



Legal Regulation on The Criminal Liability of Beneficiaries in Corporate Corruption

Ricardo Simatupang^{1*}, Milda Istiqomah², Bambang Sugiri³

¹ Faculty of Law, University Bravijaya, Indonesia

² Faculty of Law, University Bravijaya, Indonesia

³ Faculty of Law, University Bravijaya, Indonesia

rsmh2023@student.ub.ac.id

Abstract. Law enforcement in Indonesia addressing corporate corruption typically targets only corporate officers, including directors and commissioners, who hold authority within the corporation. Criminal liability for corporate corruption is not only sufficient to hold directors and commissioners accountable, but can also extend to beneficiaries who profit from corporate corruption. The weak enforcement of the law against beneficiaries of corporate corruption in Indonesia is attributable to regulatory constraints within the legal system. The challenges from a regulatory perspective are unclear legal regulations regarding beneficiaries and ineffective criminal sanctions. This research was conducted using a normative legal approach. The results of this study indicate that the panel of judges imposed only fines and additional penalties on the corporation, while the beneficiaries were not held criminally liable. The legal regulations that must be applied regarding the criminal liability of beneficiaries in corporate corruption within the Indonesian legal system can be done in several ways, including adding articles to the Anti-Corruption Law related to beneficiaries, recognizing beneficiaries as legal subjects in the Anti-Corruption Law, and applying alternative sanctions other than imprisonment, namely asset confiscation against beneficiaries as parties who enjoy the proceeds of corruption.

Keywords: Corporate Corruption Crimes, Liability of Beneficiary, Legal Regulation.

1 Introduction

Increased equitable development throughout Indonesia affects community welfare and can also have negative effects, particularly on social life. The negative impact of increased equitable national development is an increase in community crime. The type of crime that has increased alongside national development is corruption. Corruption has increased because humans are never satisfied with what they already have, which is in line with human nature.

Under Law No. 31 of 1999, Article 2, corruption crimes are defined as any act by which a person unlawfully enriches themselves, another person, or a corporation in a manner that harms the state's finances or economy. is punishable by life imprisonment or a prison sentence of at least 4 (four) years and up to 20 (twenty) years, and a fine of no less than Rp. 200,000,000.00 (two hundred million rupiah) and no more than Rp.1,000,000,000.00 (one billion rupiah) [1].

Corruption is an extraordinary crime with widespread and destructive effects that go beyond those of ordinary crimes. Corruption in Indonesia and worldwide slows economic growth, increases poverty, reduces investment, and erodes public trust in government.

Indonesia is a country governed by legal norms, as stipulated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which requires that every activity in the life of the nation and state have a legal foundation that regulates it. This is to ensure legal protection and guarantees. The economic sector must have a clear legal basis for the protection of economic crimes [2].

The most recent development, the most risky and prominent crime in Indonesia related to the economy, is corruption. To combat and overcome corruption in Indonesia, there are legal regulations that govern it, such as the criminal law on corruption.

The provisions in these regulations provide legal clarity regarding criminal acts of corruption. The legal regulations governing corruption-related crimes are set out in Law No. 31 of 1999, amended by Law No. 20 of 2001. The Indonesian nation officially ratified the United Nations Convention Against Corruption (UNCAC) at the international level in 2003, and this was subsequently codified in Law No. 7 of 2006 on the Ratification of the United Nations Convention Against Corruption (UNCAC) 2003 [3].

Corporations are widely regarded as having significant influence on the economy, with their reach extending to nearly all aspects of life. In Indonesia, corporations operate across various sectors, including trade, social services, construction, and services. In this regard, corporations can open job opportunities and help reduce the unemployment rate.

Corporations can have both positive and negative effects on a country's economy. Negative examples of corporate development include embezzlement, corruption, and money laundering.

