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Corporations as Corruption Offenders: Challenges and Solutions for Restorative Justice-Based Punishment

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ABSTRACT

The criminal prosecution of corporations involved in corruption in Indonesia has yet to demonstrate substantial effectiveness, both in terms of substantive justice and the enforcement of anti-corruption laws. Although corporations are legally recognized as subjects of criminal liability, enforcement practices remain limited, and sanctions imposed tend to be formalistic without triggering structural reforms within the company. This study employs a normative legal and comparative law approach to evaluate the effectiveness of existing regulations and to propose a more progressive model of corporate criminal liability. The findings indicate that corporate punishment should include preventive, restorative, and internal restructuring measures, rather than mere financial penalties. Therefore, regulatory reform and the application of multi-level sanctions are essential to establish deterrence and ensure sustainable justice in combating corporate corruption.

Keywords: *Corporate Criminal Liability, Corruption, Legal Effectiveness, Substantive Justice, Regulatory Reform*

Introduction

Corruption has become an extraordinary crime that threatens the stability of development and clean governance in Indonesia (Hariz et al., 2024; Junaedi, 2020; Widodo et al., 2018). This phenomenon not only involves individuals as the main perpetrators, but also shows a pattern of institutional or corporate involvement in various organized crime schemes. Based on the Annual Report of the Corruption Eradication Commission (KPK) in 2024, out of a total of 1,414 corruption cases handled since 2004, only around 33 cases explicitly involved corporate entities as suspects. This shows a considerable gap between the potential involvement of corporations in corruption and the actual legal handling of these entities.

Corporations as legal subjects have the capacity, resources and networks to commit systemic corruption crimes (Elliott, 2024; Spalding, 2013). In major cases such as the PLTU Riau-1 bribery case (involving PT. Blackgold Natural Resources) and the Jiwasraya corruption case, the involvement of legal entities in corrupt practices has proven to have a broad impact on state losses, damage to public reputation, and loss of investor confidence. However, the imposition of criminal sanctions against corporations still has not shown a deterrent effect or created a sustainable internal improvement mechanism. In practice, criminalization still focuses on individual perpetrators (directors, commissioners), not on corporate entities as part of a collective crime structure (Campbell, 2018; Haugh, 2017; Lederman, 1985; Smith, 2022).

The urgency of this research lies in the need to review the paradigm of criminal law in Indonesia in dealing with corruption crimes committed by corporations. The current legal system is still oriented towards individual subjects as the main perpetrators of crime, while social and economic realities show that corporations also have a central role in large-scale law violations. Without an appropriate punishment model for corporations, the effectiveness of corruption eradication efforts will always be hampered.

Conceptually and normatively, there is a research gap that has not been widely touched upon in academic studies and legal policies: namely the weak mechanism of proving corporate criminal liability and the absence of structural and sustainable sanctions. Many studies still dwell on the formal juridical aspects, but have not answered how corporate punishment can truly produce substantive justice and create a deterrent effect in the private sector. Comparison with other countries such as the United States and the Netherlands shows that Indonesia is still lagging behind in terms of legal innovation related to corporate liability.

The contribution of this research is expected to strengthen the scientific discourse on economic criminal law reform, as well as provide a basis for policy makers and law enforcement officials to develop a more progressive and responsive approach in dealing with corporations as perpetrators of corruption crimes.

This research aims to answer the need for a fairer and more effective formulation of punishment against corporations as perpetrators of corruption crimes. In particular, this research wants to comprehensively explore how punishment against legal entities can be carried out proportionally and functionally in the Indonesian criminal law system. In this case, punishment is not only understood as a form of retribution, but also as a means of corrective, preventive, and recovery of the socio-economic impacts caused by corruption.

The first objective of this research is to analyze the concept and practice of corporate punishment in corruption cases in Indonesia, in particular assessing the extent to which existing regulations - such as the Anti-Corruption Law and Perma No. 13/2016 - can be effectively implemented by law enforcement officials. This research also aims to examine how the principles of substantive justice can be applied in the context of law enforcement against legal entities that have collective and complex characteristics.

The next objective is to identify systemic weaknesses in the current corporate punishment structure, both from the normative, institutional, and practical aspects in the field. In this case, the research explores challenges in proof, determination of guilt, and sanctions that have an impact on internal corporate reform and recovery of state losses.

Finally, this research aims to offer an ideal model of corporate punishment, namely a model that is able to create a deterrent effect, encourage the transformation of corporate governance, and ensure the restoration of social justice values. This model is expected to be a real contribution to the development of economic criminal law in Indonesia as well as a reference in the formulation of future national criminal policies.

