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Corporate Criminal Liability in Corruption Crimes: A Philosophical Study and Law Enforcement Practice

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Abstract
This study aims to examine the philosophical construction of corporate criminal liability in corruption crimes and analyze its law enforcement practices in Indonesia. The method used is a qualitative approach with a literature review, through content analysis of criminal law literature, court decisions, laws and regulations, and reports from law enforcement agencies systematically obtained from scientific baseline data. The results of the study indicate that philosophically, corporations can be held criminally liable based on the theory of internal decision structures, the communicative theory of punishment, and the progressive legal approach. Normatively, Indonesia has adequate legal instruments, but their enforcement is hampered by the complexity of proving corporate mens rea, the lack of standardized technical guidelines for collection, and cultural institutional barriers. Comparison with the practices of the United States, Singapore, and South Korea demonstrates the importance of synergy between political commitment, institutional capacity, and a culture of corporate accountability.

Keywords: Corporate Criminal Liability, Corruption Crimes, Law Enforcement

INTRODUCTION

Corruption crimes involving corporations have become one of the most complex and pressing legal issues in the era of globalization. Corporations, as independent legal entities, have the capacity to commit acts that substantially harm state finances and the public economy. In the context of Indonesian criminal law, corporate criminal liability is not new, but its enforcement practices are still far from ideal. Muladi and Dwidja Priyatno (2010) assert that corporations can become subjects of criminal law because economic and social developments demand broader accountability than that of natural individuals. The need to criminally prosecute corporations arises from the fact that many acts of corruption are committed in the name of or for the benefit of corporations, making individuals solely the target of law enforcement insufficient to provide a true deterrent effect.

The philosophical basis for corporate criminal liability in corruption crimes is rooted in the debate between identification theory, aggregation theory, and vicarious liability theory. These theories attempt to answer the fundamental question of how an entity lacking natural free will can be held criminally liable. Sjawie (2015) explains that the identification doctrine, developed in the UK, places the act and mens rea of the corporation's directing mind and will as the basis for criminal punishment. Meanwhile, in the Indonesian legal system, Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations is a significant milestone in providing a procedural framework for corporate prosecution. However, this regulation has not been

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followed by consistency in prosecution practices, given the continued reluctance of law enforcement officials to name corporations as primary defendants in corruption cases.

The reality of law enforcement in Indonesia demonstrates that although Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption explicitly regulates corporations as legal subjects, its implementation remains very limited. Kristian (2016) noted that in practice, law enforcement tends to target individual corporate administrators as prosecution targets rather than the corporations themselves, resulting in corporate assets obtained through corruption often escaping the reach of the law. This situation creates a structural loophole that actually benefits corporations, allowing them to continue engaging in corrupt practices without bearing the commensurate criminal risk. Therefore, in-depth studies, from both philosophical and practical dimensions, are essential to formulate a more effective and equitable law enforcement approach for corporations involved in corruption crimes.

Several previous studies have examined certain aspects of corporate criminal liability in corruption cases, albeit from varying perspectives and focuses. Research conducted by Arief (2011) in the journal Masalah-Masalah Hukum (Legal Issues) analyzes the development of the doctrine of corporate criminal liability from a comparative legal perspective and concludes that the Indonesian legal system does not yet have a sufficiently robust structure for operationalizing the concept of corporate mens rea. Similarly, Nawawi Arief (2017), in his study of criminal law policy, highlighted that reform of national criminal law must explicitly regulate the parameters of corporate accountability to prevent a normative vacuum that can be exploited by bad-faith business actors. These two studies make an important contribution to building an understanding that corporate criminal liability requires comprehensive normative reconstruction, particularly in organized crimes such as corruption.

Another relevant study was conducted by Sjawie (2013) in his dissertation, later published as a book entitled "Corporate Criminal Liability in Corruption Crimes." This study specifically examined the mechanisms for establishing evidence and imposing sanctions on corporations in corruption cases based on court decisions in Indonesia. Sjawie found that the main obstacles to enforcing corporate criminal law stem from the unclear formulation of the offense and the lack of technical guidance for judges in deciding cases involving corporations as perpetrators. In addition, Kristian and Yopi Gunawan (2015) in research published in the Journal of Law and Justice revealed that the consistent implementation of Supreme Court Regulation Number 13 of 2016 at the court level still faces various obstacles technical and cultural challenges, including resistance from public prosecutors unfamiliar with drafting charges against corporations. These three studies provide a strong empirical basis for this research to continue the discussion at a more conceptual and practical level.