Corporate crime in Indonesia is a serious and complex problem, particularly with respect to criminal liability. Corporations are often involved in various business crimes that have a major impact on the economy and development, including environmental aspects, energy resources, politics, foreign policy, and others.

Criminal acts of corruption involving corporations are a rapidly increasing fact. These criminal acts of corruption are carried out in various ways, violating existing legal regulations with the intent to provide benefits to the corporation, particularly its beneficiaries. Corporate corruption crimes impact the economic losses of a country, which in turn affect development and public welfare.

Law enforcement in Indonesia related to corporate corruption crimes usually only touches on corporate executives such as directors and commissioners who represent the corporation in court. The Indonesian public expects that corporate corruption crimes should not only ensnare directors and commissioners, but also beneficiaries who enjoy the proceeds of corruption [4].

Regulations concerning corporations involved in criminal acts of corruption are contained in Article 2, point (1) of Law No. 31 of 1999, as amended by Law No. 20 of 2001 on the Eradication of Corruption, which provides a clear legal basis for

law enforcement officials such as police, the Attorney General's Office, and judges to hold corporate beneficiaries criminally liable for corporate corruption.

Corruption and money laundering are interrelated crimes. Corruption-related crimes can serve as a starting point for tracing the parties who benefit from corruption.[5].

Corporations have been recognized as subjects of criminal law. However, there is still no clear definition of the parties that can be held criminally liable for corporate corruption. Furthermore, regulations governing criminal liability for corporations, both for managers and owners, remain limited, particularly in distinguishing between the criminal sanctions imposed on the corporation as a legal entity and the individual managers when a corporate crime occurs [6]. Legal events involving shareholders may be subject to criminal charges for corporate corruption.

1.1 The Enron Case (United States, 2001)

Enron was one of the largest energy corporations in the United States that was involved in a case of corruption and financial statement manipulation in early 2000. Major shareholders and company executives, including CEO Jeffrey Skilling and Chairman Kenneth Lay, were involved in financial statement manipulation that deceived investors and market authorities.

- Corruption Crimes: Financial statement manipulation, embezzlement, and fraud against shareholders and investors.
- Criminal Penalties: Shareholders who were aware of or participated in these criminal acts may face criminal penalties, as such actions harmed the corporation and the public.

1.2 Samsung Group Case (South Korea)

Year: 2017 Description: In this case, Lee Jae-Yong, heir and largest shareholder of Samsung Group, was involved in a major corruption scandal involving former South Korean President Park Geun-Hye. Lee Jae-Yong was accused of bribing Park Geun-Hye and her friend, Choi Soon-sil, to secure government support for a merger that would benefit Samsung, thereby increasing his control over the Samsung Group.

Lee Jae-Yong was sentenced to 5 years in prison in 2017, but the sentence was later reduced to 2.5 years following an appeal. This case highlights the important role of shareholders in major corporate decisions that can lead to corrupt practices.

In cases of corporate corruption involving beneficiaries that occur in this world, it is shown that beneficiaries can also be subject to criminal sanctions.

Law enforcement officers such as the police, the attorney general, and judges have not yet taken maximal legal actions regarding corporate corruption crimes, because crimes caused by corporations have a significant impact on the economic development of a country [7].

From some corruption crimes committed by corporations, it seems that it is still at the stage of holding corporate management accountable and imposing fines, and has not yet reached the beneficiaries of the corporation. Based on the background above, the author wants to discuss the legal regulation related to the criminal liability of beneficiaries in corporate corruption crimes under the title Legal Regulation on the Criminal Liability of Beneficiaries in Corporate Corruption.

2 Problem Statement

There is no clear legal regulation regarding beneficiaries in the liability for corporate corruption crimes.

3 Research Questions

- What is the basis of consideration for judges in imposing penalties on beneficiaries in corporate corruption crimes?
- What will the future legal regulations be regarding the criminal liability of beneficiaries in corporate corruption crimes within the Indonesian legal system?

