



Accountability for Corporate Crime in the Law of the Republic of Indonesia, Number 1 of 2023 Concerning the Book of Criminal Law

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Abstract. The aim of this research is to determine the legal status of ISIS as a legal subject from an international law perspective and what are the legal implications of revoking the citizenship status of Indonesian citizens who leave ISIS. The research method uses a normative juridical approach and secondary data, while the data is analyzed qualitatively. Based on the discussion, the results obtained are that: The position of ISIS in the subject of international law is unclear. To become a state, ISIS actually meets the requirements, namely having a people, a certain territory and a government, but does not fulfill the capacity to cooperate with other countries. ISIS cannot be recognized as a country because there must be at least 1 (one) recognition from another country for the country that will be formed. Meanwhile, to become belligerent, ISIS does not meet the requirements for support from the people in the territory it controls. Thus, ISIS is not a state and is not belligerent but is just a group of militant terrorists whose aim is to establish a state. Revoking citizenship for Indonesian citizens who are former ISIS members is a preventive measure so that ideologies that conflict with Pancasila do not spread in Indonesia. However, revocation of citizenship refers to Article 23 F of Law no. 12 of 2006 concerning Citizenship will have the implication that the Indonesian state indirectly recognizes ISIS as a legitimate state or foreign service organization.

Keywords: Accountability, Corporate Crime, Criminal Acts

1. Introduction

After being approved as a law, the RKUHP underwent an approval process through a session in the House of Representatives scheduled for December 06, 2022, to decide on the Draft Criminal Code. The Criminal Code has included several new articles that were not previously contained in the 1946 Dutch Criminal Code (*Wetboek Van Strafrecht*) which is still applicable in Indonesia. It is important to remember that the

Criminal Code is a set of legal regulations governing criminal offenses or violations of substantive law in Indonesia, and also includes various forms of sanctions.[1]

On January 02, 2023, the promulgated Law of the Republic of Indonesia Number 1 Year 2023 of the Republic of Indonesia Concerning the Criminal Code was passed by the Government of Indonesia. This Law was promulgated by the Minister of State Secretary of the Republic of Indonesia on the same date and declared valid in the Official State Publication of the Republic of Indonesia Year 2023 Number 1. Law of the Republic of Indonesia Number 1 Year 2023 Concerning the Criminal Code will take effect three years from the date of its promulgation and will be effective from January 02, 2026.

The provisions contained in the Law of the Republic of Indonesia No. 1 of 2023 on the Criminal Code have significant differences when compared to the Criminal Code of 1946. One of the main differences is in the regulation of Corporations as perpetrators in the context of criminal law, corporate responsibility, and types of punishment. This difference has created a polemic in the approval process. Many parties argue that the provisions contained in this Law hinder the activities of corporations and result in easier exposure to criminal liability. In addition, this liability does not only apply to administrators or individuals having a functional role in the corporation but can also involve other individuals.[2]

The role of corporations as social actors has great significance and relevance along with the complexity and development of community life. However, there is currently confusion regarding the interpretation of corporations as subjects in criminal law and what types of entities can be held accountable in the context of criminal law. Not only that, the understanding of the process of determining criminal responsibility for corporations is still limited, especially in terms of separating the criminal responsibility of the corporation and the individual responsibility of its management (human subjects) when criminal acts are committed within the corporate environment.

This situation has led to a small number of legal cases prosecuting corporations for their violations of legal norms. These actions should be subject to criminal sanctions, but there is a tendency to equate the view of the corporation and its controlling individual (directing mind) as similar legal subjects. As a result, they can be replaced in the context of prosecution and sanctions.[3]

Problems arise when in reality, in addition to some corporations that provide benefits to society, many of them are also involved in criminal acts. The limitations of legal instruments in anticipating corporate criminal acts and the lack of development of thought among law enforcers in processing corporate criminal acts, resulted in the history of the development of criminal law in Indonesia, although punitive measures against corporations have been applied, the prosecution of corporate criminal acts is still minimal due to differences in views among law enforcers regarding the role of corporations as subjects of criminal law, especially in understanding the concept and scope of corporate criminal acts.[4]

Corporations have a significant role in driving the development of a country, especially in the economic aspect that has a positive impact on the national economy. However, besides contributing positively to the country's economy, corporations also produce adverse impacts, for example, manipulation in terms of customs and taxes, environmental damage, fraud against consumers, unfair competitive practices, and the like. The adverse impacts arising from corporate activities are usually far-reaching in scope, have long-term effects, and are detrimental to society. Therefore, serious attention and legal regulation of corporate activities are required.

