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Tracing the Logic Fallacy in Formulating the Norms of "Everyone" and Its Application to Criminal Actions Committed by Corporations

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Abstract--Law, as science at an epistemological level, of course, has been constructed based on thinking and reasoning, which is subject to scientific logic. Thus, scientific reasoning has a systematic, sequential, and logical pattern. However, a model of legal reasoning will find its articulation in the legislative process. In several criminal legislation outside the Criminal Code, the argument appears from a thought that simplifies the concept of "corporation" into the legal norm of "Everyone" by equating it with humans (persoon). Based on this, the researcher proposes the problem formulation as a limitation, namely "What fallacy model is contained in the legal norms of" Everyone "in criminal law? This study uses a normative juridical method based on secondary data through literature studies with a philosophical approach, conceptual approach, and case approach. This study aims to reveal the existence of fallacy in the formulation of legal norms of "Everyone", which results in generalizations on the criminal responsibility model related to the legal subject (norm address) of a criminal act that occurs.

Keywords : Fallacy; Logic; Legal Subjects; Corporations; Criminal.

I. INTRODUCTION

A legal system or legal structure is a law that applies at a particular time and within a certain period of time, in a certain country, which is then called positive law [1]. Positive law in Latin is called jus (ius) constitutum, which is a law that applies at a certain time and within a certain time in a certain jurisdiction as well. The opposite of the ius constitutum is the ius constituendum, which is a law that has not yet had legal consequences; in another sense, it is the law that is aspired to.

The definition of legal norms, in general, is binding norms or rules, because they are maintained by a government that controls the judicial power to retain them. All legal norms that apply in an area and within a specified period are called positive law [2].

Norma is a measure that must be obeyed by a person with each other or with his environment [3] so that the essence of the norm is all rules that must be followed. Norms function to provide information to the public about what to do and what not to do or be violated. The level of community compliance with norms is a barometer of the level of public order and order, so the higher the level of community compliance with norms, the higher the level of public order towards norms.

Law only has power if the regulated legal subject has been subject to rights and obligations, in this case, rights mean giving freedom to individuals to enjoy what they should get, while obligations are limitations and burdens. These two things complement each other and one of them cannot be eliminated. If the law is general because it applies to everyone, then individual rights and obligations are attached to each individual or legal subject.

In the rule of law, what is called a right is valid because the legal system protects it. In each right, there are four elements, namely (a) legal subjects, (b) legal objects, (c) legal relationships that bind other parties to obligations and (d) legal protection [4], while obligations are contractual burdens, meaning that there is something that is binding between legal subjects that is casuistic in nature, so it needs to be emphasized that the law is only a collection of abstract rules and that the order created by the new law becomes a reality if the legal subject is given rights and obligations.

Based on this, Anselm von Feuerbach believes that an essential principle for imposing criminal threats, namely that every sentence imposed by a judge must be a legal consequence of a provision according to law to guarantee the rights of everyone. The code must provide a criminal threat in the form of suffering to everyone who violates the law [5].

The enactment of a criminal provision is that a criminal act comes into effect from the time or after the competent authority promulgates the requirements of the criminal action for that purpose. The formulation of penal provisions in statutory regulations, of course, cannot be separated from the principle of legality. As a consequence, an act that is punishable must be based on law, the retroactive principle cannot be applied, the formulation of the crime must be precise (lex stricta), and analogy is not permitted. Based on the principle of "nullum delictum," it provides a full guarantee of the rights and freedoms of individuals [6]. Individuals are guaranteed that they will not be penalized for committing an act that was not prohibited before.

In Indonesian criminal law, as in other civil law countries, crime is generally formulated in a codification. However, so far, no provisions are governing the guidelines and criteria for formulating criminal acts in criminal legislation. This, of course, results in the existence of various formulations of criminal acts that contain matters outside the characteristics of the action and the sanctions for the action. In this case, various criminal acts, especially those outside the Criminal Code, are not always in line with the structure of criminal acts and the theory of separation between criminal acts and criminal liability [7].