4 Purpose Of Study

- To understand the basis of judges' considerations in imposing penalties on beneficiaries in corporate corruption crimes.
- To understand future legal regulations related to the criminal liability of beneficiaries in corporate corruption crimes within the Indonesian legal system.

5 Research Method

This thesis uses a normative legal approach. The normative legal research approach focuses on analyzing aspects of positive law applicable in Indonesia by examining and reading laws, court decisions, and legal doctrines as the main sources for studying existing legal issues. The writing of this thesis uses and analyzes the legal regulations related to Criminal Liability of Beneficiaries in Corporate Corruption Crimes.

6 Findings

Corporations, as subjects of criminal law, can be held criminally liable for their directors, shareholders, and beneficiaries. A beneficiary is someone with significant power and unlimited influence within a corporation, where this beneficiary can determine the direction and policies of the corporation. To find out the role of beneficiaries in corporate corruption crimes and to provide criminal accountability based on the legal regulations in force in Indonesia and existing criminal law theories, the author will analyze court decisions that have permanent legal force.

6.1 Analysis of the Judge's Consideration on the Criminal Liability of the Beneficiary in Corporate Corruption Crimes

Decision Case Number 2096 K/Pid.Sus/2023 (Judge Charge). Article 5 paragraph (1) letter b of Law Number 31 Year 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 Year 2001 concerning Amendments to Law Number 31 Year 1999 concerning the Eradication of Corruption Crimes Jo. Article 55 paragraph (1) number 1 of the Criminal Code Jo. Article 64, paragraph (1) of the Criminal Code.

Article 13 of Law Number 31 Year 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 Year 2001 concerning Amendments to Law Number 31 Year 1999 concerning the Eradication of Corruption Crimes, Jo Article 55 paragraph (1) number 1 of the Criminal Code Jo. Article 64, paragraph (1) of the Criminal Code. The principal sentence of a fine and the additional sentence of restitution against the corporation

6.2 Legal Analysis of Supreme Court Decision Number 2096 K/Pid.Sus/2023 based on Law No. 1 of 2023 concerning the Indonesian Criminal Code (KUHP) and the Theory of Corporate Criminal Liability

According to Article 47 of Law No. 1 of 2023 concerning the Criminal Code. Criminal Acts by Corporations can be committed by the person giving the order, controlling the person, or the beneficial owner of the Corporation, who is outside the organizational structure but can control the Corporation. In the facts of the court trial, Fahmi Darmawansyah, as Director, is the owner, controller, and decision-maker in all operational activities of PT Merial Esa, as well as the beneficial owner of all corporate activities, and there is no separation of assets between the defendant's assets and Fahmi Darmawansyah's assets. Thus, the elements of the criminal act committed by PT Merial Esa have been fulfilled based on Article 47 of Law No. 1 of 2023 concerning the Criminal Code.

According to Article 48, letter c of Law Number 1 of 2023 concerning the Criminal Code. Corporate crimes can be held accountable if they unlawfully benefit the corporation. The corruption case at PT Merial Esa, committed by Fahmi Darmawansyah, the Director, benefited the corporation. Therefore, the elements stipulated in Article 48 of Law No. 1 of 2023 concerning the Criminal Code have been met.

According to Article 49 of Law No. 1 of 2023 concerning the Criminal Code. Liability for Criminal Acts by Corporations is imposed on the Corporation, officials with functional positions, the person ordering, the controlling party, and/or the beneficial owner of the Corporation.

In this case, Fahmi Darmawansyah as the beneficial owner of PT Merial Esa has committed bribery against members of Commission I of the DPR for the 2014-2019 period and members of BAKAMLA related to the procurement project of goods and services at BAKAMLA. The criminal act committed has fulfilled the elements of Article 49 of Law No. 1 of 2023 concerning the Criminal Code. The defendant (corporation) has met the elements of the criminal act such as the objective

element, namely intent, and the subjective element, namely the unlawful nature. The defendant (corporation), carried out by the Director as the beneficial owner, can be held criminally liable because in his actions there is fault and there is no excuse for the criminal act that has been committed.