Methods Research

This research uses a normative juridical approach, which is a legal research method that focuses on positive legal norms that apply and are relevant to the issue of corporate criminalization in corruption crimes. This approach was chosen because the problems studied are closely related to the analysis of legal structures, principles of criminal law, and laws and regulations governing corporate criminal liability.

The main data source in this research is legal material, which consists of primary and secondary legal materials. Primary legal materials include various laws and regulations such as Law Number 31 of 1999 jo. Law No. 20/2001 on the Eradication of Corruption, the Criminal Code (KUHP), and Supreme Court Regulation (Perma) No. 13/2016 on Procedures for Handling Criminal Cases by Corporations. In addition, court decisions that have permanent legal force (inkracht) are also analyzed as primary legal sources that reflect the concrete application of norms.

Meanwhile, secondary legal materials include legal literature, scientific journals, opinions of experts in criminal law and corporate law, as well as the results of previous

research relevant to the focus of the study. This material is used to provide a strong theoretical foundation, enrich the analysis, and place the findings in a broader academic context.

In supporting the sharpness of the analysis, this research also adopts a comparative approach by examining the practice of corporate punishment in several other countries, such as the United States and the Netherlands. This comparison is intended to explore alternative models and best practices that can be adapted in the Indonesian legal system, especially in the aspects of corporate liability, proof of collective guilt, and the application of structural sanctions.

The analysis technique used is qualitative analysis, which is carried out through a process of interpretation of legal norms and supporting documents. The analysis is carried out with a systematic and teleological approach, namely interpreting legal norms in the context of the entire legal system and the social goals to be achieved. Legal argumentation is built inductively-deductively to develop conclusions and recommendations based on coherent legal logic.

With this method, the research is expected to be able to provide an in-depth understanding of the position and function of corporate punishment in the framework of eradicating corruption in Indonesia and produce an alternative model of punishment based on justice and legal effectiveness.

Results and Discussion

The Practice of Corporate Punishment in Corruption Crime in Indonesia

Theoretically, corporations as legal entities have long been recognized as subjects of criminal law (Fitz-Henry, 2022; Halpern, 2008). However, in practice, law enforcement against corporations that commit corruption crimes in Indonesia has not run optimally (Fakhrizy, 2021; Suramin, 2021). Based on the case handling report by the KPK until 2022, only about 2.3% of all cases involved corporate entities. Most of them lead to the conviction of individuals without touching the responsibility of the corporation as a collective entity that also benefits from unlawful acts.

The main difficulty in this criminalization practice lies in the problem of proving the relationship between the individual's actions and the will of the corporation, as well as the absence of standardized standards in determining when an act can be qualified as corporate responsibility. In many cases, investigators tend to choose an "easier" approach, namely ensnaring individuals based on their formal role in the organizational structure, not based on the crime scheme institutionalized in the company's managerial system.

In the case of PT Nindya Karya and PT Tuah Sejati, the corporations were found guilty of corruption in the Sabang port project (Nani Mulyati & Aria Zurnetti, 2022). However, the punishment imposed was only a fine and revocation of the right to participate in government tenders. There are no further efforts to audit internal systems, evaluate compliance programs, or dismantle corporate incentive structures that trigger corruption. This shows that the purpose of punishment has not been directed at structural transformation, but only repressive and administrative.

In addition, the low frequency of convictions against corporations also shows the powerlessness of the legal system in dealing with large economic entities that have much stronger legal and financial resources than individual perpetrators. This imbalance indirectly creates a gap for corporations to avoid legal responsibility through the mechanism of assigning blame to subordinates, proxy litigation, or transferring assets.

Justice and Effectiveness Perspectives on Corporate Punishment

In the perspective of modern criminal justice, punishment against corporations must be seen as a means to restore social balance, not just to punish (Brooks, 2021; Kasim et al., 2023; Mahendra & Emovwodo, 2023). The existence of corporations in the social and economic structure of society requires a punishment that is not only punitive, but also rehabilitates and prevents similar crimes from occurring in the future. Punishment that is only in the form of financial fines does not have a transformative effect, especially when the amount of the fine is much smaller than the profits obtained from the corruption crime.

In the context of effectiveness, corporate punishment should be able to create a deterrent effect not only for the corporation concerned, but also for other corporations to build a strong internal control system. However, in reality, the legal sanctions imposed are often disproportionate and do not provide significant pressure for internal corporate institutional reform. In fact, one of the functions of punishment is to break the chain of structured and systematic crimes.

In addition, the limited resources of law enforcement officials - both in terms of competence, courage, and independence - are a factor inhibiting the effectiveness of law enforcement against corporations. This is inversely proportional to the practice in countries such as the United States, which actively applies Corporate Criminal Liability with the principle of "respondeat superior" which allows companies to be responsible for the actions of their employees carried out in their work capacity and for the benefit of the company (Silver, 2024).