Recent economic developments have resulted in the business world becoming increasingly complex and complicated. The wide variety of goods and services on the market today has increased the level of competition among corporations. This competition in turn has led to accelerated economic growth. However, it is important to remember that rapid economic growth does not necessarily eliminate the risk of crime. Economic development in general is certainly the main trigger for the emergence of various criminal acts.[5]

With the increasingly strong contribution of corporations in various sectors, especially in the economic field, and the tendency of corporations to engage in crime to achieve their goals, there has now been a change in view so that it is now considered that corporations also have the status of a subject of criminal law in addition to natural human beings.

Along with the ability to prosecute corporations criminally, corporate criminal liability needs to be accompanied by the development of the type of punishment that is suitable to be applied to a corporation. Not all types of criminal acts can be applied and imposed on corporations. All of this needs to be understood that when a corporation can be criminally prosecuted this does not imply that the management within the corporation cannot be blamed.[6]

It is very complex to identify corporate negligence which is the core of criminal law. Negligence aimed at corporations does not cover all individual corporate negligence, because the basic core that commits criminal acts is individuals (corporate management).

As known in Article 46 of Law Number 1 Year 2023 regarding the assessment of corporate criminal acts, Criminal Acts by Corporations are Criminal Acts committed by individuals in the organizational structure of the corporation who have functional positions, or by individuals based on employment ties or other ties who serve for and on behalf of the company, or act in the interests of the company, within the scope of the company's operations or activities, either individually or jointly. Then elaborated in article 45 which states in article 1). Corporations are perpetrators of criminal acts, and then explained in Article 2). Corporations as described in paragraph (1) include legal entities in the form of Foundations, Limited Liability Companies, Cooperatives, State-Owned Enterprises, Regional-Owned Enterprises, or other entities deemed the same as that, as well as associations both incorporated and unincorporated, business entities in the form of Firms, Limited Liability Partnerships, or the equivalent by the provisions of the Legislation. Because corporations are often

involved in committing criminal acts in this law it is explained that corporations are the object of law, so those who can be subject to punishment besides the person are also the corporation.

Criminal acts committed by Corporations can't occur instantly and spontaneously but through structured planning and coordinated cooperation. The evidentiary process is also complex and requires significant effort to reveal the Corporation's role in criminal involvement. In the case of individual offenders, their criminal liability requires proof of the relevant elements, which is certainly not an easy task. This is even more complicated if the perpetrator of the criminal offense is a Corporation, where the responsibility is difficult to measure as it can be done on individual humans.[7]

Corporate liability is still difficult to prove even though legislation outside the Criminal Code has also regulated it and the Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code has regulated that Corporations are subjects in the realm of criminal law because crimes committed by Corporations tend to be committed in the form of organized actions. This problem is the background in the research entitled "Corporate Criminal Liability in the Republic of Indonesia Law No. 1 of 2023 Concerning the Criminal Code".

2. Problems

How is Corporate Criminal Liability in The Republik of Indonesia Law Number 1 of 2023 Concerning The Criminal Code?

3. Method

This research was carried out systematically through the application of the Normative Juridical research method. The normative juridical method is a type of legal research that relies on library sources or secondary data.[8] The approach to addressing the issues used in this research consists of a statute approach and a conceptual approach. The approach to addressing the issues in this research consists of a Statute Approach and a Conceptual Approach. This approach is applied by investigating all legal provisions relating to the legal issues being discussed.[9] This approach bases its research on legal material, namely legislation, as the main reference basis in conducting research.

The statutory approach related to the analysis of legal issues to be studied and researched is through the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code. Normative research certainly requires an approach that focuses on legislation, considering that the object of research comes from various legal regulations which are the core of this research.[10] In addition, a conceptual approach (concept-based approach) is also applied, by referring to the views and doctrines that have developed in the discipline of law.

4. Discussion

This is because the term corporation has a close relationship with the concept of legal entity (rechtsperson) in the scope of civil law, which in turn is firmly connected to the scope of civil law.[11]

Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code regulates legal entities or corporations in the role of subjects that can be subject to criminal responsibility and sanctions. Main penalties, additional penalties, and enforcement measures are applied to corporations and individuals involved in them, including administrators with functional roles, order givers, controlling parties, and parties who benefit from benefits. Criminal acts committed by Corporations can originate from individual order givers, controlling parties, or Corporation interest holders who are not included in the formal internal organizational structure, and have the ability to control the activities of the Corporation.

