

The Concept of Corporate Crime in Indonesian Penal Code Bill

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Abstract—Corporations play a great role in the development of a nation. Such roles can also result in violations of the law that can ultimately become a major problem for the economic and social systems of society. The complexity of the problems caused by the corporation is often also backed up by great power, so in law enforcement there are still many problems. Therefore, the policy of law as the foundation of our nation and state that upholds the values of justice and equality of the law requires a comprehensive and integrated effort on the policy of the law especially if the violation or crime committed by the corporation. In Article 44 of the Criminal Code Bill 1999-2000 states that "corporations are accountable for committing criminal acts", is an important development in the reform of Indonesian criminal law. This needs to be done considering the impact that arises from the crime committed by the corporation is very large, both individual losses, society and state. Nevertheless, there is still a debate among law experts in placing corporations as the subject of criminal law in criminal law code (*KUHP*) does not diminish the spirit of determining political policy on the basis of social life, nation and state based on *Pancasila* and *UUD 1945* (Constitution).

Keywords—*crime, corporations, KUHP*

I. INTRODUCTION

Corporate crime cannot be imposed with a penalty such as capital punishment, imprisonment, or life-long penalty, because corporations are not human. In the provisions of *KUHP* also states that, the subject of a criminal act is the person as the perpetrator. This means that only the person as a criminal can be prosecuted and charged with criminal liability. The *KUHP* does not recognize corporations as a subject of criminal law, but the provisions on the subject of corporation criminal law are found only in specific legislation outside the *KUHP*.

While in its history the recognition of corporations as the subject of crime in criminal law has been going on since 1635, when the legal system in the UK acknowledged that corporations could be criminally responsible for minor criminal offenses, and since 1909 the United States has only recognized the corporation as a criminal law subject through court decisions. Later, many countries recognize that corporations are subject to criminal offenses such as France, Canada, the Netherlands, Italy, Australia, Switzerland and some countries in Europe[1].

In Indonesia, the corporation as a subject of criminal law has been known since 1951, that is, since it has been included in the Law on stockpiling. Then in 1955, it is contained in the Economic Criminal Act, namely Article 15 paragraph 1 of Law no. 7 Drt., In 1963 found in Article 17 paragraph 1 Law No.11 Determination of President (*PNPS*) about subversive crime, and subsequently also contained in the Narcotics Act, psychotropic law, environmental law, Law on corruption and money laundering[2].

In *KUHP* it is said that legal entities can not commit a criminal offense, it is reasonable because the compilers of *KUHP* are heavily influenced by the principle of *societas delinquere non potest* fruit of the 19th century thinking, in which criminal errors are always associated with humans as perpetrators .

The complexity of the problems posed by corporal crime, whether economic or social, can threaten the entity of our state system built on the basis of *Pancasila* and the *UUD1945* (Constitution). The rise of giant corporations and the emergence of financial strength can also result in widespread corporate crime. Certainly the role of legal policymakers should not dampen the passion for taking steps to take a criminal policy that is useful to combat corporate crime.

Corporate crime can be called white-collar crime. White-collar crime is a kind of a latent crime. "The main misconception of the white-collar crime is that these crimes are non-violent and are committed by those who are non-violent in nature. It is a kind of dangerous misconception as it implies that all white-collar crimes are not harmful or cause violence"[3].

On the basis of this, the study of corporate crime in the Bill of *KUHP* is necessary, since the consequences of corporal crime are greater than the crimes committed by natural persons.

II. RESEARCH METHODS

This article uses a normative juridical research method with a legislative approach (statue approach). That is research by trying to find solutions to problems with analysis that uses the review of laws and regulations related to problems. As well as using literature studies to support the writing of this article.

III. RESULTS AND DISCUSSION

A. *Criminal Acts by Corporation*

According to (3) on corporate crime, the material of white collar crime will lead us to crimes committed by individuals, whereas corporate crime has not been the main focus, but in its development it has there was a change. The dimensions of white-collar crime grow in harmony with so many victims resulting from corporate crime, and usually the crime is done in an organized manner.