Criminal Liability based on Theories of Corporate Criminal Liability. In the case of corporate corruption, criminal acts of the defendant (PT Merial Esa) involving Fahmi Darmawansyah as Director, the author uses the theory of identification and the strict liability theory.

Identification Theory. The implementation of the corporate criminal liability system using this theory must carefully consider who truly holds operational control of the corporation, who is authorized to issue policies and make decisions on behalf of the corporation.

In the legal facts presented at the trial, the defendant (PT Merial Esa), with Fahmi Darmawansyah as Director, committed acts of corruption that harmed state finances and enriched himself and the corporation by an amount of Rp. 133,104,444,139 related to the BAKAMLA satellite monitoring procurement project for the 2016 fiscal year.

The facts of the court trial show that Fahmi Darmawansyah, as Director, is the beneficial owner and has full control over the corporation's activities.

Based on these findings, the identification theory meets the requirements in this corporate corruption criminal case and can be held criminally liable.

Strict Liability Theory. Strict liability is liability without fault, in which case the perpetrator can be criminally charged if the perpetrator has committed an act prohibited by statutory regulations without considering the perpetrator's mental attitude.

The facts of the court trial of the defendant (PT Merial Esa), conducted by Fahmi Darmawansyah as Director, have shown that the defendant committed the criminal act of corruption, which harms state finances and enriches the corporation, amounting to Rp. 133,104,444,139 related to the BAKAMLA satellite monitoring procurement project for the 2016 fiscal year.

The criminal act of corruption committed by the defendant (PT Merial Esa), perpetrated by Fahmi Darmawansyah as Director, violates Law No. 31 of 1999, as amended by Law No. 20 of 2001, concerning the Eradication of Corruption Crimes, and Law No. 1 of 2023, concerning the new Criminal Code.

In court decision Number 2096 K/Pid.In Sus/2023, the panel of judges rendered only a decision against the corporation, imposing a fine and additional penalties. In making their decision, the panel of judges should have considered the legal facts presented during the court proceedings in relation to Law No. 1 Year 2023 concerning the Criminal Code, as well as the theories of corporate criminal liability relevant to the decision. In order to provide a sense of justice, the panel of judges

should have imposed criminal liability on Fahmi Darmawansyah, as the Director, who is also the beneficiary of the corporation.

6.3 Future Legal Regulation Related to the Criminal Liability of Beneficiaries in Corporate Corruption Crimes in the Indonesian Legal System.

In legal regulations related to the criminal liability of beneficiaries in corporate corruption crimes in the Indonesian legal system, several things can be considered.

Additional Articles in the Corruption Crime Law. The addition of articles to the Corruption Law is crucial, given the increasing number of corruption cases involving corporations, which result in state financial losses. Corporate corruption committed by managers is not solely the initiative of managers themselves but is directed by those in control of the corporation.

The addition of an article to the Corruption Crimes Law concerning beneficiaries in corporate corruption is essential to provide law enforcement with a tool to provide legal certainty. This additional article could be inserted between Articles 2 and 3 of Chapter II of the Corruption Crimes Law. The article reads.

“Any person who is directly or indirectly a beneficiary of a corporation that commits a criminal act and knows or should have suspected that a criminal act has occurred may be prosecuted as a perpetrator or accomplice in the criminal act and may be subject to criminal sanctions in accordance with applicable laws”.

Recognition of Beneficiaries as Legal Subjects. In Indonesian criminal law, the regulations governing criminal subjects, both in the old Criminal Code and Criminal Code No. 1 of 2023 (the new Criminal Code), apply to individuals and corporations.

The beneficiaries of a corporation are individuals who have full power to control the corporation and receive the principal profits from it. Individuals who control corporations have the authority to select, appoint, and dismiss employees, from the lowest level to the board of directors.