Even though Law Number 12 of 2011 concerning the Formation of Legislation has provided basic guidelines and techniques in the drafting of statutory law, however, even though it has been more or less touched on, the law has not provided a comprehensive reference on how to formulate a "criminal provision" in the formation of criminal legislation. Both when it is part of the "criminal provisions" in administrative laws, and when formulating them in criminal statutes. However, the technical provisions relating to the formulation of criminal sanctions are minimal.

So far, there are no guidelines that provide clear enough boundaries on how to formulate and relate the three aspects of crime above, except for theoretical discussions that are still under debate between one expert and another. As a result, the formulation of criminal provisions is very diverse. Even the laws that were promulgated in more or less the same period had very different formulas, whether related to the norms of addressing criminal threats, regulations regarding actions (strafbaar) that are threatened with punishment, and the terminology of criminal threats.

Should any formulation of criminal provisions outside the Criminal Code, must remain within the basic principles or general guidelines of the material criminal law system. So that the penal provisions in special laws outside the Criminal Code are a sub-system of the entire criminal law system currently in effect. As seen from the pattern of the criminal law system above, the formulation of penal provisions in the "special rules" is only a sub-system of the entire criminal law system (criminal system). It means that the wording of criminal acts (both in terms of elements, types of criminal acts, as well as types of crimes/sanctions and duration of punishment) is not an independent system. To be implemented (operationalized/functionalized), the formulation of the criminal act still has to be supported by other sub-systems, namely the sub-system of rules (guidelines) and the principles of punishment in the general provisions of the Criminal Code or special rules in law specifically concerned [8].

In line with this view, research conducted by the National Law Development Agency, led by Mudzakkir [9], confirms that in general, a formulation of a criminal act should at least contain a formulation on (1) legal subjects who are the target of the norm (addressaat norm); (2) prohibited actions (strafbaar), either in the form of doing something (commission), not doing something (omission) and causing consequences (events caused by the behavior); and (3) the threat of punishment (strafmaat), as a means of enforcing the enforceability or compliance of these provisions. Thus, a study of legal subjects is a study that is as important as a study of an act that is considered a criminal act, and a study of the threat of criminal sanctions. Although sometimes, there is a reduction in the meaning of legal subjects in criminal law to become perpetrators of criminal acts, as a feature of Criminal Law.

At present, in the realm of writing and/or scientific research, studies on legal subjects have been dominated by studies of a legal entity (rechtspersoon) as a form of deviation [10] from the teachings about humans as subjects of criminal law - especially in laws outside Criminal Code.

This research was at least triggered by two previous studies, namely an article written by Rocky Marbun with the title "Criminal Law Throwing (Gowerfen-Sein) in the Ratio of Instrumental Actions to Directors as Rechtspersoon in Criminal Justice Practices" in the Journal of Criminal Law and Development Vol. 1, No. 1, 2018 Faculty of Law, Trisakti University, Jakarta which focuses on Law Number 31 of 1999 concerning Eradication of Corruption based on Instrumental Action Theory and the Concept of Gowerfen-Sein (throwing). And research conducted by I Dewa Made Suartha and I Dewa Agung Gede Mahardhika Martha with the title "Criminal Law Policy in Corporate Crime Accountability in Indonesia" in the Kertha Wicaksana Journal Vol. 1, No. 1, Year 2018.

II. PROBLEMS

According to Rocky Marbun [11], in carrying out their functions, law enforcement officers are enforcing the law based on their power and authority, currently experiencing gowerfen-sein in modernity, which maintains a grand narrative in the criminal law enforcement process. As a result, the accusatoir principle, which is believed to be the main principle in an examination, actually functions based on the ratio of instrumental actions against whoever is the subject of the investigation even to the position of the Board of Directors in a Limited Liability Company.