While [4] argues that white collar crime can be individual and collective. Individuals are essentially occupational crimes which mean crimes committed for their own benefit, in relation to the misuse of office and other crimes by employees harming the leader or employer, whereas corporate crime is unlawful corporate behavior in the form of collective law violations aimed at achieving organizational goals.

Some of the laws governing corporate crime in Indonesia are as follows:

- a. Emergency Law of the Republic of Indonesia Number 17 Year 1951 on the Collection of Goods. This law is allegedly the first law in Indonesia to regulate corporate crime, although there is no corporation there, but if it sees Article 5 paragraph (2) explains the sanction of a one-year-old cover, and of course it is intended for companies that violate the provisions of the law. So the corporation may be liable for the crime committed.
- b. Emergency Law of the Republic of Indonesia Number 7 Year 1955 on Investigation, Prosecution and Economic Crime Trial. The law, better known by the name of the TPE Law, and in fact there is not a single article in the TPE Law governing the corporation. However, implicitly implied that the Legal Entity may be subject to criminal liability. This can be seen in Article 7 paragraph (1) sub-b on the additional punishment of economic crime, namely the total or partial closure of the company, then in sub-c and sub-regulate the seizure of the criminal act of economic. And, in Article 8 of the TPE Law, regulates the sanctions imposed on the company for ever three years under forgiveness.
- c. Law Number 5 Year 1997 on Psychotropic. Article 1 paragraph (13) of the law, states that "the corporation is an organized collection of persons and / or wealth, whether it is a legal entity or not". The criminal provisions of corporate crime under the law are mentioned in Article 59 paragraph (3), in addition to the criminal offenses committed by corporate crime, the corporation may also be fined Rp 5.000.000.000,00 (five billion rupiah). Whereas in Article 70 states that if the psychotropic crime in Article 60, Article 61, Article 63, and Article 64 is done by the corporation, then in addition to the criminal offense, the corporation shall be subject to a fine of 2 (two) times the applicable fine penalty for such crime and may be imposed additional criminal in the form of revocation of business license.
- d. Law Number 35 Year 2009 on Narcotics. In the law, the definition of corporation is defined in Article 1 paragraph (21), namely, "The corporation is an organized collection of persons and / or wealth, whether it is a legal entity or non-legal entity". Article 130 paragraph (1) states that: "In the case of offenses as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126 and Article 129 shall be conducted by a corporation, in addition to imprisonment and penalties against its officers, a penalty imposed on a corporation shall be a fine with a fine of 3 (three) times of the fine as referred to in those Articles. In addition to paragraph (2) the corporation may be subject to additional criminal sanction in the form of revocation of business license; and / or revocation of legal entity status.
- e. Law no. 23 of 1997 on Environmental Management. In Article 1 paragraph (24) the definition of a corporation shall be incorporated into the formulation of persons, namely: "Persons are individuals, and / or groups of persons and / or legal entities. In accordance with Article 45 UUPH stipulates that: "If a criminal offense referred to in this chapter is committed by or on behalf of a legal entity, company, union, foundation or other organization, the penalty shall be exacerbated by one-third." In Elucidation of Law Number 23 Year 1997 also states, in anticipation of the possibility of the emergence of criminal acts committed by a corporation, the law is also regulated corporate liability.
- f. Law no. 10 Year of 1998 on Amendment of Law no. 7 of 1992 concerning Banking. The law, which is also referred to as this UUP, does not specifically regulate the definition of corporation, but it is recognized that the subject of a criminal act of a corporation called a legal entity is Article 46 paragraph (2) stating that: "Members of the Board of Commissioners, Board of Directors or employees of intentionally request or accept, permit or approve to receive any remuneration, commission, additional money, services, money or valuables, for his personal gain or for the benefit of his output, in order to obtain or attempt to obtain for others in advance, bank guarantees, or credit facility from a bank, or in the course of purchase or discount by the bank on notes, promissory notes, checks and trade papers or other proof of liability, or in order to give consent for others to withdraw funds in excess of their credit limit to bank; with a prison criminal offense of at least 3 (three) years and a maximum of 8 (eight) years and a fine of at least Rp5,000,000,000.00 (five billion rupiah) and a maximum of Rp100,000,000,000.00 (one hundred billion rupiah). Law no. 8 Year 1999 About Consumer Protection. According to the law, the definition of a corporation may be intended as an actor as in Article 1 paragraph (3) that: "Business actor is any individual-entity or business entity, whether in the form of a legal entity or a legal entity established and domiciled or conducting

