally embezzles money or securities held for his position, or allows money or securities

to be taken or obscured by another person, or assists in carrying out the act or intentionally fakes specific books or lists for administrative examination (Article 9).

### 3.2.2. Corporation

Corporate is a term commonly used by criminal expert and criminal law experts to refer to what in other fields of law, specifically the field of civil law, as a legal entity, or in Dutch is called *rechtspersoon* [12].

Etymologically, the notion of corporation which in other terms is known as *corporatie* (Dutch), *corporation* (German), is derived from Latin *corporatio*. *Corporatio* as a noun (substantivum) is derived from the verb *coporare* which is widely used in the Middle Ages or after that. *Coporare* itself is derived from the word *corpus* (body), which means to give body or make a body. Thus, *corporatio* means the result of the work of making bodies, in other words, bodies made into persons, bodies obtained by human actions as opposed to human bodies, which occur according to nature [8].

A corporation can be seen from its narrow meaning, as well as its broad meaning. Then Sutan Remi Sjahdeini reveals that according to its narrow meaning, namely as a legal entity, a corporation is a legal figure, which its existence and authority to do legal actions are recognized by civil law. It means that civil law recognizes the existence of a corporation and gives it life to be able to take legal action as a legal figure. A corporation is only legally dead if the death of the corporation is recognized by law. Furthermore, the notion of a corporation in a broad sense can be seen from the notion of a corporation in criminal law. In criminal law, corporations include both legal entities and non-legal entities. Not only legal entities, such as limited liability companies, foundations, cooperatives or associations that have been ratified as legal entities classified as corporations according to criminal law, but also firms, limited partnership or CVs, and associations or *maatschap*, business entities which according to civil law is not a legal entity. From this description, it can be seen that there is a difference in the definition of the corporation in the field of civil law with the definition of corporation in the field of criminal law. In the field of civil law, what is meant by corporation is a legal entity, whereas in the field of criminal law what is meant by corporation is not only a legal entity, but also non-legal entity.

The issue of accountability for the perpetrators of crime was not a simple matter, considering that corporations are legal entities. This problem stems from the existence of the principle of no criminal without fault. The fault is *mens rea* or inner attitude which naturally only exists in natural people. *Mens rea* is a difficult element to prove from a corporation that is considered to have committed a crime because the corporation can only take action through the organs of directors. Corporations can be considered criminal offenses based on acts committed by those who control the management of the corporation [3].

The law formulates that a corporation is an organized collection of people and / or assets, both a legal entity and not a legal entity. In addition, corporations are also part of the definition of "everyone", as stipulated in article 1 number

3 of Law No. 31 of 1999 in conjunction with Law of the Republic of Indonesia No. 20 of 2001 on eradication of the corruption crimes.

Corporate criminal liability as a legal subject can be seen in the provisions of article 20, i.e.:

- a. In case that a criminal act of corruption is carried out by or on behalf of a corporation, criminal prosecution and enforcement can be carried out against the corporation and or its management.
- b. Corruption is committed by a corporation if the crime is committed by people either based on work relationships or based on other relationships in the corporate environment, either alone or together.

Hence, corporations can actually be sentenced to criminal. Nevertheless, in legal practice, so far, there has not been a single corporate legal subject convicted in a corruption case in Indonesia. This fact may refer to Article 20 paragraph (3-7) which clearly states: "In the event that a criminal prosecution is committed against a corporation, the corporation is represented by the management; Management representing a corporation can be represented by another person; The judge can order the management of the corporation to come before the court himself/herself, and may also order the management to be brought to the court; In case that a criminal prosecution is made against a corporation, the summons to appear and the submission of the summons shall be conveyed to the management at the management's residence or at management's office; and the main crimes that can be imposed on corporations are only criminal fines, with a maximum criminal provision plus 1/3 (one third)".

In order that corruption by corporations can be accounted for as a criminal law, the above legal provisions should be improved, so that corporations as perpetrators of corruption can actually be sentenced to criminal. There are five theories relating to corporate liability.

**First** is identification theory. It is commonly referred to as direct corporate criminal liability or direct corporate criminal liability [1]. According to this theory, corporations can carry out a number of offenses directly through the management that is very closely related to the corporation, acting for and on behalf of the corporation so that it is seen as the company itself. They are not substituting and therefore corporate liability is not personal liability [2].

**Second** is the theory of strict liability. Strict liability is defined as liability which strictly refers to the law. Therefore, corporate responsibility is solely based on what is written in the law regardless of who made a mistake.

**Third** is vicarious liability. It is the substitute liability doctrine, which emphasizes the responsibility of the management of the corporation as the agent of the corporation.

**Fourth** is the theory of aggregation, which states that criminal liability can be imposed on a legal entity if the act is carried out by a number of people who fulfill the element of offense which is interrelated with one another and not stand alone.

**Fifth** is the doctrine of corporate cultural models or work culture models. This teaching focuses on explicit and implicit legal entity policies that affect the workings of the legal entity. A legal entity can be criminally liable if a

person's actions have a rational basis that the legal entity authorizes or allows the act to be carried out.

#### 4. CONCLUSION

From the description above, it can be concluded that there are two legal subjects for corruption, namely people and corporations. The definition of people includes individuals and people who carry out their duties. For this matter, it is formulated with the term "everyone". Classification of people who carry out their duties are civil servants, judges, advocates, subcontractors, project supervisors, partners Indonesian Army / Police, supervisors of Indonesian Army / Police partners, goods recipients of Indonesian Army / Police, banks, witnesses, expert witnesses, and people who hold office secret. Corporations are formulated by law as both legal and non-legal entities. The difference is in the criminal threat to the corporation which is represented by the management, which adheres to the theory of vicarious liability.

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