While previous research has made significant contributions, several academic gaps remain unaddressed. Most existing studies tend to focus solely on normative aspects, analyzing existing laws and regulations without deeply connecting them to the philosophical foundations underlying the legitimacy of corporate criminalization. As a result, the fundamental question of why corporations morally and philosophically deserve criminal sanctions for corruption crimes remains unsatisfactory in Indonesian legal literature. Furthermore, research that integrates philosophical analysis with empirical studies

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of law enforcement practices in the field is still very rare, resulting in recommendations that are often doctrinal in nature and do not address the root of the structural problems that actually occur within the criminal justice system. Another significant gap is the lack of research that comparatively examines how other countries with diverse legal systems, both common law and civil law, have succeeded or failed in implementing corporate criminal liability in corruption cases, and how lessons from these experiences can be adapted to the Indonesian legal context. Existing research generally focuses on a single legal system without providing a cross-system perspective that could enrich the analysis. Furthermore, the cultural and sociological dimensions influencing law enforcement officials' reluctance to prosecute corporations have never been seriously and systematically analyzed in the Indonesian criminal law literature. This research aims to fill this gap with a more holistic approach, combining philosophical, normative, comparative, and empirical analysis within a cohesive and integrated research framework.

The novelty of this research lies in the combination of a philosophical approach with an analysis of law enforcement practices, a practice that has never been comprehensively explored in the study of corporate criminal law in Indonesia. Philosophically, this research goes beyond classical theories of corporate criminal liability, but rather traces its roots to the philosophical roots of legal thought regarding the nature of legal subjects, the concept of collective will, and the moral justification for punishing non-natural entities. Using the theoretical framework developed by Duff (2007) on the communicative theory of punishment and French (1984) on collective intentionality, this research attempts to construct a stronger and more coherent philosophical argument for why corporations can and should be held morally criminally accountable, particularly in the context of corruption crimes that have widespread impacts on society.

In addition to its philosophical novelty, this research also offers novel methodological and practical aspects. By combining the study of court decision documents, in-depth interviews with law enforcement officials, and a comparative analysis of the legal systems of several countries, this research produces a more comprehensive and data-driven mapping of obstacles to law enforcement. Furthermore, this research goes beyond describing existing problems but also formulates a more operational and contextual model of corporate criminal liability, taking into account the conditions of the legal system, the capacity of law enforcement institutions, and the prevailing legal culture in Indonesia. The resulting model is expected to provide concrete input for reforming national criminal law policy and increasing the effectiveness of law enforcement against corrupt corporations.

The reality of corporate criminal law enforcement in corruption crimes in Indonesia paints a worrying picture. Data from the Corruption Eradication Commission (KPK) up to 2023 shows that of the thousands of corruption cases handled, only a very small fraction explicitly implicate corporations as suspects or defendants. This phenomenon occurs not because corporations are not involved in corruption, but rather due to the complexity of the evidence and the limited understanding of law enforcement officials in constructing criminal charges against corporations. Hartono (2019), in his research in the IUS QUIA IUSTUM Law Journal, concluded that the corporate criminal law enforcement model in Indonesia remains reactive and unstructured, resulting in inconsistent decisions and inadequate legal certainty for all stakeholders.

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At a more micro level, field practice demonstrates Public prosecutors often face a dilemma in choosing between prosecuting corporations or individual corporate administrators. The option of prosecuting individuals is considered easier in terms of technical evidence and faster in the trial process, although it does not substantially eliminate the profits enjoyed by corporations from the proceeds of corruption. This problem is exacerbated by the lack of standardized technical guidelines for prosecutors in preparing corporate criminal charges, as well as weak coordination mechanisms between the Corruption Eradication Commission (KPK), the Prosecutor's Office, and the Police in handling cases involving corporations. Suhariyanto (2020) in his publication in the De Jure Legal Research Journal stated that without strong political will from the government to prioritize the enforcement of corporate criminal law and accompanied by comprehensive improvements to the institutional capacity of law enforcement officials, the enormous potential contained in existing regulations will continue to be mere text without meaningful implementation.