To create a fair and effective punishment, an interdisciplinary approach is needed that does not only rely on criminal law alone, but also utilizes the science of risk management, internal audit, and governance compliance. Thus, punishment is not only a means of retaliation, but also a tool for repairing a structurally damaged system.

The Urgent Need for a Progressive Corporate Criminalization Model

Based on the results of the analysis above, it appears that corporate punishment in the context of Indonesian criminal law is still conventional and not responsive to the dynamics of corporate crime which is collective, covert, and systemic (I Dewa Made Suartha & Jared Ivory, 2024). Therefore, it is necessary to build a progressive and adaptive punishment model, namely a model that emphasizes recovery (restorative), prevention (preventive), and internal transformation (Mulyana Hadi et al., 2023).

This model can be realized through the application of a combination of criminal and non-criminal sanctions, such as the obligation to restructure the organizational structure, undergo periodic compliance audits, conduct anti-corruption training, or appoint a third party to oversee the reform process within the corporation (Januarsyah et al., 2021). This is in line with global practices such as the application of Monitorship or Compliance Programs which are part of corporate criminal resolution.

As a follow-up, revision of regulations is a necessity. The expansion of sanctions against corporations must be explicitly regulated in the legislation so that law enforcement officials have a strong basis in prosecuting and deciding on these innovative forms of punishment. In addition, it is important to develop technical guidelines that explain the indicators of corporate responsibility, collective proof methods, as well as procedures for implementing constructive non-conventional punishment.

Discussion

This research presents a number of significant scientific novelty in the discourse of criminalizing corporations for corruption crimes in Indonesia. So far, academic discourse and legal policies in Indonesia are still focused on individual perpetrators, whereas in many cases, corruption crimes involve institutional structures that are systemic and collective in nature. This research offers a new approach that views corporations not only as passive objects, but as active actors in the design of organized crime who must be held substantively legally accountable.

The first novelty of this research is the formulation of corporate punishment based on substantive justice and structural effectiveness. Unlike previous studies that are limited to regulatory exposure or formal juridical analysis, this research proposes the integration of restorative justice principles and preventive approaches in sentencing, so that criminal sanctions can include improvements to the company's internal governance system, not just financial penalties.

The second novelty is a comparative analysis focused on the application of progressive models such as the Deferred Prosecution Agreement (DPA) and Corporate Monitorship that have proven effective in several countries such as the United States and the United Kingdom. By adopting these models selectively and contextually, Indonesia can formulate a punishment system that is more adaptive and responsive to the complexity of corporate crime.

In addition to novelty, this research also provides concrete theoretical and practical contributions. From the theoretical side, this research strengthens the modern criminal law paradigm that recognizes corporate entities as moral and legal subjects that can be held responsible for crimes, as well as opening a space for dialogue between criminal law, economic law, and corporate governance.

From the practical side, this research provides strategic recommendations for policy makers and law enforcement officials, particularly in preparing technical guidelines for corporate punishment, developing indicators of collective criminal responsibility, and establishing special units that handle corporate crimes with an interdisciplinary approach. This research can also serve as a reference in drafting revisions to laws that are more inclusive of the dynamics of collective crimes involving legal entities.

Thus, this article not only enriches the corporate criminal law literature, but also offers concrete solutions to the stagnation of corporate law enforcement in Indonesia, especially in the context of corruption eradication. It is hoped that the results of this research can encourage criminal law reform that is more just, progressive, and has a long-term impact on the integrity of the national legal system.

Conclusion

The criminalization of corporations as perpetrators of corruption in Indonesia still faces a number of structural, normative and cultural challenges. Although normatively corporations have been recognized as subjects of criminal law through the Anti-Corruption Law and Perma No. 13/2016, their implementation in practice is still weak and inconsistent. Law enforcement is still centered on individuals as perpetrators, while corporate entities that benefit from unlawful acts often escape substantial accountability.

This condition shows a serious gap between regulation and legal practice, which has an impact on the non-optimal deterrent effect, weak recovery of state losses, and failure to create institutional reforms in corporations involved in corruption. In addition, the approach used by law enforcement officials is still repressive and has not been directed at punishment based on substantive justice and structural effectiveness.

This research emphasizes that corporate punishment must go beyond fines and administrative sanctions. A more progressive approach is needed, namely through the application of multi-level sanctions that include organizational restructuring, internal audit and compliance programs, and strict supervision by independent regulatory agencies. That way, punishment is not only an instrument of retaliation, but also a means of prevention, recovery, and transformation of corporate governance.

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