Meanwhile, according to I Dewa Made Suartha and I Dewa Agung Gede Mahardika [12], the acceptance of corporations as the subject of criminal acts has created problems in criminal law policies in the responsibility of corporate crime. However, according to I Dewa Made Suartha and I Dewa Agung Gede Mahardika [12], the normalization of

corporations as subjects of criminal law has been accepted by the penal law system in Indonesia.

In this study, we have a different focus from the two researchers above, where we focus on a thesis that the normalization of corporations as legal subjects embodied in the norm of "Everyone" is a form of thinking error. Thus, in this study, the fallacy model contained in the formulation of legal rules for "Everyone" is applied to corporations.

III. RESEARCH METHOD

We, as Researchers, in this study using the Normative Legal Research Method, is a type of research that is commonly carried out in the development of Law Science which in the West is also called Legal Dogmatics (rechtsdogmatiek) or Positive Law or Dogmatic Law or Practical Law [13]. What then becomes the study of normative legal research, which is related to how science works, what it means and how the method, will be determined by what the science is looking for, or in other words, what is the vision and mission of the science concerned, and related to him what is the main issue or core issue in the science.

This type of research is a logical consequence of the law, which is classified as normative law science, which has sui generis in nature [14]. Meanwhile, the focus of research with a prescriptive juridical approach leads to library research. Thus, there will be more review and study of secondary data, with the reason that the problem being studied as an object is the relationship between one regulation and another and its application in society.

IV. DISCUSSION

An establishment of statutory regulations, according to Article 1 number 1 of Laws Number 15 of 2019 concerning Amendments to Laws Number 12 of 2011 concerning the Formation of Laws and Regulations [Laws No. 15/2019], is an act that starts from the planning, drafting and discussion process before entering the stage of ratification or stipulation and promulgation. It is further emphasized in the law, namely that there is an obligation to harmonize, both vertically and horizontally, of the prevailing laws.

It implies that all legislative activities cannot be separated from a logical, systematic, methodological, and comprehensive thinking process. However, a scientific thought process will always be influenced by a specific paradigm that guides someone in providing and determining the meaning of a concept. A similar expression was put forward by Khudzaifah Dimyati [15], who explained that as an activity of thinking, reasoning has a pattern of thought, which can be broadly referred to as the logic and analytical nature of the thought process.

Activities in giving meaning to a legal norm, according to Abintoro Prakoso, then giving this meaning to face legal facts, it is necessary to conduct a study that is relevant to the statutory provisions contained in the articles which contain norms. Norms in logic are propositions (normative). Furthermore, Abintoro Prakoso explained that norms must begin with a conceptual approach because norms are a form of proposition composed of a series of concepts. Thus, misconceptions lead to misguided lines of reasoning and misleading conclusions [16]. Therefore, everyone who reads a legal norm should have a good understanding of the legal concepts contained in these statutory regulations.

Aulis Aarnio has explained long before that the science of law is the science of meanings. Thus, every activity of implementing the law in the judicial process is related to legal paradigm problems, and activities in making legal decisions are a set of methods of interpretation and application activities based on authoritative/juridical texts [17].

The focus of this study is related to the normalization of "Everyone" as a legal concept, which is a manifestation of the idea of legal subjects, for example, in Article 1 paragraph (3) of Laws Number 31 the Year 1999 concerning Eradication of Corruption Crime [Laws no. 31/1999], which gives the meaning of the concept of "Everyone" as an individual — even, including corporations. The same thing is emphasized in Article 1 number 33 Laws Number 32 the Year 2009 concerning Environmental Protection and Management [Laws No. 32/2009], which states that "Everyone" means an individual or a business entity, both legal and non-legal.

he meaning of the concept of "Everyone" also appears in Article 1 number 21 of Laws Number 18 the Year 2013 concerning the Prevention and Eradication of Forest Destruction [Laws No. 18/2013], which equates individuals and corporations. There is the concept of "person," which means an individual and/or legal entity, as contained in Article 1 number 33 of Laws Number 27 of 2007 concerning Management of Coastal Areas and Small Islands [Laws No. 27/2007].