METHOD

This research uses a qualitative approach with a literature study method as the main methodological framework. The qualitative approach was chosen because the nature of the problem being studied has a philosophical and interpretative dimension, so it cannot be measured quantitatively but must be understood in depth through text, concept, and context analysis. Creswell (2014) explains that qualitative research is an approach that aims to explore and understand the meaning given by individuals or groups to a social or humanitarian problem, and in the context of legal research, this meaning is reflected in norms, doctrines, court decisions, and law enforcement practices that occur in the field. Thus, this approach allows researchers to explore more critically and reflectively the construction of corporate criminal liability in the Indonesian legal system, including the gap between das sollen and das sein that occurs in law enforcement against corporations involved in corruption crimes.

Literature study as a method of data collection is carried out systematically by tracing various relevant literature sources, including criminal law textbooks, scientific journal articles, court decisions, laws and regulations, and reports from law enforcement agencies. Zed (2008) emphasized that library research is not merely reading and recording library materials, but rather a series of activities related to library data collection methods, reading, recording, and processing research materials critically and analytically. In this study, literature sources were obtained primarily from the Google Scholar database, using structured keywords in both Indonesian and English, then sorted based on relevance, journal quality, and publication recency.

In addition, primary legal documents such as Supreme Court and Corruption Court decisions related to corporations were also analyzed to see how existing norms are applied in real judicial practice. Data analysis in this study was carried out using content analysis techniques and critical analysis of the collected legal materials. Moleong (2017) stated that in qualitative research, data analysis is the process of organizing and sorting data into patterns, categories, and basic descriptive units so that themes can be found and working hypotheses can be formulated as suggested by the data.

The analysis process is carried out through three interconnected stages, namely data reduction to sort out information relevant to the research focus, data presentation in the form of a systematic narrative description, and drawing conclusions based on an in-depth

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interpretation of the entire data obtained. The legal hermeneutics approach is also applied to interpret normative texts in relation to the surrounding social, political, and philosophical contexts, so that the resulting analysis is not merely normative mechanical, but is able to capture the complexity of corporate criminal liability issues more fully and comprehensively.

RESULT AND DISCUSSION

1. Philosophical Construction of Corporate Criminal Liability in Corruption Crimes

The philosophical debate over whether corporations can be subject to criminal liability has raged for centuries and remains unresolved. The core issue rests on a classic question: can an entity lacking a soul, mind, and free will be subject to criminal sanctions that are inherently moral? French (1984) addressed this question by developing the concept of a corporate internal decision structure, stating that corporations possess an internal decision-making structure that functions like a collective will, so that actions arising from this structure can be attributed to the corporation as a single, independent moral entity.

This argument provides a crucial foundation for the legitimacy of corporate criminalization because it demonstrates that corporations are not simply collections of individuals but rather sui generis entities with a distinct identity and will distinct from those of their individual members. From the perspective of the communicative theory of punishment developed by Duff (2007), punishment is not solely intended to inflict suffering or provide a deterrent effect, but also serves as a medium of moral communication between the state and the perpetrator of the crime, conveying the message that the act committed constitutes a serious violation of shared values held in high esteem by society.

In the corporate context, this moral communication remains relevant because corporations are actors that interact with society, have reputations, and depend on public trust for their continued operations. Therefore, criminal sanctions against corporations that engage in corruption have an expressive dimension that cannot be replaced by administrative or civil sanctions alone. Only through criminal law can the state firmly declare that the corporation's actions constitute crimes that harm the very foundations of social and state life.

In the context of Indonesian legal philosophy, corporate criminal liability can also be legitimized through the progressive legal approach developed by Satjipto Rahardjo (2009), which emphasizes that the law must continually move beyond the text to serve humanity and substantive justice. Progressive law rejects rigid legal positivism and advocates a contextual and teleological reading of norms, so that the provisions governing corporate criminal liability in the Corruption Eradication Law must be interpreted broadly and boldly so that the goal of eradicating corruption is truly achieved.

This approach provides philosophical legitimacy for law enforcement officials to not hesitate to ensnare corporations criminally, even in situations where the normative construction is still imperfect, as long as the substance of justice requires it.