activities within the territory the law of the State of the Republic of Indonesia, both alone and jointly enter into agreements to conduct business activities in various economic fields. "By using a term" business actor "which includes individuals and corporations in the law, the determination of types of criminal sanctions and actions same. The criminal sanctions provided for in Article 61 are: "Criminal prosecution may be committed against the business actors and / or their management". And in article 62 stating that: "Business actors violating the provisions referred to in Article 8, Article 9, Article 10 paragraph (2), Article 15, Article 17 paragraph (1) a, b, c, e, paragraph (2), and Article 18 shall be subject to a maximum imprisonment (5) years or a fine of not more than Rp 2,000,000,000.00 (two billion rupiahs); then Business actors violating the provisions of Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, Article 17 paragraph (1) letter d, letter f shall be punished with imprisonment for a maximum of 2 (two) years or a fine of not more than Rp 500,000,000 (five hundred million rupiahs); and, in respect of any offense resulting in serious injury, permanent disability, or death, enforceable applicable criminal provisions. As for the criminal sanctions as referred to in Article 62, additional penalties may be imposed in the form of: Deprivation of certain goods, announcement of judge's verdict, payment of compensation, order of termination of certain activities causing loss of consumers, levying of goods from circulation, and revocation of business license.

- g. Law no. 20 of 2001 on Amendment to Law Number 31 Year 1999 concerning the Eradication of Corruption. The law is also referred to as the UUTPK that regulates the corporation as the subject of criminal acts of corruption which can be criminalized. According to Law Number 31 Year 1999 concerning the Eradication of Corruption Article 1 paragraph (1) of the UUTPK, the corporation is an organized group of people and / or property whether it is a legal entity or non-legal entity. Furthermore, in Article 1 paragraph (3) also affirmed that every person is an individual or including a corporation. In the UUTPK, in Article 20 paragraph (2), the corporation commits a criminal act of corruption if the offense is committed by persons either based on employment or other relationship, acting within the corporate environment either alone or together. As to who can be accounted for, the UUTPK regulates in Article 20 Paragraph (1) that in the case of a criminal act committed by a corporation, criminal charges and improper can be made against the corporation and / or its management. As for any criminal sanction imposed on a corporation under Article 20 paragraph (7) shall be the hefty penalty. Article 20 paragraph (7) clauses is: "The principal penalty that can be imposed on a corporation shall be in the form of a fine, with a maximum penalty of one third." Additional criminal sanctions mentioned in Article 18 paragraph (1) may also be subject to the principal penalty for corporations or shall at least be made

an additional criminal that may be imposed independently, and additional criminal under Article 18 paragraph (1) of the UUTPK, in addition to the additional criminal as in *KUHP*, are: The seizure of tangible or intangible goods or immovable goods used for or which is derived from corruption, including a company owned by a convicted person, in which a criminal act of corruption is committed, as well as the price of the goods replacing the goods; Repayment of the substantial sum of money which is equal to property derived from corruption offenses; Closing all or part of the company for one year old aling; Revocation of all or part of certain rights or the removal of all or part of the particular benefits which the government has or may give to the convicted person.