In fact, in the theoretical realm of criminal law, there is no rigid study of the legal subject as a legal concept. Thus, the study of legal subjects is absolute competence in the realm of civilization. Where the enactment of a human being as a right bearer (legal subject) begins at birth and ends at death, so it is said that the condition of a human being is alive; he becomes a person [18].

In principle, humans have rights from birth, but not all humans have the authority and skills to carry out legal actions [19]. Only those that have been determined by law do not have the authority and

skills as stipulated in Article 1329 of the Civil Code. Recognition of an individual as a legal subject can be done since he is still in his mother's womb, as long as he is born alive (Article 2 of the Civil Code) [20] [18].

Regarding legal subjects in the form of legal entities, according to Rochmat Soemitro [21], legal entities in Dutch are called "rechtpersoon." Rechtpersoon is an agency that can have assets, rights, and obligations like private persons. Meanwhile, according to Abdulkadir Muhammad, a legal entity is a legitimate subject created by an individual human being based on the law, which is given rights and obligations like a private person. According to the provisions of Article 1653 of the Civil Code, there are three types of classifications of legal entities based on their existence, namely [20]:

1. A legal entity established by the government;
2. Government-recognized legal entities, such as Limited Liability Companies;
3. A legal entity that is allowed or for a certain ideal purpose, such as a Foundation.

Thus, the concept of a legal subject is anything that can obtain, have, or bear rights and obligations. The authority to be able to carry rights and responsibilities is called legal authority. Every legal subject, whether a person or a legal entity in general, can have rights and obligations [22].

However, recognition of a legal subject, therefore, a legal entity needs acceptance from the competent authority to legalize itself as a legal entity. Thus, the accountability model for their rights and obligations is different. Where against humans (persoon) is marked by the existence of legally competent qualifications or legal incompetence according to legislation based on empirical facts regarding the person's condition. Meanwhile, for a legal entity, legal authority and legal prowess are obtained when obtaining recognition based on statutory regulations in effect at the time the legal entity is established. This legal entity certainly acts through an intermediary, namely the management, because a legal entity is only an understanding, which always operates by people, as referred to in Article 1655 of the Civil Code [23].

A contrario meaning that arises from the meaning of a person's accountability as an administrator of a legal entity is contained in Article 1656 of the Civil Code, namely as long as the act provides benefits to the legal entity or the act is then legally accepted. This means that an action of every administrator of a legal entity does not manifest itself as *natuurlijke persoon*, but itself is *rechtspersoon*.

As for the legal entity in the form of a Limited Liability Company, as regulated in Article 92 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies [Law No. 40/2007], mainly emphasizes that the authority of the Board of Directors in running the company must follow the aims and objectives of establishing the company. This provision implies that as long as it is carried out based on the rules set by the company, then that person must be considered a legal entity.

The logic that we are constructing is based on the mandate of Law Number 12 of 2011 concerning the Formation of Legislation [Law No. 12/2011] who want harmony to be carried out concerning laws related to the material or substance to be regulated. More concretely, as explained by Rocky Marbun [11], legal certainty is not only interpreted as consistency and predictability in the implementation of laws but also consistency in applying existing legal concepts as an embodiment of the principle of legal certainty itself.

The inability to think in the science of law makes the pattern of law application take place linearly and deterministically. Of course, in the realm of logic as a branch of philosophy, namely epistemology, we have described the pattern of reasoning from both the planning process and the preparation of a legal norm up to the application model mentioned above, it is interesting to examine in depth.

According to Y.P. Hayon, when we talk about the logical aspects of a statement or argument, logic as a science that focuses on how to structure the way of thinking according to the rules of thinking. Further explained by Y.P. Hayon that logic focuses itself in studies related to the relationship between thinking activities and the formal rules that underlie it [24].

Thus, in Logic, the inaccuracy in constructing an argument will cause the phenomenon of fallacy. Although in the realm of praxis, this fallacy can be accepted through communication mechanisms, however, legal decisions that are based on the Logic of fallacy have the potential for violating the law itself.