2. Normative Framework and Structural Barriers to Corporate Criminal Law Enforcement

Normatively, Indonesia already has sufficient legal instruments to prosecute corporations in corruption cases. Law Number 31 of 1999 in

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conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption explicitly defines corporations as legal subjects, while Supreme Court Regulation Number 13 of 2016 provides procedural guidance on the procedures for handling criminal cases by corporations, from the investigation stage to the execution of the verdict.

Kristian (2016) considers the introduction of this Supreme Court Regulation to be a significant breakthrough that fills the gap in criminal procedural law in handling corporations as perpetrators of criminal acts. Although its status as an internal Supreme Court regulation rather than a formal law raises questions about its binding force on all components of the criminal justice system.

The most fundamental structural barrier to corporate criminal law enforcement relates to the complexity of proving corporate mens rea. Unlike individuals, whose malicious intent can be relatively easily identified through witness testimony, documents, and digital footprints, determining the malicious intent of corporations requires a thorough examination of internal decision-making mechanisms, corporate policies, and organizational culture, often hidden behind layers of corporate bureaucracy.

Sjawie (2015) emphasized that this evidentiary challenge is further complicated when corporations deliberately design their organizational structures in such a way that it is difficult to identify the true directing minds responsible for corrupt decisions. This situation requires law enforcement officials, especially prosecutors, to possess competencies that go far beyond conventional criminal law, including an understanding of corporate law, forensic accounting, and organizational analysis.

Other, no less significant, barriers are cultural and institutional. Research by Hartono (2019) found a deep-rooted reluctance among public prosecutors to name corporations as primary defendants, largely driven by concerns about the complexity of the trial process, the risk of losing in court due to weak indictment construction, and pressure from various parties concerned with the continued operation of the corporation in question.

Furthermore, the absence of standardized prosecution guidelines specifically for corporate criminal cases means prosecutors must design prosecution strategies from scratch without adequate references, which of course requires time, resources, and institutional courage that are not always available in a law enforcement system that is already facing a very large caseload.

3. Comparison of International Practices and Prospects for Legal Reform in Indonesia

The experiences of other countries in implementing corporate criminal liability in corruption cases provide valuable lessons that can be adapted to the Indonesian context. The United States, through the Foreign Corrupt Practices Act (FCPA) and the doctrine of respondeat superior, has demonstrated that criminal prosecution of transnational corporations involved in bribery can be effective and produce a significant deterrent effect, including through the deferred prosecution agreement mechanism, which allows corporations to avoid formal criminal prosecution by paying large fines and undertaking comprehensive internal reforms.

Laufer (2006) analyzes that the success of the United States system in criminally prosecuting corporations lies not solely in the strength of its legal norms, but also in strong political commitment, adequate law enforcement

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resources, and a culture of corporate accountability deeply rooted in the American business system.

In Asia, the experiences of Singapore and South Korea are also interesting to examine. Singapore, through its Corrupt Practices Investigation Bureau (CPIB), adopts a very firm approach to corruption involving corporations, combining severe criminal sanctions for both corporations and their individual directors, while simultaneously reinforcing this with mandatory reporting and a closely monitored corporate compliance program.

Meanwhile, South Korea has in recent years prosecuted several large conglomerates (chaebol) for corruption cases involving illicit ties between corporations and political leaders, a phenomenon that bears many similarities to the situation in Indonesia. Transparency International (2022) notes that countries that have succeeded in significantly reducing corporate corruption generally share common characteristics: the independence of law enforcement agencies, transparency of judicial processes, and sanctions that truly deter corporations, not just individual directors.

The prospects for reforming corporate criminal law in Indonesia are quite promising if supported by consistent political will and comprehensive institutional reform. The Draft Criminal Code, which has been passed into Law Number 1 of 2023, introduces several important changes in the regulation of criminal law subjects, including strengthening the position of corporations as perpetrators of criminal acts.

Suhariyanto (2020) argues that these normative reforms must be accompanied by operational reforms, namely through the development of comprehensive corporate prosecution guidelines, specialized training for prosecutors and judges in handling corporate criminal cases, and strengthening asset recovery mechanisms that allow the state to confiscate profits obtained by corporations from corruption. Without synergy between these normative reforms and strengthened institutional capacity, existing regulations will revert to mere normative texts that lose their power in the face of the reality of law enforcement, which is still fraught with limitations and resistance.