- h. Law no. 25 of 2003 on Amendment to Law no. 15 Year 2002 on the Crime of Money Laundering. The law is also called the law of TPPU, basically is regulating the act of placing, transferring, paying, spending, donating, donating, entrusting, carrying abroad, exchanging, or other deeds of assets known or suspected to be the result of a crime with a view to concealing, or disguising the origins of Treasury to be a valid Legal Asset. Article 1 paragraph (2) states that: "Every person is an individual or a corporation". While the definition of the corporation is mentioned in article 2 paragraph (3) which reads: "The corporation is a collection of people and / or wealth organized either a legal entity or non-agency.

Some laws governing corporate crimes mentioned above may be subject to liability. Accountable liability may be a fine, civil or administrative penalty. However, in its development is very interesting to be studied more deeply [5]about sanctions and corporate criminal liability, so it can provide a deterrent effect on crimes that have been done.

According explains that choosing and establishing criminal as a means to overcome corporate crime must take into account the factors that support the work of criminal law in reality, including the motive of corporate economic crime. Since the problem of tackling corporate crime is choosing and establishing what criminal sanctions are appropriate for a criminal corporation.

However, if the crime act is highly organized and has wide-ranging impacts, it is necessary to consider in various countries to apply the announcement of adverse publicity as sanction for corporation expense, since the corporation's objective is only profit, so the announcement of sanctions will impacts both corporations that have financial impacts, but also non-financial impacts. Implementation of these sanctions, will also be able to explain fully and transparently to the public lekat related crimes committed by the corporation, so that similar crimes can be anticipated or can be avoided by society, and other corporations.

B. Concept of Renewal of Penalties Against KUHP

Legal reform in Indonesia has actually started since the proclamation of independence of the Republic of Indonesia on August 17, 1945, through the *UUD1945* (Constitution) of the

Republic of Indonesia. In the formulation of the 1945 Constitution of the Republic of Indonesia there is a sentence that "protecting the whole nation of Indonesia", then there is also a sentence stating that "general welfare" in it. Both sentences, indicating the national goal of the Indonesian nation in laying the law as an effort to realize social justice for all the people of Indonesia.

According to [6] states that the key national goals consist of over social protection (social defenses) and social welfare (social welfare). The key to that national goal, is part of the principle of balance in order to achieve the goals of national development. However, please note that in terms of social defense also includes social welfare.

To achieve the national goals, strategic policy is needed in shaping the political objectives of law in Indonesia. Legal politics based on Social Defense that serves the protection of all aspects of community life for all forms of crime that occurred, so as to improve and restore order in the life of nation and state. This is part of the criminal law foundation.

The purpose of criminal law enforcement according to [7] are:

- a. Society needs protection against anti-social actions that harm and endanger the community. Departing from this aspect, the purpose of criminalization (criminal law enforcement) is to prevent and cope with crime.
- b. Society needs protection against the dangerous nature of a person. Therefore, criminal / criminal law aims to improve the perpetrator of the crime or attempt to change and influence his behavior to return obedient to the law and become a good and useful citizen.
- c. Communities also need protection against abuse of sanctions or reactions from law enforcers or from citizens in general. Therefore, it is also natural that criminal purposes should prevent unlawful or unlawful treatment or acts.
- d. The community needs protection against the balance or harmony of the various interests and values that are disturbed because of the existence of a crime, therefore it is also natural that criminal law enforcement must be able to resolve conflicts caused by criminal acts, can restore balance and bring peace to the community.

Therefore, the renewal of the Criminal Code (*KUHP*) is a natural thing to do. As it is known that the existing Penal Code is the Criminal Code of the colonial legacy. In its development, the regulation on criminal law should be conducted comprehensively and integrated, so that the Criminal Code is in harmony with the dynamics of development in Indonesian society, therefore it is necessary to reform the criminal law.

The renewal of Indonesia's criminal law is one of the interesting themes for legal experts in determining the direction of national legal policy. Renewal of the criminal law is essentially an attempt to review and reform the law in accordance with the values of the Indonesian people. Not only

that, the renewal of the Criminal Code can also be interpreted as a renewal of criminal law material.