More specifically, Hans Kelsen once emphasized that "logical nature" is precisely the unique nature of law, which means in their reciprocal relations, legal norms are under the principles of logic [25]. Thus, the pattern of reasoning and legal argumentation is not possible to take place linearly.

Reluctance to think singularly, as mandated by Laws no. 12/2011, in the end, is a fallacy, which is not only a formal error but, at the same time, a material error (relevance error). Legal error is error done because of the improper form (form) of reasoning. This type of formal error is a violation of thinking by ignoring logical principles and rules. Meanwhile, the material error is a form of fault against the content (material) of reasoning. This type of material error can occur due to a misunderstanding of language that causes errors in concluding, and can also be caused by an illogical relationship between the premise and conclusion.

In general, the error occurs due to several reasons, namely [26]:

1. Errors that occur because the thinking subject rarely thinks for himself and thinks or acts following what other people think and do;
2. Misguidance that occurs due to the subject who feels as if he appreciates ratio, but in reality, does not use his ratio properly;
3. Misguidance occurs as a result of the subject not being open to seeing the problem comprehensively, fixated only on individual opinions or approaches, certain people, or specific sources. In other words, think narrowly;

In connection with the object of this study, when the logic study is directed at legislators, the norming of the "Everyone" norm is also directed at Corporations and/or legal entities, in essence, including as relevance error in the form of generalization error. Where legislators have generalized that *natuurlijke persoon* and *rechtspersoon* are identical. When we pay attention to the primary intention of the concept of "corporation" which enters the idea of "Everyone" only as anticipation for an unincorporated business entity, it is a form of composition error.

As we have described above, where the legal subjects *natuurlijke persoon* and *rechtspersoon* are distinguished from different ways of acknowledgment. Where *natuurlijke persoon* received recognition from his mother's womb until he was born alive. Meanwhile, *rechtspersoon* obtains credit that is intentionally attached to him, whether in the form of a business entity that is a legal entity or a business entity that is not a legal entity.

The accountability structure between legal entities and non-legal entities is regulated differently in different laws. Thus, in this context, the fallacy of legislative members is in the form of generalization and composition simultaneously.

Meanwhile, in the process of implementing legal norms "Everyone" as a result of mistakes made by lawmakers, law enforcement officials also think linearly. Thus, in the process of law enforcement, law enforcement officers commit fallacy in the form of 'ignoratio elenchi', namely errors in thinking caused by drawing conclusions that are irrelevant to the premise [27].

If we organize the systematization as follows:

a. Everyone is an individual and/or legal entity who violates the law will be punished;
b. X is the Director of PT. Y;
c. X broke the laws
d. So, X will be punished

n ignoratio elenchi, there is a logical leap in making conclusions that are entirely unrelated to premises or pseudo relationships. However, this apparent relationship occurs because, in its formulation, it is based on decisions that contain a fallacy. The cause of the ignoratio elenchi is also caused by the amphiboli of fallacy (language error), where the diversity of meanings of an expression (sentence) is only based on one model of interpretation.

Thus, the positivism paradigm, in the end, becomes the base of the whole fallacy of thinking in formulating the legal norms of "Everyone". Whereas law enforcement officers only acknowledge a linear way of thinking to enforce the law.

V. CONCLUSION

Formal thinking errors and relevance errors characterize the formulation of legal norms for "Everyone" at the level of legislation. So that it raises another model of thinking failure in the realm of law enforcement. Therefore, the formulation of these norms is not accompanied by "how to" carry it out. Although, in essence, when referring to the mandate of Law no. 12/2011, "should" law enforcement officials be able to avoid mistakes in planning and formulation. However, because the positive paradigm has habituated it, then in the realm of law enforcement, it is trapped in various models of fallacy.