The beneficiaries of these corporate corruption crimes often use the directors they have appointed to commit crimes such as bribery and tax evasion. In cases of corporate corruption, the beneficiaries are usually the main directors, while the company directors merely carry out their orders. These beneficiaries are also the parties that derive the greatest profits from corporate corruption. Recognition of beneficiaries as legal subjects in the Corruption Crime Law so that actions can be taken, among others.

Investigation. The definition of investigation in Law No. 8 of 1981 on Criminal Procedure is a series of investigative actions conducted by the police to locate and collect evidence that can clarify criminal acts and identify suspects.

With beneficiaries designated as subjects of criminal law, the police, as the party conducting the investigation and inquiries, have a strong legal basis to designate

beneficiaries as suspects based on the evidence obtained and to proceed to the next stage, which is prosecution.

Prosecution. The results of investigations and inquiries conducted by the police regarding the beneficiaries as suspects in corporate corruption crimes have been compiled in investigation and inquiry files and can be submitted to the Attorney General's Office for prosecution (P21). The Attorney General's Office may prosecute the beneficiaries based on the police investigation report related to the acts and financial losses to the state.

Criminal Liability. By prosecuting in court, the Attorney General's Office hopes to hold the beneficiaries criminally responsible for their actions and their impact on state and community financial losses.

Criminal Sanctions. In Indonesian criminal law, as set out in the Criminal Code, criminal provisions apply to any person who commits a criminal offense, whether within or outside Indonesia. Such persons may be individuals or corporations [8].

Criminal sanctions for corporate criminal liability include fines and additional monetary restitution based on the amount of state losses alleged against the defendant. Criminal sanctions for the liability of corporate beneficiaries are rare, even though court records have established the beneficiaries' role in corporate corruption.

Article 64 of Law No. 1 of 2023 on the National Criminal Code provides that criminal penalties comprise principal, additional, and specific penalties for certain crimes, as stipulated in the law [9]. Article 65, number 1, states that principal penalties include imprisonment, detention, supervision, fines, and community service.

Criminal sanctions that may be imposed in corporate criminal cases include imprisonment for individuals found guilty and fines. In various cases involving corporate criminal offenses, including procurement corruption and bribery involving government officials and civil servants, criminal penalties are imposed solely on the corporation in the form of fines and other penalties.

Criminal sanctions imposed on corporate beneficiaries are largely untouchable, in that they are rarely held criminally accountable, including through imprisonment and fines for the return of the proceeds of crime.

The criminal law policy that prioritizes a balance between recovering assets from corruption and imposing criminal sanctions, such as imprisonment, is a legal option for the eradication of criminal acts [10].

In the court decisions used by the author as research material, it can be seen that the Panel of Judges in deciding corporate corruption cases related to corporate corruption related to procurement of goods, bribery, uses Article 2 paragraph (1) and 5 paragraph (1) letter b of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption Jo Article 55 paragraph (1) point 1 of the Criminal Code Jo Article 64

paragraph (1) of the Criminal Code where the decision only imposes a fine on the corporation.

Alternative criminal sanctions that can be used by the Panel of Judges in deciding cases of corporate corruption, such as procurement of goods, bribery, and other related to state finances carried out by beneficiaries, in addition to criminal sanctions of imprisonment, can also be carried out by confiscation of assets. The concept of asset confiscation aims to recoup state losses resulting from criminal acts without first imposing criminal sanctions on the perpetrators [11].

This concept of asset confiscation emerged from a shift in the context of criminal penalties, which are difficult to impose, and a focus on the restitution of state losses. This asset confiscation is crucial because corruption is an economically related crime that causes state financial losses [12]. Asset confiscation without criminal penalties is set out in the draft legislation on asset confiscation, which the Indonesian House of Representatives has not yet ratified.