The scope of reform of the criminal law system includes, renewal of the substance of criminal law, renewal of the structure of criminal law, and the renewal of the criminal law culture. According to [8], the Bill of the Criminal Code Bill is essentially an effort to reform, reconstruct and restructure the Bill on the Criminal Code aimed at restructuring the building of the national criminal law system. This is certainly different from the making or preparation of the usual bill that is often made so far. The differences can be identified as follows:

- a. Ordinary drafting of the bill is partial / fragmented; in general only set the specific delicacy / certain, still tied to the parent system (*WvS*) is not complete, just a "sub system", not build / reconstruct "criminal law system".
- b. The Bill of the RUU KUHP is comprehensive / integrated / integral, covering all aspects / areas; system / pattern, compile / rearrange (reconstruction / reformulation) "Designing" the integrated National Criminal Law System.

Renewal of criminal law is closely related to the existence of criminal procedure law. Indonesia already has legislation regulating national and characterized criminal law. The making of a National Criminal Code should be done first so that we can determine a concept of determining how the procedure or procedure to uphold, implement and maintain the material criminal law through criminal procedure law.

For example in Russia. "Russia's new economic strategy is calling for the development of knowledge-based moral economy. All discussions about the necessity to decide economic problems first and moral problems after are wrong, and in fact, are even noxious. The all-level authorities should protect new ethic by law and condition its strict observance, while the civic society will have to learn to control the regime. Struggle against economic crimes is the powerhouse of this process. Economic and moral renewal of our community largely depends on how successful this will go" [9].

The arrangements contained in the national *KUHP* are emphasized in the convict procedure to have a deterrent effect and redirect back to the right path while still providing a safe, calm for the wider community. While the formulation of criminal purposes in the National *KUHP* in addition to protecting the public also concerned the interests of the convicted. In regulating the interest of the convict affected the interests of the community, where if the prisoners finished serving the punishment still behave less well, it will disrupt the peace and security of society, this subject becomes the main idea that must be contained in the legislation of a criminal law.

Therefore, in the Bill of *KUHP*, it is necessary to lay down a legal political framework which sees that the formulation of a criminal law is codified and unified intended to create and enforce consistency, justice and legal certainty with due regard to the balance between national interest, individuals within the Unitary State of the Republic of Indonesia based on *Pancasila*

and the *UUD1945* (Constitution) of the State of the Republic of Indonesia.

C. Corporations as Subjects of Criminal Act in Bill of *KUHP*.

The existence of a formula which states that "corporations are accountable for committing criminal acts" as set forth in Article 44 of the 1999-2000 Criminal Code Bill constitutes an important development in the reform of Indonesian criminal law. This needs to be done considering the impact that arises from the crime committed by the corporation is very large, both individual losses, society and state.

Corporate losses can be physical, economic and social. According to [10] explained that the magnitude of such losses, due to corporate crime targets that have a wide range of crimes, such as public health, labor conditions or conditions of exploitation of natural resources and environment (exploitation of natural resources and environmental) and the provision of goods and services to consumers.

Furthermore, according to [11] states that corporate criminal liability can be based:

- a. Based on an intergalactic philosophy, that everything should be measured because of balance, harmony, and harmony between personal and social interests;
- b. Based on the principle of kinship in Article 33 of the 1945 Constitution;
- c. To combat anomie of success;
- d. For consumer protection;
- e. For technological advancement.

However, it is also important to note that criminal sanctions against corporations will also have an impact on economic systems such as job losses, as well as termination of employment (*PHK*). This shall apply if the corporation is liable to the extent such as the revocation of a business license or the dismissal of a corporation or corporation. Therefore, it is necessary to consider the principle of equilibrium in order that the criminal law imposed on the corporation will not affect or even harm the public economy.