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REFERENCES

[1] Samidjo. *Pengantar Hukum Indonesia,* Bandung: CV. Armico, 1985.
[2] Wolhoff, G. J. *Pengantar Ilmu Hukum Tata Negara RI,* Jakarta: Timun Mas, 1955.
[3] Soeprapto, M.F.I. "*Ilmu Perundang-undangan (Jenis, Fungsi, dan Materi Muatan),* Yogyakarta : Kanisius, 2007.
[4] Mertokusumo, S. *Mengenal Hukum. Suatu Pengantar*, Yogyakarta: Liberty, 1999.
[5] Lamintang, PAF, *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: Sinar Baru, 2013.
[6] Saleh, R., *Kitab Undang-Undang Hukum Pidana dengan Penjelasan*, Jakarta: Aksara Baru, 1981.
[7] Candra, S, "Perumusan Ketentuan Pidana Dalam Peraturan Perundang-Undangan", *Jurnal Hukum Prioris*, Vol. 3, No. 3,pp 111-129, 2013.
[8] Arief, B.N. *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan*, Semarang: Pustaka Magister, 2012.

[9] Mudzakkir, *Politik Hukum dan Pemidanaan*, Jakarta: BPHN, 2008.
[10] Reza, A.A., *Pertanggungjawaban Korporasi Dalam Rancangan Kitab Undang-Undang Hukum Pidana*, Jakarta: ICJR, 2015.
[11] Marbun, R., "Keterlemparan (Gowerfen-Sein) Hukum Pidana Dalam Rasio Tindakan Instrumental Terhadap Direksi Sebagai Rechtspersoon Dalam Praktik Peradilan Pidana", *Jurnal Hukum Pidana dan Pembangunan*, Vol. 1, No. 1,p 1-6, 2018.
[12] Suartha, I.D.M. and Martha, I.D.A.G.M, "Kebijakan Hukum Pidana Dalam Pertanggungjawaban Tindak Pidana Korporasi Di Indonesia", *Jurnal Kertha Wicaksana*, Vol. 1, No. 1, 1-10, 2018.
[13] Sidharta, B.A., *Refleksi Tentang Struktur Ilmu Hukum*, Bandung: Mandar Maju, 2009.
[14] Marzuki, P.M., "Karakteristik Ilmu Hukum", *Jurnal Media Yuridika*, Vol. 23, No. 2, 1-29, 2008.
[15] Dimyati, K, *Pemikiran Hukum. Konstruksi Epistemologis Berbasis Budaya Hukum Indonesia*, Yogyakarta: Genta Publishing, 2014.
[16] Prakoso, A., *Hukum, Filsafat Logika dan Argumentasi Hukum*, Surabaya: LaksBang Justitia, 2015.
[17] Marbun, R. dan Armilius. "Fallacy (Sesat Pikir) Argumentum Ad Verecundiam Dalam Motivering Vonnis (Pertimbangan Hukum)", *Jurnal Hukum dan Peradilan*, Vol. 1, No. 2, pp 327-352, 2018.
[18] Subekti, R., *Pokok-pokok Hukum Perdata*, Jakarta: Intermasa, 2003.
[19] Mertokusumo, S., *Mengenal Hukum. Suatu Pengantar*, Yogyakarta: Liberty, 2002.
[20] Muhammad, A., *Hukum Perdata Indonesia,* Bandung: Citra Aditya Bakti, 2000.
[21] Soemitro, R. *Hukum Perseroan Terbatas, Yayasan & Wakaf,* Bandung: Eresco, 1993.
[22] Ali, C. *Badan Hukum*, Bandung: Alumni, 1999
[23] Hayon, YP. "Aspek Logis Dalam Pernyataan-Pernyataan Politik", *Jurnal Wacana*, Vol. 7, No. 2, pp 191-202, 2005.
[24] Weruin, U.U. "Logika, Penalaran, dan Argumentasi Hukum". *Jurnal Konstitusi*. Vol. 14, No. 2, pp 374-395, 2017
[25] Soekadijo, R.G. *Logika Dasar: Tradisonal, SImbolik dan Induktif*. Jakarta: PT. Gramedia Pustaka Utama, 1999.
[26] Sumaryono, E. *Dasar-Dasar Logika*. Jakarta: Kanisius. 1999.