The Corporation may be held liable for Criminal Acts if the acts fall within the scope of business or activities that have been defined in the articles of association or other regulations applicable to the Corporation, if the acts result in profit for the Corporation unlawfully, if the acts are adopted as official Corporation policy, if the Corporation does not take the necessary steps to prevent, mitigate the greater impact of, and ensure compliance with applicable laws to prevent criminal acts from occurring or if the Corporation allows criminal acts to occur.[12]

Corporations can be subject to criminal law actions if their business activities cause harm or danger to the interests of the general public and result in victims. The rules regarding the responsibility of corporate criminal acts are contained in Article 118 of the Law of the Republic of Indonesia Number 1 Year 2023. Regarding who is responsible if a corporation commits a criminal act, the concept of corporate criminal responsibility is explained in Article 46 of Law of the Republic of Indonesia Number 1 Year 2023, which explains that corporate criminal acts involve administrators who have functional positions in the organizational structure of the corporation or individuals who by employment or other relationships act on behalf of or for the benefit of the corporation. This applies within the scope of corporate activities and businesses, both individually and collectively.

In addition to the provisions outlined in Article 46, and Article 47 of the Law of the Republic of Indonesia Number 1 Year 2023 also explains that corporate criminal acts can involve people who govern, individuals who have control, or beneficial owners of corporations that operate outside the formal organizational structure but can control corporate activities. The regulation on corporate criminal responsibility is included in the provisions mandated by Article 118 in the Law of the Republic of Indonesia Number 1 Year 2023. It includes penalties imposed on corporations, which consist of two components, namely a. main penalties, and b. additional penalties. The provisions regarding the consequences of corporate criminal acts have been explained in detail in Article 119 of the Law of the Republic of Indonesia Number 1 Year 2023. The main punishment referred to in Article 118 sub a is in the form of a fine. Furthermore, Article 120 of Law of the Republic of Indonesia Number 1 Year 2023 explains:

- a. Additional punishment for the corporation as referred to in Article 118 sub b consists of the:
 - 1) Payment of financial compensation; Rehabilitation as a result of the criminal offense;
 - 2) Performance of responsibilities that have been neglected;
 - 3) Implementation of customs that have been neglected;
 - 4) Funding of job training;
 - 5) Expropriation of goods or profits obtained from criminal offenses;
 - 6) Publication of court decisions;
 - 7) Revocation of certain licenses;
 - 8) Indefinite prohibition of certain activities;
 - 9) Closure of all or part of the Corporation's business facilities and/or operations;
 - 10) Freezing of all or part of the Corporation's business operations; and
 - 11) Dissolution of the Corporation;
- b. Additional consequences as described in paragraph (1) letter h, letter j, and letter k, can be imposed for a maximum of 2 (two) years; and
- c. If The corporation does not comply with the additional consequences as described in paragraph (1) letter a to letter e, the assets or income of the Corporation may be confiscated and auctioned by the prosecutor to fulfill the additional punishment that is not fulfilled.

The provisions regarding criminal responsibility as stated in Article 48 of Law of the Republic of Indonesia Number 1 Year 2023 are structured with an alternative or cumulative approach. This article explains that the basis for corporate criminal liability is:

- a. If the corporate action occurs within the operational framework or activities described in the articles of association or other regulations applicable to the Corporation;
- b. Generating profits for the Corporation illegally;
- c. Recognized as an official strategy of the Corporation;
- d. The Corporation does not take the necessary actions to prevent, mitigate the impact, and ensure compliance with applicable legal regulations, to avoid the occurrence of more serious criminal acts; and
- e. The corporation allows violations of the law to occur. The legal consequences of applying this provision must be interpreted in an alternative-cumulative manner that has limits.

The legal impact arising from the application of regulations regarding the liability of corporate criminal acts, as outlined in Article 45 to Article 50 of the Law of the Republic of Indonesia Number 1 Year 2023, is expected to ensure legal certainty for various parties involved with corporations. This indicates that the obligation of criminal penalties for corporations can no longer be considered similar to civil liability, by the provisions in the Law of the Republic of Indonesia Number 1 Year 2023. Thus, it is expected that corporations in the future will feel more confident to be criminally liable for all actions taken in the interest of and for the benefit of the corporation, without worrying about suddenly being considered a suspect in a criminal offense case such as corruption. This means that the corporation, as a legal subject and strong legal standing, can protect both the assets of the company and the property of its officers when facing corruption charges or other charges. Strengthening the legal position of corporations as subjects of criminal law, parallel to individuals, is believed to strengthen.[13]

Punishment in the form of fines is the only form of main punishment that can be imposed on corporations involved in crimes or offenses, thus the imposition of fines on corporations becomes a mandatory necessity. The position of fines as the main form of punishment for corporations causes the importance that fines have a preventive effect on corporations not to repeat criminal acts and also prevent other corporations from committing similar criminal acts. To ensure the effectiveness and deterrent power of fines, the amount of fines imposed on corporations involved in criminal offenses must be significant. The imposition of a sufficiently heavy fine aims to prevent corporations from economically calculating between the potential risks and costs incurred and the expected results of criminal acts. A sanction or punishment will be effective as a prevention effort if the potential benefits of criminal acts are smaller than the amount of punishment imposed.