Barda Nawawi Arief [9] explains that the national criminal law principles and systems of the Bill of *KUHP* are structured on the basis of a "balance idea" which includes:

- a. Monodualistic balance between public / community interest and individual / individual interests;
- b. The balance between the idea of victim protection and the idea of criminal individualization;
- c. Balance between objective (objective) and subjective (objective) / inner (interior) / objective (idea "*daad-dader strafrecht*");
- d. Balance between formal and material criteria; balance between legal certainty, flexibility / elasticity / flexibility and fairness; and
- e. Balance of national values and global / international / universal values.

As is known, Article 46 of the Criminal Code Bill 1999-2000 states that if a criminal act is committed by and for a corporation then its prosecution can be done and its penalty

may be imposed on the corporation itself, or the corporation and its management or its management only. In the case of a corporate administrator, the caretaker as the maker must be responsible, and to the corporation be given certain obligations. The provisions are contained in Article 169 of *KUHP*, Articles 398 and 399 of *KUHP*. The criminal act in article 169 of the Criminal Code is a criminal offense against public order (Chapter V Book II *KUHP*) that is participating in banned societies. If done by the board of corporations then the tone of the weighting. While Article 398 of the Criminal Code does not impose criminal liability on the corporation but on its board. However, the liabilities charged are actually the obligations of the corporation.

In terms of the corporate debate as a subject of criminal law, [10] explains that there are fundamental differences in the status of corporations, such as those who do not agree if corporations are subjected to criminal law, for example:

- a. Crime-related issues of errors and faults are only found in natural persons or persons.
- b. Material behavior which is a condition of the cancellation of some offenses, can only be done by natural persons or persons.
- c. Criminal and acts of depriving people of liberty cannot be imposed on corporations.
- d. It is not easy to determine the norms and legal basis for deciding whether corporations alone, administrators only, or even both to be prosecuted and convicted.

Then [12] explains also parties that agree to put the corporation as a subject of criminal law, for example:

- a. In social and economic development, corporations play a very important role, so corporations have an influence on developmental development.
- b. The administration of the caretakers was not enough to repress the delays made by the corporation.
- c. The criminal law should be able to protect the community and enforce the prevailing norms. If it only applies to humans, then the goal will not be achieved. On that basis, there is no reason to impose a penalty on corporate crime.
- d. The penalty of corporations is an attempt to ensure that innocent administrators are not necessarily responsible for acts they do not fully commit.

On the basis of the above clearly states that the provisions of *KUHP* still adhere to the subject in the criminal law is a person or individual. And it is reinforced by the principle of "societas non-potest" that the legal entity can not commit a crime or the principle of "universality delinquere non-potest" ie corporation (corporation) can not be convicted. Therefore, the corporation as the subject of a criminal act in the Bill of *KUHP* is still a debate among law experts, and when it is associated with a corporate position as a legal subject, this is not regulated in *KUHP*. While *KUHP* is a general criminal law, and under the provisions of Article 103 of *KUHP* which states that if *KUHP* does not regulate the status of the corporation as a legal subject, then applicable is the provisions

of specific legislation outside *KUHP* of the current designations.

IV. CONCLUSION

Based on the above description, it can be concluded that the corporation as a subject of crime is still outside *KUHP*. Although in some laws it states that corporations are included in the element of crime, of course this is an important part in the development of legal policy in Indonesia. In spite of that, corporate crimes that have a lot of adverse effect on the development of nation's development should be included in the Bill of *KUHP*.

The growing pros and cons of setting up corporate law in the Bill of *KUHP* should be the basis for legal policymakers to keep an eye on legal developments. The basis of such legal policy must also be aligned with the global development of criminal law thinking, and should not preserve the tradition of 19th century thought, especially mentioning that corporate crime is identical to that of an individual.

As it is known, that corporate crime involves an unlimited power or a great power of investors, the corporation's conduct of a crime must be held accountable in accordance with the laws and regulations. Therefore, the law must firmly regulate the corporate crime, so that justice and equality of law in the life of nation and state is felt by all society. May be useful.

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