7 Conclusion

The Panel of Judges, in deciding corporate corruption cases, has not yet provided a sense of justice for the community regarding the criminal liability of the beneficiary. Based on the decision of case Number 2096 K/Pid.In Sus/2023, the Panel of Judges imposed only fines and additional penalties on the corporation. The Panel of Judges should, in making its decision, consider the legal facts of the trial in relation to Law No. 1 of 2023 concerning the Criminal Code and the theories of corporate criminal liability. In legal regulations governing the criminal liability of beneficiaries in corporate corruption crimes in the Indonesian legal system, several considerations arise.

7.1 Addition of Articles to the Corruption Crime Law

This additional article could be inserted between Articles 2 and 3 of Chapter II of the Corruption Crimes Law. The article reads: “Any person who is directly or indirectly a beneficiary of a corporation that commits a criminal act and knows or should have suspected that a criminal act has occurred may be prosecuted as a perpetrator or accomplice in the criminal act and may be subject to criminal sanctions in accordance with applicable laws”.

7.2 Recognition of Beneficiaries as Legal Subjects

Recognition of beneficiaries as legal subjects under the Corruption Crime Law enables investigations, prosecutions, and criminal penalties.

7.3 Criminal Sanctions

The application of alternative sanctions other than imprisonment includes confiscation of assets against beneficiaries as parties who benefit from the proceeds of corruption.

References

1. Undang-Undang No.31 Tahun 1999 Jo Undang-Undang No.20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi.
2. Sadino, Bela Nurul Hidayati; *Perkembangan Hukum Tindak Pidana Ekonomi*; Vol. II.1 Januari Tahun 2017.
3. UU Nomor 7 Tahun 2006 adalah Undang-Undang tentang Pengesahan United Nations Convention Against Corruption, 2003 (Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi, 2003).
4. Fauzan, Tomi, Asmak; *Pertanggungjawaban dan Penegakkan Hukum Pidana Korporasi Dalam Tindak Pidana Korupsi di Indonesia*; Akademik Jurnal Mahasiswa Humanis Vol.4 No.2, Mei 2024.
5. Ariyanti, R. (2020). "Strategi Penelusuran Aset dalam Tindak Pidana Korupsi dan Tindak Pidana Pencucian Uang." *Jurnal Integritas KPK*, 6(1), 55–72.
6. Nanda M, Shenti A; *Kejahatan Korporasi: Pertanggungjawaban Tindak Pidana Dalam Hukum Positif di Indonesia*; Program Studi Ilmu Hukum (Volume4 Nomor 2 Agustus 2021).
7. Saragih, T. (2020). "Optimalisasi Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi." *Jurnal Penegakan Hukum dan Keadilan*, 11(1).
8. Yudha Ramelan; *Penerapan Sanksi Pidana Korporasi Pada Bank dan Implikasinya*; *Masalah-Masalah Hukum*, Jilid 48 No.1, Januari 2019, Halaman 80-97.
9. Undang-Undang No 1 Tahun 2023 Kitab Undang Hukum Pidana.
10. Nabila Izha Nur Muttaqi; *Rekonstruksi Konsep Penjatuhan Sanksi Pidana Penjara Dalam Tindak Pidana Korupsi Indonesia*; 270 LEX Renaissance NO 2 VOL 8 DESEMBER 2023: 269-289.
11. Yunus Husein, "Penjelasan Hukum tentang Perampasan Aset Tanpa Pemidanaan dalam Perkara Tindak Pidana Korupsi", *Pusat Studi Hukum dan Kebijakan & Pusat Penelitian dan Pengembangan Hukum dan Peradilan Mahkamah Agung RI*, Jakarta, 2019, hlm. 6.
12. Irwan Hafid, "Perampasan Aset Tanpa Pemidanaan dalam Perspektif Economic Analysis of Law", *Jurnal Lex Renaissance Nomor 1 Volume 6*, Juli 2021, hlm. 47.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