Regulations regarding criminal penalties for Corporations are explained: in article 79 of Law of the Republic of Indonesia Number 1 Year 2023.

- (1) *Criminal penalties are set within the following limits:*
 - a. *Category I, in the amount of Rp1,000,000.00 (one million rupiah);*
 - b. *Category II, in the amount of Rp10,000,000.00 (ten million rupiah);*
 - c. *Category III, in the amount of Rp50,000,000.00 (fifty million rupiah);*
 - d. *Category IV, in the amount of Rp200,000,000.00 (two hundred million rupiah);*
 - e. *Category V, an amount of Rp500,000,000.00 (five hundred million rupiah);*
 - f. *Category VI, in the amount of Rp2,000,000,000.00 (two billion rupiah);*
 - g. *Category VII, in the amount of Rp5,000,000,000.00 (five billion rupiah);*
and
 - h. *Category VIII, in the amount of Rp50,000,000,000.00 (fifty billion rupiah).*
- (2) *If the value of money changes, the amount of criminal fines shall be stipulated by Government Guidelines.*

Then in Article 121 of Law of the Republic of Indonesia Number 1 Year 2023

- (1) *Corporations shall be punished with a criminal fine of at least category IV unless otherwise stipulated in the Law.*

(2) *If the criminal offense threatens with:*

- a. *Imprisonment of less than 7 (seven) years, the maximum criminal fine that can be imposed on the company is category VI;*
- b. *Imprisonment of between 7 (seven) and 15 (fifteen) years, the maximum criminal fine that may be imposed on the company shall be category VII;*
or
- c. *The death penalty, life imprisonment, or imprisonment of up to 20 (twenty) years, the maximum criminal fine that can be imposed on the company is category VIII.*

The amount of fines imposed is considered disproportionate to the impact of the losses caused by the actions carried out by the Corporation. These fines are often only considered as additional expenses for Corporations or legal entities, which only reduce a certain amount of their profits. However, from a different perspective, for organizations such as associations, foundations, or cooperatives, the amount of this fine may be too heavy as they often have limited capital. Therefore, there needs to be a minimum threshold specifically applied to the fines imposed on corporations.

Careful consideration should be given to the Law of the Republic of Indonesia No. 1 of 2023 Concerning the Criminal Code, particularly in the context of criminal penalties imposed on companies involved in criminal offenses. It is important to make a clear distinction between criminal penalties for companies and criminal penalties for individuals. Criminal penalties imposed on companies should carry more weight than criminal penalties for individuals.

- a. From the review of criminal responsibility imposed on corporations by the regulations mandated by Law of the Republic of Indonesia No. 1 Year 2023, several things can be found, among others;
- b. In the framework of regulating sanctions for corporations, there is a role of law as social control. One of the functions of law is as a social control mechanism, especially for corporations;
- c. For justice to be fulfilled, criminal responsibility for corporations must be regulated. In this case, the criminal sanctions imposed on corporations must be by the principles of justice; and
- d. Creating a preventive effect on corporations.

A corporation is a legal subject (*recht person*) which is a man-made representation that has legal rights and responsibilities. The difference between an individual and a corporation lies in the fact that a corporation has the status of a legal subject with an individual of course, a corporation as a legal subject certainly does not allow it to be subject to criminal penalties involving the detention of freedom (imprisonment).

Given the nature of the consideration of corporations as artificial entities that have status as legal subjects. corporations as legal subjects created as artificial entities, Article 5 of the Supreme Court Regulation (PERMA) Number 13 of 2016 has formulated that if one or more of the corporation's management ceases or dies, this will not cause the corporation's responsibility to disappear. Because in Article 23 of

the Supreme Court Regulation (PERMA) Number 13 of 2016, it is also stipulated that the Judge is authorized to impose criminal sanctions on the company. has the authority to impose criminal penalties on the corporation, the management, and both, either alternately or simultaneously.[14]

5. Conclusion

From the analysis and discussion conducted, the following conclusions can be drawn: Corporate criminal liability within the framework of Law No. 1 of 2023, ensuring the Act regulates corporate criminal liability, allows for the prosecution of corporations and individuals involved in criminal acts committed on behalf of or for the benefit of the corporation, Corporations may be subject to criminal action if the act violates the law, provides illegal benefits to the corporation, is adopted as official policy, or if the corporation does not take the necessary measures to prevent criminal acts. Criminal sanctions that can be applied to corporations include fines according to the category of crime, as well as additional penalties such as financial compensation, rehabilitation, publication of court decisions, revocation of licenses, closure of business facilities, dissolution of the corporation, and others, Criminal penalties on corporations do not include penalties for detention of freedom (imprisonment) as on individuals, fines being the main form of criminal penalties that can be applied to corporations

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