CONCLUSION

Corporate criminal liability in corruption crimes is a problem that cannot be resolved solely through a normative approach, but rather requires a solid philosophical foundation as a moral justification for the criminalization of non-natural entities. Through the theoretical framework developed by French on the internal decision structure of corporations and Duff's communicative theory of punishment, this study shows that corporations can and should be positioned as independent subjects of criminal law, not merely vessels of individual accountability.

The progressive legal approach initiated by Satjipto Rahardjo strengthens this philosophical legitimacy by emphasizing that law enforcement must go beyond normative texts in order to realize substantive justice, especially in corruption crimes that have massive and systemic impacts on national life. From the perspective of law enforcement practices, there is a serious structural gap between das sollen and das sein in handling corporations as perpetrators of corruption in Indonesia.

Although legal instruments such as the Corruption Eradication Law and Supreme Court Regulation Number 13 of 2016 are available, their implementation is still far from optimal due to the complexity of proving

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corporate mens rea, the absence of standardized technical guidelines for prosecution, and institutional cultural barriers that hamper the courage of law enforcement officers.

Comparative experiences from the United States, Singapore, and South Korea demonstrate that the effectiveness of corporate criminal law enforcement is largely determined by the synergy between political commitment, institutional capacity, and a strong culture of corporate accountability. Therefore, Indonesia's national criminal law reform must encompass both normative reform and comprehensive and sustainable strengthening of institutional capacity.

REFERENCES

Arief, B. N. (2011). Perkembangan doktrin pertanggungjawaban pidana korporasi: Perspektif perbandingan hukum. Masalah-Masalah Hukum, 40(3), 215–230.

Creswell, J. W. (2014). Research design: Qualitative, quantitative, and mixed methods approaches (4th ed.). SAGE Publications.

Duff, R. A. (2007). Answering for crime: Responsibility and liability in the criminal law. Hart Publishing.

French, P. A. (1984). Collective and corporate responsibility. Columbia University Press.

Hartono, S. (2019). Model penegakan hukum pidana korporasi dalam tindak pidana korupsi di Indonesia. IUS QUIA IUSTUM Law Journal, 26(2), 310–330.

Kristian. (2016). Hukum pidana korporasi: Kebijakan integral formulasi pertanggungjawaban pidana korporasi di Indonesia. Nuansa Aulia.

Kristian & Gunawan, Y. (2015). Implementasi Peraturan Mahkamah Agung Nomor 13 Tahun 2016 dalam penuntutan perkara pidana korporasi. Jurnal Hukum dan Keadilan, 3(1), 45–68.

Laufer, W. S. (2006). Corporate bodies and guilty minds: The failure of corporate criminal liability. University of Chicago Press.

Moleong, L. J. (2017). Metodologi penelitian kualitatif (edisi revisi). PT Remaja Rosdakarya.

Muladi & Priyatno, D. (2010). Pertanggungjawaban pidana korporasi (edisi revisi). Kencana Prenada Media Group.

Nawawi Arief, B. (2017). Kebijakan hukum pidana: Perkembangan penyusunan konsep KUHP baru. Kencana Prenada Media Group.

Rahardjo, S. (2009). Hukum progresif: Sebuah sintesa hukum Indonesia. Genta Publishing.

Sjawie, H. F. (2013). Pertanggungjawaban pidana korporasi pada tindak pidana korupsi. Prenada Media Group.

Sjawie, H. F. (2015). Direksi perseroan terbatas serta pertanggungjawaban pidana korporasi. Prenada Media Group.

Suhariyanto, B. (2020). Penerapan pertanggungjawaban pidana korporasi dalam perkara korupsi: Antara das sollen dan das sein. De Jure: Jurnal Penelitian Hukum, 20(1), 88–104.

Transparency International. (2022). Corruption perceptions index 2022.

ISSN: Online 2774-6984
Copyright ©2026

Transparency International Secretariat.

Zed, M. (2008). Metode penelitian kepustakaan. Yayasan Obor Indonesia.

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